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**It is from Small Missteps that Great Tragedies Grow:
Tenure and the Drive for Collective Bargaining at the University of Minnesota
Events and Commentary**

Gary Engstrand

CONTENTS

	Preface, Introduction, Methodology, Acronyms and Participants	1
1.	Context: A Board Already Distanced from the Administration and Faculty	9
2.	Initial Skirmishes: The Regents Raise the Issue of Tenure	27
3.	The Struggle Heats Up: Faculty Apprehensiveness Grows and the Faculty Divide	54
4.	Faculty Apprehensiveness Crescendos: Events Leading up to the April 18 Senate Meeting	167
5.	The Events of April 18	227
6.	The Faculty Complete Their Work (They Think)	259
7.	The Calm Before the Storm: The Pace Slowed in the Summer	337
8.	The August Regents' Retreat and the Events Leading up to the September Regents' Meeting in Morris	377
9.	The Storm: The Regents Act and the Faculty React	412
10.	Union Efforts and Press Coverage Accelerate and Various Other Events	485
11.	The Reagan-Spence Proposal & Reflections on the Role of the Media, the Faculty, and External Groups	534
12.	A Resolution Appears: The Law School Dean Offers the Regents an Exit, the Faculty Contemplate It, and the Collective Bargaining Machinery Moves Forward	563
13.	The October Faculty Senate Meeting and Its Aftermath & The Halloween Surprises	595
14.	The November Regents' Meeting: The Board Adopts a New Tenure Code	620
15.	The AHC Collective Bargaining Campaign and Vote Faculty Negotiate with Faculty on Negotiating with the Regents The Faculty Senate Responds to Adoption of Sullivan II	653
16.	More Negotiating on Negotiating, More Campaigning, and the Faculty Senate Acts on Sullivan II	697

17.	The Final Campaign and the Vote on Collective Bargaining	735
18.	The Touchy and Frustrating Endgame: Negotiating with the Board on Sullivan II	775
19.	Final Reflections	800

**It is from Small Missteps that Great Tragedies Grow:
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Events, Commentary, and Lessons**

Gary Engstrand¹

The sad and destructive events chronicled in this volume generated more harsh words than kind, more criticism than compliments. The tenure debate nearly destroyed a great university. Inasmuch as virtually all of the participants in that debate were deeply committed to the welfare of the University, sometimes tempers flared, sometimes emotions ran high, and sometimes motives were impugned. Virtually everyone came in for censure to some degree.

I have known well many of the on-campus participants, a few for over twenty years. Some of the individuals I count as friends; others, not that close, are nonetheless people whom I count as colleagues and are people for whom I have considerable respect. Recounting these events was thus itself sometimes painful, because unkind things were said about people whom I like and respect -- people who were on all the different sides of this controversy.

Notwithstanding the foregoing, I have tried to be as dispassionate as possible, tried to be the disinterested reporter. To have excised the depth of feeling that many expressed, in emails and written documents and interviews, would have bowdlerized the recounting; people were determined and angry and upset and frustrated. The alternative was simply to have let these events fade away, so both the sharpness of feeling and the events themselves receded into gentle memory. But all of those with whom I spoke believed strongly that these events should be recorded, so record them I have, with few holds barred.

To all those with whom I have worked and interacted, from faculty to administrators to regents, I simply remind you of the adage about not shooting the messenger. Remember that I chronicle not my views, but yours.

¹Staff, Faculty Consultative Committee, University of Minnesota; Ph.D., Higher Education, University of Minnesota.

Introduction

Many in American higher education are aware that the University of Minnesota was involved in a divisive and highly public debate about changes to its tenure code during 1995-97. This book is a chronology of the events at the University and commentary on those events by many of the leading faculty and administrative participants.

1. If there had been a couple of killings along the way, this entire set of events would have been a superb murder mystery. As originally drafted, I kept to verbs, adjectives, and adverbs that were relatively neutral. As the work evolved, however, and because of the dramatic nature of events, I decided that at least moderately descriptive terminology was acceptable, especially when I had personal knowledge of the events. The job of the chronicler is not to make judgments about those who were the participants, but at the same time, it is neither misleading or inapt to use descriptors afforded by the English language to convey the sense of events as they occurred.

2. It should be noted at the outset that I will refer to “the faculty” and “the regents.” There are over 3,000 faculty at the University of Minnesota, and no one can validly claim to know what “the faculty” think about any issue, much less about one that was debated as acrimoniously as tenure. Nor can it be known what “the regents” thought, because the majority of the twelve Board members were not making public statements about their views as the debate progressed -- and because it is likely that they often disagreed with each other.

In the case of the faculty, there were involved leadership groups of faculty who were active and vocally opposed to proposals that came from at least some of the regents. There will be much about them in this chronology; they included the Senate committee chairs, the Faculty Consultative Committee (FCC), the “Gang of 19,” the University Faculty Alliance (UFA; the group advocating collective bargaining), the AAUP, and the “Regents’ Professors² as a Greek chorus,” in the words of Craig Swan.³ As best one can tell from anecdotal evidence from across the University, these

²Twenty senior faculty at Minnesota are awarded the special rank of regents’ professor, for nationally- and internationally-recognized scholarship and research; they have met periodically as a group with the president and regents to consult on significant issues. There can be no more than 20; a regents’ professor must retire or die before another one can be appointed. Regents’ Professor Eville Gorham wrote that they have met with the regents occasionally since 1984 “(but not since the tenure debate began). However, in my experience we have not been “consulted on significant issues.”

³The membership and role of the various groups are described later. The FCC serves as the executive committee of the Faculty Senate and the chief faculty consulting body, and consists of 10 voting faculty: 7 elected campus-wide on the Twin Cities campus of the University, one each elected from the Morris and Crookston campuses, and the vice-chair of the Senate. The chairs of the Senate committees on Educational Policy, Faculty Affairs, and Finance and Planning serve as ex officio members, as does a faculty member from

leadership groups probably represented the views of the larger faculty with reasonable accuracy, in various ways, in various groups, at various times. I will thus take the liberty, on occasion of referring to “the faculty,” and by that I refer to the views expressed by those leadership groups. It should be clear, however, that the faculty were not of one mind on all of the issues.

3. The long practice at the University of Minnesota is that no changes are made to the tenure code without express action by the Faculty Senate recommending such changes to the regents. The tenure code contains a proviso (Section 19) that the regents will make no changes to the code without first consulting with the Faculty Senate. In turn, the understanding of the Faculty Senate is that tenure proposals go first to, and come from, the Tenure Subcommittee (of the Committee on Faculty Affairs), then go through the Committee on Faculty Affairs and the Judicial Committee, and then either to the Faculty Consultative Committee or directly to the Faculty Senate (practice on this last has not been consistent). Legally, the “consultation” with the Faculty Senate does not mean the regents must obtain the assent of the Faculty Senate to change the code, although in practice, for as long as anyone can remember, the code was changed only when the Faculty Senate recommended amendments to the Board.

Methodology

This chronology is not complete, and it cannot be. It began as a set of abstracts of the paper record of the tenure debate, and in particular the records of the faculty governance committees and the newspaper accounts. Early on, I had a few conversations with people about the context for some of the documents, and it became starkly obvious that the paper record was a woefully inadequate recounting of events. The chronology does not record administrative or regental meetings for which no notes were taken, or on the many informal meetings and exchanges that occurred over many months, except as they may have been recalled by the participants.

I decided that interviews were necessary, so I developed a set of questions (which grew as the interviews took place). I started with the faculty, administrative, and external participants. Most of the interview subjects were provided the list of questions in advance, but the conversations frequently roved from the prepared questions.

With only a few exceptions, each interview took between an hour and two hours, typically in the office of the subject. The agreement I had with each subject was that the interview would be

the non-unionized faculty at the Duluth campus. The faculty legislative liaison (the faculty lobbyist at the legislature) also serves, in an informal ex officio role. Swan was the legislative lobbyist.

taped and transcribed, and that he or she would see the first and only copy of the transcript and could make any changes, additions, or deletions he or she wished. Once the subject had edited the transcript, I was then free to use it for quotation with attribution.

In a number of instances, those who were interviewed were forthright -- indeed, blunt -- about the failings of some individuals, including their faculty colleagues, administrators, and members of the Board of Regents. Inasmuch as this record is not intended to reopen wounds that were inflicted, make faculty members angry with one another, or to harm warming faculty-regent relationships (damaged to the point that they were obliterated during the tenure events, but at the time this is written improving substantially), the more harsh personal comments will be condensed. Because those perceptions about individual failings, however, were important to what actions people took, they cannot be ignored or go unreported.

In some instances, interview subjects agreed to provide information or opinion only if the quotation were not attributed and all language which might identify him or her were stripped from the quote. Several told me that they believed that a particular perspective or event should be a part of the record, but because of the sensitive nature of the comment, they did not want it to linked to them. The wish for anonymity is understandable. In most cases, the subjects wished to make a candid statement, but because the statement might reflect adversely on a colleague -- faculty or administrator -- with whom they must continue to work, or about a member of the Board of Regents or the legislature, or about someone whom they continue to like despite a negative opinion in the matter at hand, they did not want to be on the record. This option was used only sparingly by most.

A few of the major players in these events declined to be interviewed. In two other instances, individuals agreed to be interviewed, but only on the condition that (1) none of their comments could be used with attribution and (2) the fact that they had been interviewed would not be recorded. The comments of these two are woven into the text. Both of these people have long been involved with the University and were able to offer both insight and recollections that were unavailable from any other source. There thus appear at places throughout the text comments by "a faculty member who supported the union effort" or "a long-time observer of University events" or "a faculty leader," and so on.

I was uneasy about using these unattributed comments, but it seemed to me more important to have a complete record than to have complete attribution. It was evident that either I would record anonymously these particular sentiments or recollections, or they would not be recorded at all. The reader will simply have to take it on faith that the individuals quoted in this fashion were in a position to offer an informed statement.

Although I am not a professional historian, it became clear to me that I had a major source of material for this volume that has not existed heretofore: email messages. One faculty member recalled (with some chagrin, once he learned I was preparing this manuscript) that he had deleted 1300 email messages about tenure that he had sent or received before the April 18, 1996, meeting of the Faculty Senate because they were taking up too much memory on his hard drive. Others had done the same. A few, fortunately, had kept many of their email messages, and some provided me copies of those messages (for a total of several million bytes).

Much of the information and opinion about the events surrounding the tenure debate were transmitted by email, especially on the faculty and administrative side. Only one regent was a regular email user (Jean Keffeler), and none of the external folks used it. Conversations are evanescent, of course; I surmise that the lack of any record of conversations is often the bane of historians. (How much more confident one must be about writing history before the advent of the telephone, the automobile, and the airplane, when distances in time and place were so great that much more must have been committed to the paper record through correspondence than is now the case.)

Inasmuch as email exchanges now often partially substitute for oral exchange, however, the record can be at least somewhat more complete -- if participants in events do not erase them. There are many quotations from the email record in this book, and they perhaps record more accurately than any other source the true sentiments and perceptions of those who wrote them. They also document with great accuracy the speed with which information flowed among the participants.

Acronyms, Groups, Major Participants, and Interview Subjects

(* denotes individuals who were interviewed)

AHC	Academic Health Center, consisting of the seven health sciences colleges of the Twin Cities campus and the Medical School at the Duluth campus
ASE	Arts, Sciences, and Engineering
BMS	Bureau of Mediation Services; the state agency responsible for administration of state collective bargaining laws
FCC	Faculty Consultative Committee; the group of 10 elected and 5 ex officio faculty who serve as the steering committee of the Faculty Senate and the senior consulting faculty group; there were also three “junior” FCCs, one in each of the three parts of the Twin Cities campus headed by a provost (those three units were the Academic Health Center, the Arts, Sciences, and Engineering, and Professional Studies).

UFA	University Faculty Alliance; the group advocating faculty collective bargaining
Gang of 19	Group of senior faculty who coalesced in winter, 1996, around the tenure issue, because they were dissatisfied with the manner in which the tenure debate was proceeding; the number of faculty involved varied (perhaps between a few at the beginning to 35 or more at its peak) over the period of its existence, from early winter to summer, 1996.
Gang of 4	Four attorneys who began drafting specific tenure code revisions, in winter, 1996.
Carl Adams	1995-96 chair, FCC; Information and Decision Sciences, School of Management
*John Adams	1994-95 chair, FCC; chair, Tenure Working Group; Geography, College of Liberal Arts
*Russell Bennett	former chair, University of Minnesota Foundation Board of Trustees
*Ellen Berscheid ⁴	1986-87 chair, FCC; member, Gang of 19; Regents' Professor, Psychology, College of Liberal Arts
*Carole Bland	1995-98 member, FCC; Family Practice and Community Health, Medical School
Mario Bognanno	"Mike"; Chief of Staff, President's Office; Industrial Relations Center, Carlson School of Management
William Brody	Provost, Academic Health Center, 1994 - April, 1996
*Charles Campbell ⁵	member, ASE provostal FCC; member, Gang of 19; Physics, Institute of Technology
*Frank Cerra	Provost, Academic Health Center, April, 1996- ; Dean, Medical School, - 1996; Surgery, Medical School
Mary Dempsey	chair, Tenure Subcommittee; Biochemistry, Medical School
*D. Fennell Evans	chair, ASE provostal FCC; member, Gang of 19; Department of Chemical Engineering and Materials Science, Institute of Technology; Director, Center for Interfacial Engineering
*Sara Evans	member, FCC; member, executive committee, Twin Cities AAUP; History, College of Liberal Arts

⁴Interviewed jointly with D. Fennell Evans.

⁵Interviewed jointly with Roberta Humphreys.

Dan Farber Acting Associate Vice President for Academic Affairs; Law School

*Dan Feeney 1995-97 chair, Senate Committee on Faculty Affairs; Small Animal Clinical Sciences, College of Veterinary Medicine

*Gerald Fischer Associate Vice President for Development; President, University of Minnesota Foundation

*Edwin Fogelman chair, Senate Judicial Committee; chair, Department of Political Science, College of Liberal Arts

Judith Garrard 1993-94 chair, FCC; 1996-97 chair, AHC provostal FCC; member, Gang of 19; Institute for Health Services Research, School of Public Health

*Luella Goldberg chair, University of Minnesota Foundation Board of Trustees

*Eville Gorham member, Gang of 19, AAUP, and UFA; Regents' Professor, Ecology, Evolution, and Behavior, College of Biological Sciences

*Virginia Gray 1996-97 chair, FCC; Political Science, College of Liberal Arts

*David Hamilton member, Gang of 19; Cell Biology and Neuroanatomy, Medical School

Nils Hasselmo President, University of Minnesota, 1989 - June 30, 1997; Scandinavian, College of Liberal Arts

*Roberta Humphreys 1995-96 Member, FCC; member, Gang of 19; member, AAUP; Astronomy, Institute of Technology

E. F. Infante "Jim"; Senior Vice President for Academic Affairs through 6/30/96; Mathematics, Institute of Technology

Jean Keffeler 1993-95 chair, Board of Regents; member of the Board 1989-1996

*Leonard Kuhi member, Gang of 19; former Senior Vice President for Academic Affairs; Astronomy, Institute of Technology

Erwin Marquit long-time faculty advocate of collective bargaining; Physics, Institute of Technology

*Marvin Marshak Interim Senior Vice President for Academic Affairs, 1996-97; Physics, Institute of Technology

*C. Robert Morris member, Gang of 19, member, AAUP; Law School.

*Fred Morrison 1995- chair, Senate Committee on Finance and Planning; member, FCC; member of the Gang of 4; primary author, 1985 tenure code; Law School (and generally considered to be the leading tenure expert at the University)

*V. Rama Murthy ⁶	President, Twin Cities chapter, AAUP; member, Gang of 19; Earth Sciences, Institute of Technology
*Anne Pick ⁷	member, Gang of 19; AAUP officer; Institute of Child Development, College of Education
*Richard Purple	1979-80 FCC chair; member, Gang of 19; member, AAUP; Physiology, Medical School
Paula Rabinowitz	co-coordinator, UFA; English, College of Liberal Arts
Thomas Reagan	1995-97 chair, Board of Regents; member of the Board 1991
Naomi Scheman	member, UFA; member, Committee on Faculty Affairs; chair, Committee on Equal Employment Opportunity for Women; Philosophy, College of Liberal Arts
*W. Phillips Shively	Provost, Arts, Sciences, and Engineering 1994-1997; Political Science, College of Liberal Arts
Patricia Spence	member, Board of Regents 1995-
*Lori Sturdevant	editorial writer, <u>Star-Tribune</u>
*Craig Swan	1996-97 Faculty Legislative Liaison (faculty lobbyist); ex officio member, FCC; member, Senate Committee on Finance and Planning; member, AAUP executive committee; chair, Department of Economics
*Vilis Vikmanis	Associate Provost, Academic Health Center
Thomas Walsh ⁸	co-coordinator, UFA; Physics, Institute of Technology
Carol Wells	member, Gang of 19; Laboratory Medicine and Pathology, Medical School
*Carolyn Williams	member, Gang of 19; vice president, Twin Cities AAUP; Epidemiology, School of Public Health

⁶Interviewed jointly with Carolyn Williams.

⁷Interviewed jointly with Craig Swan.

⁸Walsh was not interviewed, but provided a very long commentary on events, which is cited throughout the document.

Chapter One

Context: A Board Already Distanced from the Administration and Faculty

In the opinion of several observers, the nature of the relationship between the administration and board was one important factor in the tenure debate. In the words of one faculty member, “the tenure discussions were playing out in a situation where the nature of communication between the administration and the Board had deteriorated significantly.”

The first major and public division between the regents and the President came in early April, 1995. It appeared in an article on the front page of the Metro section of the St. Paul newspaper, which reported a “behind-the-scenes power struggle” between Hasselmo and the regents over the appointment of W. Phillips Shively as Provost of the Arts, Sciences, and Engineering. Shively was the third and final provost to be appointed, in a reorganization of the Twin Cities campus, and he was the third white male to be appointed to these positions. The article reported that “faculty members are furious over the impasse and warn that the regents have triggered a ‘crisis of confidence’ by undermining Hasselmo’s authority.” The appointment, up for a vote in the Faculty, Staff, and Student Affairs committee of the regents, was defeated on a 3-3 vote, with (Board chair) Regent Jean Keffeler among those opposed.

The article also reported that Regents’ Professor Ellen Berscheid (who served on the search committee) said rejection of the appointment would be “a slap in the face to faculty who strongly supported his appointment” and that there would be turmoil if the appointment were not approved. Roberta Humphreys, also a member of the search committee, defended the process and accused the regents of having a “secret agenda.” Regent Keffeler was quoted as saying the issue was qualification for the job (the search gave preference to those with experience at the University of Minnesota) and that there should have been a broader search.

Berscheid recalled that she had “organized what Regents’ Professors I could to call each of the Regents individually to try to secure their vote for the provostal nomination. I called [Board of Regents chair Thomas] Reagan in Arizona, went through the problem, and seemed to have secured his vote by the end of the phone call (he did eventually vote for it). I also spent a lot of time on the phone with [Regent] Bill Peterson, and he came around (after being against us initially). Explained everything to [Regent Wendell Anderson] on his machine (he was in Sweden) and he came up to me before the meeting and said he was going to vote for it. [Regents’ Professor Vernon Ruttan] called [Regent Hyon] Kim and had no success (she said in the meeting, in fact, that she had been ‘lectured to’ by a Regents’ Professor and resented it).”

“Then, for the meeting itself, we thought it important to have a number of search committee members, as well as Regents’ Professors, there to remind them that the faculty was behind the appointment. I spoke with [Regent William] Hogan at length just before the meeting (he was against, but felt bad about it). [Federal District Judge, and search committee member] Diana Murphy was important. When I explained to her what was at stake, she cancelled her previous commitment and came to the meeting (Infante and Mike [Bognanno] escorted her personally to a front row seat). Even so, it was a close vote. Had we not lobbied beforehand, and put on public pressure, there would not have been a successful vote and Nils would have gone down. Another thing I did was to ‘consult’ with Mike about Nils’s speech to the Regents supporting the nomination before the vote. In short, this took up my entire Spring ‘break.’”

The nomination was subsequently approved on a 6-5 vote (one regent was absent). These events prompted FCC to meet with the members of the provostal search committee for two hours the Monday following the Friday regents’ vote. (The 18-member search committee had included two regents’ professors -- Berscheid and John Chipman -- D. Fennell Evans, and three FCC members, as well as other faculty.) Search committee members told FCC they had not anticipated lies being told about the process, false claims made about what search committee members had said, or the negative comments about Professor Shively. There was dismay about the disdain shown toward experience in faculty governance -- Professor Shively had been, several years earlier, a relatively popular chair of FCC -- and alarm to the point that search committee members would consider suits for slander against people making charges about the search.

Three days later, FCC met again to talk about the search, this time with a group of the regents’ professors. Berscheid and Chipman attended again, as did ten others. The two groups reached agreement on the importance of two issues: (1) the need to affirm the integrity of the search process, the work of the search committee, and the faculty support for Shively, and (2) the need to affirm strong faculty support for Hasselmo and for leadership stability so the University could accomplish its goals. In unwitting foreshadowing of events, the two groups also discussed related issues:

- the difference between the technical legal authority of the Board and the practical fact of the necessary delegation of much of its authority;
- the need to reaffirm to the University’s publics (1) the importance of the institutional governance system and (2) that without faculty participation in governance, the institution would not function;
- the conflict between academic and management values and the differences between a

university and the business world, and how they do not share the same end products, the same goals, or the same means of operating, and the failure of many to understand those differences, and the extent to which the perceived need for “management” has become a “contagious disease” infecting the University; and

- the extent to which there is a lack of trust in the faculty on the part of the administration and the Board of Regents, and the extent to which the faculty do not trust either the administration or the Board.

The morning of the FCC meeting with the regents’ professors there appeared an article in one of the two leading local newspapers about the possible retirement of the President.

“Talks between Hasselmo, regents center on retirement, succession” (Star-Tribune, April 14, 1995, page 1). “Talks have begun at the University of Minnesota that would smooth the way for President Nils Hasselmo to leave office and bring in a successor at an undetermined date, the chairwoman [Jean Keffeler] of the Board of Regents said Thursday.” Keffeler said Hasselmo “had been involved” in the discussion; Hasselmo was out of town. “But more than age likely is involved, at least with some board members. Although there is no known personal animosity, hints of displeasure with Hasselmo’s administration have been visible for some time.”

This was the first time anything had been said publicly on the subject.

The article went on to note the controversy about Shively’s appointment, with Keffeler vigorously opposed. “Two professors who were on the search committee, said the dispute wasn’t really over diversity or administrative experience. They said it was over what they perceived as an attempt by Keffeler to cause a defeat for the president and embarrass him into resigning. It was learned that he likely would have quit over such a defeat, but he managed to scrape by.” The article cited the views of other regents who did and did not want Hasselmo to retire and suggested that there was a division of views on the Board. Keffeler did not want Hasselmo to resign, but wanted succession planing to begin.

One keen observer recalled another event about which he had been informed. “There was a dinner meeting of the regents at Keffeler’s house in 1994. Keffeler spoke, and thought she asked the Board for consensus in getting rid of Hasselmo. There are four or five different regents who don’t remember it that way. There may have been an honest misunderstanding. Keffeler apparently spoke in generalities. ‘When there isn’t a perfect meeting of president and Board, we have to go onward for the betterment of the University.’ I don’t think anybody thought she was saying ‘let’s fire Nils.’ And there wasn’t a vote. ‘That’s right, isn’t it?’ Everybody smiled and toasted. Keffeler thought that meant they should get rid of the president. That’s part of the background of this newspaper article. One regent said ‘there was no agreement on anything there. I couldn’t figure out what the heck she was talking about.’ I’ve talked to other people;

maybe some people knew. I don't think there ever was a consensus.”

The next day, FCC adopted two statements. One praised the provostal search committee for its work and rebuked in general those who attacked the integrity of the search and search committee members and those who made public charges about the process. The other statement, unanimously adopted, read as follows, in part:

The Faculty Consultative Committee of the University of Minnesota is astonished, dismayed, and angry at the radio and newspaper articles about the possible retirement of President Nils Hasselmo.

We strongly hope that President Hasselmo will reject any call for his retirement or resignation, except under circumstances of his own choosing.

We wish to express our unequivocal support for the leadership President Hasselmo has demonstrated during his tenure, and believe that he should continue to exercise that leadership for at least the next few years, if he wishes to do so.

We are gravely concerned that there are people who would like to bring [academic planning and progress] to a halt, perhaps because they cannot see the path that should be followed, or for other reasons about which we decline to speculate.

We strongly support the directions in which President Hasselmo has proposed to take the University. We strongly support the choices President Hasselmo has made in the selection of his provosts and chancellors.

We issue this statement as a resounding declaration of support for President Hasselmo.⁹

The next day, the paper carried an article with a quite different slant. **“Hasselmo says he has no plans to retire [;] ‘U’ faculty rallies behind president”** (Star-Tribune, April 15, 1995).

Hasselmo said “that he has no plans to retire soon and that he has had only two brief discussions with the chairwoman of the Board of Regents on the subject. ‘I’m not planning to enter into any specific planning of that kind, and I don’t have any plans to retire now or in the near future. . . . That’s my position, so the discussion hasn’t gone anywhere.” Keffeler again said that there should be talk of succession, since Hasselmo would be 64 in July. FCC “issued a statement Friday professing ‘unequivocal support’ for Hasselmo and encouraging him, if he wishes, to continue for at least the next few years. Written by Chairman John Adams, it said the committee members are astonished, dismayed and angry about media reports of his possible retirement.” The president of the alumni association and chairman of the University Foundation were also cited as being surprised at the discussion of retirement.

⁹One faculty member who would play a role in subsequent events, Richard Purple in Physiology, sent an email to FCC members applauding the support for the search committee but questioning sharply the resolution in support of the President. Purple maintained that FCC was out of touch with the faculty, and that at least “a significant fraction” of the faculty did not support Hasselmo. He also charged that the “man the ramparts” reaction to the articles was “hasty, leaves little room for face-saving, and will shortly leave no room for negotiation with angry Regents (whom the FCC has now embarrassed in public).”

The St. Paul newspaper carried a similar article on April 15, suggesting there remained strong regental support for Hasselmo.

The Star-Tribune was moved to write an editorial in the Sunday, April 16 edition, “**Get along [;] Repair rift between regents, Hasselmo.**” The paper was critical of the Board for the Shively vote, but said it reflected “what has been known to a smaller circle for some time -- that serious tension has developed in recent years between Hasselmo and the Board of Regents.” The editorial said the differences needed to be resolved, that the Board had some reasons to have reservations about Shively, but that if the President and Regents had been getting along, there wouldn’t have been a showdown on the appointment.

The following week, the regents’ professors chimed in with a resolution of support for Hasselmo’s leadership and continued service, for Shively’s appointment, and dismay at the regents’ actions on both. This was followed two days later by a letters to the Star-Tribune and the Pioneer Press from the three past chairs of the Board of Regents calling on Hasselmo not to retire and lauding his character and leadership. The Pioneer Press also then wrote an editorial supporting the President and chiding the regents for “clumsy” remarks on succession planning.

Lori Sturdevant, editorial writer for the newspaper, recalled the perspective of the Star-Tribune. After the vote on Shively, “when Jean was trying to stir up the pot, I think we then said the President should have the ability to appoint his own team, unless you’re prepared to replace the President, too, and that the Board was meddling too much in lower-level appointments. Either that or the Board should replace the President. Which she [Keffeler] wanted to do, but couldn’t do. Already then Jean knew that we were probably going to more sympathetic towards Nils and his point of view on some things than she would want us to be.”

It was reported by one observer that the alumni “sent a letter to Jean Keffeler” and “spoke out in the press.” There were alumni volunteers who wrote to Jean Keffeler and said that she was doing the wrong thing; it was very clear where the Alumni Association was. Keffeler “eventually resigned from the Foundation Board because of the advocacy of the Association and the Foundation, talking to her privately and publicly about doing the wrong thing for the University.”

In the eyes of one of the faculty participants, “many faculty believed that Keffeler had tried to get the Board to support such a request [that Hasselmo retire] and when she failed she decided to try again through the media. Keffeler’s term on the Board was up. She was standing for re-election in the legislature. She had already developed a reputation for micro-management and her re-election was not certain.”

“It was widely reported that Keffeler appealed to particularly influential legislators to support

her candidacy. As part of the process of election, there is a joint meeting of the House and Senate Education Committees to make recommendations. These meetings are usually attended by committee members, candidates and a few political wonks. When the committee was considering candidates from the 5th Congressional district, Keffeler's district, a number of metro area female DFL¹⁰ legislators suddenly appeared in the room as if to keep tabs on their colleagues voting." Keffeler, in 1996, was re-elected to a second six-year term on the Board of Regents.

One woman faculty member commented on the women's issue. "One of the things [going around] was the idea that the women legislators protected Keffeler, and some of the ideas I heard was that Keffeler was in trouble because of the old boys at the University, and here's this woman really trying to do good things. That was pretty infuriating to me, as a woman faculty member, that she was using the women's issue."

Another faculty member said that "after Jean went public about the President, my personal opinion was that she should not be re-elected regent, that she had harmed the institution by doing that -- by going public with what she couldn't do privately on the Board -- and people who behaved that way should not be regents."

"There is good reason to believe that many (a majority?) of the members of the Board did not want to fire Nils. Keffeler tried to fire Nils in the spring of 1995 before tenure was on the agenda. She failed and tried to do publicly what she was unable to do within the Board itself. Keffeler told me that a majority of the Board wanted Nils to resign in the spring of 1995 but would not support her publicly. If so, why did she need to use the papers? Why couldn't she have gotten the Board to act? I raised this issue with another regent, who doubted Keffeler had such support."

In the summer of 1995, the Board of Regents and President Hasselmo reached agreement on a two-year contract, at the end of which, on June 30, 1997, he would retire.

Marvin Marshak, former Senior Vice President for Academic Affairs, commented on this. Speaking of how the tenure debate went awry, he asked "how did we screw it up? The whole business of Nils resigning two years in advance. Probably that was a key step on the road. And whatever steps got us to that point. There was a lame duck administration for two years, and it should have been foreseeable that that would come to no good. Exactly how it would come to no good may not have been foreseeable, but that it would come to no good was probably foreseeable."

Berscheid later reflected on the confrontation. She recalled that "the faculty on the search committee, supporting both their nominee and the President's organizational plan, actively confronted

¹⁰In Minnesota, the Democratic party is the Democratic-Farmer-Labor party, assembled by Hubert Humphrey in the 1940s. It remains the DFL to this day.

Keffeler and her unprecedented interference in an internal appointment at a relatively low level, and through a telephone campaign, enlisted the support of the other regents to obtain the votes necessary to get the appointment approved by the Board.”

“The President’s appointment ended July 1, and there was concern that blocking the provostal appointment was part of Keffeler’s attempt to prevent Hasselmo being renewed. Indeed, Keffeler had asked the President to think about the succession process but, in a public statement, Hasselmo said Keffeler had been the only regent to bring up the succession notion with him. As a consequence of the perception that Keffeler would move to terminate the President in July, former regents as well as former presidents of the Alumni Association and the U of M Foundation published letters in the newspapers expressing their support for President Hasselmo. The regents’ professors also sent a letter to both metro newspapers supporting the president.”

Berscheid said that “I don’t think anyone can really understand what subsequently happened unless they know that just prior to the tenure examination, Keffeler was in active confrontation with the President and a faculty search committee, that the president was up for renewal, that Keffeler hoped not to renew him, that to save the president’s job, former chairs of the Board and presidents of the Alumni Foundation had to write letters of support for the President to the newspaper. Nils’s job was ‘saved’ by them and by the faculty. I have a note from Nils thanking me for my part in that. The 6-5 vote was really a referendum on Nils more than a vote for the provostal candidate. In other words, the seeds of the ultimate Keffeler vs. President/faculty confrontation on the tenure issue were already present and hitting the news.”

Russell Bennett, former chair of the University of Minnesota Foundation Board of Trustees, later recalled these events. “I do know that Jean Keffeler and some of the regents were out to get Nils long before [the tenure debate] came up. And that was really bad, because it’s awful hard to govern once you have a few people taking those kinds of shots at you. In a sense, Nils was almost paralyzed in terms of what he could do, except that he had the faculty background and he had the Faculty Consultative Committee that was trying to do something constructive on this. I think he thought that with patience, that report [on tenure code changes] would be helpful. In any event, he was smart enough to know that it had to come from the faculty up; he knew intuitively that the idea of the regents getting into the act and jamming it down was just a dumb idea. I can’t fault Nils. Unlike the rest of us, he’s not perfect, but I can’t fault him for what he did. I think it’s the system and what he had to deal with with those regents.”

Bennett’s view was echoed by the President of the Foundation, Gerald Fischer. “Nils, who was trying to follow the wishes of the Board, knew that the most effective tenure reform would

come from the faculty reforming itself, rather than change being imposed by an external force. Many external observers wanted tenure reform, but some could not understand the argument that tenure was hampering strategic change. After all, the University had closed a campus, absorbed positions, reallocated the O&M budget and improved the undergraduate experience.”

* * *

CONTEXTUAL COMMENTS FROM A WISE AND EXPERIENCED OBSERVER

In the view of one long-time and wise observer of the University, “the tenure debate was the most serious thing that ever happened to the University. My theory is that the tenure battle was the inevitable result of the business community recommendations after studying Eastcliff, from the Spencer Commission.¹¹

“The most important thing about Jean Keffeler was that she had been a member of the Spencer Commission. The Spencer Commission felt that if only there were some more hard-nosed businessmen on the Board of Regents, we would not have had the Eastcliff fiasco. Sometimes they said it was a governance flaw, which I believe to be correct, and sometimes they said it was a management flaw. There was a widespread belief among the business community that if only some tough business types got in there and managed the place better, none of these problems would occur.”

This observer did not agree. “Business people don’t understand the University that well. This was, in my view, a disastrous recommendation. Because the main problem with governance is secrecy: the president was getting along so poorly with the Board of Regents that the president [Keller] kept secrets from them, namely the consolidation of funds and the expenditure of funds on his house. When you have secrecy, you always have scandal.”

“Keffeler was elected from the Fifth District. She saw it as her mission to bring good, tough managerial skills to the University. While the University is not particularly well-managed, and while it can use better management, the Board of Regents is not the group that should be doing the managing. The major flaw was in governance, not management. If management is the problem, they should hire

¹¹In 1988, the president of the University, Kenneth Keller, was forced out of office by public pressure as a result of accumulation of a large reserve fund and because of expenditures on remodeling the president’s home, Eastcliff. After Keller resigned, the Governor appointed a blue-ribbon commission to examine financial management practices at the University; the commission was chaired by Edson Spencer, former CEO of Honeywell.

a new president. Governance requires that the Board hire a president who knows how to manage. It does not require the regents to manage -- in fact, it forbids regents from trying to micromanage the University. But because Keffeler and a few other regents, to some extent, had this mission, they started criticizing the president. The beginning of the tenure problem came when a member of a group that felt the regents should take over the management of the University got elected to the Board of Regents.” This view parallels that of Berscheid.

The problem first arose in connection with an unrelated issue, it was said. “This first came to a head in the matter of the steam plant.¹² The steam plant was very important in the trouble. The president of the University hired a group of outside experts who were both energy experts and legal experts, who spent more than a year studying, and came in with a recommendation for a new steam plant at the University. The president made a recommendation that the steam plant should be gas-fueled rather than coal-fueled, and that it should not be on the Mississippi River.”

“At the public meeting of the Board of Regents, Keffeler said she didn’t think this was a good study, that her own analysis showed that it should be coal-fueled and on the river, and she raised various other points. One member of the administration, who was Jean’s ally, agreed with this. In the face of regental criticism, the president very unfortunately said he would bring it back the next month.”

“The next month he brought back two recommendations to the regents, the original one plus Keffeler’s. He said ‘they’re equal, you can choose.’ This was disingenuous. They were not equal. If they were equal, why didn’t he bring them both before? This was an indication that regental management was being accepted by the administration. While I am a great fan of Hasselmo’s, and think he was a very good president, I think this was a terrible error in judgment. He should have said ‘this is my recommendation; if you don’t like it, I’ll quit.’ But that didn’t happen. The original recommendation was correct, on the merits; what the regents did is a disaster, politically, environmentally, and everything else. It was stupid. One of the problems with these brilliant micro-managers is that they are often not good managers.”

“This was a prescription for disaster. This was the climate. And Hasselmo, who has a Scandinavian, non-confrontational personality, stepped back from Keffeler and,

¹²The University’s steam plant needed to be replaced, and the contract was probably the largest that any Board of Regents at Minnesota had ever voted on, with a total cost exceeding \$1 billion. The environmental and financial aspects of the matter were hotly debated and the University was involved in lengthy disputes with the City of Minneapolis, neighborhoods, and other groups.

unfortunately, from many of the other Board members, too. The lack of communication between president and board is the cause of all these problems. If there is communication, these things wouldn't occur, no matter what bad thoughts and philosophy are guiding people. Hasselmo should have said [to Keffeler] 'it is my job to manage the University. I cannot spend all these hours a day co-managing it with you. I object and I will object to the Board. If necessary, I will put it to the Board that either you resign or I.' He should have had it out with her, and said 'go away, this is too much.' Then she could have either fired him or quit."

"Finally Keffeler decided that Nils should go, and she sounded out a number of regents. Keffeler was highly unpopular with the Board; she didn't have the votes to fire Nils. She was going to try again. In April of 1995, right after the Shively appointment, when Nils got it through on a 6-5 vote. Two weeks later, Jean was in the paper, talking about Nils's retirement."

This observer recalled that Keffeler had been warned, long before the tenure debate erupted, about the consequences for her if she tried to run Hasselmo out of office. She believed that Hasselmo was "a terrible manager, and he's no good for the University, and should be gotten rid of." This observer said that Hasselmo certainly had strengths and weaknesses. "His greatest weakness was probably his managerial style and his personnel selections. It is also true that management is not first on the list of what a university president should bring to the table. The first thing a president should do is symbolize the University to all of its constituencies. Hasselmo did that wonderfully. He is very much of the academic community, he has its strengths and its failings, and glacial slowness in making decisions. He gets an A+ on that part [symbolizing the University]."

"The second part is having a vision for the University. He gets an A on that. He was hired specifically to pick up the torch of Commitment to Focus that Ken Keller had dropped, in a packaging that would be amenable to the populace who had driven Keller out of office. He gets an A+ on that. The third thing he should do is be able to bring along the various constituencies, most importantly the faculty, but secondarily the legislature. He did well on that, too, although he got in trouble with the Governor. So Hasselmo was a good president."

"The fourth priority is management, and he wasn't as good at that, but that's low on the [priorities]."

Keffeler, it was said, did not accept this analysis, and believed that management was much more important. Keffeler was determined to remove Hasselmo. The observer said that "if I were on the Board, I would have wanted him to stay. But if Keffeler was the chair -- which she was -- and

thought he was a bad president, then her duty was to fire him. That's governance. Since she could not get the votes to do so, she had only two other alternatives. The first was to resign from the Board (which she would not do), and the second was to stay there, keep her mouth shut, and support the president. I can tell you there was not another alternative."

Keffeler, it is said, believed there was an alternative, which was to stay on the Board and publicly hold Hasselmo's feet to the fire. This observer said that this "sent shudders up my spine. It was a prescription for disaster. It was a prescription for total disaster for the University."

* * *

From the point of view of the fund-raisers, Hasselmo was a resounding success. According to Fischer, "in my role, in terms of communicating to the world at large, I was trying to bring light to the situation on both how productive faculty are, by and large, and how much strategic change had been accomplished under the existing tenure code. We're one of the only universities to have closed a campus. A very difficult issue." Fischer also recalled the considerable amount of reallocation that had taken place at the University in recent years, equal to "roughly one-fourth of the state appropriation; that's pretty dramatic restructuring. Outside of Minnesota and the Twin Cities, a major foundation program officer expressed absolute amazement on how much change had been accomplished and commended Nils and the University for the tremendous improvement in undergraduate education. The program officer expressed the opinion that among the senior education staff at the major national foundations—such as Ford, MacArthur, Pew, etc. -- that they believed Nils was one of the top four leaders in higher education in America, and showing enormous courage in what was happening."

Fischer agreed, however, that on tenure, Hasselmo "got beat up around here greatly, and part of it was his own style. In his elegant, reserved, Scandinavian manner, it would always be 'we, our,' and that creates a perception, in this world of high-profile, personality-driven news, that if you're not out pounding your own chest, you're weaker. I thought, in his quiet strength, and basing his decision on pretty strongly-ingrained principles, he was accomplishing much. I think he set the foundation in many ways for what I see as tremendous growth and momentum and new positiveness toward the University."

Purple took a view contrary to that of most of his colleagues. He said that Hasselmo should have been gone. "When it's time to go, it's time to go. You don't drum a person like that out. After all, the president of a university is a dead end job. You give him a fete, you thank him, you be real

polite, you don't listen to them any more -- you give them thanks and the courtesy that they're owed. The FCC made that very difficult for the regents to do. By pitting the faculty, through the FCC, against the regents over the Nils appointment, I think they essentially forced the regents to keep Nils on for a year longer than they wanted to keep him on. And let him set the terms of his retirement, which was a year more than Jean Keffeler and [Regent] Pat Spence and Reagan and the others wanted." Purple agreed that on this point, he was aligning himself with Keffeler. "Jean wanted an administrator who did things. She didn't think Nils was an administrator who did things. I think the consequences of the public FCC stance was that it forced the regents to hold him a year longer than they wanted to." Hasselmo may have prevailed, but, Purple asked, "did they listen to him any more after that? Better to have had him retire a year earlier."

A second major factor in the tenure debate was the "re-engineering" of the Academic Health Center (AHC), under the leadership of Provost William Brody. The process and problems were raised in the spring of 1995, when Brody met with FCC. It is not clear that FCC understood the implications of what Brody was saying; Brody himself may not have understood them.

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THE ROBSON ARTICLE ON THE ACADEMIC HEALTH CENTER

In April, 1997, two years after the events being recounted here, writer Britt Robson wrote a long article in City Pages about the tenure debate at the University. It is probably fair to say that most readers would not consider the article friendly to Provost Brody or the regents. Robson's summary of the crisis facing the AHC is as follows.

"Ironically, the crisis that brought the corporate consultants [about which more shortly] into the Academic Health Center was created in large measure by a medical marketplace bent on bankrupting the teaching and research-oriented hospitals so crucial to its long-term future. The managed care revolution has given us a health care system dominated by large HMOs that compete on the basis of price more than quality and have realized some of their greatest cost savings by agreeing to deliver bundles of patients in their networks to certain hospitals in exchange for sharply reduced fees. (More recently, they have simply bought the hospitals.)

With the pricey baggage of its academic and research mission, the University of Minnesota Hospital couldn't hope to compete. Patient loads plummeted, and took revenues crucial to the operation of the AHC down with them.

Nor was that the only problem confronting the AHC during the early '90s. The Najarian fiasco was in full bloom,

[about which more later in the text] culminating in a series of scandals at the medical school that bitterly divided the faculty and led to a number of prominent resignations. For years, funding from the Legislature had not kept pace with that accorded most of the AHC's peer institutions. And the place had become bureaucratically hidebound.

Retired Medtronic CEO Win Wallin was brought in as an unpaid assistant to University President Nils Hasselmo to help straighten out the mess. In 1993, Hasselmo decided to create a powerful new provost position at the AHC that would report directly to the president. Wallin was the most influential member of the search committee. Although four names were eventually submitted to Hasselmo, a faculty member also on the search committee says that Wallin was especially keen on William Brody, who, in addition to his academic credentials as chair of the radiology department at Johns Hopkins University in Baltimore, had once owned his own biomedical engineering company (a manufacturer of MRI equipment) in California.

Energetic and charismatic, Brody said all the right things about pride and teamwork when he first arrived. Soon, however, he discovered that under provisions of the University's tenure code, some of the AHC faculty were provided a salary that included a set amount for clinical work at the hospital in addition to their base pay as teachers. When the hospital was doing well, it was a relatively painless way to retain faculty members who could be earning much more working exclusively in private practice. But with business at the hospital dramatically reduced, the salaries were costing the AHC money. Rather than buy these faculty members out, or otherwise promote early retirement, Brody took the politically charged step of agitating for changes in the tenure code.

On the surface, this might appear to be mere fiscal prudence on the part of a top administrator. In practice, it was more complicated and risky. By earning (mostly federal) research grants and contributing a portion of their private-practice income, faculty members actually were generating more revenue for AHC operations than was provided through state funding in 1994. By attacking tenure, Brody took the chance of alienating some of the cash cows in his beleaguered realm of the University."

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According to the May 18, 1995, minutes, Brody told FCC that the Academic Health Center was facing extraordinary problems but that his fundamental concerns were for the entire University. Brody told FCC he was concerned about the inability of the AHC to solve its problems because it existed in the context of a university that was not facing up to its problems, and that the AHC was facing its problems. He explained that the AHC needed to fit into a managed care system

that does not place a high value on teaching and research, and that when over 50% of the AHC revenues come from clinical practice, and those revenues drop, there is a big problem. Brody said that this was a fundamental problem throughout the University: when there must be retrenchments, but when units are fully tenured, the situation becomes unmanageable. Brody also told FCC that he had had an assessment of the readiness of the AHC for change; he was told that people do not understand or buy into the need for substantial change. (He was to learn how true this was when both re-engineering and tenure caught the attention of the faculty in the AHC.)

Brody told FCC there was a crisis in the AHC, and that some were acknowledging it and doing something about it while others were not. He said that things must be done dramatically differently, and they must be done by the faculty and staff. He was appointing a parent committee to gather information on where the AHC was and where it should be going, with a very explicit vision containing goals and objectives, and told FCC that the effort was faculty-driven, contentious, and with lively debate, but it seemed to be working. As the various committees did their work, discussion and debate would take place; once the committees were done, the recommendations would be implemented and the debate would be over.

According to Robson, in the April, 1997, City Pages article, the process of re-engineering got underway with a meeting on July 19, 1995, at which nearly 100 upper-level faculty, administrators, and local business and political figures began a two-day “leadership retreat” to consider how to restructure the Academic Health Center and what impact that might have on the University’s future.

Given that the AHC comprised more than a third of the University’s \$1.7 billion budget at the time, and generated the bulk of its research dollars, the topic was a matter of no small importance. The featured speaker that first day was an animated, somewhat ruffled management consultant named James Champy, who was glowingly introduced by new AHC Provost William Brody as the co-author of the New York Times best-seller *Reengineering the Corporation*.

In the course of his talk, Champy cited some of the corporations his consulting firm, CSC Index, had helped to re-engineer, including Taco Bell, the Hallmark greeting card company, and an unnamed major insurance company. Re-engineering, he said, was “not pure downsizing, although you learn how to do dramatically more with dramatically less, and that might suggest fewer people operating in certain parts of the organization.” Within the first 15 minutes, the subject of faculty tenure was

raised. Champy called it a “constraint” comparable to the trade unions of Europe. And by accepting those constraints, he went on, managers became “resigned too quickly to the way things have to be.” Re-engineering, conversely, was about swift and radical change, about “starting out with a blank sheet of paper.”

And how would such massive change be implemented? “We live in debate; faculties [especially] live in debate,” Champy told University officials. “But you may have to exercise powers and say sometimes, ‘the debate is over. This is the way we are going to be.’” Later, he added that “visions are not built by groups, not many more than three to six people. . . . It is less true in a University, but people in organizations want to be told what to do. There is a thirst for leadership, for top-down direction.” The University would eventually pay Champy and CSC Index \$2.2 million to put his philosophy into practice at AHC.

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THE VIKMANIS COMMENTS ON CONTEXT

Vik Vikmanis, a senior administrator in the AHC (and former state budget analyst), also recalled this meeting; his recollection of the meeting was not at variance with what Robson reported.¹³

Brody “had invited the deans and faculty members, a number of legislators. There was a presentation by Champy, about reorganization and flip charts and the whole nine yards. There was a break-out into small groups of 10-12, where’s health care going, what’s the role of the AHC. That was probably the meeting where Champy said ‘folks, we need to reorganize and this is how we’re going to do it.’ Brody did the intros, ‘here’s the way I see what’s happening,’ and turned it over to Champy to explain the process of total restructuring.”

“I remember when we took the first morning break, there were a couple of faculty who kind of rolled their eyes and said ‘wait a minute, wait a minute, you’re going to do that here?’ The deans were there, and some of the more outspoken senior faculty members, and there was a visible, healthy skepticism. There was broad representation in the room. This is where the whole thing was launched. ‘Here’s the bible, here’s the author,

¹³Vikmanis commented on Robson’s article. “On balance, I’d say it was a good article. One can always say, with an article like that, ‘when he says this, it really isn’t quite. . . .’ I read it, and said to myself, ‘yeah, like it or not, that guy did a pretty good job.’”

the guy's come down from the mountain with the tablets, this is the way it's going to be."

"One of the main challenges the AHC has been facing, as long as three years, is the fact that with all the HMO penetration in the area, and all the mergers and affiliations, our patient population has been steadily declining. In order to somehow address that situation, even two years prior to Brody's coming, I took his predecessor to meet with leadership people. We met with the influential legislative leaders, both sides of the aisle, House and Senate, and said 'look, we have a real problem. When MinnesotaCare legislation was passed, encouraging cost reductions in health care, rightly or wrongly, unforeseen or not, some of the changes set in motion had a major impact on the University Hospital.'"

"When Brody came, he was apprised of this situation. Even before he was appointed, I took him and Win Wallin [the AHC advisor to Hasselmo on the health sciences] to meet with influential legislators. Clearly, there was no doubt about the problem, but Win Wallin helped to underscore the seriousness of the situation; here was a prestigious gentleman from Medtronic saying 'these guys aren't just crying wolf, and if you want to preserve the climate for innovation and development and research and spawning new companies, we have to come to the table.'"

"So the groundwork was laid. Legislators said 'we understand there is a problem, but we'd rather have you deal with it as best you can in the marketplace.' In other words, compete, and if you say you can't, then try to do a merger. The last thing we laid out was that the legislature could mandate, in law, that providers have to send a certain number of patients to University Hospital. Legislators were loath to get into that, because the reaction from the private sector would have been severe and predictable, that it was contrary to the tenor of MinnesotaCare, where you want the marketplace to operate."

"When I took Brody to meet with key legislators, there were several who were well aware of the problem. Brody said 'look, one of the main challenges I face in this marketplace is what are we going to do with the hospital, and second, I really have to completely restructure the AHC. That's going to be extremely difficult.'"

"Then some of the questions were 'well, what are some of the things that are going to make it so difficult for you?' On the hospital side, it was the marketplace. On the academic side, Brody stressed the fact that the University of Minnesota has perhaps one of the tightest or most restrictive tenure policies. I see that Regent Keffeler also said that at a national conference. I don't know whether or not Bill Brody was reflecting Keffeler's views, or vice-versa, or both of them happened to hit on that notion at the same time. But clearly,

Brody said ‘I am facing some major, major problems in what I have to do, and my hands are tied by tenure.’”

“One legislator, in one of the meetings, said ‘I recall that several years ago there was an internal report that suggested closing some schools.’ Brody said ‘that’s right.’ The individual asking the question said ‘the School of Dentistry. Dr. Brody, if the University closed the School of Dentistry, you wouldn’t need all those faculty.’ Brody said ‘wrong.’ The question was ‘what do you mean? If you don’t have any students?’ ‘They’re tenured.’”

“Whether or not legislators really didn’t understand what tenure means, in its ultimate application, or if they were just drawing the provost out, they said ‘you mean to tell me, we may have no students, but we still have to pay these people?’ Brody said ‘that’s right.’ There was either real or professed shock on the part of some legislators. ‘Goodness, what kind of a system do we have here?’ [Representative] Becky Kelso said that publicly.”

“Then matters began to unfold. I thought we could do a very good presentation in front of Becky Kelso’s committee. Things were not going all that smoothly for the University in front of Becky Kelso’s committee. I suggested to Brody that if we can get Becky to give the AHC a hearing, we can highlight how important we are to the state, the good things we do. What actually happened at that meeting, of course, is that Kelso and others were loaded for bear, and rather talk about all the wonderful research things we do, and all the great things Brody wants to do in restructuring the AHC, they started on tenure and lack of accountability. We got roughed up.”

“After that, that’s when we had the other hearings, with John Adams and Nils Hasselmo, and then lengthy discussions in which [Representatives] Steve Kelley and Becky Kelso were involved. All the way to the bitter end, how to phrase the rider that was attached to the release of the AHC funds [about which more later].”

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Brody’s actions and statements, and the impact of re-engineering on the tenure debate, will be described more fully in the pages that follow.

Ellen Berscheid offered a post-mortem on the entire set of events. “The tenure conflagration left a sooty residue on everyone, a residue that will take many years to wear away. Too many people think that the lingering negative feelings are directed toward a Board of Regents that no longer exists and a president who is no longer here. In fact, the emotions did run high, and many of them were directed toward each other, not simply those who were perceived to be the enemy.” Morrison was right, she said, in making the point that “the regents’ actions were analogous to catching one’s spouse

en flagrante delicto: although they might forgive, it is unlikely the faculty will soon forget.”

“In its wake, the tenure debate left a lingering cynicism, suspicion, and wariness of even a reconstituted board, of a new president, of faculty governance, of the AAUP, and, to some extent, of each other.” Berscheid said that “just as I personally will never forget all those who joined us in our foxhole and helped us, particularly those who joined early when we thought our cause was hopeless,” she was also dismayed and disappointed, and alarmed, that so many faculty sat by, apparently unaware of the threat.

“It is important that people realize that the tenure fight was costly, not only in terms of the national reputation of the University, but also internally, in terms of the trust and goodwill of the faculty towards the regents and the administration and towards each other.” She described this recapitulation of the events as “painful to read because it presents in tortuous detail the fight that went on much too long, [and] describes not only what happened but why its aftereffects will cast their shadow over the University for many years to come.”

Chapter Two

Initial Skirmishes: The Regents Raise the Issue of Tenure

The (largely but not completely unseen) signal of the start of the “tenure wars” at Minnesota came with the May, 1995, meetings of the Board of Regents. The minutes of the regents’ Faculty, Staff, and Student Affairs Committee record that “Regent [Jean] Keffeler¹⁴ noted that over the past 6 years the Board has never had a substantive discussion of tenure as a policy, and that it may be appropriate at this time. How is the administration renewing or reshaping the University in terms of tenure opportunities and limitations? Keffeler noted she would like to review the information available on faculty productivity and engage in an in-depth discussion about tenure issues, including academic freedom.” Other regents concurred, and the administration agreed to bring the issue to the Board.

Luella Goldberg, Chair of the University Foundation Board of Trustees, agreed that there probably were perhaps undefinable pressures acting on some members of the Board that led them to think that the community wanted tenure changed, in some way. At one point the Governor was behind change, and one heard that certain segments of the local CEO community questioned the need for this kind of job security. Goldberg commented that the regents did have support “in the beginning. It’s an issue that people who aren’t familiar with academic institutions can misinterpret very easily as ‘why in the world should anybody have job security inside a university, when nobody does outside a university?’ So it seems very logical to work on changing that, so that faculty are like everybody else. That grows out of a lack of understanding and appreciation for the way in which great universities have worked, and worked well, and the importance of academic freedom. It gets interpreted in a very simplistic way, strictly as job security, and it sounds very logical.”

Keffeler’s sentiment was echoed in passing in a speech given by the regents’ newly-elected chair, Thomas Reagan, in July of 1995. In his 5-page “Report of the Chair” on July 14, Reagan included this comment: “We may have to make programmatic cuts or take a fresh look at policies such as tenure. Even though we are a large, diverse University, we cannot be all things to all people. To save money by attrition means bleeding to death from a thousand cuts. We may need to bite the bullet: decide what we can no longer support and let it go. We would do so with regret and sadness, of course; with appreciation for past accomplishments; and with concern for staff -- but still with determination.”

¹⁴Who, at this point, was finishing up a two-year term as chair of the Board.

In the opinion of Tom Walsh, “Reagan inherited in his turn now increasing faculty suspicion of chairs of the Board of Regents. The Board may have been unaware of what the faculty thought of them even before the upheavals started. Over the 14 years I have been here there has been a marked distancing by the Board from the faculty. For example, the Board once paid careful attention to the views of the Regents’ Professors but virtually ignored them in this crisis.”

In August, 1995, Associate Vice President Dan Farber wrote to Senior Vice President E. F. (Jim) Infante to lay out a preliminary plan to take up tenure. He noted his lack of experience with the issue. He addressed substantive matters, such as a presentation to the regents of materials, treatment of particular issues, especially the “proper mix between tenure-track and other faculty” and post-tenure review, the need to thereafter “formulate specific proposals,” and then adoption. He commented, apropos the last, that “given the way this university operates, I am tempted to set a deadline of ‘infinity’ for this (particularly as to matters requiring Senate action)! On procedural issues, Farber suggested a “‘white paper’ so that everyone has a common understanding of the current problem. The big challenge will be to find some way to streamline the present, enormously cumbersome process. Among the major parties that need to be consulted are Senate Committee on Faculty Affairs, the Judicial Committee, University Counsel, and the Provosts.” (Farber neglected the Tenure Subcommittee.) He inquired if “it would make sense to set up a working group with representatives from these various groups and try to thrash out a proposal.”

At the September, 1995, meeting of the Faculty, Staff, and Student Affairs Committee (now chaired by Regent Keffeler), the minutes note that “after brainstorming discussions between Regents Keffeler and Spence and Senior Vice President Infante,” the issues for the committee for the year were identified; first on the list was “contemporizing the tenure system.”

At Board meetings the next day, the regents heard from the AHC provost, Dr. William Brody, that “radical changes” were needed if the AHC were to survive in an environment of managed care.¹⁵ The process of change, “re-engineering,” would require changes in governance and tenure, and would lead to “a completely transformed organization” in eighteen months. Brody told the regents they could help by, inter alia, considering “modifications to governance and tenure.”

The Board supported Provost Brody’s requests, including asking the legislature for money during the 1996 session.

Regent Keffeler proposed that a resolution be formulated to express that the Board

¹⁵The Twin Cities campus of the University at this time was, in administrative structure, divided into three provostries, one for the Academic Health Center, one for the professional schools, and one for the arts and sciences.

of Regents recognizes that the circumstances of the AHC are unique and will, in some instances, require solutions different from the rest of the University. . . . The Board of Regents will consider modifications in governance and tenure to achieve the goals and will request the [AHC] administration and University administration to advise the Board at the earliest possible point of the kinds of changes that would facilitate what the AHC is trying to accomplish.

Associate Vice President for Human Resources Carol Carrier emailed to Dan Feeny, chair of the Committee on Faculty Affairs, and Carl Adams, chair of FCC, on September 7 to report that the regents' Faculty, Staff, and Student Affairs Committee wanted to take up tenure, and that there would be sessions with the Committee that would include outside experts, perhaps Judith Gappa from Purdue. Ten days later she informed Feeny and Adams that the presentations would be to the Committee of the Whole of the regents, and might also include another expert, Richard Chait. A faculty panel might also be included in one of the sessions.

On September 25, 1995, Farber reported to Carrier that Hasselmo had proposed considering an "audit" of the tenure system, perhaps by an outsider such as the ACE president. Such a person might also chair a task force, including faculty, that would be endorsed by the Senate. It would thus have credibility both with the regents and the Senate. Carrier inquired, in response, how such a task force would work with Professor Mary Dempsey's Tenure Subcommittee. She also told Farber that she had invited Carl Adams and Ellen Berscheid to participate on a faculty panel to discuss tenure with the regents.

Regents' staff Kim Isenberg wrote to Reagan and Keffeler on October 5; she said that "we know that the Board and the administration has [sic] taken some bold steps, but we are far from our destination" to make the University "a world-class institution." "A comprehensive, thoughtful look at tenure is key to reaching that vision." Isenberg said she recognized that some "have been feeling frustration over the lack of information that has been coming forth," and suggested they needed to think about the role the Board would play in the discussion and the timeline. She noted that there were several questions to consider, such as whether the existing system was working, was a complete overhaul needed, did the Board have the capacity to do an overhaul, "can the leadership that drives the change come from the faculty or the administration," and so on.

Brody returned to the Board in October, to speak in favor of a request to the legislature for funding for the AHC. He again told the regents that he faced a "crisis situation" in the AHC and that "comprehensive and dramatic" changes were needed. Board members expressed support for the directions in which Brody said he wished the AHC to go.

Provost Frank Cerra commented on Brody's views. "I've thought a lot about this issue with Bill. I think he was pushed, a fair amount, into the positions he took by CSC Index [Champy's consulting firm]. I don't know that for a fact; I wasn't really involved that much at the time, as I was trying to figure out what you're supposed to do as a dean. But that's my sense of it."

John Adams commented on these events generally. He said that he had spoken with Brody "several times during the previous summer [1995], and had the impression that by September he had already been talking in these terms around town."

"The spring 1995 discussion about tenure review occurred while we were engaged in what had by that time become a review of many regents' policies. At the time that the tenure review was proposed, it seemed to some of us (1) consistent with the idea of review, and (2) an opportunity to address some things that needed addressing. I for one did not think in spring 1995, and even in fall 1995, that the review of the tenure code was a bad idea."

"There had been discussion while I was vice chair of the FCC [1993-94] about some of the salary and tenure issues. . . . I had raised for the record the idea that there be some thought given to the traditional link between tenure and base salary. Moreover, I recalled during summer, 1995 -- and recall talking with several people about it -- that the ill-advised tenuring of many clinical professors in the wake of the Rajender Consent Decree [an agreement the University reached with respect to hiring more women faculty] . . . had created rigidities in the AHC that Dr. Brody was forced to deal with because of the financial issues that had, by 1995, begun to threaten the financial stability of the entire University."

"So," Adams related, "several things occurred at once: the decision to review the tenure code, the aggressive stance taken by Dr. Brody, and the drift into the fall of 1995 line of reasoning that addressing the tenure code might open the way to addressing some of the issues facing the AHC. I don't think that in the spring of 1995, when the review of the tenure code was first voiced, that the link between the Brody agenda and the tenure code review had become apparent, even to the Board. On the other hand, the AAHE annual meetings had begun discussing tenure codes by that time, and there was concern on our campus and on other campuses that the removal of mandatory retirement, coupled with public concerns that some faculty were not towing the mark, made the idea of tenure code review seem sensible in early 1995. By fall 1995, though, things had already begun to take an awkward turn."

Propos these comments, Walsh maintained that "many faculty remain mistrustful of the motivations of groups like AAHE in their discussions of tenure. We believe that these groups represent a new managerial and bureaucratic elite in universities. It is doubtful that they speak in an

impartial way for all of us. Raising tenure on the basis of AAHE or the Pew organization studies did not help the credibility of the faculty leaders who did so. Many of us also question claims that there is ‘public concern over tenure.’ In fact, we think that this ‘public concern’ was nurtured by groups like AAHE and the Pew Trust in their own interest. However, the upshot of the Minnesota tenure war was that the Minnesota public actually supported faculty, not the views of AAHE and similar groups.”

Walsh wrote that “Brody’s raising the tenure issue in AHC set off widespread discussion among core unit faculty [i.e., in the arts, sciences, and engineering]. He did not know the history of the tenure issue in AHC. Core faculty felt that the financial crisis of the 70’s had been caused by mismanagement of AHC and tenure practices there. There was comment to the effect that ‘here we go again.’ Rightly or wrongly, many felt that the last crisis had been solved by moving core resources to AHC, starting off the decline in the reputation of the University. That wound was still open after more than 15 years.”

Brody’s comments at the September and October Board meetings quickened existing regental interest in tenure, which led to discussions between the administration and FCC, and the eventual appointment of a joint faculty-administrative Tenure Working Group, chaired by John Adams, the 1994-95 FCC chair.

In early October, 1995, President Hasselmo met with FCC.¹⁶ He told the committee that tenure was on the University’s agenda because society had put it there and that he wanted the consideration of tenure to be a joint administrative-faculty governance effort. He assured FCC that tenure was essential to the protection of academic freedom; the tenure review agenda, still open, might include evaluation of the process of granting or removing tenure and of areas where tenure should perhaps not be granted (e.g., clinical faculty). He said there would be a working group of faculty and administrators to “take up the tricky issues,” and that a member of the Law School faculty, Dan Farber, had been appointed acting associate vice president for academic affairs to deal with tenure issues. The President also reported that the Board of Regents would be having a tenure forum with a national tenure expert, Judith Gappa of Purdue.

At that same FCC meeting, chair Carl Adams reported that he had reached agreement with Senior Vice President for Academic Affairs E. F. Infante on the appointment of the Tenure Working Group. He said the legitimacy of the substantial role of the Senate would be acknowledged, that

¹⁶The minutes of the FCC, the Committee on Faculty Affairs, and two other Senate committees are circulated electronically to several hundred faculty and administrators as well as the regents, so there is widespread knowledge of what takes place at these meetings.

progress in dealing with the issues would be superintended by this jointly-appointed advisory group, and that the substantive work would go through the usual committees and the full Faculty Senate. Adams emphasized that this would not be a “special” process, and that the working group was to play purely a coordinating function. FCC concurred without vote to proceeding this way, and the working group was shortly thereafter appointed. As will become clear, the working group later became a contentious matter with many faculty.

John Adams, who was to serve as chair of the Tenure Working Group, said this was his recollection of events. “Coordinating the discussion was my understanding of the charge. This was made clear in a long, intense meeting with [Senior Vice President Infante] in his office, with me and Carl. There may have been others there -- Mary [Dempsey] and Dan [Feeney], for example, but Jim [Infante], by that time, was already getting anxious because he was seeing the Brody agenda and the Keffeler agenda begin to take an ugly turn. I believe that he thought that Carl and I could manage the process with the faculty, and we might have been able to if Brody had not stepped up the attack in the AHC.”

Adams commented that Infante “was nervous, after having had continuous interaction with Jean [Keffeler] on this and related matters. . . . At that time, dire financial scenarios were regularly kicked about, and Brody’s numbers were not questioned. Nils was clearly on Brody’s side regarding financial and programmatic reorganization, as was the Board. The tenure issue in early fall was seen by all of us as something of ‘business as usual.’ The link between the tenure code review and the reorganization of AHC had not yet been made by most, although Brody clearly saw them closely linked.”

It is Walsh’s view that “many of us believe that any financial issues raised re AHC are for political purposes with at best a marginal relation to reality.”

At this point, it appeared that the tenure review process was perceived as open and above-board and there was no discernible faculty or administrative nervousness. Craig Swan, the FCC’s legislative liaison, believed, however, that “not many faculty knew of the Tenure Working Group.” Chuck Campbell, a Physics professor and former FCC member who became very active in events, wrote that the minutes of the FCC meeting creating the Tenure Working Group “seemed to be unavailable for a long time. Certainly many faculty were unaware of this very important step for months,” and he concluded that the tenure review process was “invisible to most” faculty at this early stage.

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CAMPBELL AND HUMPHREYS ON THE TENURE WORKING GROUP

Campbell and Roberta Humphreys in Astronomy, who also became very active, were sharply critical of the way in which the tenure review process had begun in FCC, with the Tenure Working Group. Even a year later, Humphreys said that “the Tenure Working Group is still one of the things that bothers me. I was on FCC. There was never any discussion of the Tenure Working Group on FCC. There was an announcement that it was being created. Which was strange. Even when you read FCC minutes, usually the FCC takes a hand in anything like this, and makes suggestions as to who should be on it. There was no input from FCC on the membership of that committee.”

Campbell said that he had “been involved in faculty governance for quite awhile and was on FCC for a couple of years. I can remember when search committees, the appointment of the task force -- if it was considered at all an important issue, the FCC insisted upon being participants in the selection process in the past.” Humphreys pointed out that FCC “never took a vote.”

Campbell commented. “That really surprises me. To me, that’s a signal that there was something wrong with that FCC. Because when you talk about establishing a group that’s going to consider changes in the tenure code, if that’s not something that merits an extensive discussion, then nothing is. I’ve always felt -- and I’ve said this in a lot of different circumstances -- it is the responsibility of a committee chairman to ensure that important issues are completely aired. So I blame Carl for not making sure that full discussion of this emerged. The aftermath of it demonstrates that it was not properly handled by Carl. Something this important, which clearly Carl and John recognized, deserved -- required -- a full discussion with FCC, even if it meant closing the doors for some reason, under some ruse, which I generally don’t approve of, because of a concern that this would get out of hand within the community and [FCC] wanted to deal with it delicately. It still required them to make sure the committee fully understood the import of this. And my opinion, my impression is, that his objectives were just the opposite. His objectives were to do the minimum to get it through without much discussion; to appoint people to the committee that the FCC did not consider and express an opinion on is an arrogation of power that is totally unacceptable on a matter of this importance. I would have been one of the people who would have supported a direct vote of censure and perhaps even asking for resignation of the ‘leadership,’ particularly Carl, from the FCC, on the basis of that alone. Quite apart from the question of whether it fit the rules, the constitution and the bylaws. It was handling dynamite in a way that was totally inappropriate.”

Humphreys added her views. “What bothers me about the

whole thing is, there was a set of minutes that didn't appear, or that I didn't have, until months later. Why I never had those minutes, I don't know. But in those minutes, it does have Carl announcing that this committee is going to be appointed. And the way it's worded is, this committee is going to be appointed. It's not like he was asking FCC whether or not they should do it; it's being announced that it will be done. It was something between him and Infante."

"And he announced at a second meeting that he and Jim Infante had agreed on the membership. It's interesting that in the minutes, there's no mention of who the members are."

"According to all the minutes, I was at these meetings. It's very bothersome to me that I can't remember all this stuff. If I can't remember it -- I can remember other things that are in those minutes -- that means it wasn't emphasized. Either I was out of the room, or I was teaching a course; I may have left when that came up. That's maybe why I don't remember. But it seems strange; if I'm not remembering it, it must have been passed like it wasn't very important. And yet later, it turned out to be one of the most important issues."

Campbell concluded that "I don't consider this a failure of faculty governance, that is, faculty governance as a structure, which we keep hearing. It's sort of like distinguishing the presidency from the president. But I do consider this to be a failure of some of the people who were involved in faculty governance at that time. I think they are responsible for much of what happened thereafter."

(Virginia Gray commented "was FCC asleep?" She noted also that Humphreys was ON FCC at the time, so the fault was at least partially hers as well.)

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At their October meeting, in addition to hearing from Brody, the regents held the first of what was to be a three-part forum on tenure, both at Minnesota and nationally; this meeting would address the latter. A faculty panel participated; the panel included FCC chair Carl Adams, Regents' Professor Ellen Berscheid, Professor Mary Dempsey [Chair of the Tenure Subcommittee], and Regents' Professor Ron Phillips. Professor Gappa spoke with the Board and outlined questions being raised about tenure. The regents, according to the minutes, added to the list: removal of unproductive faculty; keeping "current in fields with rapidly changing information; how to measure the difference between tenured and nontenured faculty; and what implications tenure has on the changing role of professors." Gappa also identified the objectives of tenure and options to achieve them; the latter included post-tenure reviews, identification of a "base" salary for tenure purposes, and review of "institutional processes for handling disciplinary actions, terminations, and program discontinuance." Gappa emphasized the need to be mindful of academic freedom.

Staff member Isenberg later wrote to Regents Reagan, Neel, Keffeler, and Spence to report that “it has come to my attention that a number of Regents felt the October 12, 1995 presentation on tenure was too narrow and there is concern that this issue needs a much broader focus.” She suggested a conference call among them to decide what to do.

Walsh later commented on the forum. “To the best of my knowledge, nobody at that forum pointed out that the faculty in the core units has declined drastically since the 70’s. Since this is where most of the students still are, one would think it a major issue. Yet it still is not. Faculty see this and wonder about the motives of those who raise the issues in this way. There is also a perception problem at work. Faculty are not atomic individuals under expert managerial oversight. Instead, academic units are collective and collegial, where the major impetus to achievement is the desire for group respect. Faculty I talk to think that the deadwood problem is trivial: there are few of them and department chairs and deans should negotiate premature retirements in most problem cases. In extreme cases of nonfeasance, offenders should be (and have been) fired -- there is a process to do that. The major concern is group performance, which should not be compromised, because it has been shown to work. The really critical cases are where group performance is low and seemingly cannot be brought up. Nobody I know has even talked about this and if or how this sort of problem can be fixed. It cannot be fixed by targeting and firing individuals (probably not even administrators).”

On October 23, Regents’ Secretary Bosacker wrote to Reagan to transmit the view of Keffeler on the options. Keffeler wrote “if this is to be pursued by a committee other than the Committee of the Whole, it should be assigned to a committee under the leadership of one of the chair’s/president’s close regental colleagues rather than the board ‘outlier.’ or If we want the Faculty, Staff, and Student Affairs Committee to take it on, I am very receptive to turning the chairmanship of that committee to Regent Spence -- or anyone else, of course, Tom designates.” Or a special committee could be established.

On October 16, FCC chair Carl Adams and Senior Vice President E. F. Infante appointed the Tenure Working Group, with John Adams as chair, with five faculty and two administrators. Two of the faculty chaired the relevant Senate groups, Mary Dempsey (the Tenure Subcommittee) and Dan Feeney (the Committee on Faculty Affairs). They were to coordinate tenure discussions, including future presentations to the regents.

John Adams, at the outset, seemed to recognize his lack of experience in dealing with tenure. He sent a fax to Associate Vice President Carrier in late November with a cover note saying “I’d feel more comfortable about the processes we are following if a few more faculty -- who know more than

I do about tenure issues -- were informed about what is contained in these discussions and memos. At the very least, Carl Adams and Virginia Gray [vice chair of FCC] should be copied on some of this, otherwise we may find ourselves in a battle later in the year that will slow things down.” He added that “there is a wide spectrum of faculty views on the tenure issue, and some sharing of views now will minimize the risk of (public) trouble later on.” Adams was prophetic.

At its meeting of October 19 FCC spent considerable time talking about tenure. Chair Carl Adams said there were two parts to the tenure discussion.¹⁷ “First, he has signed a joint charge letter that sets up a coordinating task group, with John Adams as chair and with other faculty members on it, with the charge to lead and guide the tenure discussions and presentations. Where administrative actions are necessary, they will be sought from the administration; where legislative changes are sought, they will be requested from the Committee on Faculty Affairs. The task group, however, will not be the ones making changes.” He also reported on what the regents were doing. “His sense, he said, is that the Board is not on any campaign to get rid of tenure, but Board members want to be sure they have reviewed current thinking about it. The Board appears to support tenure, and the President has made his support for it clear. Four or five specific items, however, have been raised.”

The focus was already on the AHC and Brody. The minutes of FCC note that “in the Academic Health Center, Provost Brody has been explicit that tenure is a problem. Academic freedom must be protected, but tenure is not the way to do it. The underlying concern is the need for flexibility, and he sees tenure as a major constraint on the AHC adapting to the circumstances in which it finds itself. Here is a case where a senior administrator needs help and support from the institution to deal with problems, but he may be taking a position which makes the situation more difficult to deal with.” A number of faculty involved in later events would describe the last statement as prescient.

Most FCC members “expressed doubt that tenure was the sole or even primary cause of the difficulties facing the AHC. Addressing tenure problems is a long-term solution, not one for the short term; suspending tenure gives administrators an easy way out of the problem.

Provost Brody visited with FCC again in late October and reiterated his views about the severity of the marketplace problems of the AHC. He warned that if the University Hospital were to go under it would cost the University tens of millions of dollars. With private practice income also declining, Brody told FCC he believed that radical change was required -- and that that change may put the AHC at odds with some of the major tenets of the University.

¹⁷Quotations are from the minutes of the meeting, not the individuals.

Brody cautioned FCC that some of the change that was needed might result in debates on an interpretation of academic freedom, but he affirmed its importance. One FCC member said that there is much that faculty do not want to change that is being wrapped into a package with things that should be changed; the interpretation of the change that was being called for may be more radical than the change itself. But if groups that are ready to change are polarized into seeing only that there will be radical change, then they may resist any change at all. Brody was of the view that it was more difficult to implement incremental change than it was to make a paradigm change.

Brody said there was no question that a tradeoff between the AHC and the College of Liberal Arts would be a very difficult one, but said there would be no long-term solution for the AHC until an alternative to the \$35 million provided by the practice plans was identified. Brody explained that it generated \$100 million; one-third went to overhead for operating the plans, one-third went to the Medical School, and one-third went to physician salaries to supplement the state funds provided.

One FCC member asked Brody about tenure. When tenure is identified as a barrier to change -- which one can see that it would be -- it may mean not granting tenure to so many people in the future. But that is a long-term solution; how addressing tenure can be a short-term solution is not clear, unless he proposes to dismiss tenured faculty. Brody took the position that tenure and salary needed to be separated. He maintained that the tenure code provided that salaries could only go up, something not true at other institutions. He again defended the need for academic freedom, but argued for a compensation system that rewarded those who perform and did not reward those who did not do work that was needed. The question, he told the committee, was how to uncouple tenure and compensation. FCC members pointed out that even if the tenure code were changed now it would not affect those already at the University, who saw the present code as a contract.

FCC said that if the AHC administration tells faculty what to do, they are not being brought along, and if there is to be re-engineering, the faculty must be involved. Brody said he agreed -- that is why the faculty were leading the effort. The problem was that while Brody believed the faculty were involved in the re-engineering effort, it was through an ad hoc process, which is not what the faculty saw as faculty involvement. FCC urged that there be more faculty involved in the effort.

One FCC member told Brody that the concern was not just about academic freedom, it was about professionalism and being part of the decision-making. If one looked at productive research organizations, their most consistent characteristic, after vision, is assertive and participative governance, and it would be better if the re-engineering people would treat the faculty like professionals who are building an organization.

Asked what the Committee could do to help the AHC, Brody told FCC it could act quickly to

adopt modifications to tenure and compensation; he suggested the Committee to talk to the AHC re-engineering group.

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JOHN ADAMS ON BRODY AND THE AHC

John Adams later concluded that “at this time, no one on FCC fully understood what Brody meant by ‘salary,’ because [the] AHC had peculiar compensation arrangements that were not at that time understood by the FCC members, or by many AHC faculty outside the [Medical School]. So when he said ‘salary’ he meant one thing and the committee heard something else. This misunderstanding took quite a long time to clear up, and by the time it had been cleared up, the war was on.”

On these issues generally, John Adams later wrote¹⁸ that this presentation (the entire text) “gives insufficient attention to some of the legitimate concerns that had built up in 1994 and earlier over the rapidly changing environment in the economics of health care, the AHC slipping into red ink, the decline in program ratings in the AHC, the inability of the AHC to produce a reasonable managerial analysis of what was happening and what were the options, and the need to get rid of the hospital while retaining research and training access to it and revise compensation plans in ways consistent with the emerging financial realities.”

“Many times,” Adams related, “I heard the president, vice president and some of the regents comment that if we don’t fix the financial mess in the AHC, it could bankrupt the rest of the U of M. References were frequently made to what happened in the early 1970s when the rest of the U bailed out the Health Sciences. . . . It was clear in Brody’s view that the Medical School had evolved to a point that it was too heavily invested in areas that were overstaffed, and not well positioned to move into new areas of emerging importance. I never heard anyone really dispute this diagnosis, but initially they could not figure out to restructure at a pace consistent with the financial realities, so Brody evidently jumped to conclusions.”

“As early as 1992, during my first year on the FCC . . . certain serious financial questions were coming to the surface. . . . In 1992 we were coming out of a recession, the state’s budget was a mess, and we were facing two years of no raises for faculty. Meanwhile, the ground was shifting under the health care industry, with costs and revenues beginning to get seriously out of line. In late 1992 or early 1993 the Board of Regents was certainly aware of these problems. . . . As I recall those conversations about [health care] finances with FCC, there was concern but not yet alarm -- publicly at least. I was also left with the impression that the Board and the people in charge of [the health sciences] really did not have an effective managerial accounting system that would permit them to produce good, crisp bottom-line

¹⁸In two memos to the author.

reporting to the Board about how the shifting financial ground in [the Academic Health Center] was affecting [it] and the U of M, and how trends were likely to affect them over the coming years.”

“By the time I was chair of FCC, things obviously seemed serious, but discussions were still presented and carried out in fairly general terms. From the Board’s point of view, their fiduciary responsibility demanded that they know what was happening, and to try to ensure that things were on a safe course. It took a long time for us on FCC to begin getting hard numbers on how serious things actually were. Nils may have known, and he may not have. The long history of financial and managerial independence of [the AHC] may have made it hard for him and Jim [Infante] to pry hard data out of [the AHC].”

“I think that the Board, the president, and the VP-provost were operating with less than sufficient information about financial issues, and then Nils and Jim found themselves being beaten over the head with a financial stick, which Brody & Co. translated into a tenure stick. But even after Brody was gone, they lacked the information they needed to respond persuasively. Even if Jean had not gone out of control on the tenure issue, there remained a series of crucial but basically unanswered questions from 1992 through 1996 that the Board needed to ask, and the administration needed to answer.”

* * *

Later that same day as the FCC meeting with Brody, Mary Dempsey reported to the Committee on Faculty Affairs about the regents’ tenure discussion. She reported that the issues of greatest interest to the Board were post-tenure reviews, faculty accountability, removal of non-productive faculty, and issues with hiring non-tenured faculty. Dan Feeney, chair of the Committee on Faculty Affairs, commented on Brody’s discussion with FCC, and reported Brody’s interest in “de-coupling” tenure and salary, including allowing salaries to decrease. Feeney told the committee that “there seems to be too much speculation occurring around the campus regarding various stances on tenure.” The minutes of the Faculty Affairs meeting record sentiments such as “there are no positive comments about tenure coming from Provost Brody” and “this issue is driven by economics” and “there is concern that the concept of tenure . . . is being used as a ‘scapegoat’ to explain the financial woes of the [AHC].” There was also concern that the faculty governance system would be bypassed and that the regents would change the tenure code themselves.

Feeney told his committee he would propose a meeting with Brody, administrators, and faculty representatives to discuss tenure, and in early November he wrote to Brody to ask for a meeting. He suggested four administrators and four faculty, including himself, Mary Dempsey, John Adams, and Law School professor Fred Morrison (primary author of the existing tenure code and

chair of the Senate's Committee on Finance and Planning). The purpose of the meeting would be to identify the problems with tenure that confront the AHC; Feeney expressed the hope that "adjustments, I hope, can be negotiated in good faith," and that if these were successful, other such meetings with other administrators could also lead to productive results.

Feeney added that he proposed the meeting "also to limit the apparent progressive polarization of administration and faculty on the issues surrounding tenure in the [AHC] and across the University." He recalled that Brody had said "everything was on the table" in re-engineering the AHC, and the meeting he proposed would deal with any "'re-engineering' of the Tenure Code." Feeney reported later that "absolutely [nothing] happened. I did not even get the courtesy of a response."

FCC met with President Hasselmo again on November 2; tenure was again on the agenda. The President said "he wanted there to be no misunderstanding about the current discussions: academic freedom is the foundation of universities" but that the University must review tenure as the best defense for academic freedom: "how tenure comes to be job security must be evaluated, as must the ways tenure is granted and removed and the extent of its application within the University, especially in the Medical School." He said it was important to "engage the faculty in a dialogue" about it. FCC and the President discussed the lack of a tradition of faculty governance in the AHC.

John Adams reported that the Tenure Working Group, appointed at the request of the regents, would meet soon to think about the issues. He said he would draft a memo laying out the choices. AHC Provost Brody said the AHC only has 12-18 months to act with respect to tenure commitments, because it has no money. Adams said he would make a presentation at the December regents' meeting, and would circulate his memo to FCC.

FCC also discussed the issue of the location of tenure. Technically, it resides in the University and the University is obligated to reassign a faculty member if a unit is abolished. The administration agreed to this after long discussions in the 1980s. FCC also took up the problem of tenured clinical faculty; tenured appointments were supposed to be on permanent funds, but that rule had not been followed. There was an argument that "in 1973 the rest of the University bailed out the Medical School, and it promised not to put tenured appointees on soft money. It appears that promise has been forgotten."

FCC Chair Carl Adams made his quarterly report to the regents on November 10. He said the faculty "would prefer the operational mode of the University to be collegial," a partnership in dealing with problems.

Perhaps an early indicator of the troubles that were to become more widely known later was

a November 15 memo that one of the AHC faculty wrote to the AHC faculty senators. Amos Deinard (Medical School and former FCC member) reported on a meeting, held at Brody's request, between the AHC consultative committee, a few members of the senior re-engineering committee (the "QRTC" committee), and the re-engineering consultant, CSC Index. There was dispute between the faculty and consultant about whether the results of a faculty survey (35% return rate) were accurate. He also reported that while there had been much consultation with external groups, little had apparently been done with faculty, administrators, or staff in the AHC; that external consultation included advice that the QRTC "give serious consideration to the following suggestions as a way of re-engineering the Academic Health Center: run the [AHC] more like a business, with business philosophy and discipline; create multidisciplinary educational and research programs; separate compensation from tenure (although not necessarily eliminate tenure); develop productivity measures and apply them vis-a-vis salary increases and retention; eliminate faculty governance." Deinard also reported that the QRTC was told about research which suggested the importance of participation in decision-making in healthy organizations, and that higher education models needed also to be considered. Deinard also said that the consultant and a representative from Brody's office were "ambiguous" on whether the QRTC recommendations would be provided to the faculty before a public report was issued.

On November 14, Regents' staff Kim Isenberg sent to Regents Reagan, Neel, Keffeler, and Spence a draft "statement of objectives" for a tenure review. This began a considerable set of exchanges that led up to resolution on tenure at the Board's December meeting. A few days later, Isenberg set up a conference call for November 21 with the four regents plus Hasselmo and Infante and sent a draft statement. [Hasselmo's November 20 letter -- about which more very shortly -- went out at this point, and he said the draft objectives and the points in his letter were "compatible," and that both could be used "as a starting point for our discussion" during the conference call.]

On November 22, Isenberg sent to the Board a draft of the tenure review objectives prepared by Reagan, Neel, Keffeler, and Spence. Hasselmo had seen it, and recommended it be the basis of a resolution for the December meeting. She invited comments on the statement of objectives.

Academic Affairs Vice President Infante wrote to Regents' Executive Secretary Bosacker and Isenberg on November 28 to report that he had "shared, unattributed, copies of both the draft resolutions on tenure we have been discussing" with Hasselmo. Hasselmo's view was similar to his own about the Board office draft; in addition to other editorial changes, "he felt the wording suggests that the reason we are reviewing tenure is purely in response to fiscal concerns." Reagan agreed with Hasselmo, according to Infante, and "suggested that perhaps public policy and the responsibility to

maintain the public trust would be a foundation upon which to base the Board's review of tenure."

On the same day, an assistant to Infante reported to him and to Hasselmo that she had informed Bosacker about "the administration's choice of resolutions related to tenure." There apparently was some disagreement involved. Conversations had been had with Reagan; Reagan told him to talk to Hasselmo, which Bosacker was going to do. She [the staff member in Infante's office] herself had spoken at length with Bosacker "about how this situation came to be. Here's my take on it: The Regents staff and the Regents saw our telephone discussion of last week as consultation with administration on the points in the Statement of Objectives. They came away believing that there was agreement/acceptance of the statement, word-for-word, as it stood." The administration, however, agreed "that there were principles that should guide our discussion and topics we should explore for discussion, we were silent on the specific wording of the document. . . . I doubt that the administration even considered 'word-smithing' the document since I don't believe they ever thought it would be a public document." Bosacker "feels strongly that the 4 Regents who worked on the original Statement are strongly wedded to the wording they used and want the resolution to reflect that wording. They, the Board staff, made some modifications to their original draft" after receiving administration suggestions, but the regents believe "the resolution must show that management must be accountable and have flexibility, that a public forum was important, and that fiscal issues do, in some part, drive this discussion." The regents' office, and Reagan, believed the administrative proposal too weak.

On November 20, President Hasselmo sent what became a fateful letter to Regents' Chair Reagan outlining the issues he believed needed to be addressed in the tenure review and about structuring the dialogue on tenure and laying out his premises. He maintained that human resources must support academic freedom, "we believe that the concept of tenure is to continue" ("this is an issue of competitiveness"), there must be more flexibility and efficiency (so procedures should be streamlined) and he identified a number of related issues: tenure imposes rigidity, so it may be necessary to establish goals for the proportion of tenured faculty (with a decrease in proportion of tenured faculty), to provide "a more responsible reward system," a partial decoupling of tenure from compensation "should be examined (base salary plus; with the possibility of a decrease in salary)," the locus of tenure (i.e., institutional versus departmental), and the length of the probationary period. Procedural issues in granting tenure, post-tenure merit reviews, and misconduct allegations (they "are very complex and lengthy") should also be examined.

The faculty were largely not aware of the existence of this letter at the time, but as its contents slowly became known over the next few months, it embittered a number of faculty leaders

against the President. It appeared to the faculty to put the President on the side of those who wished to make drastic revisions to the University's tenure code as well as to prejudge the outcome of a process that had just begun. There will be much more about the letter later, but it can be said that the letter probably aroused as much reaction as any document or event in the tenure debate.

Hasselmo later noted that Senior Vice President Infante shared the letter with FCC, and Infante had written the letter for his signature. He commented that "I signed it, so it is clearly mine. And I take responsibility for its contents. Those were the issues that had been identified; they were not my issues. Clearly, the letter led to some serious misinterpretations, especially in light of everything else that I said, wrote, and did! But, it had some unfortunate wording" (emphasis in original).

Handwritten notes dated November 20 from the regents' files include the sentence "faculty finally getting beyond the denial stage. Now realizing the Board is really getting into this discussion."

FCC again met with the President in late November.¹⁹ Chair Carl Adams said the mechanisms for tenure review were in place and the regents would adopt a resolution in December. Hasselmo said the faculty, administrative, and regental questions and aspirations about tenure were the same, as best he could tell. The resolution had been embargoed until Board members had seen it, and it would embody the Board's questions; it would lay out a continuing commitment to tenure as well as the need for review to be sure it served the institution well. FCC members were concerned at being unable to see the resolution; Adams said he had emphasized collegiality in his comments about the process of tenure review and he expressed concern that an embargoed resolution might suggest there is not as much trust between faculty and regents or administration as had been thought.

Hasselmo told FCC it was not a matter of trust and that the Board had affirmed its appreciation for faculty leadership on the issue; the resolution said the Board wished to continue to develop working knowledge of tenure, options used at other universities, and raised issues such as where it should be applied, that the procedures should not be unnecessarily cumbersome, and the location of tenure. Hasselmo assured FCC that the Board understood the importance of tenure and wanted it to be effective. Adams continued to express concern about how such a resolution would be perceived by the faculty, and that it could make the situation more difficult; he said that at present the regents, administration, and faculty were all on the same track, which was beneficial. Hasselmo said that would continue and the resolution did not set out new directions. Adams warned Hasselmo that

¹⁹That the President was meeting with FCC was not remarkable; he did so regularly. What was remarkable was that the subject of tenure was the focus of part of every meeting.

the regents were acting with respect to their constituents, and FCC with respect to the Senate; in the spring, there would be a need for hard votes, and if they could not be obtained, the system would break down.²⁰

Regents' Professor Berscheid recalled that on December 7, a week or so after his meeting with FCC, Hasselmo met with the regents' professors at a regularly-scheduled lunch. The regents' professors wanted to discuss several issues, including tenure. The other issues were never discussed as Hasselmo opened the meeting by distributing a resolution on tenure that the regents would pass at their meeting the next day. The regents' professors were concerned both with the substance and the tenor of the resolution. Berscheid said she asked Hasselmo what other major research institutions were examining their tenure codes, and he replied that he didn't know of any; she asked why, then, Minnesota was embarking on such an examination, and he replied that Minnesota would be in the "vanguard."

Berscheid said "she was dismayed to learn several weeks after the luncheon of the November 20 letter and felt deceived and betrayed by Hasselmo because at no point during his long conversation with the regents' professors did he mention that he had written such a letter requesting a review of tenure. Rather, he had presented the regents' proposed resolution as being solely a product of their own initiative; moreover, and although the Regents' Professors spent a great deal of time at the luncheon suggesting modifications of the resolution for the President to take back to the Regents, it later became clear that by that time the resolution already was a 'done deal' that had the approval of the administration, and that seeking the regents' professors advice on the resolution had been a sham." When she learned of the letter, "she insisted that copies be sent to all regents' professors for, up to that point, they had believed the President to be at least neutral in the regents' tenure revision project if not actively resisting radical changes to the tenure code."

That was the point at which Hasselmo began to be seen as "the enemy," Berscheid said, although given the two evils of the Board and the administration, Hasselmo was still seen as the far lesser threat. Many faculty members (including Berscheid), whose relationships with him went back many years, were simply bewildered by his behavior, she said, and they retained the hope that he would come to his senses and his academic values would reassert themselves; there was no such hope of redemption for the Board. It was primarily for this reason that several movements to call for a vote

²⁰It may have been, as some faculty believed, that the resolution was worked out beforehand between the administration and regents, in a tense atmosphere; that is suggested by the summary provided to Infante in late November. It was a compromise, with the regents wanting more than was said, and the President wanting less. The President, however, may also have felt cornered, trying to defend the faculty in the face of hostile Board leadership. His alternative would have been to quit, which he seemed determined not to do.

or petition of “no confidence” in Hasselmo were actively aborted by some faculty. When Hasselmo parted company with the regents on tenure the next fall, their hope was realized and, after his retirement he was highly lauded by everyone for his accomplishments during his service as president. But, Berscheid said, it is important to recognize that in December, 1995, as the tenure crisis was heating up, Hasselmo was perceived to be in the enemy camp. It is still not clear to many faculty how deeply he was in that camp at that time; faculty subsequently learned that he had not written the November 20 letter himself, and he later told others how much he regretted signing it.

With respect to the November 20 letter, Walsh said that “I am still at a loss to understand how modifications to tenure would fix the serious problems here. They should have focused on the decline in our national reputation instead. Why did Hasselmo not tell them that this was the real index of trouble? A Board of Directors of a corporation which did not identify real problems rather than superficial ones would be changed.” In terms of the President’s role, Walsh commented that “Hasselmo’s behavior was more than just a character trait. It goes back to the Board’s slowly demolishing [former President] Ken Keller. I talked to at least one administrator hired from outside who said that nobody here would go out on a limb after what happened to Keller. We have had bad leadership, but the core problem is a consistently bad Board.”

The Board continued in December its discussion of tenure, with, among others, John Adams and Provost Brody. John Adams provided a three-page memo outlining ten issues the Tenure Working Group was addressing, and said the assumption was that no one wished to eliminate tenure. Board Chair Reagan said the Board recognized the value of tenure but wanted a critical review of the tenure code in order to identify what was working and what the problems were. He said the Board wanted to cooperate with the administration and faculty governance and that it had no intention of destroying tenure, it wanted to protect academic freedom, but it also wanted “a system that . . . provides, to the greater degree, flexibility for the institution to move forward on strategic decisions.”

The regents took up a resolution that said the “fiduciary responsibility” for the institution is more “challenging” because of shrinking resources, and the regents will “undertake a comprehensive and systematic review of tenure” and seek “to improve the tenure system by developing more contemporary and mutually beneficial relationships between the University and its faculty.”

The statement then set out a set of clauses about what the regents would do: “develop a working knowledge of the University’s tenure code with the overarching goal of reshaping it to fit current and future needs; gain an understanding of the full span of tenure alternatives and variations available to the University of Minnesota and benefit from the experiences of a broad range of institutions; assure the protection of academic freedom; provide University decision-makers with the

flexibility to respond to the institution's changing circumstances, and to shape academic and administrative programs to meet the needs of our teaching, research, and service missions; ensure the maintenance of a vital academy through ongoing programs of faculty renewal, including effective tools for development and retention; maintain fairness as a central criterion in personnel decisions; address the special concerns of the Academic Health Center; and provide the Board with opportunities for public discussion of eventual revisions in the tenure code."

The Board adopted the resolution unanimously and directed the administration to have recommendations for tenure revisions by the beginning of the 1996-97 academic year. This would mean review by the Faculty Senate and its committees by June, 1996.

Humphreys commented that this meant "six months! I recall seeing Reagan hand John Adams the schedule or calendar on which the FCC/Senate was supposed to work at the December 15 meeting of FCC." The regents said they would act by the end of 1996-97 year. Swan later recalled that "at the time, the feeling was that they were asking these faculty committees to work faster than they could, and then when they did, and the regents didn't act [in June or July or August], that added to the sense of mistrust."

At the same Board meeting, Provost Brody again focused on changes in health care and the stresses on academic health centers and said that leading universities are beginning to recognize that these changes will require rethinking the role of tenure in the viability of the institutions. He also told the Board that Minnesota had one of the least flexible systems of tenure and that other academic medical centers with more flexibility are considering significant modifications to their tenure system. He told the regents that the AHC must be able to recruit excellent faculty, and that one of the four principles to be observed included protection of academic freedom. The minutes record him telling the regents that "the current tenure system hinders change and the [AHC's] ability to respond to changes in the demand for its educational, research, and service programs."

With respect to the interests of the Board, John Adams said, "I think that even at this point, the Board and Brody were still not aligned in their thinking. The Board's concerns, as I understood them, were legitimate -- not only because the Board is the boss and had a right to ask these questions, but because I, as a faculty member, believed it was appropriate for faculty to raise the same issues as professionals responsible for policing our own behavior. I believe I said as much on many occasions."

Adams also said about this that when Brody spoke, "he was speaking from the point of view of appointment arrangements and compensation arrangements in the AHC and parallel organizations in other research universities. But when he spoke, people heard something different. Brody appeared

neither to know or to care what was happening in other colleges or campuses. That was not his job or concern, unfortunately.”

Faculty worries were starting to grow. Mary Dempsey was at the December regents’ meeting. “I can remember John [Adams] and Bill Brody and others talked. It was December, a snowy day; I was walking back here [to the faculty club] and met Fred [Morrison], and I said ‘I’ve just come from the regents’ meeting, and there are some really unfortunate things going on about tenure.’” Morrison looked at the materials that had been presented. Dempsey told him “‘I don’t understand why you’re not involved in this.’ He said ‘they’ve never asked me to do any of this.’ He read through the materials, and I’d made some notes on the side. He wanted to know what Brody said; I said ‘luckily, he didn’t go on too long about it.’” According to Dempsey, Morrison’s reaction was that “he thought it was awful. He knew it was going to be bad.”

As the process of review began, Dempsey made a proposal to John Adams on December 13 on how he and she, with assistance from Tenure Working Group members, might draft language for the Tenure Subcommittee and Committee on Faculty Affairs, allowing discussion of specific text and perhaps action. She thought that a list of topics could be drawn up. On the same day, she notified the members of the two committees of a schedule of meetings that ran to June, 1996, at the rate of two per month, for discussion of tenure issues; she noted that the administration had requested that all proposed revisions to the code be completed by the end of Spring Quarter. As events played out, the process would not go as neatly as Dempsey had suggested it could.

At an FCC meeting the week after the regents’ meeting, on December 14, some expressed concern that the faculty members of the Tenure Working Group were “selling out” and that the schedule was far too tight, because there would need to be many committee meetings and possibly lengthy Faculty Senate meetings. One asked “‘what’s the rush?’” Others said the faculty had to act on a schedule the real world understands, not one comfortable for the University. FCC identified two issues critical for the faculty: (1) whether tenure is in the unit or in the University, and how to define the unit, and (2) uncoupling of salary and tenure. The timetable, it was said, may force a collision between faculty and regents over these issues.

FCC also conveyed its concerns to Senior Vice President Infante when he joined the same meeting. Infante said it was important for the faculty leadership to take a significant role in the discussions so the University would better be able to deal with the critical issues outlined in Professor Adams’ memo to the regents. Some FCC members argued that the governance system had to do the work, but it was not the governance system that started the discussion; the Board of Regents raised questions about tenure with the administration, and now the faculty had to make changes in the tenure

code.

What caught the attention of a number of faculty was an interview with John Adams about tenure broadcast on Minnesota Public Radio. Humphreys said “I very clearly remember that meeting. That’s when the warning bells went off in me. Even more strongly than [from] the President’s letter. Because John had just given his interview on MPR. I remember very clearly who used the words ‘selling out.’ It was Fred Morrison. ‘John, you sound like you’re selling out the faculty.’ Even by that mid-December FCC meeting, members of FCC were getting nervous about what was going on, and what John was planning.”

Humphreys recalled that it was at that December 14 meeting that “we were first given a copy of the President’s November 20 letter. And it was Jim Infante who distributed it.” Virginia Gray recalled, however, that FCC obtained it in November, at the time it went to the Board of Regents.

Again later that afternoon, John Adams met with the Committee on Faculty Affairs. Dempsey itemized the issues being considered, noted the tight schedule, and “proposed publishing the agendas of meetings in which tenure would be discussed for the purpose of involving more people.” Adams urged that the faculty deal with tenure by the end of the academic year, rather than let it drag out for several years. The committee asked Adams to produce a paper with a list of the issues, why they were on the list, how universities elsewhere are responding to them, and recommendations on each. Adams and the committee agreed that there should be a series of public forums for faculty to discuss tenure changes.

FCC held a special meeting with Regent Reagan the next day, December 15. Reagan said tenure had been brought to the attention of the Board from many quarters, including the legislature and the Governor, but assured FCC that the regents were committed to working with the faculty and administration. He said the Board would take its lead from the faculty, for the most part, and that the regents wanted the faculty to find ways to revise the tenure code in ways the University needed but that no one wanted to harm the parts of tenure that protect academic freedom. He said he wanted to see revisions that would allow flexibility. He said he was very pleased at the way the process had begun, that leadership had done well, and he hoped that faculty, administration, and Board could continue to work together. The view was expressed that the faculty perception is not that the changes were not needed but there was concern about the rush, and that the debate was driven by Medical School problems and statements by Provost Brody.

John Adams wrote later that this summary was also his sense of the meeting, but “I do not believe that [Reagan] was fully aware of what Keffeler was trying to do or what Brody was already doing.”

Humphreys described the meeting with Reagan as “even scarier” than the meeting the previous day. “I seemed to be the only one at that meeting who got upset at Reagan.”

After the meeting, the chair pro tem, Virginia Gray, wrote to Reagan to say that FCC found the meeting encouraging. To this, Humphreys later responded that “I recall a lot of very nervous and uncomfortable faculty at that meeting. Reagan at one point said I didn’t understand how a worker in northern Minnesota would react to my salary.” Gray later clarified that what she meant by “encouraging” was that the regents had no plan of their own, and that they would wait for the faculty to act first.

Walsh’s reaction was that “to the extent that all this was driven by AHC, the Board or faculty governance could have focused on AHC and demanded a careful inquiry. They did not. For many of us, this was ‘the dog that did not bark.’ Why the focus on tenure if the problem was AHC?” He said, “I think that we were all being driven to dance around this red herring of the tenure code while the real problems went unaddressed. Faculty governance failed us. They bought into this. But the real failure is of the Board.” Gray inquired rhetorically, in response, if the faculty governance system could possibly have refused to consider tenure reform.

Chuck Campbell said that “to me, the most important meeting that got this going was when Roberta actually discussed things with the Physics faculty in December, and alerted us to what was going on. I’m pretty sure Erwin Marquit was at the meeting we had.”

Humphreys recalled her role in this December meeting. “There were several FCC meetings in November and December, 1995. I was talking in the halls, telling people what was going on. Most people were still unaware, because people didn’t read FCC minutes. But I had been given a copy of Nils’s [November 20] letter, I’d been given a copy of the resolution of the Board, and there was other stuff in our minutes. I went around and talked to people, and said ‘look, this is an issue, there is going to be something happening this year, there are going to be changes to the tenure code.’ Most people didn’t know about it.”

“So at a meeting of the Physics faculty, I told them. I showed them the material. I just talked with people, and told them what was happening.”

* * *

ONE FACULTY MEMBER SPECULATES ON EVENTS

One faculty member recapitulated and speculated on events. “My guess is, although we can’t really prove it, that Infante was one of the main architects of the whole tenure crisis. We know Keffeler was; Infante and Brody -- I think that’s

the three, working in different places with similar goals. Maybe they united; maybe they had a common goal.”

“This may actually be hinted at, or more explicit in the stuff you’ve written, but my scenario of what happened -- and it’s highly speculative, just using some of the events -- is that there were some deals made, at some point. I think that when Keffeler started going after Hasselmo -- the whole business about ‘we have to find his replacement, he’s going to retire,’ she wanted to fire him -- I wouldn’t be surprised if Hasselmo made some concessions to Keffeler’s agenda, as part of the deal where they let him continue.”

“I would be even less surprised if, when Brody was hired, in the atmosphere that this guy Win Wallin²¹ was running the AHC -- if in the presence of all of these problems, and in the presence of Jim Infante, that Brody was given carte blanche to do whatever he wanted. At that point Hasselmo probably had essentially agreed, by giving him cart blanche, to support Brody in whatever measures he would take.”

“I think it is interesting and probably significant that Jean Keffeler and Win Wallin are both involved in the health care and technology business. It’s clear that the medical technology alley representatives wanted to see the University’s health center more the servant of their needs. I think that Win Wallin was part of that, I think Brody comes from that end of things. Many people -- Fennell [Evans] is one of these people, who comes from an enterprising perspective, because he is someone who runs a center that is primarily an interface between industry and the University -- like [Professor David] Hamilton and others in the health sciences felt that Brody saw this as an opportunity -- or maybe the only salvation of academic health -- to become a contract research agency for the government and for the private sector. Where, instead of people deciding on their own what to do in basic research, they were assigned what to do on the basis of contracts. That’s what this re-engineering seemed to be aiming to do if you look at its structure. To do that, you had to accomplish two things. Number one, you had to get rid of tenure, so you can have appropriate control. Number two, you really need to get rid of your strongest-minded faculty members who disagreed, drive them out.”

“I think that was the agenda. I think it was Jean Keffeler’s agenda even beyond the AHC. Maybe for reasons she thought were in the interest of the health of the University, that other parts of the University would also assume that sort of role -- the technology parts, the professional parts. It is interesting that we have a Governor who had a lunch bunch which included

²¹Win Wallin was a local retired CEO (Medtronic) who had served as Hasselmo’s health sciences overseer before Brody was appointed as provost, and who subsequently served on the presidential search committee.

some of the people who were heavily involved in this. The Governor has expressed, on more than one occasion, his feeling that a lot of this teaching of English and things of that sort that we do is really a waste of time, that we should cut right to the chase and train people technologically and for the needs of the state, and in particular, when he says the state, he means the private sector.”

“I see all of those things as possibly part of one cloth. That, to me, is the atmosphere in which all this happened.”

“Individually they may have had a particular thing they were focused on, but what they probably eventually realized was that they had a common goal. All their goals could have been realized with a common change. I think Keffeler seized on the situation in the AHC to justify changes in the tenure code -- Brody was probably really only interested in the AHC and the tenure situation there. If they had kept that confined, and not extended it to the rest of the University, they might have been able to pull it off. But Keffeler had a bigger goal, and it was the whole University. (And probably so did Infante.)”

* * *

One knowledgeable observer of events expressed a concurring view. “The relationship between the Governor and Nils worsened, because the well had been poisoned. It was not very good to start with, and the well was poisoned. They didn’t get along primarily because people who Carlson listened to said the University was wasting money and badly managed. There was some truth to that. But he overestimated the importance of that, because it was told to him by a former chair of the Board of Regents.”

“With this background, they all went ahead for tenure reform. I don’t know if the kitchen cabinet supported tenure reform, but I think they did.”

Berscheid was also suspicious of the circumstances. She wondered if “a pact was made with the regents, especially Keffeler, as a condition of his 2-year final contract, to weaken tenure. I am suspicious that the hostile (to tenure) Washington Post article was written with Nils’ knowledge, if not cooperation (through Peter Magrath, who has emerged as an advocate of weakening tenure).” Berscheid noted that Magrath, a former University of Minnesota president who had hired Hasselmo as a vice president, was president of the National Association of State Universities and Land Grant Colleges and that Hasselmo was the chief executive of the association during part of the tenure debate. She also pointed to the fact that Magrath’s wife was “head of Newhouse News Service,” and that these factors played a role in the fact that the editorial was written.

Hasselmo flatly rejected the proposition he had somehow been involved in compromises in reaching agreement with the regents on a two-year terminal contract. “I know that there has been

speculation that I made ‘deals’ of various kinds. I never entered into any ‘deals’ with any member of the board, or anybody else for that matter. When my contract was discussed, tenure was never mentioned. Yes, Jean clearly wanted me out of there (for reasons that had nothing to do with tenure) and was working to accomplish that objective. I had decided that I wanted to stay until 1997 -- I did that maybe by 1993 in the fall or so -- in order to try to settle the undergraduate initiative, Najarian²² matters, and get U2000 underway, etc. I never bargained about staying on! Nobody asked me to resign except Jean. Tom Reagan got mad at me, and [Provost] Phil [Shively], about the General College proposal -- which was to consider the closing of that unit, not just to close it.²³ That did strain our relationship,” as did the Shively appointment, “but that was a disagreement, simply; it never led to a ‘deal’ of any kind.” Hasselmo also pointed out that he had no motivation to make any such arrangements, because he certainly could have accepted a presidency at another institution, had he wanted one.

²²There will be more about Dr. John Najarian later.

²³This issue will arise again. In March, 1996, the President and Provost Shively made a recommendation to the regents that the University’s General College be considered for closure. General College admits under-prepared (including many minority) students into a two-year program, at the end of which the students are expected to transfer into one of the University’s colleges that grant baccalaureate degrees. There had been an undercurrent of questioning about the role of a General College at a research university for some years; those who favored closing General College argued that its success rate was too low and that its role had been supplanted by the growth of the community college system (which did not exist when General College was established in the 1920s). Hasselmo and Shively believed, going into the April, 1996, regents’ meeting at which the proposal would be brought, that they had the support of the majority of the Board. When the vote was taken on whether to consider closing General College, only one regent voted affirmatively. Both Marshak and Shively, later in this recounting, will characterize the role they believed “the General College fiasco” played in events.

Chapter Three
The Struggle Heats Up
Faculty Apprehensiveness Grows and the Faculty Divide

Early in January, 1996, Regent Reagan wrote to Executive Director Bosacker and Isenberg to “emphasize the importance of your attendance at meetings within the University community that deal with tenure.” He wanted the regents “kept abreast of the ongoing debate among faculty, staff, and students.” He noted that the Board received minutes of FCC and would receive reports in other ways, but he wanted “the perspective of someone who is on-the-ground and present during meetings and forums.”

Keffeler, Spence, and Infante held a telephone conference call on the “tenure workplan” on January 8, 1996.

Also in early January, President Hasselmo wrote to the chancellors (of the campuses at Crookston, Duluth, and Morris) and to the three provosts on the Twin Cities campus, saying tenure needed revision but that changes could be accomplished through cooperation with regents, administration, and faculty, and that faculty leadership is essential. He also wrote that the effort should “not imply to internal or external constituencies that change is impossible unless we can fire a number of tenured professors.” He also warned that external attacks on tenure would lead to faculty resistance to change.

The Committee on Faculty Affairs met after the holiday break. Chair Feeney reported that there would be a meeting of faculty in the Physics building about tenure the following day; FCC would not be involved, but all were invited to attend, and John Adams and others were going to explain the situation.

Faculty Affairs then took up a discussion draft of issues prepared by Adams. A concern expressed then, and repeated later, was that the draft “should not steer the discussion in a prescribed manner, should elaborate on the pros and cons of alternative approaches,” and put it in context. Fred Morrison, “noted expert on the Tenure Code,” also spoke, and said that the “removal for cause procedures are probably too complicated,” they need to be better administered, and “the tenure granting process is too detailed.” The Committee identified locus of tenure as a major issue; “this is a non-issue,” according to Morrison, and the “University is obligated to retain a tenured faculty member under the present regulations, no matter where the tenure is located.” Budget reductions cannot lead to lay-off of tenured faculty, Morrison said; the question is whether termination in the case of programmatic change should be permitted.

Morrison said that reduction in base pay, another major concern, is “a false issue in the [AHC]” because the provost (Brody) says it is a problem while the Medical School dean (Frank Cerra) says it is not. On this John Adams commented that “about this time, it started to be clear to some that Brody was beginning to understand the internal affairs of the Med School more completely than he had six months earlier.”

Morrison told the committee that procedures and controls are necessary if changes in the code are to be made, to protect against arbitrary administration actions. The committee had a prolonged discussion with Adams and Morrison about the code and tenure in general. Feeney said the committee would take positions on several major issues at upcoming meetings.

There was also, in early January, a meeting of the regents’ professors with members of the Tenure Working Group and the FCC leadership. Regents’ Professor Berscheid recalled that discussion centered on whether there should be two tenure codes. “What seemed to get ‘settled,’ is whether there should be one tenure code for the Health Sciences and one for the remainder of the University (No) and even more discussion of whether the 1985 tenure code should stay in effect for current professors, with the proposed “new” code applying only to future hires (also No). With respect to this last, it was felt that a ‘two-tier’ tenure code would divide the faculty into ‘first-class’ and ‘second-class’ citizens and, ultimately, be injurious to the University.” The question of having more than one code never again arose. That position also led to difficulties, because had the faculty agreed to a different code for clinical faculty, or for new faculty, the battle would not have been so hard-fought. Berscheid also said that she told the Tenure Working Group members that the faculty were counting on them to protect them; if they did not, they faced the specter of a union.

Walsh commented that “FCC was continuing to talk about solutions before anybody had looked into just what the problems in AHC were. I am still baffled that educated people could be so illogical.” It was Gray’s view that the FCC was not talking about any solutions at all; it was the Tenure Working Group that was dealing with tenure questions.

* * *

ORIGINS OF THE UNIVERSITY FACULTY ALLIANCE (UFA)

It was by now clear that not all faculty saw the tenure review process as benign. This growing alarm is perhaps signalled by an ad in the Daily on January 3, by a group styling itself the “Ad Hoc Committee to Defend Tenure.”

“Faculty members discuss tenure bargaining” (Minnesota Daily, January 8). The article reported on a meeting in Physics (mentioned at the Faculty Affairs committee meeting), where

“27 professors chose five volunteers for a committee charged with gathering information and possibly signing collective bargaining cards.” One of the faculty attributed the interest in tenure to financial problems at the University’s hospital and declining funding for higher education; “to right the fiscal mismanagement, corruption and malfeasance that have occurred over the years at the University Hospital, tenure is targeted.” FCC member Roberta Humphreys said FCC was “stunned” by the schedule.

This was the meeting that led eventually to creation of the University Faculty Alliance (UFA), which sought to obtain support for unionization of the faculty. Within short order, the union advocates were regularly sending email messages to all faculty about tenure issues, administrative statements, news coverage, and so on, and urging them to sign union authorization forms.

John Adams recalled attending the meeting. “The occasion was mainly designed to help kick off the card signing campaign. I spoke several times, recounting what was happening, but it was obvious to me that there was no interest in hearing what I had to say or what was happening in the University. The goal was to organize a union.”

Humphreys also recalled attending, at the request of Carl Adams, and described the atmosphere as one of “nervous concern,” with worry “about AHC financial problems threatening the rest of the University, etc.”

Campbell described the meeting as “hostile to John Adams and impatient with his lengthy beating around the bush in response to questions. It was informational. Erwin Marquit was the one who put the announcement in the Daily and called a meeting in January [The Ad Hoc Committee to Defend Tenure]. Several of his associates came to that meeting. In some percent, clearly some people wanted it to be a union organizing meeting. At the end of the meeting, some people stayed and their actions were probably the nucleus of the UFA; however, I was not [at that part of the meeting]. But there were many people, a number of them physicists because it was in the building and convenient and they were already alert to this, who were there to get information and to respond to whatever was said, on whatever side. John Adams was also there.”

Humphreys noted that “Carl [Adams] had asked that I attend, since I was in Physics -- I initially wasn’t even going to go. There was one thing about the meeting that stuck in my mind. I sat in the middle of the room, in the midst of the faculty. John separated himself from everybody. Some things can be communicated by body language. John separated himself from the rest of the faculty. There were several chairs between us; he turned and faced us; John was lecturing.”

Campbell said “John was going on and on. I interrupted him several times, because he was filling the air with lots of

words that didn't seem to have any other purpose than to try to put us off."

Humphreys commented that "if I hadn't had the FCC connection, I would have been infuriated." "Most of the people in the room were," according to Campbell. "It was his style of talking," Humphreys said. "He talked down to people. He was almost insulting at times to the faculty. It was like 'we on the FCC know better.' There was an implied message of 'us' versus 'them' from John."

Campbell remembered that "this is the first time I noticed the use of the term 'the faculty leadership.' The Adamases seemed to have assumed the title of 'the faculty leadership.' When speaking in terms of the faculty wants this or the faculty wants that, it was the faculty leadership very often, and it took me awhile to realize that 'the faculty leadership' meant exactly John and Carl. Apparently they presented themselves that way to the administration and that way to the rest of the world. This also came out in the forums; it was irritating to a lot of people."

Humphreys said that "it was like body language, but it was verbal. It communicated a separation, a difference. There's you out there, the faculty, the plebeians, and there's us, the patricians. It was communicated very strongly in FCC meetings; when he said 'faculty leadership,' I didn't think he meant me. I knew he didn't mean me! Yet I was on FCC. I once challenged him on the use of the phrase, at an FCC meeting; 'but of course it means you, Roberta, you're on the FCC.' I said 'no, I don't think you mean me.' At least I did not identify with that phraseology. It was definitely not inclusive."

Campbell also said that "the issue of the membership of the Tenure Working Group came up. We had heard about that group; we were already wondering who the members of this group were. I really pressed hard on this. John didn't answer at first, but finally he gave us a list of people. I don't remember who he said, although I do remember that I found out later there was one name he got wrong. But I had the impression he didn't want us to know."

About this January meeting, Walsh recalled that "I was one of the five volunteers. Our immediate goal was an organization to stop the Regents. Of course, some of us were for a union. But some of the more enthusiastic union advocates were not in the group of 5; one of the members had even opposed unionization in the 70's and 80s. I was at the beginning not convinced that we were headed for collective bargaining. I saw this as an ad hoc activity to oppose the Regents. But events ran us down and we became UFA, a collective bargaining organizational effort." He added that "the general view was, I think, that much of what we had heard was cover language for what was, in effect, a general attack on the tenure system and academic freedom. There was a very strong

feeling that this was being done in a non-public way (despite protestations otherwise) and that this boded very ill. Maybe that is why the card issue came up so fast -- as a way of stopping the rush.”

* * *

Board Chair Reagan wrote to the group, declaring again that the regents did not want to destroy tenure but wanted flexibility. “The Board of Regents recognizes the value of tenure.”

The Tenure Working Group issued a discussion paper (authored by the chair, John Adams) in January outlining the issues to be considered in revising the tenure code. Members of the Faculty Senate were provided copies of the discussion document and notified that two forums on review of tenure would be held within the month. Adams provided an overview of the issues and an update on the discussions to the Senate in early January. Later in the month, Senators were informed of committee meetings at which tenure would be discussed, including Faculty Affairs, the Tenure Subcommittee, and the Tenure Working Group; they were told the meetings were public and they were welcome to attend. There were nine such meetings scheduled, running from February 1 to June 6.

On January 9, Victor Bloomfield (FCC member), emailed John Adams to compliment him on the tenure discussion document. He raised two points that he believed warranted further attention: the need for due process before any suspension without pay, and the need to consider all faculty in the same field -- even if in different departments -- before laying off anyone as a result of financial emergency.

Dan Feeney, Faculty Affairs Committee chair, wrote a four-page memo to his committee on January 12. He reflected on the pressures driving the tenure code revision (a clash between academic freedom and public perceptions about the security of the job, lack of public understanding of higher education, an “overstated problem of ‘deadwood’ . . . fostered by the media,” mismanagement of tenure and inattention to the market, scandals, fear of administrative abuse and faculty mistrust that caused the present code to be restrictive).²⁴ He recalled a question from the January Faculty Senate meeting, when John Adams was asked where the questions about tenure were coming from (since they were not coming from faculty); Feeney wrote that Faculty Affairs must take up the questions or others would. At the same time, he assured them he was not prepared simply to acquiesce to whatever changes others might seek.

²⁴In Walsh’s view, “the national groups that wanted to attack tenure had successfully captured the attention of editorial writers. Unfortunately, this was a good tactic and there was no opposition to it. There is even in academia an odd confusion of editorial writers with the public mind.”

One issue was the location of tenure; the key was layoffs. Feeney suggested the provostal unit as the logical place for tenure, rather than the college or department, which is where final approval is granted and which were units large enough to accommodate transfer. He also suggested that tenure could be tied only to recurring salary funds, not “soft” money or outside income, and that tenure could be granted to positions at less than 100% time. Feeney said more information was needed on streamlining the “removal for cause” and tenure-granting provisions of the code, that varying probationary periods should be allowed (with a system maximum), that annual reviews should be enough (rather than a post-tenure review process), that non-tenured faculty appointments should be permissible, that each unit should decide the types of faculty appointments that are eligible for tenure, and asked for opinions on whether any changes should be applied to all faculty, or only prospectively. He concluded by noting that discussion of these issues would begin January 18, that “I’ll wear my rubber suit to minimize the tomato stains as we discuss my suggestions,” and called for open discussion.

Morrison wrote back to Feeney to lay out his thoughts on a number of the tenure issues. He identified procedural, programmatic, and financial difficulties in changing the base of tenure from the institution to some smaller unit, the need for “very careful procedures” if tenure is uncoupled from 100% of salary, the need to streamline termination procedures, and said that major changes should only be applied prospectively. (A few days later, the Senate office forwarded to all faculty senators copies of Feeney’s memo and Morrison’s response.)

At this same time, Mary Dempsey sent to the Tenure Subcommittee and Faculty Affairs revised Judicial Committee procedures, and reported that the Judicial Committee chair, Edwin Fogelman, asked that his committee be represented at any discussions of procedure that were held. She requested that a joint meeting of the four groups (the three committees plus the Tenure Working Group) be scheduled.

In mid-January, President Hasselmo had a column in Kiosk, a faculty-staff newspaper, saying in a more public way what he had told FCC and others earlier. He said tenure was on the agenda because of the national context “whether we like it or not,” and that it required thoughtful review of where it was granted, how it was granted, and faculty evaluation and rewards. Doing so would avoid external interference and internal disillusion with tenure. Neither danger was great at Minnesota, and the opportunity should be taken to conduct the review to protect academic freedom but not non-performance. He emphasized the importance of tenure for the University and that there was a common agenda with faculty leadership in charge.

Walsh wrote that “at that time, many people said that if tenure was a national issue,

Minnesota should be the last place to react to it. We were just too vulnerable to losing yet more of our slipping reputation by pushing this issue. Even if you sincerely believed that tenure needed reforming, it would be stupid to start reforming it here.”

In mid-January, Faculty Affairs met again, with Fred Morrison present. The John Adams discussion document from the Tenure Working Group seemed to committee members to be prescriptive. The committee decided to focus on major issues, and began with the locus of tenure. The Adams document suggested departmental tenure, the January 12 Feeney summary suggested larger units, and Morrison maintained it should be institutional. Committee members agreed with Morrison; the minutes record views that institutional tenure “was the obvious choice for faculty” and that “the Adams document on this point seeks to greatly diminish tenure” and “should be resisted.” Also at the meeting was Acting Associate Vice President Dan Farber, who said that system tenure was not the norm in higher education and that there is little public sympathy for this kind of job security except for academic freedom. After debating the merits of the issue, the committee decided to tell Adams that it opposed departmental tenure. It also debated but reached no conclusion about unlinking tenure from 100% of salary, but the view was expressed that the problem is poor administrative decisions on salaries.

Walsh later wrote that “unfortunately, most of what was going on at this time was in conversations among faculty, not in paper letters, memos, etc. Fred and Co. were really out of touch. The paper trail maybe even overemphasizes this.”

Chuck Campbell emailed to a colleague, Tom Clayton, about collective bargaining on January 16. “I think there is little to lose in getting the cards signed, unless we fail to obtain the minimum number of signatures. I would much prefer to work through AAUP, but they seem to be silent, if there really is a campus AAUP anymore.”

Campbell also commented on the Tenure Working Group. Half of them, he wrote, “appear to be reasonable people.” He said he intended to respond to the discussion document; “that document is a mixture of positive and negative things, so I don’t want to tar them too quickly. I happen to be a Senator this year, which gives me another entry into the battle. Judging from last week’s Senate meeting, I feel that the Senate is in no mood to act positively on this matter. While the Senate can slow things down, and refuse to endorse the proposed changes, the Regents don’t have to accept the Senate’s position (after all the Administration has already convinced them that the faculty will be the problem), which is why [collective bargaining] election authorization cards must be collected, and quickly.”

Campbell also told Clayton that “one person whose political judgment I trust tells me that we

should also be attacking the administration. In the last several sessions the Legislature has directed the administration to shrink. Perhaps the administration has shrunk, but most people doubt it. Moreover, the administration has to be made to acknowledge that they violated the tenure code (as the working group report points out) by permitting so many faculty to be tenured on soft money -- which is the heart of the crisis -- and that the first part of the solution should be to shrink the administration and get rid of those who permitted the present crisis to develop.”

Campbell also described Walsh. “Tom is very intense when involved in such issues, and is both very smart and very clever,” although some felt that on occasion he over-reacted to events. “He is collecting information and working on a way to obtain all of the faculty e-mail addresses.”

Clayton emailed back to Campbell that “if the Augean Stable of the Medical School were cleared out along with the Senior Augean Stable in Morrill Hall²⁵ (or Moral Hell, as a friend -- who would prefer to remain anonymous! -- calls it), I think we would all be in better shape and recognizably so even beyond the walls.”

“On AAUP as an agent. On principle, I agree [with the notion that the AAUP would be a good bargaining agent] but AAUP has been moribund for years, if not decades, here, which points one necessarily in other directions, such as MEA [Minnesota Education Association, or University Education Association, the collective bargaining agent for the Duluth campus non-health-sciences faculty], which seems to have done well by Duluth.”

On January 21, Clayton send a message to colleagues entitled “Defensive action against threats to faculty tenure and compensation.” He wrote that “as everyone should know by now, the administration is making strenuous efforts to revise if not eliminate the tenure code with the approval of the Faculty Senate by May of this academic year. Elimination or serious abridgement of tenure is unlikely to win Faculty Senate approval, but the University does not require Senate approval to take action. As I assume everyone knows, if security of tenure goes, academic freedom goes with it.” Clayton expressed concern about a decline in compensation if bonuses were substituted for salary increases, and increased vulnerability of faculty if tenure were moved to departments or colleges. He urged faculty to attend the planned forums on tenure. Clayton enclosed a portion of the Faculty Affairs committee minutes of December 14 to identify the actions that were being considered. “And, not to beat around the bush out here on the heath, I write to ask you please to declare yourself as ready to sign a form, when ready, that calls for a collective-bargaining election to be held at the University.” Clayton explained that “this would not commit you to collective bargaining” but would

²⁵Morrill Hall houses the central administrative offices of the University, including the President’s office and, at the time, that of the Board of Regents.

invoke the state's legal machinery (by issuing a "cease and desist" order) to stop discussion of faculty working conditions. He reported that "efforts are actively under way to organize as many concerned faculty as possible to help in obtaining the signatures to bring on the election announced shortly." He asked for an indication of willingness to sign a card.

The list Clayton appended from the Faculty Affairs committee minutes included the issues that had appeared repeatedly: the locus of tenure, the link between salary and tenure, removal for cause procedures, flexibility in probationary periods, post-tenure reviews, and so on.

By this time, faculty were beginning to pay attention to the discussion document. Even though it was provided to the Faculty Senate, Swan pointed out that the members of the Faculty Senate were only a small percentage of the faculty, and the discussion document "was not generally known or available." Adams repeatedly said that he had only attempted to summarize all the tenure issues he could find that had been raised, irrespective of source, without reaching any conclusions about whether they had merit or if they should lead to changes in the tenure code. Despite his statements, the document was seen by a number of faculty as a white paper for particular changes rather than a discussion document, and they grew alarmed at the nature of the issues it raised.

* * *

THE DISCUSSION DOCUMENT

It was Fred Morrison's view that "the discussion document was not a balanced piece. The discussion document took all the arguments against the existing system and laid them out at great length, and did not put any counter-arguments there. So it was easy to interpret the discussion document as an attack on tenure, rather than a raising of questions about tenure." The document would receive more attention in subsequent exchanges, but at this point it is perhaps worth reviewing the criticisms of the document that were made by those involved.

Virginia Gray believed that "in a way, John created some of his own problems, because he was saying different things to different people. Also, I went to all of these forums, and I thought the purpose of the forums was to talk about 'what's the problem, what's the solution,' and we would walk through these issues. But John would get up there and he would say 'does anybody know where the motivation comes from to engage in this at all, and people have speculated about this and that and the other, and I wonder if anybody knows.' He would lead everyone off on these witch hunts for a motive, and we would

never talk about the substance. So people would leave much more suspicious than when they came. I don't think John was really suspicious, but I couldn't figure out why he kept talking like that."

Gray added that "John wrote this whole document himself. He wrote it over the Christmas holidays; he gave it to me and asked for comments. I read it, and I knew this was not going to work. But I said to myself, 'do I want to give up my Christmas holiday to rewrite this?' I said 'no, I don't want to do that. I'm not on the committee.' So I didn't do anything. I don't know if that would have helped or not."

One faculty member said that "unfortunately, [both John Adams and Carl Adams] share in personal style a tendency to lecture. People would walk out of the forum conducted by John and say 'goddam it, I'm not going to another forum and listen to another lecture from John Adams.' Faculty went to talk, to debate ideas, they didn't go to hear a lecture."

"[Another] point that people made at the time is one that I must admit I hadn't thought about. When Carl appointed John as chair, I thought 'John's an organized, experienced person, that makes sense.' But other people pointed out to me that John had never had anything to do with the tenure issue; he was not an expert on the tenure issue, he didn't know the AAUP history on this, he didn't know the University history on this, and the experts didn't think he really understood the issues. I think that's a fair point."

Campbell was more critical of the document. "Things that were being presented as the Tenure Working Group's document were in fact written by John and Carl and maybe Farber or somebody like that. It's not a question of who wrote it; it was probably clear who wrote it. But people kept questioning him; 'where do these things come from?' He kept saying 'faculty members.' In the end, I decided he was the faculty member! It was technically true. They were the ones. It really was a bone of contention at the forum [held at the AHC in March]."

One faculty member said that "I think John Adams had a particular vision of the University that he tried to impose on the committee. I don't know anything about the internal dynamics of the committee, but the report read all of John. I talked to a couple of people on the committee who said 'John seemed to have these ideas, so we just let him do it.' Which was unfortunate."

John Adams provided his own perspective on the matter. Asked about the belief that the Tenure Working Group met only once or twice, Adams said that "there's no question that we met; we met several times. When we met, we met with Jim [Senior Vice President Infante]. I can't remember how many times. We always met in Jim's office."

"He was usually telling us what was going on with Jean

and with the President and the Board. We were going back and forth with him; he was telling us what was happening with respect to pressure on the administration, from the Board, and just informing us of the directions they were fishing for, and asking us what we thought.”

“Yes, we did meet. I know that the main thing that was decided, at one point in the development of that Tenure Working Group, is the idea that we would initiate discussions about this on campus, that it was important to pull together all of the things that happened and the different points of view that had been laid on the table with respect to this issue, both pro and con. That group asked me to write them down, in a discussion document which would be circulated, to start the conversation, which is what I did.”

“I did that some time around December, then we planned these forums, which started after the first of the year. All of that was done with the group. Carl was there; also Dan Farber; Mary [Dempsey]; Jim [Infante]; Dan Feeney; not every time we met was everybody there.”

As for the authorship of the document, Adams acknowledged that he wrote it. “Yes, and I showed it to them. They made comments. The real idea -- in retrospect, probably naive -- was that people would actually read it and think about it and begin discussing the issues that were raised in it. I remember quite clearly that some of the stuff that was in there was based on stuff that had been talked about not only during the year that I was chair, but also in the year preceding, when Judy [Garrard] was the chair. We started raising some of these questions about compensation.”

“For instance, one of the things that sticks out in my mind is the issue that had come up at a much earlier time about the relationship between tenure and compensation, and whether we should rationalize that. [Adams recalled an incident with respect to a former administrator who returned to the faculty, and wanted to retain the administrative salary.] There was a big flap over whether he would be able to do that; Jim came to FCC and said ‘this is a problem. We have to figure out the connection between salary and tenure.’ So I put that in there, along with other stuff that had come up.”

“I didn’t think any of that was particularly contentious, because I thought we were going to have an actual discussion and debate about it. Then as the year went forward in 1996, that document was viewed increasingly by many people as our committee or me acting as a kind of stalking horse for administration and/or regents’ initiatives.”

“It’s fair to say that the paper was a combination of what had been talked about before, what the committee thought ought to be talked about, and what the regents and the president had put on the table as a result of the letter that Tom Reagan gave Nils.”

Asked why he thought the discussion document became seen as a white paper by so many faculty, Adams said "I don't know. I wish I knew. I've always had a problem with many of my colleagues around here, because I've always felt, deep in my insides, that I'm the University. There isn't any 'there' there; there are these people who take turns sitting in Morrill Hall, but it's the faculty who run the place, ultimately. So I've never had this 'he boss, me slave' kind of mentality that some people have, and whenever I've wanted to know something, I found out. I didn't wonder what the President thought; I asked him. I learned this very early in life around here, I suppose because when I was a student here I knew some of the people who ran the University."

"[Knowing the people who run the University] always changes your attitude about the place. That history helps me understand why some of the things that trouble folks who come from someplace else and don't know anyone here, have never met the President, don't know any of the senior officers, maybe don't even know their very own department head -- that changes the way they think about things. They think there's a 'there' there, rather than walking in the front door, sitting down, and becoming part of the operation. That's part of it."

"I start conversations around here all the time about things; I've done that for 30 years. When I see something I don't like, I do something about it. If the President or the dean or the vice president have a problem, I'll write them a memo and say 'I understand you have the following problem; have you thought about it this way? Here's something I think you need to know. If you need any help, holler.'"

"It was with this kind of an attitude that I approached the question 'what are the issues? What do people think about them?' I admit, if I'd had another month to polish that thing, it would have been more elegantly written and there would have been a lot more, 'on the one hand this, on the other hand that, what do we think?' But it was clear there was pressure, because the regents had asked for action by the end of the year, and it was already Christmas time."

"The idea was that we would get this out, have the forums, talk about these things, and it was pretty clear to me that the discussions were going to go along among the faculty while the committees were going along doing what the committees do. But this would facilitate that process, because everybody knows that most faculty don't pay any attention to the committees' activity; they don't read the minutes, they don't participate."

"So what were we going to do about that? If you're going to do something important, you better make sure that people have an opportunity to know that it's going on, through extraordinary devices. That's why the idea of the forums came up. Then we were really disappointed that so few people came."

The first two or three that came along, I was astonished; five, six people would show up. Then all of a sudden, attention started to increase. I don't know specifically what caused the increase in attention, but there were a series of things that began to go on simultaneously. Not the least of which was the celebrated email traffic on the union organizing activity. This all multiplied to produce a rapidly expanding product that we saw lead to the discussion in Mayo Auditorium [in the AHC]. There were a lot of people at that one."

"But by that time, a lot of folks' teeth were already set on edge. That forum in Mayo was in many respects a reflection of faculty attitudes in the health center about what, by that time, they were already beginning to see what was happening in the health center."

(Gray later commented that it was telling that the Tenure Working Group "always met in Jim's office." Have you ever heard of a faculty committee that met exclusively in a senior administrator's office? One can only draw the inference, she said, that it was too much a puppet of the administration. The faculty did not know this. She also noted that while Campbell and Humphreys kept criticizing the Tenure Working Group, the group had well-known and well-respected faculty on it, such as Matt Tirrell; who would have thought the group was a stalking horse for Infante, she asked? It seemed on its face to be a good group and would have seemed so to any faculty member, she concluded.)

* * *

January 25 was the date of the first two-hour Faculty Senate Forum on Tenure, and was attended by about 60 people. [Or so the record shows. Comments about the forums cast doubt on the numbers.] John Adams reviewed the issues, and said that "one important task of the [Tenure] Working Group will be to explain to members of the Board of Regents and the skeptical public why faculty in a research university need to be protected by the institution of tenure." He also told the group that some blame tenure for failures that are actually attributable to administrative failings.

One of those present at the forum read a prepared statement from the University Education Association (the collective bargaining agent for the Duluth faculty). The UEA opposed the changes being proposed and noted that no changes could be made at Duluth without bargaining. They said they were "concerned that faculty on the other campuses have been so passive in the face of these proposals. For example, where have your governance bodies been while the attack on fundamental faculty rights gained momentum?" The UEA commended the Twin Cities faculty for beginning a union organizing effort, and pointed out that signing authorization cards would "freeze" the tenure discussion.

Several of those who spoke at the forum maintained that all of the concerns mentioned by the regents and others (flexibility, faculty renewal, administrative failings, financial pressure) could be addressed in the current tenure code, and that this was a political matter.

Walsh observed that “of course, the Senate was not the only group discussing the tenure issue. Faculty were doing the same in private and unrecorded conversations. In the long run, these conversations were decisive as the faculty mood turned more and more negative -- against the Board, against the administration and even against FCC.”

John Adams said that few spoke except for union supporters; “I believe that most attended to listen and to learn.” Dan Feeney said the tenor was “one of concern, but not militant. [There was] reasonable discussion.”

Walsh recalled, however, that “many of the future UFA members I talked to did not attend the January 25 forum. There was a feeling that things were moving fast and that these forums were irrelevant. They would be overtaken by events.”

The campus newspaper reported on the forum. **“Group discusses changing tenure system”** (Minnesota Daily, January 26). The article reported on preparation of the discussion document identifying possible tenure changes, including placing tenure in departments, reducing the percentage of tenured faculty, and separating salary and tenure. It noted the decline in clinical revenues in the AHC and the inability of the AHC to meet its commitments to tenured faculty. John Adams reportedly said most of the tenure code should remain intact, but allow for longer probationary periods, and new categories of faculty appointments for those who only teach.

John Adams later wrote that “this paragraph reminds me of the difficulties that we had communicating with the faculty -- especially in the atmosphere of misinformation and disinformation that some of the union advocates were disseminating. I wrote the ‘issues paper’ to summarize the issues and to relay what various people were asking and stating. It was not intended to be a series of proposals or recommendations. It was to outline issues and the thinking that lay behind them as I understood them. Carl [Adams] agreed with this approach and agreed with the content. Despite our protestations, those who were trying to galvanize opposition to the entire tenure code review process used the issues paper as a club to attack the process and to elicit support for their various causes. The result was that issues that we hoped would be addressed were not addressed. There was little or no concession on the part of well over 90 percent of those who spoke or who I heard from that the issues deserved discussion and serious attention. As the weeks went by, genuine fear gripped many, especially those who, for whatever reason, felt vulnerable.”

One faculty member, an AAUP loyalist, sent an email to colleagues after the forum and the

Daily article reporting rumor of an objectionable letter from the President (probably the November 20 letter) and asserted that the problems started in the Medical School, because it tenured clinical faculty earlier and now did not have enough money to pay them. He argued that the national AAUP should review John Adams' discussion document and that the AAUP should work with the union people to ask faculty to sign cards. "This is on such a fast track and Keffeler pushing so hard that it must be stopped long enough to get some real consideration and review." The regents and administration "disdain" the faculty, he wrote, and said faculty should consider publicly "endorsing actions to stop the Regents' dreadnought."

Walsh wrote later that "by the end of January there was a lot of anger directed at FCC and specifically at the Tenure Working Group. They would like to think that a few activists created this anger, but they are wrong. They had been working in secret, and then they came out with this document. It was awful. I still don't understand why they went ahead. UFA had later to deal with this background of faculty anger and suspicion. The impact of poor judgment by faculty leaders at this time cast a pall over our future attempts to work with faculty governance and even with AAUP. It was not easy to work with people who had shown bad judgment in the past. We succeeded, but it was not easy." Again, Gray pointed out that the Working Group was not the FCC.

Hasselmo said that he had not "linked faculty tenure review to the AHC. That was done by others."

One of the catalysts for faculty discontent became re-engineering in the AHC. Brody had told the regents about it, and a few faculty were aware of what was going on, but for most faculty (especially those outside the AHC), it had not meant anything. The first time it received any publicity was in the campus newspaper in late January. "**U's health center tries re-engineering to help finances**" (Minnesota Daily, January 22). The article reported on a meeting Brody had with "more than 250 people" to explain re-engineering. There had been a faculty committee working for six months on phase one that identified goals; three "non-negotiable decisions" were separation of the AHC into three units, management to achieve "efficiency and effectiveness," and to "maximize overall performance." New committees were to work for several months during the second phase, and "an example of an issue that would be scrutinized is whether tenure would exist in the new system and how it would work if it did, Brody said." Brody also urged addressing problems within the University, in response to legislative testimony by a Medical School administrator "that the [AHC] wouldn't need the money [the University had requested] if it could manage its finances better."

The Minnesota legislature convened in January, and at the committee responsible for the

University's appropriation, Provost Brody testified that the existing tenure code was a bar to successful re-engineering of the Health Center.²⁶ The committee began debating language to be added to the AHC appropriation, making the funds contingent on changes to tenure with respect to clinical faculty. This became the subject of intense lobbying by the administration and faculty. The quotation attributed to Brody in the Daily article was a surprise to those who had heard him testify before the legislature.

Representative Becky Kelso (chair of the House committee that dealt with the University's appropriation) wrote to a member of the Board of Regents, Hyon Kim, on February 1 and said that changes in the AHC were necessary because of controversies and the need for accountability; she said much had already changed and she supported re-engineering. "I remain convinced that unless there is modification of the Regent's [sic] tenure policy that all of our efforts will inevitably fall short. I fear that the tenure system is so intrinsically resistant to change that any large scale restructuring effort cannot succeed." She understood tenure was necessary for academic freedom, but "the fact that the University of Minnesota has a system that is even more inflexible than other comparable institutions argues for reasonable change." (As Swan pointed out later, there were no data to support this proposition.) She said changes could not wait until September, that health care was changing too rapidly, and she hoped "the Regents are willing to make internally unpopular decisions which are needed to ensure the success of the AHC re-engineering."

Hamilton pointed out that re-engineering "had been going on for a considerable amount of time, a year and half. Brody, when he first came in, didn't publicly talk about re-engineering. He did publicly talk about things like doing away with tenure. And said explicitly to some people, including me, in private conversations, that that was the only way to solve the AHC problems. Then his cohort, Leo Furcht, took up the call, and it was the two of them who carried the message to the legislature, that doing away with tenure was the only way to deal with the re-engineering needs in the AHC."

The message "fell on receptive ears because so many people can't see beyond the end of their nose," in Hamilton's opinion. "The issue in the AHC is highly-paid, older faculty who are non-productive in the sense that they're not making their way. In departments such as Medicine and Pediatrics and some other non-surgical departments, where research is very highly prized, people will have clinical responsibilities that may last for one or two months a year. The rest of the time is fully devoted to research. If you don't have a really active clinical program, that can fit into one month or

²⁶Some recalled that Brody had testified before the legislature on these same matters as early as February, 1995, but no one seems to have taken note of the tenure issue at the time.

two months, you're not even going to make your salary.”

“So what happened,” Hamilton related, “was that there was a cadre of younger people who were working their heads off, because they wanted to become older people, and they were supplying clinical income. And there were some loss leaders in the group. Some of this is market-driven, some is historical. The issue was not doing away with the tenure of those people, the issue was getting rid of those people who were non-contributors.”

Hamilton said that an early retirement option had been considered. “We estimate that 30% of the Medical School is eligible for, and would probably take, an early retirement option if it were attractive enough. That would have solved Brody’s problems; there would have been no tenure debate, from that perspective. I don’t know what Jean Keffeler would do, but Brody would have had his way.”

At about this time, two of the Minnesota AAUP²⁷ leaders (Faculty Legislative Liaison Craig Swan and Anne Pick) were contacted by national AAUP president James Perley for help in understanding what was happening at Minnesota. They sent an email to Perley describing the process and saying that “it is widely believed that the major impetus for the action of the Board of Regents came from a particular member of the Board,” but that other factors also came into play. They noted that Farber had met earlier with the AAUP and had been asked by the administration to assemble materials and that he had a strong scholarly reputation.

Pick and Swan also itemized the other factors promoting the interest in tenure at Minnesota: national discussions; local tenure cases, one in which a faculty member held two full-time positions at different universities (one was Minnesota) and others in the Medical School; pressures from the AHC, and especially declining clinical revenues, the need to shrink (“the Provost for the [AHC] . . . emphasized the difficulties that tenure poses” in reducing the AHC); and legislative opinion (“there are clearly legislators who believe that tenure should be abolished” while others understand its importance but who believe Minnesota’s code may be too “complex and unwieldy”). They also reported that one leading legislator has said that if what Provost Brody has said about tenure is true, then she cannot support a University request for \$15 million to help the AHC with re-engineering until the tenure code is changed.

They reported to Perley on the preparation of the Adams discussion document and listed the major issues in it. They commented that “while designed to be a discussion document and raise

²⁷Walsh commented about the role of AAUP in these events, up to this time: “AAUP was entirely passive. I don’t even think that they participated in our meetings.”

issues, a number of us feel that the tone and tenor of the document has done so in a way that is polarizing positions.” They noted the faculty calls for a union, and recalled that AAUP membership at Minnesota “declined significantly when AAUP presented itself as a union alternative 15 years ago.”

Swan went on to say that he was “quite surprised by the document.” The Tenure Working Group members were good scholars “with strong academic values” but “the tone and tenor of the discussion document is unnecessarily antagonistic and anti-faculty [and] . . . completely at variance with what I know about members of the committee individually.” He agreed that disciplinary processes may be too complicated, but that shifting tenure to units “appears to be open to abuse and a serious compromise to academic freedom.” He expressed concern about several other issues in the discussion document as well.

Carol Wells, a member of the Judicial Committee, later pointed out that in the case of the faculty member who held two full-time positions at different institutions, “this behavior was judged by the Judicial Committee to be incompatible with the tenure code. The person was dismissed from both institutions.” Why, she inquired rhetorically, would this case be “an example for weakening tenure?”

John Adams commented, apropos Swan’s and Pick’s observations about legislators, that it was not known what Brody told them. “But our interaction with them during the session certainly suggests that he planted seeds in their minds that then grew into the skeptical, hostile atmosphere that we then had to deal with.”

Professor Arthur Geffen emailed on January 26 to a long list of faculty, including John Adams, Campbell, and others who would eventually become part of the Gang of 19²⁸ that “the newly formed Minnesota Faculty Association, an organization founded to protect faculty rights, urges you to attend a meeting it is holding on the tenure crisis (no exaggeration)” on February 1.

On February 1, the Committee on Faculty Affairs met again. Feeney reported he had communicated the committee’s opposition to unit-based tenure to John Adams; Dempsey said the Tenure Subcommittee would deal quickly with the issues raised in the discussion document. Graduate students presented materials arguing for their inclusion in the tenure discussion; the comments focused on the nature and extent of academic freedom and its importance for faculty, and touched on other issues. Feeney said the meeting was “collegial and supportive. The grad students were on the side of tenure!”

²⁸About which more later.

The first meeting of the UFA held under that name was February 1.²⁹

A few days later Faculty Legislative Liaison Craig Swan emailed FCC Chair Carl Adams and John Adams to report on a meeting with Representatives Kelley and Kelso. According to Swan, Kelso again said she needed to see a change in tenure regulations in order for the state to know its investment was effective: since Brody had said the re-engineering changes in the AHC were prevented by tenure, and since the University controlled tenure, it should change tenure to ensure the state investment is wise. Both legislators indicated their concerns were with the AHC, not with tenure generally.

One small indication of AHC faculty views on re-engineering is perhaps captured by an early-February memo to one of the AHC vice provosts (Leo Furcht) and the deans of Nursing and Veterinary Medicine (who supported re-engineering); all three had been present at a Dentistry faculty meeting about re-engineering on February 5. The memo came from over 30 Dentistry faculty. They wrote that they realized “it must be difficult for scholars such as yourselves . . . to stand before your colleagues and admit that after months of planning and a sizeable financial investment you have no budget projections, no charges for the planning teams that we have been encouraged to participate on, and no data or rationale other than faith alone for supporting a radical restructuring of the AHC.” Copies were later provided to the regents. One faculty member who was present later described it as a turning point, because the faculty members spoke out against the consultants, and, supposedly, it was the last time Vice Provost Furcht agreed to any meeting with a group of faculty about re-engineering.

Walsh remembered that “by February, UFA had learned about reengineering in AHC. It was a significant factor in broadening faculty concern, because this was not about tenure. It was a major push to corporatize the work of a major public research university. But I am not sure that everybody really appreciates the threat, since re-engineering has mostly been implemented in AHC. We will see more of this sort of action by powerful academic managers. AHC has been in many respects a big success story for them. We were completely ineffective on this, we could not stop it.”

* * *

RE -- ENGINEERING

As Walsh noted, stories about re-engineering became

²⁹There was subsequently a minor squabble among the faculty about what “UFA” stood for, because there was another faculty group, the University Faculty Association, that lobbied on behalf of faculty. The UFA later in February 19 adopted the name “University Faculty Alliance.”

more widely known in winter of 1996. The impact of those stories cannot be dismissed; one question is whether the faculty alarms were justified. Faculty members who commented on re-engineering did not pull their punches.

Rick Purple said that for the first year Brody was in office, "he was getting ready to make this assault, and change this place around." Purple recalled that Brody "sent out a questionnaire the fall before all this fuss came. I remember getting it in the summer and going over it. 80% of the faculty threw the questionnaire into the wastebasket. It was an obviously biased, obviously dumb, big, six-page survey of the Champy re-engineering bit. First you gather data. The data doesn't [sic] have to be real; it was bogus. But it's something you can hold in your hand and wave in the air and say 'this is data.' That was their data-gathering, and those were the 'facts' Leo Furcht was talking about when he wrote the article [cited later]. To say it was fact-driven is part of the hoax of re-engineering. It's all a political campaign and a ploy, to say 'I own this corporation and people are going to do what I want them to do.' That's what re-engineering is all about; it appeals to the corporate CEO who says 'I own this corporation and people are going to do what I tell them to.' That's basically what Brody was trying to put in here."

"When [School of Public Health professor and former FCC chair] Judy Garrard first started telling me this, I thought Judy had gone crazy. It wasn't until I began to hear from some of the other people who'd been involved in this QRTC [re-engineering] committee that I began to realize what kind of monstrous assault this thing was."

"Then you began to see the CSC consultants walking around here. Every one of them, black suit, black leather briefcase, black tie. You wouldn't believe it. Any time of there was a public meeting, there would be one of these goons in the back of the room, watching and listening. A dean would lead a seminar and use a batch of overheads about the necessity for change in the AHC. 'Could we have the overheads?' 'They'll be coming in a bit.' [We would] never get them. They were under direct orders not to release the overheads."

"The deans were under direct orders. Some of them capitulated; some of them did it with gritted teeth. The deans really didn't count. Brody, even when the plan had been exposed and this place was raging, with the Public Health faculty and the Dental faculty passing votes of no confidence and the rest, had a meeting with the deans, at which they were supposed to implement the process. It's known as the embedding process. You have to read the book to understand re-engineering is all about."

"At that meeting, Brody -- who had already accepted the position at Hopkins -- still ran the meeting, and asked for the resignation of all the deans. That's part of re-engineering; you

ask everybody to resign, and then you re-open their jobs. Those who will do what you want them to do can be hired back. Those who have been a bottleneck to you, you fire and throw out into the world.”

“Besides that, the reorganization didn’t need deans; they couldn’t figure out what deans do. That’s one of the conclusions Leo Furcht’s re-engineering panels came to; they ought to get rid of the deans. They need vice presidents for research, education, and clinical services, and we would all report to three different bosses for these three different areas in which we do our work. Who needs a dean? Under each of them will be a new group of focus groups; you join one or the other, and if you didn’t join any focus group, you were gone.”

“To say that it all started in November when Hasselmo wrote that letter is wrong. This stuff was well under way six to nine months before then, but it was all under the table. His performance was an example of that. He made statements about how tenure was such an awful thing. Basically, the people on the FCC didn’t believe him, either; it was all a bunch of hogwash. But what they didn’t understand is that this is part of the big lie that is part of what re-engineering is all about. Tell them whatever they want to hear, keep ‘em off balance, don’t let them really know what you’re doing until you’ve got everything set, and then you crush your opposition, you win the day, and you run your own company. That’s exactly what they were trying to pull off.”

Vik Vikmanis commented on the role of the deans, and the story that at least one of them, Elzay in Dentistry, refused to go along with re-engineering, and was marginalized as a result. “Maybe Elzay said ‘this is wacko stuff, this is voodoo, thanks but no thanks, I don’t want any part of it.’ If it’s true, as it was related to me, it’s the old ‘he who’s not with me is against me.’ You’re right, and that’s certainly more than marginalized. Whether it was understood he had to go, or he said ‘here are the keys to the executive washroom,’ I don’t know.”

“And quite frankly, looking at what Brody and the consultants tried to do, they couldn’t hope to succeed. Although the deans can’t issue marching orders to the troops, if you have a faculty that’s skeptical at best, and ready to lynch you at worst, and you have the dean who says ‘if push comes to shove, guess which camp I fall into,’ if the dean says ‘I’m siding with the troops,’ then you’re lost. I think that CSC Index and Brody -- and I can understand it -- said ‘hey, wait a minute, you’re part of the management team. You gotta be on board. Those guys are all nervous already; if you don’t help us and prop this up, how the hell are we going to do this?’”

Asked if the deans had been asked to resign, Vikmanis recalled that “I heard rumors -- and I want emphasize that these are rumors only -- that in effect it was put that ‘if you feel you can’t support and go along with this,’ it’s the old honorable

thing, there's a pistol and round on your desk. That is strictly rumor. I've not seen anything in writing, but what I've gotten in a roundabout sort of way, was that it was very clear, 'you have to be on board.' Otherwise, if you're not a member of the team, you can't play."

Vikmanis agreed that some of the deans felt themselves to be in an ambivalent position. "Oh yes. I'm sympathetic to the plight the deans faced. You go back to the faculty, and the faculty say 'we think this smelleth.' You say 'but we really gotta do this.' The faculty say 'who's side are you on?' It did put the deans in an impossible position. That's why I have to take my hat off to Elzay. That's not to be negative to the other deans. It's easy to say. It depends on a number of individual circumstances, and it's easy to talk about being the hero and doing the right thing. Who knows if any of us put in that situation would say the same thing, sing the same brave song."

Mary Dempsey offered a gentler, although similar, view. "Provost Brody probably unintentionally created an atmosphere of distrust. I had met with him as a Medical School Senator, when he came, in the fall of 1994. That was the only time he ever met with us. He told about his idea of re-engineering, and that tenure was all right for people in history, but not in the AHC. I spoke up, and said 'I'm chair of the Tenure Subcommittee, and I'm sure there are people here who don't agree with that, and that's going to be a problem.' He was always very respectful of me, but I knew he was making a mistake, and if he went on like that -- which he did, even to the regents and the legislature -- it was going to be a big blowup. Besides that, he had hired an inexperienced consulting firm (i.e., inexperienced with academic institutions), and he had hand-picked committees for [re-engineering]; the members were either so new here they didn't know the culture, or were someone he made promises to." Dempsey was emphatic that the committees were not representative; "I and others knew it right away."

Carole Bland, an FCC member from the Medical School, was involved with the re-engineering effort, and largely shared the views of her colleagues. She said she was certain that re-engineering "convinced faculty that we were vulnerable. It probably strengthened the resolve to keep the tenure code." Bland allowed that there was truth to the stories about men in the black Armani suits. "Absolutely. I was head of one of the design teams, the one on tenure and faculty compensation and governance. The Index people did not have a clue. I can remember sitting in a meeting with them and asking them 'what do you know about productivity in a university? what do you know about what makes for a productive university?' They did not have a clue. They had done no research on universities. You saw the big guns a couple of times, but after that you mostly saw these young pups who were like management majors

out of [a small college]. They did not have a clue. It was scary.”

“There was the original design team, with one from each college, that worked with them while they did their mission statement and scanning of the environment, before they came up with these multiple design teams. I think the people on the first design team had a better impression in the beginning, because it sounds reasonable -- strategic planning and so on. After it came down to looking at the data they were using for their decisions, and their design teams, it became clear they were not going to guide us on a good path. You don’t come to a major university and do a sloppy survey and expect it to carry any weight. It was really bad -- they had bad response rates, they had biased questions. It kind of blew these people out of the water, because I don’t think they were used to dealing with people who knew more about what they were doing than they did. They were bad.”

“Several people talked with them about their past experiences and what had happened in organizations. They had no experience with universities, number one. Number two, all of the past places they had worked with had essentially been downsizing efforts. So they talked about redesign and better positioning and so on, but it was downsizing. That was when I did that paper on downsizing; even in corporations, downsizing in the long run did not make for a more profitable corporation. It became clear that what they had in mind for us wasn’t good.”

David Hamilton reflected on re-engineering and his role vis-à-vis Provost Brody. “I never did meet any CSC Index people, and the reason I didn’t was because of my relationship with Brody. When Brody first came here, it was natural for him to turn to me for support and whatever help I could give, because I was chair of the Basic Science Council -- the department heads in the Medical School basic science departments -- and I have a lot of respect of the clinical faculty, and it was clear that for him to do whatever he had to do, he had to get the support of people like me. He tried to co-opt me and a variety of other people.”

“I became alarmed at what he had in mind, because number one, he stated to us that he wanted to do away with tenure, which I thought was anathema. And number two, his only view on how anything could change was that you had to destroy what was there and build from the ashes. My view is completely different from that. My view is that change is necessary, and is correct, but you leverage the strengths that you have to build greater strength. This is academia, this is not a corporation. What amused me, in the aftermath, is Hammer’s new book, which recognizes and admits that he and Champy forgot that there are people, and you have to pay attention to people. Bill Brody never understood that there were people. I don’t know whether you met him or knew him,

but Bill Brody could not look you in the eye. He could not look you in the eye. Because of that, I distrusted him. If a person can't look me in the eye, when he's asking me to do something or when he's telling me something, I really feel it."

"I had lots of conversations with Bill, to the point where he would see me coming and he'd run. He didn't want to meet me in the hallway. I decided -- it was the late summer of 1994 -- by October that I was going to resign as a department head because I could not work with him. I submitted a letter of resignation on October 4, which the interim dean at that time asked me not to do, it would be too disruptive. So I said 'OK, I'll stay around longer.' So I stayed on as department head, but I made very clear to Bill Brody what my position was vis-a-vis what he was trying to do. As a result, I was completely marginalized, as you might anticipate. As I anticipated. But my thought was that I had built a major department in this institution that had, quite literally -- it doesn't any more because of what happened and what is now happening -- an extraordinarily strong international reputation. It was recognized as one of the best departments of its kind in the country. I was not going to see that torn apart, and I was not going to participate in tearing it apart, because that's what Bill Brody wanted to do. I decided that I would not work with him in any way."

"He would tolerate me periodically, in his office. He was going to deny tenure to a member of this faculty. I spent hours arguing with him, and it eventually became sort of vitriolic on both our parts. I said he didn't know what strong academic credentials were, because he doesn't have them himself and has never seen them in people. This is true. He got equally mad at me and called me all sorts of names. Then I began the hectoring campaign about CSC Index, because I viewed CSC Index as an absolute catastrophe. Here is a man who had contracted for \$1.2 million with this group, had never even mentioned it to the regents, was told that he had to mention it to regents -- and I just happened, for another reason, to be at the regents' meeting, the finance subcommittee meeting where he brought it to the regents -- and they just fell all over to find ways to modify their rules so he could have his cake and eat it, too. That firmed up my feelings about the regents and about Brody and about this whole process. It was just ludicrous."

"The re-engineering things that went on here went on in secret. They've now taken a lot of the stuff off the web, because they realized it was so damning. But initially, when they put up the membership of these re-engineering groups, there were very, very few faculty. Out of 1000 faculty in the AHC, if 20 were on these groups, it was a large number. There are some of those groups -- and Carol Wells will tell you this -- like the research group, that never met, that turned in a

report, and put on the names of the people who were on this group, although they had never seen it.”

Vic Bloomfield, noting he had no direct involvement in re-engineering, recalled that “I would hear occasionally from my friends in the Medical School about things that they were being forced to do, which didn’t sound very good and sounded very top-down. Leo Furcht has emerged as a real villain in all of this; he certainly has that reputation among a number of the people I talk to. Were faculty alarms justified? I think so, definitely. That was a really misguided way to approach a university. One of the stupidest things I can imagine.”

“Those tales gradually became more ominous, and [they] basically prevented rational discussion of the tenure issue, because it was driving people crazy,” Virginia Gray said. “If I’d been in the AHC, I would have been driven over the brink by these bad things going on, too.”

Regents’ Professor Eville Gorham’s view was similar. “I was not involved, but I certainly was alarmed by colleagues in the Medical School whom I respect. So I would say, were faculty alarms justified? Certainly they were. They still are, as a matter of fact.”

Craig Swan said, of the relationship of re-engineering to the tenure debate, “that certainly didn’t help! My initial reaction was that the AHC, like any unit, should have some flexibility to organize itself the way it felt was going to be most effective, but the process in making this sort of decision needs to have broad faculty involvement and commitment. Pretty soon it became clear that that was not the case. I talked a lot more to those people over the last two years than I had over the previous 20 years. And as word of what was happening came out, and exactly what was going on, it was just phenomenal. I found it very surprising. If something like that had been tried in [liberal arts or science and technology], the place would have blown up.”

Dan Feeney agreed, as a faculty member who was in the AHC. “I went to a couple of re-engineering meetings, and it was very unnerving. I can see why people in some of these precarious departments in the health sciences were extremely concerned. When you’d go to these meetings, there were maybe a couple of people there who were what you’d say were ‘true’ faculty; there would be some lower-level administrators, several people from CSC Index. A lot of the discussion that went on, in the couple of meetings I went to [led him to react by thinking] ‘whoa, where’s everybody else that’s supposed to be here?’ Assuming there was an ‘everybody else.’ It was uncomfortable.”

“I think that was a process that was bound to self-destruct. If it didn’t, the health sciences would have self-destructed, in my opinion. Good people are not going to stick around under martial law and Hitler-type rule. They’re going to

go. That's one reason I think this institution has been able to hold on to as many good faculty as it has, despite facilities and salary limitations: people have the freedom of speech, the autonomy they need to do a good job. When you start taking that away, they're gone. Then what you have left is the people you don't want, the people who buy into that crap, but spend more time buying into that than they do producing anything else."

Vikmanis did not dispute the faculty perceptions. "Given the faculty's mentality, and given the academic culture and the manner in which debate takes place and decisions are reached, yes, for them it was very, very spooky. I am not an academician, I am an observer, but yes, it was spooky. Now, as I say, is that process necessarily wrong? No, I think it's very successful in private industry. It's just a total misapplication to try to do this in an academic setting."

"I can understand, looking back at what took place, yes, the guys in the gray suits and wing-tipped shoes were perceived as coming in here and being Brody's hatchetmen. And unfortunately, when it became known there had been some finagling with book sales, with the New York Times and you already have people nervous, viewing what you are doing with suspicion, and have things like this leak out, friendship between Brody and Champy, how many millions of dollars the contract was worth, people say 'wait a minute, this whole thing is hokey.' There may have been a lot less to it than that; just because somebody is a roommate or were buddies in school days, that does not mean the guy may not have the best consulting firm, the best outfit to do the job. But given the kind of mood and atmosphere that existed when some of these revelations started to come forward, it was no win."

As for the secretiveness that many faculty perceived, Vikmanis said that "looking retrospectively, I'm not sure it was secretive. You can't have every single faculty member, or every administrative staffer, in the AHC involved. By necessity, there was a limited number of people who served on the various task forces and committees. I think also, there was a little bit of 'we'll let you know when you need to know.' Again, I think that reflects the private sector. Things are run a different sort of way. Management may discuss things and reach conclusions, and then say 'OK folks, this is what we're going to do.' There was a little bit of this. Brody said 'the train has left the station; either you're on or you're not on.' It got to the point where comments were made that those who are not with us are against us, that mentality. Whether that came directly from Brody, I don't think so, but it certainly came from the consultants. They were viewed as hard-nosed tough guys, and by God, it's going to be their way or the highway."

"And remember the charges that were made, that this was a real opportunity for the consultants to break ground in higher

education; they'd never done one. Looking in retrospect, it certainly would suggest they'd never done this in higher education! Probably never will again. It was an experiment. I'm trying to give them some benefit of the doubt. They just walked into a hornet's nest or a buzz saw, which you can deal with in private industry. The top guy says 'these are my boys, this is the way it's going to be.' Not here."

Cerra commented on the faculty alarms about re-engineering. Asked whether or not they were justified, Cerra said "my answer is 'yes and no.' I've thought a lot about this point. I think 'yes' in the sense of what was coming out of that process, and what it was doing to take the tripartite mission and splitting it into three businesses. I think they should have been alarmed about that. I think what they focused on to get alarmed about was sort of a red herring, the business of CSC Index manipulating the ratings of this book. This didn't help their cause."

The perceptions of the faculty about the CSC Index consultants was an issue, as was the perceived secrecy of the process. So also was the perception of one faculty member who came away from a meeting of the School of Public Health faculty and dean; his perception was that the deans were told to get their faculty in line or find another job. Cerra responded that "I never heard that from Bill [Brody]. Never. As I recall, that came up after I was provost; I recall being asked that question about this famous Friday morning deans' council at which I was in attendance. It was the last deans' council that Bill had. But I never heard this from him, and never heard it in one of those council meetings."

"I think there were a number of miscommunications going on here, as part of what was going on, one of which was that those presentations that were made had CSC Index's logo on it. That was just stupid; they shouldn't have. Some of this stuff that got out -- 'the deans have to do this or resign' -- that was not true. That's not to say, on the other side, that there wasn't an expectation for the deans to support the movement. I think that was real. You're dealing with gray zones. That was part of the process. I could never figure out why a number of faculty felt that it was as secretive as they thought it was. It was clearly a widespread feeling, but the number of faculty involved, and the number of invites to faculty to get involved, and information made available, was actually quite large."

Some faculty claimed that the leading re-engineering committee was a carefully chosen group of faculty (chosen by Brody) that would not dispute with him, and that the reports from the various re-engineering committees were phony and that faculty supposedly involved were in fact never allowed to participate -- and that the materials used in presentations, such as slides, could not be distributed. Cerra said that "to my knowledge, the faculty participants were volunteers. The

reports were very real and I think the general case was one of very active participation of over 100 faculty, some more than others. [As for the slides, that was] not so, I think -- all the deans had them, and were could give them out and make presentations at will.”

“But,” Cerra said, “I could see the other side of that, where there wasn’t a free flow of information out of those work groups early in the process. The reports were also not done before Bill left. Later in the process, all the reports and who participated in them were available to anyone who wanted them. Then, after Bill left, there was a great deal of concern about those reports and what I was going to do with them and who had contributed to them. I made the statement that these would be public documents; I believe in the open exchange of information; I think somehow you’ll make a better decision.”

“It surprised me, the strength and the depth -- and I guess the symbolic importance, as I look at it in retrospect -- of those reports. Because even when I got them all in, and let people know that I had them, and we were going to systematically review them and discuss them at the deans’ council, and then they would go out on the web and anybody who wanted them could have them, there was so much pressure built up that I finally said ‘to hell with it’ and aborted that process. We made copies of all of them at one time and gave them to the deans, and said anybody who wants it, go to the dean’s office. There was so much angst around them. I suppose they served as a lightning rod, in a way, to channel some of that energy. I spent a lot of personal time thinking about that, what did that energy really mean, and what actions needed to be put in place.”

This was to reassure the faculty, Cerra affirmed. “Yes, that we’re not going to continue this thing called re-engineering. It became difficult to separate tenure from re-engineering from what I thought we needed to be doing in the AHC and the kind of leadership I was trying to provide. It was very difficult to separate these things. It took the better part of a year before that separation actually started to occur.”

Former Provost Phil Shively³⁰ offered a quite different interpretation of re-engineering and related matters. He thought that “faculty alarms were justified. I actually had to fight this fight myself at times. The particular part of re-engineering that I took umbrage at was that it was a virtue for us to be shrinking the size of the faculty, [and] that the legislature wanted us to shrink the size of the faculty, which I never believed for a minute. And that this was a sign of how seriously planful we were, whether we were shrinking the

³⁰With the new administration of President Mark Yudof, the Twin Cities campus provostries were abolished, and Shively returned to the Political Science faculty.

faculty. I didn't believe that."

"[Regent] Hogan very nicely articulated the other view, which was that cutting by itself is not planning and it's not progress. In businesses you call that a death spiral." Shively recalled that he had commissioned a study of the revenues that a faculty member brings in, and that it had demonstrated that cutting faculty positions reduced University revenues. "The reason I did that was because both within central administration and the regents, there were a lot of people who thought that it was important that we be shrinking the size of the faculty and that this was a good thing and that we saved money by doing. It was a very explicit counter-attack on that. This was going on before there was any serious discussion on tenure. The tenure thing sort of evolved out of that, as being the main barrier within the AHC to doing re-engineering."

One individual involved in these events recalled a position taken by Brody. Brody said that he was "doing away with departments in the AHC because they are the last shred of armor for the faculty. If you can get that taken away, they are naked and exposed and then you can change them in any way you want.' He liked this metaphor for re-engineering, that to change an ice cube from being a cube into a pyramid, what you have to do is melt it and then put the water into a new mold and then freeze it again."

Shively offered an interpretation events that in some ways keyed off the comment attributed to Brody. "If I had to say what was the defining issue, the core issue, that I was working on the whole time I was in central administration," it was "how much we redesign things." "Tenure, although it was terribly important, was something that arose out of that. GC, in a way, arose out of that."³¹

"The whole business for me, over this two and one-half years, was that this was a research university, and that as a research university, the faculty are not a drag on what we are doing, they are not a cost, they are the product. Therefore you don't cut out the faculty. The faculty were not the problem."

³¹Shively said that "another part of the GC outcome was that . . . although the decision was made not to close it, it was clearly made in the context of articulating the fact that the mission of the University was a research university, and that there was this exception which we were going to carry. To the people who did not want to close it, it was a very important exception, but it got defined always as an exception. Out of the GC thing, we got, in an odd, strange way, [a resolution of] the unresolved tension of Commitment to Focus. When I entered central administration and I would talk in Executive Council about the research university, people would shush me. They'd say 'we can't talk that way, we can't use that term.' By this last legislative session, we were going over and proudly saying at the legislature that we are a research university. I think the GC thing was critical in that, because all of the arguments made in keeping GC open, because of the strong interest in the business community and the push from Nils and me that the mission here is that of a research university. It is important to have another access line in, but it is a research university. Those who were favoring keeping GC open did it in the context of accepting and articulating that this was a research university, but that we do this."

* * *

The regents held their monthly meetings on February 7-9; the third regents' tenure forum was held on February 7, at the Faculty, Staff, and Student Affairs Committee meeting, with Regent Keffeler chairing. They were joined by John Adams and Dan Farber to report from the Tenure Working Group. Adams reported on their findings with respect to tenure generally (tenure is the national norm, recent hiring emphasizes non-tenure-track faculty, tenure is under media attack, faculty trade off higher compensation for job security needed to do the University's work, new paths to tenure are appearing, alternatives within tenure were arising, and that medical schools face special problems). After the regents' December resolution, the Tenure Working Group had collected issues regardless of source and put them in the discussion document. The minutes also record that Adams told the regents about the discussion document and that "reaction of the faculty to the process so far has been disappointing. The discussion document has left many faculty concerned that the Regents' request for a review of tenure is a thinly disguised effort to begin dismantling the University's tenure code." He reported on the five topics the Working Group would focus on (locus of tenure, length of the probationary period, tenure for clinical faculty, the link between base salary and tenure, and judicial procedures.) Farber reported that comparisons with other tenure codes are being made. The best way to dispel faculty fears, Adams advised, is to communicate with the faculty and to have open discussions.

At the Committee of the Whole meeting on February 9, Carl Adams made his quarterly report of the FCC chair, and said with respect to tenure that "the faculty has been promoting significant dialogue with broad open involvement. The discussions have included the motivation for the review, problems to be addressed, and the solutions available. He expressed appreciation to the Board and the administration for the collegiality" they had displayed. Hasselmo "emphasized that faculty leadership is absolutely essential in making changes" in tenure, that the issue was "extremely volatile" and that discussions needed to "stay on track" to preserve the University's health; he also said it was "essential that the fundamental values that drive the institutions" be preserved.

On February 7, an article in the Star-Tribune reported on John Adams' report to the regents. This was among the first of what would subsequently become a flood of front-page articles and editorials about tenure at the University. According to the article, the Adams discussion document set faculty teeth on edge, and some said the regents' review is an effort to dismantle the tenure code. Some faculty said the review must stop and were seeking to unionize. Some faculty believed the tenure review is only on the table because of the financial problems in the AHC; Adams said that was

not true. Some saw the regents' resolution as an effort to "get tenure" and some described the Working Group document as "bull -- -- ." On the topics presented to the regents, the article reported on the positions Adams took: tenure should be in the University, and trying to change it to the department would lead to massive faculty resistance; colleges may vary the probationary period length, within a University maximum; clinical faculty should not be tenure-track; on the link between base salary and tenure, there should be a permanent base salary at a reasonable professional level tied to tenure; and revised Judicial Committee procedures should provide a balance between due process and long delays.

John Adams view was that the sharp reaction to the Working Group document "originated with the union organizers, who by that time had a vested interest in fueling the conflict rather than in promoting discussion of issues that had been laid out."

Walsh's response was that "unfortunately for them, there were a bunch of folks right at ground zero who collectively pushed the button with that first Senate tenure document. It wasn't the first or last time somebody sat on a powder keg and pushed the detonate button. It is amazing to watch such a thing happen."

The newspaper followed up with another article the following day, amplifying on the exchanges at the regents' meeting.

"Major tenure changes unlikely. Look elsewhere for savings, 'U' committee says" (Star-Tribune, February 8). The article began by saying that "efforts to loosen tenure protection suffered a blow Wednesday when it was disclosed that an advisory committee [the Tenure Working Group] . . . is likely to come out against layoffs and pay cuts for tenured professors. 'I'm pretty sure there are not going to be any major changes,' said geography Prof. John Adams." Regent Keffeler, "one of the leading advocates of changes, said that she has not given up." Adams was quoted as saying layoffs due to programmatic change were unnecessary and "disagreed with Keffeler's contention that it is difficult to reshape the university" without them, and that faculty could "be used in new ways." Keffeler said Adams "didn't accurately gauge faculty sentiment" and that faculty wanted excellence, rather than face continued reductions across the institution.

Swan later recalled that it was this "article that set people's teeth on edge. Keffeler did not raise her concerns during the meeting but seemed to use the reporter after the meeting to advance her own agenda."

The student newspaper provided yet another slant on these events.

"Administrators aim to alleviate tenure anxiety" (Minnesota Daily, February 8). Also reporting on the regents' meeting, the article cited Dan Farber as saying "unfounded paranoia about

tenure changes is rampant around the University. ‘The question is, why is this on the agenda?’ Farber said. ‘The feeling is that this is a step in a long-range plan to fire people.’” Adams reportedly agreed “that faculty concerns are misplaced,” and said communication was essential. Regent Keffeler, however, said the tenure code was more inflexible than elsewhere and that with tenured faculty a high percentage of personnel costs, “we have very little room for institutional renewal.” Mary Dempsey said “the discussion document was prepared in a hurry and could have been changed so as not to ruffle too many feathers,” and was quoted saying “I am concerned that some faculty are getting so upset. . . . Unionization would be disastrous for faculty as well as the University as a whole.””

* * *

THE GANG OF FOUR

Early in February a group of four attorneys, the “Tenure Drafting Group,” began writing specific language for tenure code revisions, which would be presented to the three Senate committees responsible for making recommendations to the Faculty Senate. Subsequently known as “the Gang of 4,” its members were Bill Donohue (from the University’s General Counsel’s office), Acting Associate Vice President Dan Farber (from Academic Affairs), Fred Morrison (representing the faculty), and a lawyer from the Washington, D. C. firm of Hogan & Hartson, Steve Routh (who represented Provost Brody and the AHC). That an external lawyer hired by Provost Brody’s office was participating alarmed the faculty, suggested the strong influence of outside forces, “rather than being a cooperative effort between the faculty and the administration, as such revisions had been in the past,” according to Berscheid, and led to widespread faculty questioning of how and why the group was constituted and what it would produce.³²

Farber recalled that the Gang of 4 came into existence following a meeting in Hasselmo’s office that included the President, Senior Vice President Infante, Provost Brody, Carl Adams, John Adams, and a few others. There was a need to develop a viable package of proposals that the administration and faculty could support and that the AHC would see as meeting its needs. In Farber’s view, it was perhaps illustrative of a fragmented administration that there were three administrative representatives involved, plus Morrison to

³²Three of the four lawyers subsequently told me (I did not speak with Routh) they viewed their role strictly to serve as drafters of specific language that could be taken up by the Senate committees, and that they explicitly were not policy-makers. On several issues, the four could not agree on what text should be proposed, so provided the committees with alternatives.

represent the faculty. Donohue surmised that he was on because of his familiarity with tenure termination cases and that Routh was on to make sure AHC concerns were met. The reason the Hogan & Hartson firm was used was because they had earlier been retained by the AHC as consultants, and one of the partners, Martin Michaelson, was well known for his practice in higher education law. Routh was designated as the firm's representative on the tenure drafting group.

Dempsey said that "I was there the day they were appointed. It was a meeting in Nils's office. [Vice Provost] Leo Furcht was there, Frank Cerra was there; Bill Brody wasn't there. Nils, John, Dan Feeny, the lawyer from Washington, and Mark Rotenberg.³³ It was the same day Najarian was acquitted; the call came during that meeting. It was decided that somebody would write a draft; John was pushing for that. They said "who should be on the committee?" I said "we have to have Fred Morrison."

The four lawyers worked during February to draft language, but Donohue, Farber, and Morrison all later said they did not see themselves as a policy-making group. Their job was to formulate proposals that could be taken to the Tenure Subcommittee and the Committee on Faculty Affairs. Before the proposals were taken to the faculty, however, they were approved by the administration.

Hasselmo said that rather than seeing the group as representing a "fragmented" administration, it was that different issues were raised by the General Counsel, the AHC, and national debate that needed to be considered. He agreed that "clearly, the four were strictly a group to gather issues, analyze, and begin to draft."

The Gang of 4 aroused considerable faculty ire. Humphreys inquired repeatedly at the time,³⁴ "who appointed this group? Why was a non-University person included? I tried to learn this in FCC but no one would ever tell me! I was grilling Fred; Fred knew what I was after. I was never allowed to finish because Carl said it was taking too long. When it was found out that Routh from Hogan & Hartson was one of the Gang of 4, that is what really set the faculty off. The Gang of 4 and the non-University person probably more than anything else made faculty feel the tenure code was being revised by non-faculty and led to the revolt in the Senate" (on April 18).

Campbell agreed. "It certainly set me off. I went to one FCC meeting, in the peanut gallery, when this came up." The meeting was between FCC and two of its previous chairs, to talk about the situation. "It seemed to come as a surprise to some of the people on FCC that that was an issue. To us, it was; we'd

³³Rotenberg was General Counsel to the University.

³⁴And again upon reading a draft of this chapter.

been talking about it.”

Walsh commented that “the ‘Gang of 4’ was another group that found a powder keg, sat on it and pushed the button. We had an informal UFA authorization card drive going by then. It was amazing. As the card signatures dropped off, we got help. I used to joke that the administration and ‘faculty leaders’ were working for UFA. Around this time, I began to think that this was nuts -- that without collective bargaining, we could not cope effectively with this managerial and political craziness. Ad hoc actions wouldn’t do it. Paula Rabinowitz [co-coordinator of UFA] had organized graduate students, so she started out less naive. It took me a while to realize that we were talking about unionizing the faculty, that nothing short of that would really give us a voice.” He said the Gang of 4 was “a political disaster. It is an interesting question why the situation was so misjudged.”

Rick Purple commented that “and then came the Gang of 4. Who were the four? It was Fred, Bill Donohue, Dan, and Steve Routh. Steve who? Where’s he from? What’s he doing there? Look at the phrases of the drafts from the Tenure Working Group, and you know what he’s doing there. He is putting in those phrases that will disassociate tenure, at least in the AHC, put it into the provost’s hands, allow him to do it without having a Judicial Committee or any grievance process and so forth -- in other words, abolish tenure. That’s his job on the Gang of 4.”

“Here is this character from a Washington, D.C. law firm, employed by CSC. You have a hired gun sitting on this committee, he has nothing to do with the University, he’s there representing the provost, and you wonder why we were suspicious? Particularly those who sat down and read Champy’s book on re-engineering. It was like a Kafka soap opera. The paranoia was running rampant.”

On the appointment of the Gang of 4, Virginia Gray commented that “that was definitely a bad move. What I never understood was they said they were just drafters, just technicians. Why would you be drafting when you’d not reached a consensus on policy? I never could understand that; it was kind of the cart before the horse. Why weren’t we waiting until we figured out if we wanted post-tenure review or if we wanted to lengthen the probationary period, and then draft the language? We weren’t ready to have language drafted, so it was a total waste of time.”

Swan’s views were in line with those of his colleagues. “The biggest thing that annoyed me about the Gang of 4 was Brody’s personal hired external lawyer writing an internal tenure code. The guy from Hogan & Hartson. And also the document that they produced. There were about 12-14 points, and I think about six or seven of them were absolutely wrongheaded. When you combined the two of those -- this

funny group that produces some very funny proposals -- I think the reaction of the faculty was quite understandable.”

Not all were as upset by the Gang of 4.

It was Feeney’s view that not everyone agreed on the need for a “viable” set of proposals, as Farber had suggested. “Some of us felt that you can’t fight an enemy you can’t see! Therefore, let the ‘Gang [of 4]’ put together a worst-case scenario. It will all have to go through the Senate committees anyway. I saw this as another way of finding out what Brody had on his mind (e.g., via S. Routh).”

In Feeney’s view, whether or not the Gang of 4 was a disaster depended “on your frame of reference. From my standpoint, this was a way of getting something on the table. We had all this cheap rhetoric out there, but we had nothing tangible. We had asked Brody, what are the stumbling blocks in the current code that you consider an obstruction to your being able to restructure and realign the health sciences. Never got a word.”

“I viewed this as ‘we’ve tried asking the horse directly, now let’s ask the horse’s puppet.’ I didn’t have any concerns; Fred Morrison was on the Gang of 4. This isn’t somebody who’s going to sell anyone out. By that time, I also had a lot of confidence in Dan Farber. So there was Dan Farber and Fred Morrison, Bill Donohue, and Steve Routh. The latter was a Hogan & Hartson attorney we knew was on retainer from the health sciences. People said ‘why should the health sciences have so much influence?’ [I said] get the issues on the table; to date, we had been unable to do so. Get them out there. If you want to lay off 50% of the faculty on a whim, and that’s written down, we can at least say ‘aha, now we have something from the enemy.’ Up to that point we had nothing. We knew this thing was going to get beat up and shredded all to hell when it went to the tenure committee and when it went to [Faculty Affairs]. What were we worried about? This wasn’t going to be handed to the faculty for a vote. But you could at least see what they want.”

“Some saw it as a political disaster. But we were the individuals in the throes of the process; we knew exactly what was going on. We knew what was going on with the Tenure Working Group; John shared with me beforehand all the stuff that went out. I said ‘you’re getting the issues out there, John; it’ll upset some people, but you’re going to do it.’ I think if it had even just been the way he wrote it, versus his body language when he said it, then things might have been a little different. Those of us on the inside knew about the working group. I supported the Gang of 4. Let them write something. We need that. But people said ‘we’re letting somebody else take over when we should do it.’ My worst fear was that we would draft this nice, rosy little thing that everybody says ‘this didn’t address any of the concerns we had.’ And then they [would]

march out the concerns. 'Why didn't you say that in the first place? We'd ask, and you never told us.' This way, at least the stuff was on the table, and we can fight it."

Carole Bland was also less alarmed than others. She pointed out that their work "all would have come back to [the Tenure] Subcommittee." That was understood by everyone. "So why did everybody get so upset?" Bland asked. "My objective thought is because there were surprises. We didn't keep monitoring it so there were no surprises. The non-objective part of me says it was used by people who wanted to make the Senate look bad, and was billed as a straw man of us going outside the Senate process, which made them look like the good guys to pull us back into the way we should be. That may be a paranoid view. Certainly the people who wanted a union took advantage of it; whether they helped facilitate it, or it was just there and they took advantage of the situation, is unclear, but they certainly took advantage of the situation. Because they knew it wasn't outside the Senate process, yet they chose to present it as though it were. My guess is that we got this thing going and we never monitored it, and it was too big a surprise for people to handle."

Bland recalled efforts to warn Carl Adams about the perceptions. "We tried to tell Carl. I bet if you go back to those minutes, we told Carl four or five times 'Carl, you've got to have a newsletter, you've got to have correspondence to the faculty, you have to tell people what's going on.' He said things like 'we've got the minutes.' That was insufficient."

In Carolyn Williams's view, the reason for faculty ire was simple. "Because of the connection with Brody. Outside lawyers coming in and drafting tenure codes, rather than going through faculty governance?"

Rama Murthy (to become president of the AAUP and member of the Gang of 19) pointed that "we have records of how we did tenure code changes last time [in 1985]. It went through an enormous amount of faculty discussions. Almost to the point of boring, sometimes. Then we had Fred Morrison write up the code. There was full faculty participation. Here, now, we have four lawyers sitting down, one of which is ours. Where is faculty input? Since [faculty governance was] bypassed already, given that, and you give me four lawyers who are writing my life, I would be surprised if it didn't generate a lot of ire. Faculty were left out of the picture and four lawyers were drafting something. You'd hardly call it an academic institution with governance, would you?"

Ed Fogelman, chair of the Judicial Committee, was puzzled -- and amused -- by Morrison's role on the Gang of 4. "Fred's role was a really strange -- from a certain point of view. Let's take the charitable view that Fred likes to write tenure codes. As a lawyer, he works for his clients."

Two of the members of the Gang of 4 -- Routh was not

interviewed and Morrison's comments follow -- said they clearly understood themselves to have no policy-making responsibilities at all. All they were supposed to do was take whatever came from the Tenure Working Group and convert it into specific tenure code revisions. Fogelman responded that "this is a typical lawyer view: we just work for our clients, we have no views of our own. On the other hand, Fred became one of the public leaders when the faculty acted. I think we all regarded him -- certainly Mary Dempsey did -- as not just a hired lawyer, but as one of us. He seemed quite willing to play that role. How you square that with his being on the [Gang of 4], I don't know. Maybe you have to understand the mentality of lawyers in order to get into that. It is peculiar. His role within the faculty was more than just a lawyer to the faculty. And that was also true of Carol Chomsky [Law faculty member on the Tenure Subcommittee and Faculty Affairs]; she was doing it because she believed in it. I think Fred was, too; but then how come he was doing the other thing? I can't answer that."

Vic Bloomfield reiterated his view that people were unable to see what was going to happen. "I think initially the implications of having the Washington lawyer in the Gang of 4 were not recognized. People thought about it, some people raised alarm, but until things got a little further under way, people shrugged it off. My assumption always was that whatever they came up with would go to the relevant committees, so it was just drafting language. I buy that. Fred [Morrison] must have viewed it that way also. He may also have viewed it as 'he's the voice of the real faculty' and it was important for him to be on it."

Marshak had a kinder interpretation of the views of two members of the Gang of 4. He said that "I always felt that Dan Farber got a bad rap in all this. I think Dan is a very decent and honorable guy and a very strong supporter of tenure and academic freedom. I'm not quite sure why [he got the "bad rap"]. He worked for me for six months. In my interactions with Dan, he was always a very strong supporter of tenure and academic freedom. He never advised me any other way. He was not supportive of the Board proposals at all. He talked about quitting several times, except I talked him out of it. I said 'that's not going to do us any good; I need your advice, and your quitting isn't going to change the Board.' I think he got a bad rap."

"Let's be honest about this. There are a half a dozen faculty members whose conduct could well be termed outrageous. I don't know that there are more than half a dozen, but I could name three or four off the top of my head; I'm sure if I looked, I could find two more. Our skirts aren't completely, absolutely clean in this. Can you find a couple of outrageous cases? The answer is yes. Is it worth sinking academic freedom because two- or three-tenths percent of the faculty are

outrageous? I think not. But we shouldn't pretend there are no outrageous cases. This is a little bit like the prosecutor who becomes like the criminal; Donohue is forced to deal with these people all the time, and that certainly breeds cynicism. Donohue doesn't deal with most of the faculty. Who does he deal with? It's the couple of outrageous people. And a couple of them are in the administration, too; it's not just that they're in the faculty. There are just a couple of outrageous people around here."

Morrison, himself a member of the Gang of 4, had this recollection about it. "I got asked by Mary Dempsey to go to the Gang of 4. How it came into being and what it was was always a rather mysterious thing. Let me go back to a little earlier than that. John Adams started saying 'we need to do this' and 'we need to do that' and 'no, I can't tell you because there's no language.' Having lived through the 1985 revisions, I could see that if real thought was given to what it was that was being done, we were looking, with that discussion topics list, at at least six to eight Senate meetings. We were looking at one Senate meeting, and then a couple of months of discussion, and then a series of Senate meetings to go through language line by line -- if you wanted to have a thoughtful piece of work."

"We were ambling through January, with a deadline of May, and nobody seemed to think language was very important. I started pounding on the FCC table, saying 'let's get some language.' I may have said or written something to Nils [to the effect] that we're getting down to where the fuse is very short. If I work back from the first of June, I worked things back to where we ought to have some language on the table right now, so 'let's get started.' That may have started that process."

"Mary Dempsey was in the working group, and the working group said 'let's do some drafting.' Mary called me up and said 'I think the faculty ought to have some hand in this, too.' So I inserted myself, or Mary inserted me, and all of a sudden I was part of the process."

"I didn't come in with any specific proposals the first time we talked, as I recall. The health sciences came in with some, and Donohue [from the General Counsel's office] came in with some. We talked about ways that we could get a document in front of us, and we were scratching on the paper and writing things down."

Asked about the relationship between the discussion document and what the Gang of 4 was drafting, Morrison said "there was some link, but not a direct link. The discussion document raised issues. Much of the stuff [the Gang of 4 was dealing with] was coming straight from Brody through Steve Routh, so we had that specific language. Much of the stuff about discipline was coming straight from Donohue. Then we looked at the Tenure Working Group document. I kept telling the other three lawyers that this or that would not fly with the

faculty. Dan Farber was agreeing.”

“I said ‘if you put that forward, I am not giving you any commitment that I will support it.’ Things like changing the number of days for a Judicial Committee hearing was a technical problem; we could deal with it.”

Morrison explained that “what I was trying to do, in the Gang of 4, was to get some middle and minor things accomplished, and to try to flag, for the people who were proposing things, where the bombs were. I said ‘you propose those, and I’m going to shoot them down.’ I had one rather nasty exchange with Steve Routh; I said ‘if that goes in, I can assure you I will stand up in the Senate, oppose it, and it will be rejected by the Senate without dissent.’ He said ‘that doesn’t really matter, because it will be adopted by the board without dissent.’ I said ‘we’ll see.’ But most of it was amicable, and there was a lot of backing down on some of the stuff.”

“That was the point, incidentally, at which we flagged for Hogan & Hartson the grievance process -- because the Hogan & Hartson people wanted everything to be handled through the grievance process. I said ‘look, the grievance process doesn’t have an academic freedom provision, and it has this explicit exclusion of academic freedom claims.’ There was a proposal, that they then drew up, to expand the jurisdiction of the grievance process, to cover academic freedom claims in things that did not relate to termination of employment. That was missing when Hogan & Hartson brought their proposal on the 5th of September. I’ve always assumed that they knew, because they had been told, and the people working on it knew that this was a problem, and that was intentional, not accidental. They wanted to exclude academic freedom claims in a lot of cases, because they are so broad and mushy.”

“The Gang of 4 was drawing up language so we would no longer be talking about this thing that John Adams created; we would be talking about real language. John did bob and weave a little, saying ‘it might say this and it might say that.’ We were forcing the issue on ‘what does it really say?’”

Asked if the Gang of 4 tenure code proposals were or were not supposed to go to the Faculty Senate unvetted by the committees, Morrison said that “when we prepared our document, we did it rather hastily -- it was only a couple of weeks, as I recall, in February. We sent it to the President, and there were options, because there were some sections that I said I would not agree to. I would not agree to say that I had even participated in the drafting of these. I can’t tell you which ones they were, but there was option A and option B for several, and option C for one of them. The President and/or the Tenure Working Group created a proposal, picking among those things.”

“I didn’t have any control, at that point, how it came out or when it came out.”

Bob Morris (like Fred Morrison and Dan Farber, a Law

School faculty member , and in addition a long-time member of the AAUP) had views similar to those of Dempsey, Feeney, and Morrison, as well as some additional observations on how the work of the Gang of 4, and Feeney in particular, proceeded. Morris recalled discussing the Gang of 4 with Morrison. "They worked well together, without any rancor. One of the reasons was that they thought of themselves only as technicians; they weren't making any decisions. They were just going to draft something. This was in part in response to complaints that John [Adams] was doing things which prevented deliberation. You can't deliberate on 'where is tenure to be located?' You can deliberate on what are the things that are going to be done vis-a-vis a professor who has suddenly lost his seat. What rights will he have? You can write that down and then you can talk about it. You can't talk the way that John was. The idea was to get these materials down so we knew the kinds of things we could talk about."

"Routh [Brody's attorney] was there, and welcomed by the others, as a way to finally find out what Brody wanted. I only heard this by grapevine, early on -- that Brody was saying tenure is going to be the death of us all, it's going to cause us a tremendous amount of trouble, and Dempsey said 'come to the committee and talk to us about it.' He said 'no, it's too early, I can't do that.' So he would complain about it, say it was terrible, but he would not give any suggestions. This was very frustrating. So they had Routh there, presumably instructed by Brody, which would give some idea of the kinds of things he might want. So he was welcome."

"I can tell you that Roberta Humphreys is of the opinion that the Gang of 4 had another important function, which was that it galvanized the faculty and caused more unity than there would have been otherwise, because there four lawyers! Of course, some of my best friends are lawyers, so it didn't bother me. As a matter of fact, we were at the point where we needed something like that."

Morris was not particularly concerned about the work of the Gang of 4, like those of his colleagues who knew what the process would be. "Because, after the resolution, no matter what the Gang of 4 did, it was going to have to get through the Tenure Subcommittee, the Faculty Affairs Committee, brought to the Senate and bought by the Senate. The very thing I had written in my letter to Nils [more about this later] is what you have to do! I don't care where things come from."

Morris also remembered telling Hasselmo that he would be in touch after returning from travel. He never talked to Hasselmo; Farber contacted him. Farber said 'in response to your letter, Nils wants me to talk to you.' I said 'what does he want you to say?' He said 'I don't know. I'm uninstructed.'"

Morris related that "Farber was beginning catch on. He hadn't caught on yet, at that point. Farber went over to the

administration to be their person on tenure, but he doesn't know anything about tenure. He wasn't the kind of person you'd have for that. But he's one of the most brilliant members of this faculty; there is nobody better than he on this faculty. So Farber was talking about various things, such as a guarantee of a position when your department when is closed. There are many schools that don't give that guarantee. MIT is a civilized place, and they don't provide a guarantee. He knew that, because he was reading tenure codes."

"That's exactly what an American constitutional lawyer would do! Because the American constitution is a series of ordinances and rules. They're written down, and you can find out. A British constitutional lawyer would not have done that. A British constitutional lawyer would have known that the whole thing is a group of deferences and customs and practices, and you would want to know what those are. I kept telling him, 'I think you're missing the boat on this.'"

"Finally he told me, 'Kvavik phoned MIT and asked them how it worked. They said "we did it once, and we'll never do it again! We fired 22 people, and it cost us much more than it would have if we had kept them.'" In terms of morale, hiring, the trust of the faculty. They'll never do it again. I said 'yes, it's just contrary to the practice. You've been reading these rules, but that's not the way people are living.' He began to catch on, after awhile; he got better and better as time went on."

One faculty member commented that Morrison "says he represented faculty opinion [on the Gang of 4], but what I think he did was let it all hang out, just to see how bad it could be. He'll say he was only one against these other people, but I still think he let it go, because Carl Adams made the unfortunate mistake of not including him sooner in this game."

*** * ***

John Adams wrote to President Hasselmo in early February, in part to express frustration at events. He said the President could clarify the AHC financial problems, their connection to tenured faculty in AHC, and ways to resolve them, if he gathered a certain group of faculty leaders and administrators. Adams told the President that he -- Adams -- lacked the information necessary to lead the Tenure Working Group, and he needed to know the extent of the AHC shortfall and how it impinged on tenured clinical faculty. He also wrote that he was not clear about the extent to which Provost Brody used the financial problem to accomplish re-engineering, and that Brody might be muting his view on the rigidity of tenure as the cause of slowing re-engineering. Responding to the report on discussions with Representative Kelso, Adams cautioned the President that the University should not react hastily to misunderstandings by legislators, nor should the University "mislead or

deceive -- even inadvertently.” Hasselmo recalled that Brody and Cerra were asked to present information to the AHC faculty.

The second Faculty Senate forum on tenure was held on February 8; about 50 faculty attended. Some expressed concern about the news articles covering John Adams’ presentation to the regents; Acting Associate Vice President Farber said he did not believe the tenor of the articles “accurately reflected what took place at the meeting. While there may be some unhappiness among the Regents about the way faculty discussions are proceeding, the overall tone was positive.” Farber said he was optimistic that the regents wanted to work with the faculty. Concern was again voiced about the schedule for developing recommended tenure code amendments. Those present expressed opposition to basing tenure in departments; they also worried about tenuring faculty on less than full-time appointments and separation of salary from tenure. Repeating comments made at other meetings, one individual said the financial problems of the University are being blamed on tenure and the faculty.

Morrison said “the way the forums were handled also generated” the impression that the discussion document was not balanced. “John would stand up, John would present the issues, people would raise questions, John would not respond and would go on to the next issue, and a week later at the next forum, it would be as if the first forum had not been held. He continued to be articulating what was in the discussion document, which wasn’t a ‘discussion,’ it was an advocacy of one position.”

“I think that the forums were something that started the train running down the wrong track, [and so did] the discussion document. I sent him an email in December, when I saw the first draft of the discussion document, urging him to present a more balanced piece. He made a few changes, but not much. I think he was committed to some radical change, and wasn’t able or willing to persuade the faculty, as opposed to telling the faculty, what they needed to do.”

“In a sense, my view of that is confirmed by the piece that appeared in Kiosk about three days after the April 18 meeting, in which John was saying, in a sense, ‘these things will happen,’ not ‘these are issues that need to be discussed.’”

At the time of the February regents’ meetings, both the Board Chair and the President, in different contexts, commented on events. Chair Reagan wrote to Representative Kelso responding to a letter about changes in tenure, He said the tenure code is “continually revised and updated” and must respond to pressures of a changing society, that the faculty understand this, and that the regents must “move the process forward in a timely manner while taking into consideration the governance structure of the . . . faculty.” He emphasized that the regents, administration, and faculty were

“committed to a comprehensive and systematic review of tenure” to fit University needs. At the same meetings, Hasselmo reported on the process of review, noted the many meetings that had been scheduled, and said that “one common concern is that the revision of the Tenure Code is part of a long-range plan to fire faculty members. I want assure everyone that there is no such plan and that suggestions to the contrary are simply unfounded.” The intent was to “ensure academic freedom and provide the institution with the flexibility to move forward on strategic decisions.”

About the comment on firing people, Walsh wrote that “at heart, the desire for tenure changes is about controlling employees. And the threat of firing is part of that. They really need it -- the Board really thinks that this is what effective management is about. Then employees ‘get reasonable,’ they act less independent, there is less group identity. Management can make choices at will. A business may survive that way. But it would kill a university. And that was where the Board was headed. A lot of people did not want to believe it, or they thought that there were just one or two Board members off the beam. But it was a real belief and they tried to act on it.”

Craig Swan reported on events in an email to colleagues after the regents’ meetings. (1) Representative Kelso had written on February 1 to Regent Kim affirming the centrality of tenure to academic freedom but claiming that Minnesota had one of the most rigid tenure codes of its peers; Swan expressed doubt this was true and wondered about the factual basis for making such a claim. (2) A recent meeting with Representative Kelso, Hasselmo, and Brody “did not go well.” (3) He had recently seen, for the first time, the President’s November 20 letter to Reagan, and described it as advocating changes in tenure “without benefit of previous faculty discussion”; he said if the letter were widely known (it was on the UFA’s web page, and UFA had emailed the text of the letter to its faculty-wide email list, which included AHC as well as the core units), it would damage the President’s relationship with the faculty, call into question some of the President’s later comments about tenure, and “would not be written by someone strongly committed to the importance of tenure as a defense of academic freedom.” (4) He had been ambivalent about an offer by the national AAUP to have the General Secretary, Mary Burgan, visit Minnesota, but he now believed it would be useful.

It was John Adams’s opinion that Swan “did not know the extent to which Keffeler and Reagan had forced Infante and Hasselmo to do what they did. There had been discussion with faculty on the issues -- in fact the discussions went back many months.”

Hasselmo agreed with Swan’s point (2), as noted earlier. “This was the first time I became aware of Kelso’s attitude -- which was -- absurdly enough, given the closing of Waseca³⁵ and

³⁵At Hasselmo’s direction, the University closed its campus at Waseca in the early 1990s.

reallocation of over \$100 million, etc. -- that no change was possible without major change in the tenure code. The waters had been poisoned.” As for Swan’s statement that his November 20 letter advocated changes without discussion, Hasselmo wrote that this was “totally contrary to my repeated statements and actions to involve faculty, including previous to” this email. Hasselmo noted his Kiosk column, his February 8 report to the regents, and his letter to the faculty on March 6.

Hasselmo recalled that “I did express my personal views in the documents I issued in April of 1996. They are consistent with my testimony in the legislature, including the very tense session with Representative Kelso. Anyone who wishes to determine my personal views - which did not change - can do so from those documents.” He emphasized that “the letter of November 20 - which has been subject to such overinterpretation, and which because of that I wish I hadn’t sent - was only intended to summarize the issues as they had emerged from the various discussions before the board at that time. To maintain that that letter somehow suggested that the Regents and I wanted to abolish tenure at Minnesota and nationally is a gross misstatement. That is what I have taken issue with, but that point apparently was missed in the discussion of the letter in the FCC.” Hasselmo also regretted that FCC had not discussed the matter with him.

On February 14 there was an all-faculty email announcing a meeting of the UFA on February 19. This typified the rapidly expanding use of email in the tenure debate. Walsh commented that he used two email lists, one of the UFA members and one a listserv with virtually all faculty, which by the end of the debate had 2,962 names on it. He used both lists for the UFA messages, so everything he and Paula Rabinowitz sent out went to almost the entire faculty. He also said that “estimates were that at the beginning of the campaign about 30% of faculty were reading email regularly and by the end it was perhaps 80%. Ultimately almost all signed authorization cards were sent by email, printed out by the recipient and returned via campus mail. We estimate that 200 of the final 1000 or so cards from the core units -- with about 1600 faculty in total -- were obtained by personal contact; the rest came through the email campaign.”

Walsh’s comment raises the question of the effectiveness of the email activities that were taking place. In early March, the Star-Tribune carried an article entitled “For ‘U’ union organizers, recruiting is in the email.” It described the UFA website and how the UFA was using email to communicate with “hundreds of offices simultaneously.” Face-to-face contact is still necessary, Walsh said, but email allows updates and feedback.

* * *

THE UFA EMAIL CAMPAIGN

There were varying views on the effectiveness of the UFA email campaign.

Vic Bloomfield thought "it was pretty effective. Its emails certainly both kept people informed and kept the level of anxiety up. That was a valuable service by this time, because it was pretty clear the regents' intentions were unlikely to be honorable. The UFA was very important and very effective in getting faculty aware of the issues. At this stage they were not so effective in garnering support for a union. A lot of people who signed those cards did so just to fend off the possibility that the regents could do anything. But they were obviously more effective than we thought they were; that vote was very close, in the end."

Eville Gorham agreed. "I think the UFA was somewhat effective in garnering faculty support, in that they really publicized the issue early on and got a lot of other people interested in it, even though they didn't want to join the UFA or thought that some of them, at least, were a group of wild men. Their activities really catalyzed the development of opposition, without much doubt. I don't think its emails were nearly as important as those the AAUP or the Gang of 19 in garnering support. But I think they did affect some faculty, for sure."

Gray and Morrison, however, took a different view. Gray said, "I think their emails inflamed the situation. Certainly some of their emails vilified individuals, which I didn't appreciate. Ultimately, the important action was getting the signatures which triggered the cease and desist order, which then bought time, through which the faculty at large -- not the UFA specifically, but the faculty in general -- could mobilize support in the community. We might not have had enough time otherwise. We might have, but I didn't know how fast the Board was going to act. It was an insurance policy. I think that was important."

In Fred Morrison's view, the UFA "emails irritated a lot of people, early on. We've got the lingering damage from the last union election, so the UFA looked a lot like that. I don't think it was nearly as effective as the Gang of 19, and I'm not sure that it would have been nearly as successful, but for the Gang of 19 and various other people in September saying 'the enemy is at the gates.'"

Mary Dempsey said that "I think the influence they had was to get people excited. I was never impressed by them, or even the AAUP national leadership. When they wanted to get the AHC to vote for unionization, they had some national leaders from the AAUP come, and they had some people from schools that had a union. Those people were not with it! They were not of the same caliber as our faculty leaders; I thought 'this is not going to work.'"

Carole Bland, who was no union supporter, said she

believed the impact of the emails was “enormous. I think that was just brilliant. They were extraordinarily good at using email. I was just amazed. Maybe in the long run, people started just deleting them, but in the beginning, they were enormously effective. People read them, people believed them. I think it was early on in the email usage of the University; I think people are now a little more cautious in thinking about the validity of things that come across their email.”

In Marvin Marshak’s view, “what Tom [Walsh] really added to this was the technology. That really, on the national and international level, has to go down in the annals of somebody’s study somewhere. It was the technology and the idea that you could use the technology to mobilize this national and international uproar that would actually have an effect on the local scene. Those are almost revolutionary thoughts, and Tom deserves enormous credit. I’m not sure he thought it out in advance, but he intuitively came to that. I think the emails had enormous effect. Not only the emails locally,” but nationally as well.

Lori Sturdevant also commented on the relative importance of media coverage and electronic communications. “I think that the email network that now unites the academic community in this country is a powerful one. I think that the mass media, while we have a role to play in terms of informing the world of what happens with this kind of issue on a major campus—it’s nowhere near as important what I say, or what this newspaper says, about the University in terms of its reputation in the larger academic community, as what is said over those email messages and newsletters that come by email every day. That is more important than anything that is published in the mass media, for that select audience, for the people whom we might like to hire. I think that was really powerful.”

“And useful to the faculty in a number of ways. I know, for example, that Mark Yudof got checked out very quickly through the email network. One of the professors said to me, after the three names were floated, ‘call me back in 24 hours and I’ll have the skinny on all three of them.’ And she did.”

As for the proposition that that this entire sequence of events, and the role of the faculty in particular, might very well never have come to pass had it not been for the speed of electronic communications, Sturdevant said “that’s hard to say. I do think that the notoriety this got was connected to electronic communications. The fact that people would go to professional conferences in the spring of 1996, before this even really erupted, and would be questioned immediately about what’s going on about tenure -- this was before papers like ours tumbled to the story -- that was because there are such good email networks now. It heightens the importance of professional connections.”

Much later on, the campus newspaper carried an article

on the use of electronic communication in the tenure and collective bargaining debate. “University professors are organizing, cyber-style” (Minnesota Daily, October 17). With fewer faculty eating at the faculty dining club, the union organizers have turned to email. “To tell you the truth, I honestly didn’t expect this to work as well as it has,’ Walsh said.” The UFA sends information as well as authorization forms. Email has allowed the circulation of documents, such as Hasselmo’s November 20 letter; according to Robert Sonkowsky, a UFA member, said this “ready accessibility helped rally faculty against tenure changes.” According to the director of email services, the number of faculty using email doubled in five months; “tenure issues are a fast way to get faculty to use e-mail,” he said. It has also permitted faculty to communicate with colleagues at other institutions, and the AAUP used it as well to research Minnesota law.

About this, Walsh later wrote that “the use of email had a serious downside. It meant that we could avoid setting up a solid departmental level organization based on personal contact. This hurt us later when we failed to take our case effectively to some of the more skeptical departments.”

* * *

The Faculty Senate met on February 15 and heard another report from John Adams on the activities of the various committees, a tentative time line, and issues under discussion (including the reemphasis of system-wide tenure, the need to distinguish between base salary and temporary augmentations, the need to clarify the consequences for an employee refusing to accept new assignments in the face of programmatic change, improving and streamlining the judicial process, post-tenure reviews, and extending the probationary period in some units). He reported that the Tenure Subcommittee (which needed to formally act on tenure code amendments and forward them to the Faculty Senate) would have amendments by mid-March for action and discussion at the April/May Senate meetings.

Four days after the Faculty Senate meeting, a meeting of the union organizing group was held. Professors Thomas Walsh and Paula Rabinowitz were elected as co-coordinators. The campus newspaper carried an article about the meeting. **“Faculty unite to tackle proposed changes”** (Minnesota Daily, February 20). The article reported the UFA meeting was attended by about 70 faculty, and explained that if 30% of eligible faculty signed authorization cards, the state’s labor laws provide that a collective bargaining election must be held. One of those who had been present at the meeting was quoted as saying that the attendance was higher than at any of tenure forums “because of a loss of faith in the University’s governing process. ‘Faculty know that the Board of Regents can do

whatever they please with tenure.’”

Perhaps symptomatic of some faculty views were two letters Dempsey forwarded to the Tenure Working Group at this time. One enumerated the value of a tenure system; the other said he had been assured by Regent Reagan that the Board did not intend to eliminate tenure, and that “it is therefore shocking that your Subcommittee is contemplating just that.” The latter writer pointed to layoffs and decoupling salary from tenure, said that the faculty were apathetic only because they did not know what was going on, and that they did “not conceive the possibility that Committees largely ran [sic] by toadies are willing to go so much farther than the administration and regents are willing to push for (at least in public).” He urged that the subcommittee publicly state that tenure would not be eliminated by allowing layoffs or decoupling salary and tenure.

Along the same line, Erwin Marquit (Physics, author of a national email message about Hasselmo and the regents ending tenure, noted later) wrote to the Daily on February 20; he said “the University administration and some of its favored faculty ‘leaders’ are engaged in an extensive misinformation campaign to lull the faculty into believing no major changes in tenure” were being made. Marquit cited the May deadline imposed by the regents and the Hasselmo November 20 letter as evidence for an intent to make changes without faculty consultation. The regents can abolish tenure without Senate consent and intend to do so, so collective bargaining is being considered.³⁶

Bosacker and Isenberg wrote to Reagan, Keffeler, and Spence on February 22 to confirm a conference call on “tenure and where we go from here” and included a set of questions to be taken up. The questions included relations with the legislature, the role regents would play in the discussions, “are we going to continue to have the entire process continue as originally set-up (i.e., with the faculty taking the lead, administration following, and the Board waiting for results)? Do we need to establish some parallel, outside consulting help? What preparations are necessary from a legal standpoint? What are the legal issues to address (i.e., unionization/blockage of policy debate, Board and FCC changes in the end)? It is our expectation that both POLICY and PROCESS should be part of reform recommendations? Faculty suggest the policy/code is less the problem than management of the process. General Counsel is absolutely insistent that procedural reform is crucial to reform and meaningful change? Should we consider a parallel analysis of academic freedom during the tenure examination? Given the lack of options for change provided thus far, how does the Board go about specifying their change expectations? Consider goals and rationales. How do we come to a ‘Board’ position on our status? Who speaks for the Board on this issue?”

³⁶How much effect Marquit’s letter had is difficult to tell. Marquit had long been an outspoken Marxist as well as a union advocate, and was likely perceived by many of his colleagues as too radical for their tastes.

In late February, the Board began development of a “Request for Proposals” for a tenure consultant. It noted that a tenure review was underway, and said that “in light of growing concern over the lack of visible progress toward meaningful change, the Board is determined to exhaust all avenues to construct the resources that afford a more rigorous discussion.” It called for analysis of the existing tenure code, related the goals set forth in the December resolution, and said “the Board has been dissatisfied with the level of detail and the breadth of discussion that has come before them to this point. The Board is determined to make informed decisions on the proposed changes that are brought before them by the faculty and administration.” The regents wanted information about the current code, “comparisons of comparable higher education institutions and [t]rend analysis [?] with scenario building (consequences of recommended revisions).” Finally, the proposal indicated the Board intended to take action on tenure changes “no later than September of 1996” and that the information would be needed much earlier “in order for the Board to use it in its own analysis as the discussion moves forward before we arrive at firm proposals. It will help the Board formulate its own vision for change and the possibilities for reaching those goals.” All the information would be made available “to all the stakeholders in this discussion.”

At this point, in mid-winter, 1996, the most vexing problem for faculty and administrators was presented by the legislature and the interest of some legislators in becoming actively involved in the tenure debate. On February 19-20, University representatives testified before a committee of Minnesota House of Representatives chaired by Representative Kelso. Representative Steve Kelley had proposed an amendment to the appropriations bill linking the funding to tenure changes in the AHC with respect to clinical faculty. Hasselmo told the committee that tenure was a ““societal good,”” was not well understood but required much work to obtain, that it was “essential to the integrity of the University,” that it did not bar change, and that the review of tenure would take place within the governance structure. He said “the faculty leadership . . . is every bit as committed as is the administration and [regents] to timely and meaningful revisions” to tenure. He asked that the University be permitted to continue to review “without legislative involvement.” Hasselmo later recalled then making very strong statements in response to questions from Kelso.

Those strong statements (reproduced for the Faculty Senate at its meeting on April 18) included an affirmation that “we are not going to fire tenured faculty members” (in response to a question from Kelso about the possibility of “laying off tenured professors when their specialty is no longer needed”). He also told Kelso that the only two options, in the case of program discontinuation, would be retraining or early retirement.

In his testimony, John Adams summarized the tenure review process and the issues under

discussion; the latter included a new compensation plan (distinguishing between base and variable salary) and post-tenure review, plus other changes that would not be dramatic. Others also testified, including Regent Keffeler and Medical School Dean Frank Cerra, the latter of whom said tenure was essential. He said that while changes were needed, especially for the AHC, the appropriate review process was in place at the University. Cerra suggested language making the appropriation contingent on management redesign in the AHC. Gray recalled that Cerra had “defended our tenure code and the need for tenure.”

Following the legislative testimony, Hasselmo wrote to the regents about the meeting to report on an amendment to the University appropriations bill adopted by the committee making a portion of the funds for the AHC contingent on “changes to the tenure code as applied to the AHC’s clinical faculty.” The committee did not consider Cerra’s alternative proposal, he wrote, even though he and Regent Keffeler and others testified in opposition to Kelley’s language. He said he had asked the committee to let the University review tenure without legislative involvement, and concluded that “this kind of mischief serves only to make our shared goal that much more difficult to achieve.” He affirmed for the regents that “the tenure review and revision process upon which we embarked last fall is well under way and on time. . . . While rumors and assertions to the contrary abound and are impossible to fend off, they are patently untrue” (emphasis in original).

There was later commentary on this testimony. “After [Hasselmo] testified, Regent Keffeler read [a] letter from Regent Reagan saying that language about funding changes in the tenure code for [the] AHC was not necessary. However, in the view of one faculty who heard the testimony, Regent Keffeler then went on in her own testimony to undercut the Reagan letter. My memory is that when asked if all Regents agreed with Regent Reagan, Keffeler said she did not and implied that Regent Kim (who had been at the hearing but had left) along with other [regents] agreed with her rather than Regent Reagan.”

“The Kelso Committee voted out language that linked AHC funding to changes in the tenure code for [the] AHC. The wording was to the effect that funds would be released when the Commissioner of Finance certified that the Regents had made changes in the tenure code for clinical faculty in the AHC. I had asked to testify before the committee on this issue. Rep. Kelso moved to a vote immediately after John Adams testified and before allowing additional testimony. I then approached Rep. Lyndon Carlson, chair of the full Education Committee and asked to testify before that committee. He agreed. Virginia Gray and I testified on behalf of University faculty. Virginia’s testimony talked about how changes in the tenure code are analogous to changes in the U.S. constitution and need the same sort of careful discussion and deliberation. My testimony focused on

the importance of tenure for the defense of academic freedom. There was also testimony from faculty groups at all other higher education systems -- state universities, community colleges and technical colleges -- arguing that the legislature should respect the U's internal processes for change."

"With regard to the compromise language, I thought there were three important changes:

1) language that referred to the tenure code was moved to a point where it said the legislature requests the faculty, administration and Board of Regents to pursue their internal process for change.

2) The language about the Commissioner of Finance certifying was replaced with the Commissioner shall release funds when the Board of Regents certifies.

3) The Board had to certify that changes had been made in personnel policies for clinical faculty."

"The distinction between personnel policies and tenure code was subsequently lost in newspaper accounts and other discussions. There were certainly some legislators who wanted major changes in the tenure code, but I was among those who believed that a major part of the problem with regard to compensation for clinical faculty was related to personnel practices, not the tenure code."

(The final statute read as follows, in pertinent part: "The commissioner [of finance] shall release 90 percent of this money to the board of regents when the board of regents certifies that changes have been made in the personnel policies for clinical faculty with regular appointments in the [AHC] which enable the University to alter clinical compensation and base salary, and provide a streamlined due process procedure for separation under the provost of the [AHC], without infringing academic freedom.")

Virginia Gray later recalled that she and Craig Swan "made Brody sit quietly."

Following the testimony, FCC Chair Carl Adams emailed to all faculty a copy of John Adams's February legislative testimony on tenure.³⁷ He told the faculty about the work of FCC and other faculty leaders on tenure and about the legislative testimony, and that the faculty, administration, and a Board member "have been outspoken and vigorous in saying that tenure is here to stay," and that Regent Reagan has also said tenure will not be harmed. He said the "review and debate is being led by the faculty," with the administration and regents waiting on faculty recommendations. There will be changes recommended, but ones needed by the University to move into the future, not to weaken tenure; anyone arguing to the contrary is "not fully informed." There have been "continuing and frank discussions" about tenure, and the faculty will be informed as those

³⁷This, along with the earlier messages from the UFA, were probably among the first all-faculty emails about tenure; the all-faculty email list had only recently been set up. It was about this time, in any event, that the all-faculty email list began to be used regularly by faculty groups and the administration.

discussions progress.

It was Walsh's opinion that the February 22 email from Carl Adams was "a response to UFA's faculty wide-email on the 14th. They were trying to recoup lost prestige and they were alarmed by a growing number of authorization cards. There was also no ambiguity about UFA's position by late February: we wanted a Status Quo order and a collective bargaining election. Most of our email was to keep the faculty aware of what was going on. We felt that knowledge alone would do its work in these circumstances."

As a follow-up to the legislative presentation, Faculty Legislative Liaison Swan emailed to the chairs of FCC, the Tenure Working Group, and the Committee on Faculty Affairs. He reported the legislative action and said there was "contentious debate"; small changes in the legislative language let the University address tenure, but he warned that many people were out on a limb because they promised to meet the regents' timetable for tenure review. He said there must be respect for the internal process of having language reviewed by the Tenure Subcommittee and then the Faculty Affairs Committee. He also urged the widest possible consultation, including with the Judicial Committee, to try to insure that all important substantive questions had been identified in advance of the Senate meetings and to avoid the charge that the faculty were not consulted.

A few days later, Swan reported on the work of Kelso's legislative committee. He noted again that he and Infante had succeeded in getting changes in the language of the bill letting the University address tenure itself, but warned that he and the President, along with Regent Patricia Spence and a number of faculty were "all out on a very long limb about the ability of the University to address needed changes on the timetable that was laid out by the Regents last December." He again urged that in addition to work by the Senate committees, there be broader consultation with the faculty about changes in the tenure code. He said it was important to avoid (1) "a situation where a major issue was first identified on the floor of the Senate" because he "was concerned that if something major slipped through the committees, that the Senate might refuse to adopt anything, and drafting language in the middle of floor debate is not good practice," and (2) charges that the faculty were not consulted.

The next day Swan emailed the President's chief of staff, Mario Bognanno, along with Carl Adams, John Adams, and Virginia Gray to emphasize again that full, open communication with the faculty was critically important, and that sending John Adams' legislative testimony to the faculty was the wrong document. The problem is the credibility of the Tenure Working Group, he said; while he had "immense respect for the openness with which John has approached these issues and for the extremely hard work and long hours he has put into this," many faculty did not share his

confidence in the group. The “discussion draft” in January was a concern to many faculty, who thought it a white paper for specific changes, not a discussion paper of issues.” Moreover, the issues keep changing, and so do John Adams’ reports, so faculty perceive different emphases. FCC Chair Carl Adams’ memo to the faculty should discuss the charge of Tenure Working Group, the timetable, stress the Faculty Senate role, and note that there will be wide consultation. He urged both Adamses to write to the faculty about what was going on, and cautioned that there will be issues of great sensitivity, so faculty must be informed about those issues as well as what the Tenure Working Group is thinking.

* * *

MORE ON THE TENURE WORKING GROUP

Swan’s comment about the credibility of the Tenure Working Group reflected widespread concerns, and that credibility (or lack of it) would be a central issue at the April 18 meeting of the Faculty Senate. Although more about it will appear as events proceed, it is useful to itemize what some of the participants saw as the problem with the Tenure Working Group.

Swan elaborated on his views. “This was a committee the faculty didn’t really know about. There wasn’t any broad opportunity for input. John Adams may feel differently, but in the end, the report became John Adams’ vision of the University, not an issues paper about options for tenure. In that sense, it seemed to point to his vision of the University, not something that laid out a set of issues for faculty to consider. That’s what I think went really awry.”

“I had to go find the report, it wasn’t given to me. I had heard of it, and had to go find it; anyone who didn’t make an effort didn’t know about it, and suddenly it went to the regents and became part of faculty views. I think that’s what went wrong.”

“In other places, there have been ad hoc committees, but they’ve been given more attention and been a bigger deal and incorporated people who’d been broadly involved in tenure issues. That was not the case here. I think that’s a real problem, if you appoint an ad hoc committee -- and one of the lessons people should learn from this.”

In the opinion of Virginia Gray, “it was appointed through the normal process, we had had these joint administrative-faculty groups in the past, so to say there anything wrong about its appointment is just false. It was normal.”

“I think what screwed it up was this drafting group with the outside lawyer who was connected to the bad things going on in the AHC. Whoever decided on that, that was stupid. And then Brody. Every day he was doing some other terrible thing, and the people in the AHC were constantly, totally freaked out. It was always such a different tone coming from them, versus the rest of the University.”

“I think in a ‘normal’ year, nobody would have given it a

thought. But Brody so poisoned the well that probably no group could have functioned.”

Dempsey said that she had no problems with the Tenure Working Group. “I’d known John Adams for a long time, and I respected him. I had heard him state some of the things that ended up in his draft, and I knew what his line of thinking was. But I thought he was one person, and it would work out all right. It was unfortunate that the administration encouraged them to prepare some draft proposals over Christmas time, and the Working Group was supposed to make some comments about them, but I didn’t have time and I don’t think very many others did, either. I thought ‘he can go ahead and say what he wants.’ He was obviously trying to make the administration happy, and they were so proud of him for doing this. In retrospect, I realize they were under horrible pressure from the regents, and this is why there was serious discussion of tenure.”

“I had met with Carol Carrier and Jim Infante the summer before that, and they had mentioned some of the changes in the code that were needed. I tried to tell them that some of the changes would not be acceptable to the faculty, that they should realize it was not going to work. Not too much came after that, until the Tenure Working Group. I always felt Carol Carrier was very supportive, but she dropped out of the whole thing. She had more of a calming influence on discussions; Jim was very anxious to have, for example, departmental tenure.”

“I also remember Nils coming to one of the meetings of the Working Group [in January] and he had a list of things; most of them ended up in the working draft of the Gang of 4. One of the things he was pushing for was departmental tenure; I told him ‘I don’t think that’s going to fly with the faculty.’”

“The administration and Tenure Working Group hadn’t involved Fred Morrison at all, and I’m not sure what why; it was probably Carl Adams’ call, that he thought Fred had been too involved before. But they hadn’t even talked to him.”

Dempsey also denied one of the accusations levelled at the Tenure Working Group, and John Adams: that it met only once or twice. “The group did meet -- but [Professor Matthew Tirrell, Regents’ Professor Paul Quie, and Associate Vice President Carol Carrier] were usually not there. The original discussion document was John’s work - - but he did circulate it to the working group -- the time for comment was short. I thought John’s discussion document attempted to reflect the opinions of the administration -- which changed as time went on.”

Morrison recalled that he “was out of the country when it was appointed. I think what went awry with the Tenure Working Group was, in part, that it gave the appearance of -- even though it may not have been -- something that was appointed to accomplish a particular agenda, and not to consider things dispassionately. That goes back to the role of John Adams.”

“The second thing that went awry was that it didn’t actually meet, or met only once or twice. It is my understanding that they only met maybe once, maybe twice, and that after that John took over

and did things kind of single-handedly. That's probably a mistake, because he wasn't getting feedback and moderation from other people."

Bob Morris of the Law faculty and AAUP had a slightly different view. "First of all, no one could figure out what John [Adams] was doing. I didn't even know anything was happening until I got this notice that there was going to be a forum, in January of 1996. I went over there, and he had this paper with discussion points. It was quite clear, when he would talk about these things, that he had not done his homework. He did not know the kinds of things that were involved, the kinds of arguments that might be made pro and con." Adams had recognized his deficiencies earlier, but clearly had not satisfied at least some that he had made them up.

"Should we extend the probationary period? There is an argument that the AAUP makes that that is a way of weakening the professoriate. You need a time when you are going to fish or cut bait, and the sooner, the better. It must be long enough so the person can demonstrate [competence], but there are some good reasons not to extend it. That's in the literature, but he had no idea about it. I had this book along [the AAUP red book]; I said there are all sorts of things in this that are germane to the things you are talking about and I don't see them reflected in what you are talking about. He said 'I haven't read that yet.' He hadn't done any of his homework. That's why I said . . . that you can't do this kind of thing with uninformed, untutored people."

"The other thing that happened was that he would regularly appear before Keffeler's committee. He would tell her what was going to happen. Nobody had decided what was going to happen yet! But he was telling her anyway. It was a great ego trip for him, quite clearly, but it did not seem there was any reason to believe that this is what was going to happen."

"He, and Nils, too, were talking in terms that made no sense. The question is, what is the location of tenure? As I said at the forum, 'Professor Adams, you of all people, should know that tenure is not a geographic entity.³⁸ It does not have a location. It is a practice.' I didn't go further than that. If you said tenure was located in a department, that would mean, when the department was gone, tenure was gone, and you had no rights at all. No one ever says that. No one would ever say that. Everyone would say 'you get a year's leave of absence.' Who's going to give it to you? Not the department; it's gone. The University has to give it to you. Most people would say you have a right to be hired if there's an opening in your specialty, in some other department. Your department isn't going to give you that right; the University is going to give you that right. Those are both tenure rights. They're not full tenure, but they're tenure rights. All of the things that we do to let people down are rights that are part of tenure. Where are they located? They're obligations of the University. No one

³⁸John Adams is a professor of Geography.

was talking in operational terms. They were talking in such airy terms.”

“The thing that got me angry, and why I wrote the letter to Nils,” Morris recalled, “was that all of this was using up valuable time” [the letter is cited shortly]. Moreover, Morris said, “I know, as I said in the letter to Nils, that what comes out at the end is much different from what goes in, even after the committee has worked on it. But here Adams was doing all these things. And I think some people read his talking points as proposals rather than talking points. They were phrased as proposals rather than talking points, very often. This caused people to have a lack of confidence in him.” Morris, like many others, also reported that the group only met twice.

Carolyn Williams said that “I think the fact that this was done outside of the governance structure” was made it go awry. “Why appoint a working group? Why not go through the committee structure? Isn’t there a Tenure Subcommittee?”

Murthy agreed. “What happened was that the faculty, both in the Senate and prominent members of the Senate committees, felt that the joint committee appointed by Infante and Carl Adams was not a Senate committee. Governance committees were there for the purpose, so [those faculty] felt they didn’t have ownership in it. That’s when their anger started, not only because of the content of the Adams committee report, but also because of the way it was felt it was masterminded by the administration. That’s what went wrong. I heard several people getting very angry at the time at the Adams committee.”

“The Adams committee was not considered to be responsive to the needs of faculty or representing them. The committee had a very funny admixture of people, some from administration, some from the legal group -- maybe they were bulldozed by them, we don’t know. But they certainly were not seen as friends of the faculty.”

Bland said “I thought an important point was that part of the reason things went awry with the perception of the effectiveness of Senate governance was that the administration was out of control, too.” She alluded to her view that Hasselmo was not controlling Brody. “In order for joint governance to work, both sides have to be effectively functioning. You can say that faculty governance broke down, but it’s all integrated. If administrative governance breaks down, you can’t expect our side of the ladder to stand there while theirs is crumbling. You can’t expect Senate governance to work if administrative governance isn’t working. And it wasn’t working. It is a partnership, and when the link goes. . . .”

Bland said she thought it important to identify the particular people on the Tenure Working Group in this book, “because those people held the legitimate positions in the tenure code to be working on changes; it had Mary Dempsey [and Dan] Feeney. That point, that the working group was illegitimate and inappropriate was a major bone of contention. The tenure code does not say you cannot have groups put together to have input into the Tenure Subcommittee, and that’s all they were doing. That was my understanding, and I was there when

FCC approved the task force as a group to submit proposals to the Tenure Subcommittee. I talked with the City Pages [reporter], and he said 'well, the regents' professors said FCC did this and that.' The regents' professors weren't there. I was there, and when Carl brought this to FCC, it was never thought to replace the Tenure Subcommittee. It seemed like a good way to get some proposals in on which you were getting some insight into what the administration thought and what the Senate thought. It seemed like a good way to feel each other out, to keep a bridge. To this day, I don't think it was a bad strategy. In fact, the recent Senate task force on governance recommends using such joint administration/Senate groups!"

Why was the Tenure Working Group perceived to have failed? Bland's response was that "that's a good question. I wonder if we didn't set up enough feedback to both the administration and the Senate as to what it was doing. It was a joint committee, and they were supposedly coming up with proposals, but they never came back and talked, I don't think. Dempsey and Feeney were on it, so you'd think there would have been some feedback loops, but I'm not sure there were. This was set up by FCC and Infante. I don't remember us [FCC] ever getting any progress reports from them. It may be that we set up a task force and didn't monitor it very well. So it got down a line, with a whole bunch of things that were surprises to people."

Feeney provided a lengthy but different perspective. "When you get into how certain things were handled, such as whether [Faculty Affairs] objected to the idea of the Tenure Working Group, I don't think so. We were as open about that in [Faculty Affairs] as we were about the Committee of 8 when it was formed. I was asked by Carl Adams about the Tenure Working Group, before it was appointed. It was one of these things where somebody has to serve as a heavy-duty go-between, where they will make the reports to the regents and do this and that. John Adams was past chair of FCC, and there were other reasonable people on it."

"If you were to say what went awry, I'd say there were two things. One was the perception of the group. I think the Gang of 19 looked at the Tenure Working Group and said it was not part of the Tenure Subcommittee, the Faculty Affairs Committee, or the FCC. I think at that time there was beginning to emerge a confidence gap with FCC and the rest of the faculty, and in particular with the more forceful individuals such as the Gang of 19. I think the other problem was the way John was handling it. John was putting things out, and he can play devil's advocate roles. Some people said the way he was saying things was so pro-administration, pro-regents, that he was dancing to the tune of Jean Keffeler and a couple of other people on the Board. There was that infamous letter that Nils wrote; there were a number of things in there that you could almost lift out, in order, and see in the stuff that came back from John."

"I started getting nervous when I saw the stuff that John developed during the Christmas holidays. The discussion document. There were things in there about the locus of tenure and the need for programmatic change. I thought 'John, they might have done well to

hire you to make the regents' arguments.' I don't think John was looking at it that way; John has a way of looking at things because he is a planner. He could see that we were not going to get by without some sort of programmatic change enhancement in the code. But you had to be careful if you went with layoffs or something else."

"John would make comments like 'oh, well, people who are worth their salt don't have to worry about it anyway.' That doesn't sit well with faculty, because they remember there have been administrative transgressions that have occurred, where administrators without wisdom have made some decisions that have really screwed things up. The idea of tenure and continuity is what faculty buy into. They don't buy into this idea that you have expendable people, and that we're going to dump Urban Social Science for Rural Social Science overnight. In that respect, John ruffled a bunch of feathers."

"You could see the tide beginning to rise a little bit even in these faculty forums that were held. The concern was being raised about the way term appointments were being used, the potential that faculty would be booted out in the cold after 15-20 years of dedicated service to the institution because one or two people decided that discipline or department should be reorganized or disbanded. John was still playing the fiddle to that."

"If you were to look at it, it was the idea that 'why is this discussion document going the way it is going?' Was I uncomfortable with the discussion document? No, it was being beat up in [Faculty Affairs] regularly. We had John and Fred Morrison and Dan Farber at the [Faculty Affairs]/Tenure joint meetings all the time. We dedicated 50% of every [Faculty Affairs] meeting to tenure all the way through the process. I think people didn't realize what was going on behind the scenes. We were taking what was going on at these forums as input. We said 'people really are vigorous about this; John, there's a message there.'"

"If you were to look at the two factors that contributed [to the Tenure Working Group going awry], people looked at the discussion document as if people were advocating for the administration, and the forcefulness with which John delivered it, and second, the reason that this is a problem is that this isn't really a part of the defined groups that should be working on tenure. I don't want to say we had control - we didn't have control over what they did, but they couldn't do a damn thing unless we approved. You could say all you want out there, but if the Tenure Subcommittee and [Faculty Affairs] don't approve it, it's going absolutely nowhere."

Rick Purple explained his view of what happened with the Tenure Working Group. "It came probably six to nine months after the campaign by Brody was going in earnest with respect to CSC [Index, the re-engineering consulting firm] and the legislators and God knows what with respect to the administration and regents. But a lot of these people were really sold on re-engineering; they thought it was magic. I don't think any of them bothered to read Champy's book; they just let the charisma of Brody carry them on this. You just can't

believe evil when you see it, when it's charismatic and nice."

"What went awry with the working group? The working group, viewed from the perspective of the health sciences, was nothing more than another vehicle to be manipulated by people like Brody. The personalities who were on that working group is one of the things that bothered us. You had John Adams. Several of the other people on that working group were what I would call distinguished faculty who most of our faculty would look to for leadership, but who were relatively disengaged from the actual usage of leadership."

"Judy [Garrard] told me the working group met once or twice before December, and people like [Professors] Paul Quie and Matt Tirrell never met with the working group again. John Adams just sat down and wrote this stuff up. All of the emails I have seem to be consistent with that. That basically John decides this is the way to go, and John does it. I don't know how much Brody whispered in his ear, and convinced John we needed changes. But John obviously felt things like post-tenure review and the rest were very necessary, and apparently did not see what Brody was doing as an assault on tenure."

"Concerns about the working group was that the working group wasn't working. Another concern was that the working group was eating up a lot of time, then all of a sudden March, April, May comes up, and we've suddenly got tenure proposals, and our committees haven't seen the damn things yet. So the real committees that are supposed to do the real work get maybe a couple of weeks to do the real thinking about this, whereas the working group has had six months or more. Then all of a sudden everything gets compressed. Again, that's one of the hallmarks of re-engineering. You get people to commit to do what you want them to do, without giving them any time to think about it."

Fennell Evans, not reticent in commenting on events,³⁹ offered this view of the Tenure Working Group. "Basically it was a scam. Nils thought he was going to be able to finesse this through by getting some of his faculty stoolies to be symbolically representative of the faculty while he screwed us. The consequence of that was that by the time we were done, we screwed them. It's really very simple."

Hasselmo had a quite different view of what was intended with the working group. His objective was to "try to keep the tenure discussion low key -- and [that] obviously failed. The committee [Tenure Working Group] that was set up by Infante and [Carl] Adams was intended to help do that -- and to ensure through its membership, and clear instructions to forward any views, comments, proposals, etc., to the Tenure Subcommittee for their review and recommendation to the Senate that the recommendations would be faculty recommendations, as mandated by the code. The committee [Tenure Working Group] obviously got caught up in other issues, which undermined its work. I have nothing but admiration for the work of

³⁹For example, see his comment later about the boxcars and the Jews, and his other comments in his interview.

John Adams, and for that of Carl Adams.”

* * *

At the end of the month there was an article describing the legislative action. **“House OKs health center funding -- with strings”** (Pioneer Press, February 29). “A wolf in sheep’s clothing. That’s the way many faculty members at the University of Minnesota see the Minnesota legislature’s action on Wednesday. But legislators say they were only taking advantage of a golden opportunity to keep some professors from having jobs for life - even when those jobs no longer exist.” The article reported the House voted 124-7 to give the AHC \$4.5 million if the regents make changes in “personnel policies” in the AHC. Representative Kelso was quoted as saying that means the regents will have to change tenure as it applies to clinical faculty and that the legislature was surprised to learn that a faculty member cannot be released even if there is no position in his or her specialty, “even if no department. Even if there is no campus.” Faculty can be fired for cause, but the University “cannot downsize by eliminating the jobs of tenured professors.” The article said Brody wanted to reshape the Medical School because it is losing money, but is hampered because clinical faculty at Minnesota, unlike elsewhere, are tenured. Hasselmo and the legislators “want to help Brody”; faculty see “an assault on the tenure of the entire faculty.” Rabinowitz [UFA co-coordinator] called for solidarity; John Adams said the Tenure Working Group wanted changes permitting salary reduction for disciplinary reasons and setting up a post-tenure review system, but that tenure should remain system-wide. Kelso said she was “bowled over” by resistance from faculty,” and that the “entire force of the university” was exerted, and she doubted “anything would have been done without action from us.”

On February 21, Marquit sent out a national email that began with the statement that “University of Minnesota President Niels [sic] Hasselmo and the university’s Board of Regents are launching a serious campaign to end tenure not only at the University, but nationally as well,” and called for “strong protests.” He cited Hasselmo’s November 20 letter and the December regents’ resolution and said they initiated the review effort and set the schedule “without meaningful consultation with the faculty.” He said the regents “have the power to abolish tenure with or without Senate concurrence and recent statements by some administrators and regents indicate the intention to do so.” He reported the University Faculty Alliance was formed and was soliciting authorization statements for a union election.

Hasselmo said that first sentence was a “gross misstatement of anything said or done by the Board of Regents or administration. It set the tone for national hysteria.”

It was Walsh's view, however, that "there was in fact a move at Minnesota to eliminate tenure in any meaningful sense. Anybody who doubts this should look at the regents' subsequent September document and consider its implications. I think that the administration panicked around mid-February when they realized where the Board and its political supporters were headed. They had cooperated, but now they saw the danger, as did many of the faculty leaders who had worked with the Board and administration up until then. It is hard to feel much sympathy for them."

By this point, the prospect of unionization was sufficiently evident that FCC met on February 22, and was joined by Josh Tilsen, a representative from the Bureau of Mediation Services (BMS), the state agency that regulates union elections. Tilsen explained the process of petitioning for a union and what happens during the period between petitioning and an election (no change in working conditions are permitted). Were FCC to seek to be the bargaining agent, it might be considered a "company union," because it is chartered by the regents; during the period between petitioning and election, the business of the governance structure would be curtailed, and the continued existence of the Senate would be a matter to be negotiated if employees voted to unionize.

Following the discussion with Tilsen, FCC turned to the participation of chair Carl Adams in a press conference about the results of the trial of Dr. John Najarian.⁴⁰ There were heated exchanges. Adams said he had participated in the press conference to ensure that the faculty were visible and defending the need to remove those who act in violation of University rules, that he based his statements solely on the findings of the faculty panel, and that he was called on very short notice to participate. Some members of FCC⁴¹ were sharply critical of Adams for making a statement without

⁴⁰Although not germane to the tenure dispute, the debate reflected the acrimony that existed on FCC at this point. Dr. John Najarian was a regents' professor and renowned transplant surgeon who had been accused of numerous wrongdoings. He had been investigated by a distinguished panel of faculty that included regents' professors and found to have violated University rules. He was essentially forced to resign his faculty appointment at the University. Najarian was also indicted and tried by federal authorities on a variety of charges, and was acquitted on all charges (to the surprise of many inside and outside the University). The acquittal, as Dempsey had recalled, came the day of the meeting to create the Gang of 4. Hasselmo held a press conference the day after the acquittal to defend the University's earlier findings and actions concerning Najarian. The FCC discussion was about Carl Adams' participation in that press conference.

⁴¹In particular, those from the health sciences, where faculty opinion was divided about the Najarian matter. Some believed (angrily) that the administration had tried to shift all the blame for events to Najarian and the Medical School but that there was ample evidence of central administrative culpability as well.

Virginia Gray took a different view. She acknowledged that "certainly the faculty had a variety of views on Najarian. But I don't think Carl overstepped himself then, because you have to remember there was a faculty committee that had spent a year examining the research misconduct of John Najarian, and they had said he committed these bad acts. The report was very sharp. So I think the leader of the faculty is justified in standing up and saying he should not be a professor here because of his previous behavior." That there was a press conference at all was a different matter. "I don't understand why they had a press conference. As a matter of fact, Carl and I were at the legislature. Mike [Bognanno] came over and got Carl, to come back and

prior consultation with the committee, and the role Adams played was revisited at a meeting of FCC in March.

One faculty member later suggested that “Bognanno was the one who wanted Carl there. Mike sometimes uses a blunderbuss where a more precise implement is called for. I think it was series of things like that where Carl, in some people’s views, seemed to step over a line. You certainly need to consult with the administration, but it was a matter of stepping over a line.”

Carole Bland defended Carl Adams. “It is true that FCC split sharply over Carl Adams’s participation in the Najarian press conference. That’s an interesting thing; if you go back and see what Carl did, he only repeated what the faculty review committees had looked at about Najarian. He never overstepped what other faculty committees had said about Najarian. I really fault [Medical School professor and FCC member] Mike Steffes; if you look at the minutes, I was yelling at Mike Steffes. He wanted Najarian to be protected, and Carl didn’t protect him. It wasn’t that Carl didn’t protect him; the faculty didn’t protect him! I really think Carl got walked into a corner by a few people on the committee who either wanted to protect Najarian or hated Carl.”⁴²

The Committee on Faculty Affairs met the same day as FCC, with John Adams joining it, and spent most of the meeting reviewing proposed amendments to the tenure code. Adams repeated the various reasons tenure was on the agenda (part of the regular regents’ review of their policies, non-recurring University funding, financial pressures in the AHC). He reported on the legislative actions, including administrative assurance the University would “work on the tenure code” if language making part of the AHC appropriation contingent on tenure change were removed, and that faculty had testified the University would rather not receive the money if there were this kind of “intrusion into internal University affairs” accompanying it.

The committee then had a discussion about what “base salary” means, especially in the context of clinical faculty income. Committee members objected to the problems in the AHC leading to changes in the tenure code for the entire University, and feared that problems in the AHC “would

be at the press conference. And by the way, Carl wrote his own speech. I was over there for the press conference, I saw him finishing it up, so this idea that somebody wrote it and he was duped into saying it is not true. I think he believed what he said.”

See also the comments of Morrison and Swan later in the book.

⁴²John Adams wrote that “the fallout from the Najarian episode left a bad taste in the mouths of many in the AHC. Some felt the administration had failed to protect him. Some felt that there were others who did not get caught, and should have been. Some felt that the administrators who knew about Najarian’s escapades and looked the other way should have been fired also. In the aggregate, the Najarian events turned many against the administration and the regents. Mike Steffes has one take on all this. When coupled with the sentiments and the emerging fears from AHC money troubles, the atmosphere was poisoned. Many people in town simply could not understand how the U could fire such an eminent person,

soon be spreading throughout the University.”

That things were seen to be going off the track is indicated by a late February memo Mary Dempsey wrote to the Tenure Working Group and to Fred Morrison. She expressed concern that the Senate would approve only “housekeeping” amendments and would defeat others, such as the ones John Adams talked about in his legislative testimony. She wrote that “faculty are now suffering from serious anxiety and fear regarding what is going to happen to the Code. These concerns are being exaggerated by recent attempts in the legislature to tie funding appropriations to changes in the Code. In spite of assurances by the President, the Regents, and ourselves, faculty believe they are going to lose tenure. We also have many reports that tenure track positions are not being accepted when offered to outstanding candidates and present faculty are beginning to look for positions in other universities.” She suggested that many goals could be accomplished without code changes, and that this needs to be clarified for faculty and the administration; she would offer several new Interpretations of the code to accomplish this end.

On March 1, 1996, the Tenure Drafting Group (the Gang of 4) submitted a “first installment” of proposed tenure changes to the Tenure Working Group and senior administrators. They submitted five items the drafters could not agree on, leaving the choice to the Tenure Working Group. The disputed items were how to establish base salaries in the AHC, an interpretation of “reasonably assigned duties” in the case of faculty reassignment following programmatic change, changes in the standards for removal and broader alternatives for discipline, treatment of faculty in the case of programmatic change (i.e., permitting layoffs if reassignment and retraining did not work), and suspension of faculty without pay during removal proceedings.

“Faculty uneasy as University ponders tenure” (Pioneer Press, March 3). A case study of a faculty member on a probationary appointment, the article said “if things go as expected, the 37-year-old biochemist will be anointed with a mysterious and controversial job condition called ‘tenure.’ At the University of Minnesota, the word is almost sacred.” The article described events of the debate, which “simmered onto the floor of the House of Representatives last week” when Kelso “convinced legislators” to vote for the contingent AHC appropriation. Faculty are prepared to change the code, but not separate the medical school; “one university, one tenure code is their position.” Other institutions face the debate, but Rabinowitz said “Minnesota suffers from a virulent case of anti-intellectualism that” is harming the University.

On March 6, President Hasselmo sent a letter to all faculty that began by saying that “this year’s paradox is how we can have an exemplary review of tenure policies when there are so many

and that sentiment fed community suspicion that the U did not have its act together.”

unanswered questions and so many conflicting interpretations in circulation.” He cited FCC Chair Carl Adams in saying the Minnesota approach to the review of tenure was exemplary for faculty and was faculty-led, and stressed his own view that the process was exemplary because it “started, as our traditions and governing principles require, with faculty initiative” (emphasis in original). He repeated earlier statements that the best protection for tenure and academic freedom is tenure that works effectively and efficiently, but assured the faculty that tenure would be protected. He also commended John Adams on the tenure change proposals.

On the same day as the President’s letter to the faculty, the third Faculty Senate forum on tenure was held. John Adams presided, and previewed with the 15 people in attendance the comments he would make to the regents the following day. Faculty present inquired when language would be available for review and what the process would be for voting on changes. Carl Adams was asked if the administration would return to the Faculty Senate if it disagreed with any amendments approved; Adams said that under the code, the Faculty Senate transmits the amendments to the regents, through the President, and that while the administration can voice its views, it has no authority to make changes. If the regents disagreed with what the Faculty Senate had done, it would have to go back to the Senate for additional debate. John Adams maintained (as others had done at other meetings) that the debate about tenure was not occurring exclusively at Minnesota, but was taking place at a number of peer research universities.⁴³

The Committee on Faculty Affairs met the next day, March 7. While much of the meeting was devoted to the prospective change to semesters (a background factor that exacerbated the sense that too much was changing all at once, for some faculty), the committee did take up tenure. One committee member said the UFA was garnering increased support, which reflected reduced confidence in governance. Note was taken of Hasselmo’s letter to the faculty, which made no mention of the Senate committees and emphasized the activities of the Tenure Working Group; were the committees wasting their time talking about tenure? Moreover, the Working Group “continues to operate outside faculty governance.” Comments were made about the AHC’s declining revenues as the genesis for the tenure debate. The committee concluded that the governance system “is working reasonably well.” Feeney noted that four lawyers were working on drafting language. The committee is in an uncomfortable position, it was said, because it may have to act on tenure changes that are not to the faculty’s advantage, while collective bargaining is a different way to deal with the

⁴³This was a proposition that most faculty did not believe. A number of faculty made inquiries of colleagues elsewhere around the country and could find no parallel review of tenure taking place at peer institutions.

changes.

Following the meeting, chair Dan Feeney wrote a long letter to FCC chair Carl Adams and sent copies to all of the senior officers. Feeney told Adams that Faculty Affairs exhibited a “high level of concern . . . about the trend in tenure code revisions and the assumptions on which they are based.” He reported that Faculty Affairs had been discussing tenure revisions at length, and the need for them, and that “a number of the questions pivot on the need for a large-scale revision versus a more intense interpretation and implementation of the rights and responsibilities defined in the current Tenure Code. . . . One major concern was what will the faculty gain compared to what will they lose, if the current trend in deliberations continues. The perception is that the faculty, while seemingly in the driver’s seat in the Senate deliberations, may be bypassed or overruled at higher levels including either the Board of Regents or even the State Legislature. The concern is whether or not what we say will matter in the current environment and whether or not there are specific mandated, ‘non debatable’ changes at the Board of Regents level. . . . In short, is the faculty wasting its time deliberating on the whole code when, once the smoke screen is lifted, layoffs are the central issue and they WILL become part of the Tenure Code regardless?”

“Another major concern is the relationship between the financial problems in the Medical School and the driving force behind Tenure Code revision. . . . The question which has come up repeatedly is whether the option for large-scale layoffs and significant base salary reductions in specific units are actually the agenda across the system and Health Sciences is only the trigger.” A related topic, he said, was whether there should be one or two tenure codes, and that “a feeling is surfacing [in his committee] with some that we are changing what is an appropriate and sound Code, that was adequately debated 10 years ago, because of problems related to Medical School finances.”

Feeney told his colleagues that “the mixed feelings of [committee members is] one of being ‘violated.’ The combination of the statements made on or referable to tenure by the Health Sciences Provost last Fall and the Chair of the Regents’ Faculty, Staff and Student Subcommittee recently; the aggressive timetable proposed for Code revision and approval; the seemingly simultaneous deliberations of the Tenure Working Group, [Faculty Affairs], and the Administration; the continuous reference to the Medical School fiscal problems in Tenure Code deliberations; the recent legislative action interlocking funding and Tenure Code revision, and the pending implementation of the DELAYED biweekly payroll have led some of our members to question the relevance of faculty governance in the overall scheme of things. One experienced member posed the question that is the reintroduction of the faculty unionization issue a response to the perception that current faculty governance is ineffective or even impotent when it comes to dealing with aggressive and influential

individuals in positions of authority and/or the current political environment in which we find ourselves?”

“In short, the current environment is confusing, worrisome and in some cases aggravating to the faculty in ways that those of us in committee chair positions are only beginning to realize. I’m not sure we can predict the reaction to pending Tenure Code revisions by the Senate or to any potential imposed revisions from the Board of Regents or the Legislature.”

Feeney said that the reaction of the members of his committee “surprised me. As a group of people responsible for issues affecting the well-being and contentment of the faculty, the level of concern and the difference in perceptions about what is happening among these informed people shocked me to a realization. Those of us close to the Code revision process, in our quest to negotiate timely terms and to acknowledge positions taken by vocal authority groups, may have lost sight of how it will be received by our colleagues in the next ring beyond our circle of contacts. I think many faculty perceive any change in the current code a net loss which may be the start of (or continuation of) a series of losses in the faculty’s role in institutional academia. Faculty are being pushed into a corner and their reaction may not be predictable. . . . My read on the situation is simple. We Must Beware! I got the message given to me by [Faculty Affairs members] and I’m passing it along.”

John Adams reaction to the Faculty Affairs concerns was that “I seem to recall that . . . ([at] the meetings I attended) there were quite a few intemperate speeches, but little discussion of the issues.”

In advance of the March regents’ meeting, there appeared in the newspaper an article about layoffs.

“Regents consider faculty layoff policy” (Star-Tribune, March 7). The article noted the regents would consider a layoff policy, and reported that Maryland, Washington, and Penn State also have one, and they “have caused no controversy.” At Washington and Maryland, it has never been used and the faculty are not worried about it. “Academic freedom . . . is the basic justification for faculty tenure. . . . Academic freedom has played a very small part in the public debate on tenure” at the University. Dempsey and John Adams say tenure is needed for faculty to carry on long-term work; Adams said his committee “is not likely to agree to layoffs.” “The fact that three other universities have layoff policies is not compelling, he said, because those schools do not use the policies. . . . ‘A good research university does not threaten its faculty with layoffs.’”

Faculty Legislative Liaison Craig Swan responded to this article several days later.

“Academic freedom is crucial part of tenure” (Star-Tribune, March 12, opinion piece by Swan). Swan took issue with the contention in the March 7 article that academic freedom was not a

significant part of the tenure debate at the University. Faculty understand that, so focus on policy details; Hasselmo testimony to the legislature “began with a forceful statement of tenure’s importance in defense of academic freedom.” Swan described the role of academic freedom and described several instances where it was important for colleagues at the University (including, although not named, Regents’ Professor Ellen Berscheid), said that since his own legislative testimony, “I have learned of other attacks by individuals, including legislators, who have disagreed with the conclusions and implications of research done at the University.”

For the March regents’ meetings, Associate Vice President Robert Kvavik provided to Acting Associate Vice President Dan Farber a report on a survey of AAU institutions about their tenure codes. He reported great variability on how institutions embody tenure in their rules and regulations, that most follow AAUP guidelines, that all permit dismissal of tenured faculty for financial exigency (a few allow it for program closure, but most school policies are silent on the issue, and few have ever exercised the authority), that few have ever reduced tenured faculty salaries for non-performance (unionized institutions have greater authority to do so), that post-tenure review is almost entirely developmental, and that most tenure provisions are so vague and so complex that dismissal for cause is extremely difficult.

The regents’ Faculty, Staff, and Student Affairs Committee again heard about tenure, this time from John Adams, Carl Adams, Dan Farber, and President Hasselmo. Regent Keffeler noted the interest of the legislature, and said that “the positive way the Regents and administrators have been able to interact with the legislature has helped them advance the cause of the University.” Carl Adams outlined the general direction of the changes being considered, and “stressed the importance of working conditions associated with collegiality, sensitivity, trust, and communication” and said that “tenure is at the heart of the faculty’s sentiments about working conditions.” John Adams elaborated on the changes to the code being considered. The President “acknowledged the leadership of faculty” and said “the message that tenure is here to stay is coming through” and that “tenure must be reformed to be an effective and efficient tool.”

John Adams’s opinion was that “in retrospect, Nils might have been better off had he said less about ‘faculty leadership’ in the process. . . . He was in a vise of her [Keffeler’s] making, and standing between her and the faculty, not wanting to bail out, but knowing that he served at the Board’s pleasure.”

In the discussion at the regents’ meetings, Medical School Dean Frank Cerra said the University could have a single tenure code, although the AHC might have to make “a one-time adjustment in the definition of base salary” in order to set a reasonable base salary. The location of

tenure was raised, with Farber reporting he had favored unit-based tenure but now did not, because universities that have it don't use it and believe it "harmful to morale." Keffeler noted that if the location of tenure is not among the changes proposed, then "it is still off the table" and she "expressed concern that [it] was not being fully examined." She asked for more analysis by department of tenure. The relationship of tenure to academic freedom was also raised, with Keffeler asking that it be examined, why it was important, and what was needed "that isn't provided by the First Amendment?" The link has been claimed but not explained, she said, and though the process of review should move quickly "to reduce misinformation and anxiety," it must be "thorough." She also said there must be collaborative effort to "dispel the fears of the faculty."

The only additional information in the Daily article the next day was that the President had sided with Farber in changing his mind about the desirability of unit-based tenure. Hasselmo later said that he had "never advocated unit-based tenure, only that the matter was an issue and should be reviewed."

Reflecting a concern that he had emphasized time and again, Fred Morrison wrote to Carl Adams in mid-March to urge that tenure code changes be provided to the Senate committees by April 10 if they were to be taken up during the academic year, and cautioned that "it would not be a good idea to have new proposals 'sprung' on the committees during the last weeks of the term with a request that there be immediate action on them." He suggested a letter to all interested parties, including University administrators, soliciting proposals.

Events over the next few days were heated, and a number culminated in more heated discussion at the FCC meeting on March 21.

The Washington Post on March 11 contained an editorial that said the "latest outburst" on tenure came when Minnesota president Hasselmo asked the regents to consider tenure changes to increase flexibility, reduce the number of faculty, and perhaps lower salaries, and that they should consider a national discussion. This led to "a flurry of protests, the formation of a new faculty alliance, and . . . tremendous eddies of angry rhetoric and calls for action across cyberspace." A national debate "may reveal that tenure no longer serves either academic freedom or academic security." This editorial caught the attention of the Minnesota faculty.

Hasselmo commented later that he had not asked the regents for these changes. "I simply sent a summary of agenda items that had been identified in previous discussions to the Chair of the Board of Regents." He was emphatic that he had not asked for a "national discussion." Swan believed the editorial's reference to Hasselmo's request was based on the November 20 letter. Feeney thought it was possible to interpret the letter as a request.

Four days later President Hasselmo and FCC Chair Carl Adams wrote joint letters to the Washington Post and to AAU and NASULGC institutions about tenure review at University. They maintained that misinformation has been distributed on the Internet and that the process is “faculty-led and governed by the Senate’s constitutional procedures.” The letters were circulated widely on campus.⁴⁴

The joint letters led Law Professor Bob Morris to email Hasselmo. Morris took issue with the President’s views about the process. He said that he was “heartened to read in your letter that ‘[a] tenure review process was begun: a process that is both faculty-led and governed by the Faculty Senate’s constitutional procedures.’ Unfortunately, this is not true.” Morris cited the campus newsletter Brief, reporting that “‘faculty leaders Carl Adams and John Adams told regents about changes that are planned in the tenure code,’” and admonished Hasselmo that “‘the ‘Faculty Senate’s constitutional procedures’ to which you refer in your March 15th letter do not provide for such submissions to the Regents. Those procedures require that any proposal for change originate in the Tenure Committee, since reorganized as a sub-committee of the Faculty Affairs Committee. Since that committee is not elected but is appointed from those faculty members who are willing to serve, its proposals must then go to the Faculty Senate, an elected body which does represent the Faculty. The Faculty Senate then makes the final proposal in a forum in which only the Senators vote but in which all faculty members have floor privileges. Only after that process is complete may the matter be referred to the Regents. The presentation by Professors Carl and John Adams are, therefore, in violation of our established procedures. They have no authority to present to the Regents any changes in the tenure code. And it is dangerous for them to do so. There is no assurance that their proposals will correspond with any legislation ultimately suggested by the Faculty Senate.’”

Further, Morris told Hasselmo, “I can assure you that no few members of this faculty can accurately report the attitudes of the faculty at large. . . . The current process, with ill attended forums, no concrete proposals, and untutored leadership, cannot generate any carefully considered changes. There is a large body of scholarship concerning these matters. No scholar should undertake to work in this area without becoming reasonably informed about it. At the first forum, Professor John Adams admitted that the discussion document which was meant to bring out the issues had been formulated without regard to important positions and arguments advanced in AAUP position papers. The AAUP, of course, does not have a monopoly on wisdom concerning these matters, but it has given long, careful and thoughtful study of them, and its positions deserve careful

⁴⁴ See later for the FCC response to the letters.

consideration.”

Morris said that the process in place “takes an end run around our established procedures. I do not find it compatible with ‘the Faculty Senate’s constitutional procedures,’” and he asked Hasselmo to “use your good office to make sure that this matter is handled in the orderly way that is mandated by our governing documents and that no ultra vires presentations to the Regents, pretending to state the faculty’s position, be made in the future.”⁴⁵

Copies of his email were later sent to FCC. Carl Adams said no changes have been presented to the Board, the appropriate processes will be followed, and that they have as a collegial matter discussed views with and solicited comments from the regents. John Adams later commented that “of course, Carl’s statement was accurate.”

Dan Farber received later a copy of Morris’s email, and commented on it. He said he was “puzzled by the idea that the regulations prevent the regents from consulting with individual faculty members regarding university issues, or that any informal interaction outside of the formal amendment process is inappropriate. . . . Given the determination of the Regents to obtain information about tenure reform, it would seem especially inappropriate if they heard only from outside consultants and administrators, but not from the faculty leadership. It seems to me that it is very important to prevent a breakdown in communications between the faculty and the ultimate decisionmakers, the Regents. As you know, the Regents are required only to consult the faculty, but I think it would be a serious blow to the institution were they to act unilaterally to impose changes over the protest of the Senate. For this reason, it is crucial for the Regents, faculty representatives, and administration to be fully informed as the debate progresses.” Farber agreed, however, that “none of this should be inconsistent with adherence to the formal committee structure or with Senate procedures.”

John Adams saw Farber’s email, and commented to him that “I don’t know of any prohibition on consultation, in fact it might be a good idea for those who understand the issues to brief the regents well in advance of the date when they have to act on recommendations reaching them.” He suggested that meetings with small groups of regents, to avoid violating the open meeting law, might be helpful.

Adams also recalled that “on most routine matters, I have maintained for as long as I have been on FCC that faculty consultation with the regents needs to be carried out very sparingly unless

⁴⁵After the April regents’ meetings, the UFA distributed to all faculty by email a copy of Morris’s letter and said it letter “makes important points regarding the procedures which have been followed.” The all-faculty email list was about 2900 names at this point.

there are very good relations between the president and the board. Last year, when there was a not-very-thinly disguised effort to weaken and/or embarrass the President, I avoided dealing directly with hostile regents except at board meetings.” Adams agreed completely with what Farber had to say to Morris.

Hasselmo said “this chicken and egg problem recurs throughout the process: how do you get the issues on the table without discussion and solicitation of comments?”

On March 14 Dan Farber sent, on behalf of the Tenure Drafting Group (the Gang of 4), to Tenure Subcommittee Chair Mary Dempsey a 28-page document containing specific wording changes to the tenure code. Although it is not now clear how many people received copies of these proposals, they were not circulated widely beyond the Tenure Subcommittee.

* * *

THE AHC TENURE FORUM

The last of the tenure forums took place on March 14, held in one of the AHC buildings and attended primarily, but not exclusively, by AHC faculty. John Adams explained the process to the approximately 85 who attended and then outlined the goals and the changes to be proposed. Those present asked questions about the language; Mary Dempsey promised to email it to the faculty as soon as she could. Much concern was expressed about base salaries and variable income dependent on grant funding; there were also complaints about a lack of financial information about the Medical School, confusion of Medical School problems with those of the AHC, and manipulation of the process by the administration. A point repeated was that money was the problem, not tenure. There were comments about Brody, about why he had a representative on the drafting group and that he “has publicly stated the faculty are the problem in the AHC.”

Carol Wells (Medical School) wrote later that she had attended the forum “without realizing how much it would change my life for the next year. John Adams made me realize that ‘something was rotten in Denmark’ and that tenure code amendments were being drafted by unknown persons who wished to fulfill a preconceived (and unknown) agenda.” She followed up with a memo to Fogelman [chair of the Senate Judicial Committee] reporting on the forum. She reported that Adams had talked about a professional judicial officer and that she had questioned him about it, recalling that the Judicial Committee had opposed such an appointment. “Adams then asked me if I had attended the most recent meeting of the Judicial Committee. I replied that I had not. John Adams then publicly stated that he had presented these proposals to the

Judicial Committee at their most recent meeting, and that there had been no opposition” from its members. Wells went on to tell Fogelman that “I have subsequently spoken to two members of the Judicial Committee, who did attend the last meeting, and who related to me that John Adams’ appearance at the [meeting] was a ‘last minute’ appearance for about 10 to 15 minutes. The members of the Judicial Committee were unprepared for his appearance at the meeting, but everyone listened politely, and John Adams left. The above scenario indicates that John Adams may not be completely truthful in his interactions with the faculty, and that he may not be the best person to act as Chair” of the Tenure Working Group.

Rick Purple commented on the forums as well. “Bob Morris went to two or three of those. He stood up at the first one and said ‘John Adams, you don’t know what you’re talking about.’ Bob Morris is a former governor of the national AAUP. He is our premier person on this campus when it comes to [AAUP Redbook] academic freedom and so forth. When that guy speaks, he knows what he’s speaking about. When he stands up and tells John Adams he doesn’t know what he’s talking about, things are seriously wrong.”

Purple provided his own summary of the last tenure forum. “John came over here and gave his speech. It was a fiasco. He’s putting out these big generalities you can’t sink your teeth into; there are no specifics. Everybody in the audience is standing up saying ‘give us a draft! We don’t know what you’re talking about until we see the language.’ And here’s John, not wanting to give us the draft. By March, everybody in the AHC knew about re-engineering and how you present things on overheads, and then you take the overheads away and you don’t let them see anything else. There was nobody in the AHC in March who was going to settle for that. ‘You give us your words. Let us read it, and see what the specifics are.’ That’s when we finally pried out of Mary Dempsey the draft, and that’s when all hell broke loose. Now you could see where re-engineering crept into the tenure code.”

Hamilton explained the impact of the Mayo forum on him. “That meeting in March, of the AHC faculty that John called, was my first real awareness of what was going on in terms of the Gang of 4. I had been talking about this, and hearing about it, but I had not focused on it as a personal issue; I hadn’t invested any of my intellect or anything in this.” He had been meeting with the Gang of 19, “and I was listening to them, and I was thinking I was understanding it, but I was not fully engaged. But when John got up and gave his kingly talk, at the end of that I was so enraged” that he and Judy Garrard started to work together. Hamilton did not know her, but knew her name because she had been chair of FCC. “She was on one side, and I was on the other side, and we just lambasted him. There must be a recording of that meeting, somewhere. Then it

was Judy and I who forced the issue about distributing the words that the Gang of 4 had come up with. It was shortly after that that we began to work more closely together.”

FCC received, the day after the latest tenure forum, an email six-page summary of the forum prepared by Garrard; it noted that most discussion was about separation of tenure and salary, asked if this were a tenure crisis or a compensation crisis, and said that there were demands for more information from FCC and the Tenure Working Group. She said the two Adamases “at times did not distinguish between the Medical School and the other 6 schools in the AHC,” and “when asked for evidence that a compensation crisis actually existed throughout the AHC” they could not respond. She said that John Adams “was initially reluctant to distribute” language until it had gone through the committees, but “the audience insisted that the 14 points being discussed could be date stamped and that faculty would be not be able to appropriately advise their faculty senators if the points are not published NOW” (emphasis in original). The meeting was described later to FCC as “contentious” by Roberta Humphreys.

A March 20 campus newsletter (Brief) reporting on the forum said most discussion was about re-engineering, that “anger and distrust” were voiced by AHC faculty, and that questions were raised about financial situation of Medical School and the lack of information about it. There were also complaints about the secrecy of the re-engineering process and who is on re-engineering committees. Claims were also made that Provost Brody was ignoring the governance structure; the newsletter quoted one individual as saying “the atmosphere in the AHC could characterized ‘by one four-letter word, and it’s called fear.’” Chuck Campbell was also quoted: “during the Depression, some faculty voluntarily took pay cuts to help the U, he said, but ‘the present atmosphere here is that the faculty is the enemy and the administration is the University.’ His comment was followed by long applause.”

*** * ***

At the FCC meeting on the same day as the forum with AHC faculty, Professors Carl and John Adams came late, directly from the tenure forum, where they were joined by the President. John Adams reiterated the point that satisfactory progress on tenure issues will not be accomplished until more information is made available to the AHC faculty about the nature of the financial difficulties that have been offered as justification for reorganization, and again noted the difficulty of getting accurate financial data for the AHC. He said it was clear that many faculty in the AHC do not trust what is being said and the need for abrupt and drastic change in the AHC is not being accepted by many. The faculty did not necessarily oppose change, but they oppose it when they do not see the

factual basis for it. He told FCC and Hasselmo that before the tenure discussions go any farther, there must be more information provided from a trusted source; the faculty feel that ambiguity is being used to promote rapid changes almost independent of financial exigency, and faculty were asked to participate in discussion but denied the facts they needed to support change. The President promised to talk with Provost Brody about providing information.

Carl Adams told FCC that he and John Adams felt, during these tenure forums, that the faculty are talking to them as if they were the President. The faculty are saying things about the process for change that they -- the Adamses -- cannot evaluate. There are a lot of angry and anxious people; some of it is due to representation, some to arbitrariness, and some to external forces, and it does not seem to these faculty that the process of change is well-reasoned.

Hasselmo said he had been involved in some of the discussions, and they are faculty driven. Both Professors Adams were quick to tell the President that the faculty of the AHC do not believe that. The President and FCC discussed at some length the tenure issues.

John Adams wrote later that the "AHC faculty failed to make a distinction between what the Working Group and the Committees were doing and what the AHC provost was doing. In the minds of most AHC faculty, it was all one effort. Those of us on the inside saw things quite differently. We saw senate activity and working group activity as distinct from the reorganization efforts and other issues inside [the] AHC." He commented that the fact that even the AHC faculty leaders did not make the distinction "shows how widespread was ignorance and consequent mistrust and fear."

FCC was then joined by Senior Vice President Infante; they discussed the views of individual regents about tenure and the AHC. Infante urged that there be only one tenure code for the University, and assured FCC that if the discussions needed to continue beyond spring Senate action on code amendments, it would. If the regents don't like something, or want more, they will bring it back to the faculty. He told FCC that "he has learned that when one does not fill in the blanks in a discussion, people will fill in those blanks with their worst fears." The biggest issue at this point was a possible adjustment in base salary for Medical School faculty; the rest of the issues could be dealt with in a way acceptable to the faculty at large, it was said.

Following the March 14 FCC meeting, FCC members were provided an email copy of a March 7 letter from Dan Feeney to Faculty Affairs; Carl Adams had asked that FCC members receive a copy.

* * *

THE GANG OF 19

By about this time, mid-winter of 1996 -- the participants

could no longer remember exact dates -- there had been active email discussions occurring among a number of senior faculty for some time. Those exchanges evolved into what later became known as the "Gang of 19." It became the Gang of 19 because that was the number of the faculty who signed a resolution that was presented to the Faculty Senate on April 18, about which much more follows shortly. The only word Ellen Berscheid could find to describe how it came into existence was that it "coalesced." It is also difficult to tease apart the separate evolutionary paths followed by the Gang of 19 and the UFA (because there was some overlap in both activity and membership), and the subsequent revitalization of the University's Twin Cities chapter of the AAUP. Such recollections as the participants had are presented here (and to a certain extent jump ahead to events that follow), in order to set the stage for what comes in the spring, in later 1996, and into 1997. The reason for the growth of the groups was, clear, in the view of Carolyn Williams: "because of dissatisfaction with not being adequately represented" by FCC.

Humphreys said that "many of the members of the Gang of 19 had been on the search committee that picked Phil Shively [as Provost]. They were the core of the Gang of 19." Campbell related that "other future members of the Gang of 19 rallied to Phil's support when it looked like the President might be talked out of approving his appointment as AS&E provost. Myself included."

Humphreys recalled that "the original Gang of 19 -- the 19 signatures -- expanded very rapidly after the April Senate meeting. Everybody wanted to join." There were fewer than 19 at the beginning, however. "The core of the Gang of 19 really began with a constant series of telephone calls between Fennell [Evans], Ellen [Berscheid], and me, beginning in about November. Close ties developed between many of us because of the search committee connection. I started telling them what was happening on FCC, beginning with the November 20th letter. That's when Ellen got alarmed, when she saw that letter. She went to the regents' professors about that letter. That's where it started. We'd been in a lot of communication before this, but it wasn't until the November-December period that we realized we had a problem. Fennell was working closely with David Hamilton on grants management at the time."

"Then we continued to talk, there were the Senate forums, there was the Najarian thing -- it was just all so much happening at that time. It probably wasn't until about February that it was beginning to be obvious that a crisis was developing." The tenure forum held in the AHC also brought in people.

"It kind of grew. By mid-March, by the time of that AHC forum, I think it was Ellen who called me and [said she and Fennell Evans] had been talking and decided it was time to stop

just exchanging emails and talking on the telephone, and time to do something. I think the first real meeting, where we physically sat down and said, 'is there something we can do here?' was March."

"We informed Paula [Rabinowitz] and Tom [Walsh] of what we were planning for the April 18 meeting," because, according to Campbell, there was a rumor that UFA was going to propose some kind of motion at the Senate meeting. "So," Humphreys said, "we had to tell them what we were doing. At that point, we started communicating with the union people, because Tom had an email list, he knew who had signed UFA cards, and this was a potential group of people who would support our position. So we informed them of what we were doing, but it was only a couple of days before the April 18 Senate meeting."

"The Gang of 19, after the April 18 [Faculty Senate] meeting, decided as a group -- it got to about 30 people who were starting to come to the meetings -- we needed official identification. It was at that point, basically, that the Gang of 19 decided to take over the AAUP. Craig Swan was pulled in at that point." Swan was a long-time AAUP member, and officer in the moribund Twin Cities chapter.

"At that point we decided we would become the AAUP, so we all en masse joined the AAUP. That's when the Gang of 19 put out an email calling on the faculty to join AAUP, and to use this as a faculty forum. That was in May and June of 1996."

These recollections coincide largely with those of Berscheid and Fennell Evans. The two recalled that the Gang of 19 grew out of the core of the Shively search committee. The first meeting was in Evans's office. After that, according to Evans, "for a long time, we were meeting every Friday afternoon at 4:00 in the Physics building. I think the first big event was dropping that resolution on the Senate, and doing it in such a way that the FCC knew they were going to lose if they didn't go along with it. There was some very intricate maneuvering there."

Humphreys related that "the only division that occurred in the Gang of 19 didn't come until October, 1996. By this time, everything had changed. By September, the whole dynamic had changed. Now we had UFA, we had AAUP -- the Gang of 19 no longer existed, it never was a formal organization, anyway." Although, as Campbell pointed out, it did have meetings. However, according to Humphreys, "the AAUP leadership was now sort of the Gang of 19, because we had all joined." Including, she said, Berscheid and Evans.

Another faculty member commented that Berscheid "was sort of this power behind the throne. But Fennell, Dave Hamilton, and Chuck Campbell were the three. To the extent that there was someone who called the meetings together and ran them, it seemed to be David. Roberta sometimes."

Hamilton's recollections were similar, but not identical,

to those of his colleagues. “The Gang of 19 actually started by Fennell and I getting a small group of people together. We met in 125 Shepherd Lab one afternoon.” Hamilton recounted that Evans “and Ellen were a pair, you might say. They had been bosom buddies since the issue of [the provostal appointment of] Phil Shively, and they spoke on the telephone almost every night. And at that time, Fennell and I spoke almost every night, because we had a common goal related to grants management.” Because of the grants management matters, Hamilton dates the genesis of the Gang of 19 to late 1995, rather than 1996.

“The August, 1995, letter from NIH came out,⁴⁶ and Fennell and I had been on a grants management committee and a re-engineering committee established by Hasselmo. We had worked very hard during that time together; we had absolutely consonant common goals. They were exactly the same. We would confer every night. Quite frankly, I was not aware of the tenure issue as I should have been, but it became obvious as time went on that Fennell and Ellen had been talking about it. I think that Ellen was probably a major reason we got a group of people together to talk about what the faculty could do, because the FCC was doing nothing.”

Hamilton, like the others, recalled that a variety of people eventually became involved. One individual in particular was the focus of attention. “We debated a long time about whether to include Tom [Walsh] in this. I’d had a long conversation with Tom on the telephone about this; I’d never met him, but I was extraordinarily impressed with his intellect. I was very impressed with Tom; I thought he had a keen analytical mind, and that he analyzed things fairly. I learned later on that very few people felt that same way about Tom, but I did and I still do. I think he’s a first-class mind.”

Hamilton also conveyed some sense of the perceptions that existed. “We had a lot of debate about whether to include Tom, because there was the view that if we got he and his radical buddies like Erwin Marquit and some of the people in Mathematics involved, Alfred Aeppli and Jay Goldman, then we were doomed.”

“We then began to meet in an informal way almost every Friday, from 3:00 until 5:00, in Physics, in the 4th floor conference room. I was the nominal organizer; I would say we’re going to meet, and would call Tom and say we need the room. There was never any formal agenda, never any formal leadership. It was more, from a psychological point of view, where you get a group process going. People start talking about things, and eventually things evolve.

⁴⁶Putting the University on “exceptional” status, meaning its activities, particularly financial transactions, required careful scrutiny by NIH. This was another issue that served as a backdrop to the tenure debate.

“It was in the Physics meetings that Chuck [Campbell] came, and Roberta came, and others. A whole host of people, most of whom I’d known, but some I hadn’t known previously. Frankly, I think Chuck became the leader of the group, although I was the convenor. Chuck was the tactician in that whole process; he is a superb political tactician. It was through discussions with him and others that the Gang of 19 brought the motion to the Senate floor. Chuck was the one who started that whole thing, and who presented the motion. Then I spoke for the motion; I was the only one who spoke for that motion out of the Gang of 19, by plan.”

Morris said, of the Gang of 19, that the April 18 Senate action was “about the biggest and best thing we did. We were supportive of the idea of getting AAUP back on track. Walsh was with it; he was a member of the Gang of 19. Walsh, who had the cards, made it quite clear that he understood what had happened the previous time, by having rival faculty groups; we divided and conquered ourselves. His idea was to fold his group into the AAUP. We urged that.”

“Hamilton thought we ought to make ourselves our own organization, and we all nixed that on the grounds that we didn’t need two organizations. We needed one organization, and we should make it the AAUP. The AAUP would have a name with a little cachet, and would be a better label for us, better than something we might dream up on our own. Walsh was hoping he could just meld the UFA into the AAUP and go on from there. The BMS wouldn’t let him do it, but he knew and we all knew it, and the Gang of 19 was very supportive of this.” Morris affirmed that virtually all Gang of 19 members “were supportive of the idea that we should not have our own organization. That the AAUP and the UFA should close ranks. I don’t know anybody who thought that they should not. Some people decided, down the pike, that they didn’t want to have anything to do with it. They left.”

In Morris’s judgment, “the Gang of 19 was, by and large, a think group, a worry group. The thing that we did that was most public was too little and too late; the Tenure Working Group -- which was not a Tenure Working Group, it was the nom de guerre of John Adams -- had run its string anyway, and had done a very incompetent job.”

“Another thing that we thought was very important was getting Marvin Marshak into that position [Senior Vice President for Academic Affairs]. I didn’t know Marshak from Adam, so I didn’t get involved, but everybody was saying ‘we have to get somebody in there who has some scholarly credentials.’ This guy was an administrator who apparently had the respect of academics when he was the head of Physics. We were always meeting in the Physics Building, and there were an awful lot of people in Physics who were there. It seems to have come out of Physics.”

Purple recalled the genesis of his affiliation with the Gang of 19. “It was my oft-repeated request to have attribution in the minutes of FCC. I wrote at least three years, asking for attribution. The last time [it went] to the FCC, Carl never took it to the whole Consultative Committee. [I was told] Carl would give me an answer. Carl never bothered to answer me. At that March forum, I mentioned it to him; he just looked at me and said ‘we’ve been over that,’ and walked away.”⁴⁷

“That’s when I wrote [a] letter to the Daily. When my letter was printed, about attribution, I got an email from Roberta Humphreys, whom I’d never known. I knew of her, but had not met her. She said she was on FCC and had no knowledge of this request for attribution and had no idea that, in the past, attribution had been there, that she had felt uncomfortable about this, but that she had always assumed that’s the way things were done, even though she was uncomfortable with it. She was surprised at my letter.”⁴⁸

“So I started talking to Roberta, emailing back and forth. I asked her how the FCC was running itself these days; is it out of the chairman’s pocket or do they appoint subcommittees so everyone gets a piece of the action? Roberta emailed back that it was out of the chairman’s pocket. So things went back to the old ways, in which the chairman does all the work and everybody else is no more than a mouthpiece who sits around the table and gives an opinion. That’s not my view of what the FCC should do.”

“Roberta and I started emailing. Roberta and Judy Garrard had an ongoing email, because of Judy’s participation on FCC in previous years. Roberta started cc’ing Judy on the emails, so I started cc’ing Judy. Then the three of us were in this electronic back-and-forth: did you know this? did you know this? Roberta was absolutely stunned at what Judy was saying about re-engineering in the AHC, because they hadn’t seen any of this [outside the AHC].”

“[The Gang of 19] probably started meeting in February. Judy, Roberta, and I were in email conversations; Roberta said Chuck Campbell ought to be brought in on this. Somehow David Hamilton got into it. Finally things were going around in circles; it may have been Judy or Roberta who said we ought to meet. Somebody set up a meeting over in Shepherd Labs.

⁴⁷The minutes had identified speakers until the late 1980s, when FCC members began receiving (some said harassing) telephone calls from regents (who had read the minutes) about what they -- the faculty -- had said at FCC meetings. Because of intense interest by some faculty in who was saying what at FCC meetings, FCC finally agreed -- after discussing the issue repeatedly -- to begin to identify speakers in its minutes.

⁴⁸Humphreys wrote to Purple: “I want you to know that I agree with your letter in the Daily about the minutes. I did not know that previous minutes had identified the speakers. I have always been uncomfortable with our highly edited minutes, but just assumed this was the standard procedure for treating sensitive topics.”

Fennell got into it; Ellen Berscheid was upset about something. Fennell came into it mainly angry about the budget. He'd been working on an analysis of the budget. Roberta had heard about this; Roberta is a key thread to all of this."

"We sat down and started chatting about the different problems the University faced. Then AHC faculty started talking about what we were going through. They didn't believe us at first. Then Fennell began to present his budget data, and we began to realize what a serious business this whole University was in. Then this assault on tenure started surfacing, with the forums; that became the focus. 'We have to do something about this; this is getting out of hand.' Particularly those of us in the AHC, because of what Brody was after. We couldn't see this tenure process as anything except tainted by Brody."

Purple also recalled that they decided not to formalize the organization. Hamilton proposed doing so, but "I think the rest of us didn't particularly care for that. My own view was that this was a great thing and we ought to meet on a sporadic basis anyway, because it's a great way to find out what's happening here, there, and the other [place]. But in terms of organizing, Purple said "I wrote a memo advising against it, on the grounds that we were nothing more than a rump group. It's basically the same thing I said to the FCC after the April 18 meeting. You cannot have formal, collegial governance run by a rump group. You've got to have a formal line of organization. When the cook in the cafeteria is the most powerful political person in a university, something is very, very wrong in the way in which the university is doing things. A rump group is good for a specific emergency, but a rump group is going to splinter after that emergency is over with, unless they bid into the power or they form a revolution and take over the power. None of us wanted that. Yes, we'd already bid into the power; we had people on the AAUP, we had people from that group who were serving on the FCC, we had people who'd been active in governance for God knows how long. In that respect, there were stringers out there, and lines of information. Beyond that, however, my belief is that the FCC had to restore its credibility with the faculty. They're the legitimate faculty leadership group. It's got to be that way. I'm an old FCC member; I respect that. I think that Carl Adams and John Adams did a lot to destroy trust in the FCC, at a time when the University was sinking into a survival mode. There's a whole batch of bad things happening at the same time."

Anne Pick said that "for some people, there certainly wasn't a clear set of goals, but it was 'isn't there something we can do here besides stand around in the halls, wringing our hands, while the University falls down around our heads?' I know this is why I started meeting with them." They met once a week during the spring and early summer. Pick also recalled

that Berscheid “never came to meetings.” (Berscheid’s recollection is different; she went to meetings earlier, but not later in the summer; she and Evans had decided he would go to meetings while she did other things.)

* * *

Both Murthy and Williams became involved with the Gang of 19 several months after the email exchanges had already begun, in April. Both of them, as with most Gang of 19 members, also later went into the AAUP. But at this point, before the AAUP was re-energized, the Gang of 19 played a different role. Williams said that it was “an alternative to the union. At the time that I started, after the April 11 faculty meeting, at that point I was not convinced a union was the way to go.” Neither was Murthy.

William amplified. “UFA was not an alternative for me at that time, because I hadn’t yet concluded that unionization was the solution. The Gang of 19 was a group of faculty who were very concerned and working on this issue, so that was a very natural group for me to join. Then the idea of revitalizing the AAUP came out of the Gang of 19. The AAUP was this national organization; protecting academic freedom was its main purpose. It also was a very natural fit for me. It wasn’t until the Morris code [proposal from the regents, in September, 1996] that I said ‘a union is what we have to do.’”

According to Murthy, “the Gang of 19 took the same position. We thought we could solve it by negotiations. That’s why I was asked to do this, she was asked to do that, and report back. We talked to regents, we talked to administrators, we talked to anybody of relevance to the issue. The union issue came in our group much, much later.” It came after the regents issued their proposal at their September meeting in Morris.

Murthy recalled that he and Carolyn Williams were elected president and vice president of the AAUP in late May of 1996, although the initiative on reviving the AAUP chapter would come with a visit from Mary Burgan, national AAUP president, in early April. That visit came at the request of chapter members. “The local chapter, under the presidency of Bob Sloan, was not in the loop” earlier than the spring. “The question of revitalizing the AAUP happened in discussions in the Gang of 19 in the two to three weeks prior to that. That is, the Gang of 19 said ‘maybe now is the time to revitalize the AAUP,’ because the Gang of 19 was such a nondescript group.”

Murthy also recalled an earlier meeting of the Gang of 19 “on how to proceed; there was no clear leadership, and we all agreed that each one of us will undertake a function. There was a public relations and liaison with the legislature function, for which Craig Swan was suggested. There was a group to do AHC things, Hamilton’s subgroup. I was asked to be with regents. Instead of having a

singular leadership, tasks were assigned to various people, and any time the Gang of 19 [met] -- informally because we didn't have a room -- these groups would say 'what have we learned.' That's how we proceeded until it was channeled into the AAUP formally."

Williams remembered that in late May, "David Hamilton agreed to convene the Gang of 19. He would call the meetings; he also had a way of coming up with a good email list. [We called it] the Alliance. We defined who was the Gang of 19 by who was on the email list. That was about 35 people, at that point. I don't know that that 35 people expanded much beyond that [in early May]; it was pretty consistent from May on."

Before that, Murthy agreed with Humphreys: "it was expanding every day. The reason I got involved was I was walking down the campus one day; I ran into [Mathematics Professor Allen] Goldman. He and I moaned and groaned about what the regents were doing. He said 'hey, there is a group meeting in Physics; why don't you show up?' I went there; the next thing I know, I was a member of [the Gang of 19]."

Williams also noted that Walsh and Rabinowitz were on the email list, "but they never considered themselves members of the Gang of 19. It was a very amorphous group. At some point, Tom [Walsh] came to a Gang of 19 meeting and said 'I'm not a member of the Gang of 19,' even though he was on the email list.⁴⁹ The Gang of 19 was really not a formal entity, and in May we talked about whether or not we should be; [and decided] 'no, let's have it be the AAUP.'" Murthy agreed; "there was a formal discussion in which we said we'll create a revitalized AAUP chapter."

Murthy also pointed out that "the UFA had a head start. They were a distinct organization. They collected membership dues. \$25 per person. We don't know how many attended the meetings, but membership was formally established. As members of the UFA, they were working together with [the Gang of 19], but not as part of it. The UFA was not part of the Gang of 19, although some of the members were in both places. Roberta Humphreys [was in both], just as we were part of the Gang of 19 and the AAUP."

Campbell iterated Williams' views with respect to collective bargaining. "There's one thing both Roberta [Humphreys] and I feel very strongly about, and it emerges in the questions here. There are people who you're talking to who would like to leave the impression that much of the opposition in this was from people whose only objective was to have a union. This comes through in John Adams' statements over and over again. I want to make sure that it is clear that the Gang of 19, for

⁴⁹ Ellen Berscheid recalled that Walsh attended the meeting because he was invited, and that they did not consider him a member of the Gang of 19 because they wanted to keep separate from the union.

example, kept the union at arms' length.⁵⁰ Not that there weren't people in the Gang of 19 who were sympathetic or felt early on that the signing of cards would turn out what had to be done. In all those meetings of the Gang of 19, I never sensed, even underlying, the feeling that 'these are actions that will serve our purpose in achieving a union.' That was absolutely not there. I didn't sign -- and thought I would never sign -- an authorization card until it finally became clear there was no hope. It's not that I was against a union. I never joined UFA, but I was very supportive of the union right on through the election, because by then I thought that was the only way we would succeed."

"But John clearly feels the union people seized the show right away. The evidence for that, undoubtedly one of the reasons he feels strongly about that, was that meeting in Physics in early January that he attended."

Humphreys commented that she didn't join UFA until mid-August. "I have always had the feeling -- no one has ever said anything to me -- that John, Carl, and Virginia always thought I was union mole in the FCC. I was not, and I was not a member of UFA until August, 1996. What made me join was the anonymous proposal, and the minute I heard Hogan & Hartson was back on the scene, I said to myself that was the end. I'm signing."

Swan and Pick offered other observations about the Gang of 19 and its eventual link with the AAUP. "I think the other interesting thing about the Gang of 19 was that there were so many different people from different parts of the campus that came together. It really energized the School of Public Health. And it brought in some newer people, but they were primarily the basic science people, not the clinical faculty."

Pick also noted that "during the latter part of the time when the Gang of 19 was meeting was also when AAUP began to gain more visibility and some more members. Lots of the members of that group then joined AAUP."

"There were explicit discussions that the Gang of 19 shouldn't be an ongoing body. The national resources and the traditions the AAUP represented were seen as potentially very valuable sorts of things. I don't remember details, but all the discussions in the Gang of 19 quickly focused on the AAUP rather than the UFA."

Morris commented on the marriage of the UFA and AAUP. "It didn't seem to be very painful as far as I was concerned. The fact is, a large number of the AAUP leadership were very strongly in favor of a union, and a large number of them were very much not in favor. So the schism, if you want to look for one, was in the AAUP itself, which is a catholic organization, embracing all

⁵⁰ Berscheid agreed. She said that "we were careful about that. Walsh was always a 'guest' at our meetings."

wings.”

According to Morris, “the wing of the AAUP that favored unionization didn’t have any trouble with the UFA group. There were three wings. There was a wing of people who felt that ‘we missed the boat the last time; we should have had a union all along.’ There was another group of people who said ‘we’re between a rock and hard place, and what we really need now is a union, and it’s our bad luck to need a union, but we really do need one.’ And there was another group who said ‘it’s a mistake to have one.’ But they were all civil to one another all the way along.”

“There were some silly things that did happen. Walsh came over here to give a talk to the Law School faculty. After he left, some of my colleagues were talking about what Walsh was like, and they were demonizing him! On what evidence, I don’t know. Everybody was doing that a bit; everybody was over-reacting to what was said, in all sorts of ways. You ought to have heard what some people were saying about Fred, demonizing him.” Morris thought this was happening “in the faculty generally. Outside the AAUP, inside the AAUP. There were only two members of the AAUP in the Law School; the other Law School faculty were demonizing Walsh. I’m sure they were doing it in other parts of the University also.”

“It was quite clear to me that Walsh was not a power-grabber kind of guy, but they all thought that he was. I suppose I was demonizing John [Adams], because it looked to me like he was - not necessarily a power-grabber, but he certainly was having a very comfortable ego trip.”

In the judgment of Fennell Evans, the nature of the Gang of 19 was changed after Hamilton invited a large number of Public Health faculty to join. It seemed to Berscheid and Evans that the infusion of the many health sciences faculty and their re-engineering issue almost seemed to distract from the tenure issue. Berscheid worried that several professors in the health sciences were less concerned about tenure than about re-engineering. Both Berscheid and Evans tended to agree with John Adams’ proposition that the people in the health sciences sometimes got the tenure debate and the re-engineering debate mixed up. Berscheid commented that “those people [in the health sciences] live in a different world.” She said that she and others were sometimes concerned about how interested those in the health sciences were about rest of the University, but they “recognized that the concerns of the AHC faculty were more immediate than they were for professors in other parts of the University; their academic world already had been turned upside down, whereas that kind of upheaval was still on the horizon (although rapidly approaching) for faculty outside the AHC.”

Despite their primary focus on re-engineering, Berscheid had great respect for them. She recalled that she and Fennell Evans were “surprised at the extent to which some faculty were afraid to sign anything or commit themselves publicly -- privately is another matter -- to anything that would

appear to put them in opposition to the regents or administration. Many people in the health sciences were especially fearful, given Brody and his imported ‘goon squad.’” That is why, Berscheid said, she did not “ever want to denigrate the Epidemiologists, who got out in front relatively fast.” People such as “Carol Wells did yeoman service on the Gang of 19, and so, somewhat later, did Carolyn Williams and several others. It came as such a surprise to us that many faculty were afraid publicly to express their opinions. Perhaps that’s why the union vote was as strong as it was; for some faculty, this was the first time they could express themselves in a meaningful way and remain anonymous.”

Campbell commented along similar lines about Wells, in January 1998: “with Leo Furcht as her department chair and Cerra as a former collaborator, she was in a rather precarious position, and I believe showed tremendous courage with the stuff she went public with and with her direct confrontations with Cerra and Brody.”

A week after the last tenure forum (in the AHC), as the faculty at the forum had demanded, Tenure Subcommittee Chair Mary Dempsey emailed to all faculty the draft amendments/interpretations of the tenure code from the Tenure Working Group/the Gang of 4. She cautioned that the Tenure Subcommittee had not approved specific wording and that both her committee and Faculty Affairs would consider amendments over the next few weeks. Any changes would also be sent to the Judicial Committee and to FCC. Dempsey remembered that things such as department-based tenure “may have appeared in the Gang of 4 proposals, which were, to some extent, edited by Carl and Dan Feeney and Dan Farber and myself. Some of the items that were really bad did not even make it to the faculty, for example, some of the items proposed by Provost Brody’s lawyer.”

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THE RELEASE OF THE GANG OF 4 DRAFTS

One faculty member said the language (drafted by the Gang of 4) that Dempsey released -- in response to demands at the tenure forum held in the AHC -- before the committees acted on them, was a mistake. Dempsey herself thought the premature release was regrettable. She recalled that the forum held in the AHC was “very heated. There were people there who really wanted to see the draft from the Gang of 4. What I had wanted to do was have the Tenure Subcommittee go over it and pull out the stuff that was never going to see the light of day. What happened was that they were so upset, they demanded to see the draft right then. Carl said it was OK to release it, so we did release it. I did have a cover letter that said the Tenure Subcommittee would not pass certain items, but that was almost too late.”

Bland also agreed. If the language “had come out from the subcommittee with all of the comments, saying the Tenure Subcommittee had looked at it, ‘we don’t like this, we think this isn’t appropriate,’ and so on, it would have positioned the Subcommittee as a powerful group. It didn’t get that chance. In the best of all worlds, you would have everything open all the time. In the best of all worlds, I would say ‘sure, give everybody anything they want any time they want it.’ It seems like the best policy most of the time. But this time, because Mary didn’t have the opportunity to say the things she had to say about it, it really provided an opportunity to make it look like the Subcommittee was not doing its job.”

Bland concluded that “in retrospect, it would have been best if Mary would have just held it for a week while the Subcommittee worked on it, and said ‘you’ll have it, but not yet.’ She put that little paragraph on it, saying ‘we haven’t looked at it,’ but who paid attention to that? Again, it could be a happenstance that people could just take advantage of.” She added that “I don’t think any of the FCC members were supporting the language coming from this group. Nobody was. We were supporting it going to the Tenure Subcommittee to be revised. Nobody thought what was coming from those people was great the way it was worded. It was a question of ‘why blow up yet?’ That was Dan and Mary’s position.”

Morrison did not agree that release was a mistake. “I don’t think it was unfortunate. If we had not come out, I think that those were issues that somebody was going to press. Nobody in the faculty. I think we might have had a much worse situation if it had not come out, because if only the things that come through the committees had been published to the faculty, we would have the regents much earlier saying ‘this isn’t enough.’ Then we would have had the explosion in June instead of September.”

“I tend to be of the view that, particularly in this University, you can’t keep things secret. If those issues are out there, there’s no particular harm in saying ‘this issue is out there, and there are people lining up in support of this issue, and if you want to protect yourself, you have to defend yourself.’ I don’t think that was a mistake.”

“I do think it heightened, and moved forward, the controversy; it might have been put off for another month and a half. All of a sudden people started seeing how bad this was. This was, of course, tied in with re-engineering in the health sciences, so the two were closely intertwined for the health sciences people. I remember one [Law] colleague saying to me, he remembered hearing from the health sciences people in October and believed they were paranoid, but the paranoia seemed to be infectious, and everyone was paranoid. Now they saw how far-reaching the re-engineering was; people in the Law School were seeing that what the academic health center had

been saying, back in October and November, based on their internal discussions, and what this document was really like.”

Virginia Gray observed that “they were supposed to go through the regular committee process, and then to the Faculty Senate. I don’t think there was ever a question about that. Again, in that sense, whatever the Gang of 4 did didn’t matter a lot, because Dan Feeney was going to dismantle it, or Fred or Mary or Ed. We had good committees, and they weren’t going to roll over to the Gang of 4.” Asked if it was a mistake to release the language, Gray commented that “it was a mistake having them writing in the first place.”

Dan Feeney’s views were parallel with that of Morrison. “If you tried to squelch that thing, and somebody got hold of it, what would have happened? I would rather disclose what I have, and say it’s still going to go through the process. That was our idea, but people [believed] this was what was coming. We said ‘no, no; it’s just being dumped into the hopper; this is what was handed to us.’”

“There would have been far greater political damage had that thing been squelched. Had we hid it in a committee, and somebody spilled the beans, [the reaction would have been] ‘you guys have been sitting on this and you haven’t told us how bad this is?’ [It was better to] tell the worst. Be straight about it. There was no good way to have this stuff out here. It’s like the Gang of 4. My response was that I had no problem with them. I was one of the people who said -- although I don’t think too many people paid attention -- let four attorneys work on this, then you’ll get the worst-case scenario. Then you’ve at least got a target you can shoot at. Otherwise, you’ve got this nebulous ‘faculty culture’ and ‘tenure is bad’ and no solid provisions. Mary Dempsey and I were the people who said ‘hell, let them do it; it’s got to come back through the committees, anyway, so what do we care?’ At least get something on the table, because up to that point, we couldn’t get anything.”

“Yes, it upset the faculty. I guess I don’t necessarily feel bad about upsetting the faculty. I think there was a lot of laissez faire, ‘this-isn’t-going-to-happen, I’m not going to worry about it’ attitude among the faculty. There were, quite frankly, a number of people who didn’t even know what was going on. Even down to the end, there were a number who didn’t. There were also a number who were very afraid, who [used] the head in the sand approach: ‘if I don’t get involved, maybe it will go away.’”

Swan’s views coincided with those of his colleagues. “I think one of the problems was that too much had been too secret. I was arguing that more things be distributed. This Adams committee, what the Adams committee was doing, the nature of its report, was not as open as it should have been. I don’t think distributing the Gang of 4 report was a mistake. In fact, I think the Tenure Subcommittee and [Faculty Affairs]

should have sought as much input and broad consultation as possible.” Swan said that “if I had been in the AHC, I would have argued that, too.” He pointed out that “it wasn’t like you were negotiating a labor contract or something like that, in the sense of a real management-union negotiation, or some other sort of contract where premature disclosure could get you into some trouble.”

Pick concurred. “Had they not circulated them, that would have further promoted the atmosphere of ‘all this stuff is going on in secret and it’s going to be dropped on us without warning.’“

Fogelman’s recollection of what was going to happen varied from that of his colleagues. He agreed that reliance on the Tenure Working Group and the Gang of 4 was a mistake. “It was wrong, from the standpoint not only of what procedures were supposed to be, but of allowing the faculty its own voice in this process.” This was one reason why the process went awry, “when the faculty saw what was happening. We had a joint meeting of the Judicial Committee, the Faculty Affairs Committee, and the Tenure Subcommittee. It was a very dramatic meeting. This was before the Faculty Senate meeting. Some members of the Judicial Committee were very excited, and I felt very strongly, too.”

Fogelman said that “what apparently was going to happen was that the draft prepared by this Gang of 4 was simply going to be passed along to the Senate, without making changes of their own, to let the Senate have it. A number of us, members of Judicial Committee, including me, reacted very strongly against that. I remember saying, ‘is the Tenure Subcommittee just a rubber stamp for the administration on this?’ That, from my point of view, was one of the turning points. We felt very strongly about this.”

“I have clear memories about this, because it was a dramatic moment. Mary Dempsey’s view, as I recall it, was that this had been presented to them; they were going to pass it on to the Senate -- not endorse it -- and see what the Senate does. We reacted very strongly that that’s not good enough, that our role is to prepare our own -- this is the point about the faculty’s voice.”

“This preceded, by a few days, the letter from John Adams in Kiosk, which laid all that out, and confirmed that what they were up to was layoff powers. Which was the crucial issue. That would have been in it. That came out after that notorious Faculty Senate meeting. But it confirmed exactly what we feared, that that Gang of 4 committee had simply prepared a draft that reflected the interests of the Board or the administration. But not the faculty. And that was what we were going to be presented with. We took the position, very strongly, that this was not the way to handle this, and that this draft does not reflect what the faculty should present.”

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On March 18 the UFA distributed by email to all faculty a copy of Hasselmo's November 20 letter, along with the December regents' resolution.

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**THE REACTIONS TO HASSELMO'S NOVEMBER 20 LETTER:
DID HE CHANGE HIS VIEWS DURING THE DEBATE?**

This letter probably provoked as many spirited reactions as any other document or event in the tenure debate. There was a sense among some of the faculty that the position the President took on tenure, first with the November 20 letter (which he didn't write, but accepted responsibility for), and later his support of the faculty position, reflected a change in his views over time. Some said he was weakened at the outset, after the attacks by Jean Keffeler and his lame duck status; others believed he initially endorsed significant changes in the tenure code but subsequently changed his mind.

John Adams explained his understanding of the letter. "Nils told us that he worked rather strenuously with [Reagan] in crafting this letter, knowing that it would be the blueprint for whatever followed. I have the impression that Tom Reagan wasn't too close to the whole matter. Jean Keffeler, as chair of the Faculty, Staff and Student Affairs Committee of the Board, was really in charge of this matter. But it was Nils who worked with Tom on the letter, and Jim [Infante] who dealt with Jean in carrying it out. I don't know what conversations that Jim and Nils had, but I'm pretty sure that the two of them worked together in crafting the letter that we then received and worked with."

"That letter was the result of very tough -- tough probably understates it -- heated, contentious, extended discussion between Tom and evidently Nils. And Jim was involved. As far as who was talking to whom in their working it out, I had the impression that it was Nils and Tom who were fighting over what the letter would say, [and] it was clear that the letter said less than Tom wanted it to say -- a lot less -- but a lot more than Nils wanted to say. I have this all second-hand, [but] I do know that after the letter was sent, that was part of the basis for the series of topics that were discussed in the discussion document."

One faculty leader commented that "I think the November 20 letter was a terrible mistake." At one point, Bognanno "attacked Jim Infante. He implied this great rift between the Academic Vice President's office and the President's office. He said, with regard to this letter, that it was Jean Keffeler who essentially wrote the letter, and arm-wrestled

Nils to sign it. I don't know if that's true."

With respect to the statement that Infante drafted the letter, it was said that "that may be true. My memory is that Mike said it was hammered out in negotiations, and I remember him mentioning Jean Keffeler. Maybe this was a three-way negotiation; maybe Jean was putting pressure on Jim Infante. I don't know why you sign a letter like that, if it has things that you fundamentally disagree with. Again, it wasn't a letter that so much raised issues as seemed to prejudge the outcome of issues."

"When Nils testified before the House committee in January of 1996, his position was quite different. Whether he could have seen the light on the road to Damascus that quickly, or whether he signed that letter against his better judgment, I don't know."

What effect did that letter have on subsequent events? "I think it undercut his credibility dramatically. And it made many people very suspicious. I think that with a number of people, he restored his credibility, certainly by the spring. But there are other people with whom that was irreparable."

There was no doubt in Dempsey's mind that Hasselmo had changed his mind. About the November 20 letter, she said that while it bothered her, "I thought we could handle it. I guess I must have known at the time that he was under a lot of pressure, especially from Jean Keffeler. I think he honestly thought he was doing the right thing. I respected him for that; I thought maybe he'd get some code changes, but not all of them. I told him that. I said 'why don't you pick the things you really want, and we'll work on those?'" She observed that Hasselmo had obviously changed his mind "by the time of the September meeting in Morris, because he saw the draft the regents' consultant had written, but he must have been changing his mind before that."

In Humphrey's judgment, "the famous phrase about supporting 'the concept of tenure' . . . is what actually alarmed most faculty and led many to conclude Hasselmo had capitulated to Brody and Keffeler. In my opinion, the Nov. 20th letter is the most damning piece of evidence in this entire business!"

Murthy's reconstruction of events was this. "Somewhere along December of 1995 or maybe even January of 1996, Roberta [Humphreys] unearthed this letter that Hasselmo wrote to regents, the so-called November 20th letter. He mentioned something to the effect that tenure imposes rigidity and a lack of flexibility and needs to be examined. That began to circulate among faculty, and if taken at face value, it was very damaging. I don't know under what duress he wrote it."

"In retrospect, I feel sorry for Nils. Whoever wrote the letter, when a letter like that appears from the President, the faculty would not think he is one with us. I've had several

conversations with Nils, subsequently, through the letter and after the letter, and also with Bognanno once or twice. Nils emphatically claimed that was not his position at all. He didn't tell me who wrote the letter, but he told me he regretted it and that he has always spoken many times for faculty governance and tenure, because he came from the faculty. But that is not the position that most faculty take. Most faculty don't believe it."

Murthy explained that "Nils was chair of the presidents' group of NASULGC. I think that Nils was made the president of the presidents' club because of [C. Peter] Magrath. Magrath was Executive Director.⁵¹ Nils also listened to Magrath quite a bit. About October or sometime in 1995, Magrath spoke somewhere and also published a little bit about modernizing tenure. NASULGC's main activity the last two years was 'how do we bring land-grant universities up to the times?' One of the aspects was tenure. They didn't talk so much about governance per se, but tenure. 'Is it anachronistic?' And Magrath took a position; whether that had an influence on Nils, I don't know. The tone of the letter was very bad. And that's exactly the phrase that Jean Keffeler picked up: lack of flexibility and rigidity imposed by tenure. That phrase was bandied about."

"He was already weak in the sense that he had announced his time of resignation. Once you announce it, you're a lame duck. I don't know why he had to do it."

"The November 20 letter deeply alienated Nils from the faculty. Whether amends can be made for it later on, in part, is fine. Knowing what I know now, I can see that under the heat from Jean Keffeler on one side, and Infante on the one side, and people pressing him to do things because that's what she was yelling all the time -- 'why don't you do something?' -- he could easily have signed a letter like that."

Morrison related that he also found it ominous. "Did the November letter alarm the faculty? I don't know about the faculty in general, but it certainly led me to believe that was much more afoot than we had been led to believe."

Morris said of the letter that "I was appalled by it when I first saw it. It starts out by saying we must have tenure because everyone else has tenure and it's a matter of competitiveness, but there are certain issues are open. It's as though Juliet wrote a letter to Romeo accepting his proposal of marriage, saying 'of course I accept your proposal of marriage; it is the customary thing to do. But there are a few issues that are open. One is cohabitation; another is fidelity.' It's almost denying the premise." Morris grants Hasselmo some leeway, however, because at least on one issue, the question of decoupling tenure

⁵¹As noted earlier, Magrath was also a former president of the University of Minnesota. Hasselmo served as vice president for administration under Magrath.

from compensation, Morris believed Hasselmo was talking about decoupling of augmentations. But, Morris said, “that was not an issue; we had already done that. That’s what he was thinking. But everybody on the faculty didn’t know that, not knowing that was the conversation that had been going on in Morrill Hall. It was really as though Juliet said the issue of cohabitation still has to be negotiated.” As a result, Morris said, the letter “caused great unhappiness and worry for the people who saw it.”

Bloomfield commented that “reading your paper made me pay attention to a sequence of events that I hadn’t put together in my own mind. I have the sense that Hasselmo, like many of us, just didn’t realize what we were getting into. I think a lot of this is just stumbling into a mess.⁵² That bears on a couple of other questions: what was the Adams committee doing, what was the Gang of 4 doing? In general, they all didn’t realize the implications of what was happening, at least as they started out.”

“I think initially Hasselmo was very supportive of Brody. I don’t think he realized what impact Brody’s position on tenure would have. I remember once, when the FCC, in Hasselmo’s presence, was savaging Brody; Hasselmo said something like ‘don’t be too hard on the change agent.’ Hasselmo valued Brody for what he was trying to do in the AHC and to pull off the Fairview merger. I think he was willing to accept, initially, without thinking it through, that tenure needed to be re-examined as a result of that. But I think his true faculty instincts, as well as his survival instincts, kicked in later on. He was really quite genuine in his later attitudes about feeling that tenure shouldn’t be messed with in any significant way.”

As for the point of view that the November 20 letter was the most damning piece of evidence in the whole sequence of events, Bloomfield said that “it may well be. Again, I think you need to view this in a context that unrolls with time. It’s the most obvious reason that people as prominent and influential as presidents most of the time don’t say anything meaningful at

⁵²John Adams probably shared Bloomfield’s view. Adams commented on conversations he had had with Regent Spence, and in doing so echoed Bloomfield’s observation. “I think that she [Regent Spence] was inclined to keep these issues on the table, to get them resolved, without sensing the depth of concern on the part of the faculty. But as the whole thing went along, she’s real smart and began to see that there was more going on here than what looked initially as though it were an exploration of a particular set of regents’ rules and their relationship with serious financial questions. To a new person on the Board, this would look like an important thing to do, and she was the vice chair of the committee, so she went ahead and did it. I actually think that many of them, at the outset, did not see this as any particular big deal. And acquiesced in the pursuing of the agenda. Then when I came along and talked to the Board several times about what we were doing, there was a lot of nodding, ‘well, OK, that sounds fine, it’s not my committee, I’m not worried about it’ and you get on to other things.”

“I don’t know the point at which the regents had their attention alerted that more was going on here - we had been through a number of regents’ rules review and revision.”

all. Any time they open their mouths, people take them seriously. So in any kind of trial balloon or thinking things through, they just don't have that space for making mistakes that the rest of us do. I indeed think Hasselmo made a mistake, but who among us doesn't?"

Neither John Adams nor Fred Morrison thought Hasselmo really changed his position. Adams said "I never thought that he was in favor of substantial changes. But maybe we're using 'substantial' in a different way. What is substantial? Any change at all, in some people's mind, is substantial. Some people would think that post-tenure review is a substantial change."

"I don't think his position was ever in favor of substantial changes in the tenure code. He, however, works at the pleasure of the Board, and when the Board decided that they were going to look at the tenure code, he had two choices: He could agree to look at the tenure code, and work out the terms according to which it would be looked at, or he could quit."

"I know that he wasn't going to quit, because I think he knew, in his heart of hearts, that if he quit, the situation would be even worse than if he stayed. Then he writes a letter that would be acceptable to Jean and Tom, and then proceeds to figure out, with us, what we are going to do in the next six months to 1) accomplish needed changes and 2) protect the code. I thought that was the posture all along."⁵³

Morrison agreed about Hasselmo's position. "I don't think it evolved very much. If you go back to the summer and fall of 1995, Nils didn't want very much to happen." Morrison agreed that Hasselmo had tried to stave off any review of tenure by the Board. "Yes. He then decided he could not do that, and he decided he would have this approach of having the faculty consider it, and having it be a low-level consideration, he wouldn't be directly involved, Jim wouldn't be directly involved, and you bring something back to the Board that would be enough to stave off a massive fight."

"I think that was his position all the way through. He kept doing variations on that position, to accommodate the political necessities of the moment. I think the November 20 letter was a capitulation to Tom Reagan."

Morrison said he was not surprised to learn that Infante had written the letter, not Hasselmo. "The November 20 letter was a capitulation to doing far, far more than Nils wanted to do. He thought maybe the process could still control it. The thing he wasn't thinking about was the time bind that put us in. I complained about the time bind at that point, and we might

⁵³Adams later wrote to the author on this point. "I wish people had a better understanding of the position Nils was in from the very beginning. It would have been much easier for him to quit than to stay and fight. It would have been easy for him to let Jean appoint herself CEO of the University, then the critics would have asked why he did not stay and fight."

have come out with a much better solution if we had not been in the time bind. But he did it, he signed it, then he brought it to us, and said 'here it is, I hope you approve,' and did not get a positive response."

"I treat that as the beginning of the end of the breakdown -- the November 20 letter and bringing it to us afterwards. Together with the non-meetings of the working group and the mandate of the letter, that's the place at which the distrust started to bubble up. Something's going to happen here, there's an agenda. That's the place where people started to get very concerned."

"Some say he was weakened at the outset. Clearly he was weakened at the outset. One of the real problems, through the whole process, that he didn't believe in any of the proposals that were being put forward to make changes in the code. He believed something ought to be done here and there; I did, too! I thought there were all sorts of minor repairs and even some middle-level changes that needed to be addressed. I'm sure Nils thought the same thing. But he really didn't want to live a tenure war in the last 18 months of his administration."

Fogelman said he had given some thought to where the President stood, over time, on the issues, and linked his position to Brody. "I came to the conclusion that Brody could not have done what he did, including going to the legislature to lobby them on his own, without at least the tacit support of the President. Otherwise, it would have been such an act of insubordination that it would not have been tolerated or tolerable. Brody must have had the support of the President in doing that."

"The President eventually came out strongly for the faculty, and I certainly appreciated that. But I underline the word eventually, and I think it had to do with forces developing over time, and the President responding to them. Initially, there must have been a lot of pressure involved there, not just from within the University but from outside constituencies, the legislature, the Governor."

"Nils, as this pressure was developing, did not stand against it. There are reasons for that, too, including his relations with the Board and with Keffeler. If you want to put it in a broad scenario strategically, he was weakened, first, as president by the attacks on him. He became a lame duck. He was a weakened president going into this whole struggle, which would have made it difficult for him to stand up to them anyway. I don't think he did stand up to those forces, initially."

"After it all developed, and the tide turned, I'm prepared to believe that his personal sentiments were with the faculty, but his support came late. And only after the tide had turned. I welcomed it, and appreciated it, and in the end he came out strongly. When that draft came out in Morris, he was unequivocal that this was a big mistake, and he told the Board

that. But that was very late in the game.”

Feeney thought, apropos the President’s position, that “it was a parabolic curve. He precipitated much of the problem, particularly with that letter he wrote and the way things were portrayed when he got the process started. Then it hit a low. After that, he decided that he better be on the side of the faculty.”

Agreeing that Hasselmo may have resisted for some time any review of tenure, Feeney nonetheless maintained that “if you were to take the infamous Hasselmo letter that the Washington Post got a hold of -- you could have signed Jean Keffeler’s name to that letter, if you wanted to look at it critically. Was this the individual who staved them off, and then said the wolf is at the door so we’re going to open the floodgates? There are ways to write letters to get people to do things; I think that was a big tactical error.”

“[About] the Jim Infante letter, if that’s indeed what it was, if Hasselmo didn’t buy that, then he should never have signed it. Yes, you can say ‘I regret it, and I didn’t write it,’ but you signed it. You must have had a certain tendency to say ‘we need to do this, we need to do that.’ If you read the letter, it didn’t come across the way Nils would have written a letter, so I suspected somebody else wrote it for him. I’m not sure I would have thought it was Jim.”

Bland thought that Hasselmo probably changed his views, but wasn’t critical of him for doing so. “I think he was thinking like everybody else -- how do we do the tenure code, what is appropriate to increase flexibility. I think he was honestly thinking ‘we should look at all these things; I don’t know what the answer is.’ As we got more information, everyone kind of solidified their position more, and he came down more where he is now. How can you fault a person for that?”

Regents’ Professor Gorham, asked if Hasselmo initially endorsed significant changes in the tenure code, but subsequently changed his mind, said “that was certainly what I believed. I thought some of his early pronouncements, including some to the regents’ professors, suggested that he was willing to see some significant changes in the tenure code, but he backed off when he saw what a ruckus he’d generated.”

Gorham recalled that “the regents’ professors go to lunch [at Eastcliff], and I’ve chatted to him extensively on various issues. I was a strong supporter of Nils for a long time, but toward the end it seemed to me -- I started to get a little unhappy when he took after Ellen Berscheid so vigorously in that regents’ professors meeting, without ever naming her. Then it seemed to me that some of the things he wrote and said were not the things that I had thought that Nils espoused. I thought he really did feel there was some ground that could be given on tenure that the faculty would not support. I can’t put my finger on exactly what it was.”

(Hasselmo later commented that “I certainly never intended to ‘attack’ Ellen Berscheid. I considered her a friend all along, and so consider her now. I must have created the wrong impression by trying to discuss the way board members reacted to publicity, and by pleading for de-escalation.”)

Purple, no admirer of Hasselmo, said “the position the President took on tenure is that he waffled. We had a waffling president. What was he doing with Brody? Did anybody draw in the reins on Brody? If I were president of this university and believed what Nils did on tenure, I’d have fired Brody. Because obviously those views conflicted so fundamentally that you can’t work with a person like that. What was Nils’s role? I don’t know. That’s why I say he waffled. I think Nils likes to sit back and let other people carry all the laundry, and if they fail, hang ‘em out to dry and say ‘it wasn’t my fault. It was all John Najarian’s fault.”

“Some say Hasselmo was weakened at the outset because of attacks by Keffeler. I think he was. Others believe he endorsed significant changes. I believe he did, but subsequently changed his mind. I believe Nils waffled. He’s a nice guy, but when it comes to public positions, the main thing he doesn’t want to do is get scorched, which means you don’t stand up and take a stand.”

Asked about why the President so actively opposed the Board’s position on tenure, Purple responded that “he’d already been pushed over the cliff. He was gone, he was inconsequential, they weren’t going to listen to him anyway. Now it was save your face. Stand up to them. They ignored him! I went to those Board meetings. The President would make his statement, and then Pat Spence and Reagan would go right on and do whatever it was they wanted to do. They lost all confidence in him three years before.”

“I blame John Adams for that. When Jean Keffeler said it’s time for Nils to go, I had already come to that opinion two years earlier. I think the FCC at that time jumped to Nils’ defense with this impassioned plea,⁵⁴ and went public with it. I wrote a long memo to John on that one, saying I’ve seen this too many times. Nils’s time is done. It’s all there in the wind, there’s an accumulation of grievances, and all the FCC is doing is embarrassing the regents in public. What it means is they’ll maybe have to pull back and Nils will be with us a year or two longer, but no more than that, and he’s not going to have any power.”

“When you see what’s happening, you may have the opinion that Nils is a horrible administrator, but he’s a decent guy and he was trying hard and he’s done some damn good

⁵⁴The FCC statement issued in April, 1995, after the newspaper article quoting Keffeler about Hasselmo stepping down.

things for the University. Where I fault him is his ability to pick people to carry the ball for him and his ability to deal with the legislature.”

Gray had a different view of the significance of the letter. She recalled that “FCC, for all the people criticizing it, was the one who forced him to release the letter. Nils said he couldn’t release the letter; we said ‘you will release the letter; we will see this letter before we go home.’ And we did.”

“One thing we have to remember, at that point the administration was for unit tenure. They were not on the same page with the faculty. ‘We’ll cut the AHC loose, and they’ll have their own tenure code, and the rest of the University will have another tenure code.’ That was their solution to the whole thing. Or maybe it will be at the college level; it was never clear. It was much later that they got on board with system tenure.”

“How much Nils was forced into this position by Jean Keffeler and how much was his own ideas is very hard to tell. But he did say, when we expressed dismay after we finally forced him to bring the letter, that he knew it wasn’t a very good letter but it was the best he could do and he really had to fight hard to get it this good, and so on.”

“On the other hand, some people made a whole lot out of that letter. I really never regarded the letter as particularly important. It’s just some resolution, and who knows what they meant or what they intended. I don’t think it was a critical point. I don’t think the general faculty knew about the letter and something that was passed at the regents’ meeting. The average person doesn’t know what’s passed at a regents’ meeting. What was a lot more important was what the faculty were going to propose, would the administration accept it, would the regents accept it.”

Shively took issue with those of his colleagues who thought Hasselmo was weakened by his lame duck status, but did agree that Hasselmo’s views on tenure probably evolved. “I don’t think Nils was weakened at the outset by his lame-duck status. I don’t think he was that weak a lame duck. For one thing, his lame-duck status was also an assertion of a two-year appointment, which was longer than any other appointment he’d been given. If you recall the circumstances of that two-year appointment, it was really a defeat for Jean and an affirmation of Nils, although there was the statement that he was going to step down at the end of the two years. I think he came out of that strengthened.”

“I think, up until the last few months, he was a pretty tough lame duck. People forget that meant he was going to do two budgets. The thing that people really care about with the president -- there are many things people care about with the president, but one of the things that gives him real power is that he comes up with the budget. He didn’t complete his last

budget until just a couple of months before he stepped down. Up until then, he was a fairly powerful lame duck.”

“I think his position on tenure was evolving, along with the rest of us. My position was evolving. I don't think that he initially endorsed significant changes in the tenure code.” As for the letter, Shively said, it was his view that Hasselmo believed it to be “an attempt to pull together a position more for discussion purposes than as a doctrine coming out of the Board of Regents. It was out of a discussion with the Board of Regents.”

Bland's view was that Hasselmo “did us such a favor by retiring with a two-year lead time. When he saw what was happening, it was very wise -- if he did it because he was wise. It was wise for him to step down, and put in that lead time, so they couldn't put a hatchet man in there in the meantime. It served us extraordinarily well to have him as a 'lame duck' in there supporting the faculty. A new person couldn't support the faculty against the regents; they're dead if they do that.”

Lori Sturdevant of the Star-Tribune provided her perspective on whether or not Hasselmo had changed his mind with respect to tenure. “I think that what happened was that he got a bellyful of trying to please Jean [Keffeler]. That he felt for a long time that he had to do this dance between what he really wanted to do and say on a host of issues, and what he thought he had to do to keep Jean off his back. I think at some point, and it coincided with his retirement plans and all that, he said ‘I'm not going to try to please this woman any more, and I'm just going to say what I think. They can't get me any more. I'm beyond that now.’ So I think from the time of Morris proposal on, he felt very free to speak his mind, and he did. I think all that fall, he knew he was running the risk of them asking him to leave right now, and had that happened, he would have made a lovely martyr. And I don't think he would have minded if that had happened.”

Was Hasselmo trapped between the Board and the faculty? Sturdevant thought he may have been earlier, but not later. After Morris, she said, “he didn't behave trapped. He behaved like a lame duck who knew he was about to be freed. I thought he began to be much more presidential in those months, when he felt very free to say that the Board was going in the wrong direction. I think he was risking an early dismissal; I think he also accurately sensed that this Board was in such a weak, precarious position that they would have a hard time pulling it off. I thought that if he felt trapped, it was in 1996 or 1995, when he was trying to keep some kind of a decent working relationship with his Board, but also was very true to the faculty's notions about the importance of tenure and what it means to the University's competitive posture. He talked to me in the spring of 1996, off the record but very passionately, about the importance of tenure. It was not

something he was willing to compromise away. I knew that about his personal views during this whole conversation, that that's where he was."

"I think President Hasselmo played an important role. Had he become the martyr, it would have been even a more significant role. Had they done the foolish thing and fired him, a lot of things would be different. I think we'd have a faculty union right now, I think this university's name would be mud even more than it is, I think Mark Yudof would not have come. Had they done that, it would have been a very, very negative thing for the University."

Fischer thought that "the world tends to view news in terms of conflict and drama, and wants to personalize in individuals the 'good' and 'bad' parts of the drama. Nils was caught in the middle. The faculty thought Nils was pursuing change, that he was too closely involved with the unknown, therefore feared, desires of the regents. Then the regents perceived him as becoming a representative not of their desires, but of the faculty's. I think Nils really understood that you don't have a strong university without ownership by the faculty in whatever tenure reform would be adopted."

Berscheid and Fennell Evans offered a more cynical and manipulative view of both Hasselmo's position on tenure and the implications of his views. They believed he changed his mind. In Berscheid's words, "I suspect he held his finger up to the wind, and that he got a lot of calls from his fellow presidents. It was a scandal, nationally, and I think he saw that he picked the wrong horse to ride. He's a survivor. He's always been a survivor. That's why he lasted so long here. He saw his mistake and he switched horses. I suspect it's that simple. He was in the other camp initially -- forced into it, no doubt unwillingly -- but still a member of the other camp. At the time he was president of the national land-grant organization, run by Peter Magrath, who has now come out of the woodwork saying we don't need tenure because we've got the First Amendment. I suspect that Nils thought he was going to be a leader in so-called tenure 'reform' nationally. It lowered my respect for him."

Evans maintained that it was "his good fortune that he was more valuable to us alive than dead." Berscheid agreed. "We quashed movements for votes of no confidence. A vote of no confidence in Nils would not have helped our cause. We needed him. And, in the end, we thought he'd discover he needed us."

Had Hasselmo been removed from or left office, in Evans's view, "we would have then ended up with a civil war. We would have been fighting on two sides. If Nils had gone down, and they had put somebody in they wanted, we would not have had the administration either neutral or, as it ended up, on our side. As long as they were neutral, that meant the Board of Regents didn't get a whole lot of support from the

administration. Then when Nils went against them, that meant they were really handicapped, because they no longer had the resources of the University available to them. We actually talked, briefly, about putting an appraisal of Nils's administration in that survey. We decided not to. We could have killed him off any time we wanted; it would have been very easy."

Berscheid said that Hasselmo knew this; Evans said "he [Hasselmo] was very nervous. Moreover, Berscheid said, "what we were banking on was that he would discover that he needed us."

Evans said that Bognanno "tracked very closely, watching us. He took our pulse every time he had a chance." They did the same, Berscheid said. "We took his pulse every time we got a chance. That was an interesting dance we were always performing in this. I have a lot of respect for Mike, and Mike had a lot of respect for us, but we had somewhat different loyalties."

They knew they were playing "a very adult game," according to Evans and Berscheid. She recalled that "we both knew that each side needed to know a little bit about what the other side was doing. But we both were very careful in our exchanges." According to Evans, Bognanno "told us things only when it was in his interest. But combined with information from other sources, we usually were able to fill in the blanks. But it was an adult game in which, basically, we were exploiting each other to our mutual benefit."

The Robson article in City Pages was quite critical of Hasselmo.

Was Brody a rogue operator in the University administration, or the person put out front to deflect heat from U of M President Nils Hasselmo? A compelling argument can be made either way. What is certain, however, is that Hasselmo publicly appeared weak-willed and indecisive, giving off contradictory signals as the tenure issue unfolded. During the process, he announced he was retiring in 1997, and his lame duck status made him even more ineffective. The president eventually pronounced himself vigorously opposed to the regents' proposed changes to the tenure code, yet he helped set in motion the chain of events that allowed such a radical document to see the light of day. Whatever affinity the Wallin search committee had felt for Brody, it was Hasselmo who picked the provost from a field of four finalists, and Hasselmo who continually applauded Brody's re-engineering process at AHC. . . .

On Nov. 20, 1995, Hasselmo wrote a letter to regent

board chairman Reagan, meant to “structure a meaningful dialogue on issues related to tenure.” Among the “specific issues which we [the administration] feel should be addressed,” Hasselmo embraced Brody’s position that tenure “imposes rigidities and lack of flexibility.” He suggested setting tenure quotas, and, since “It is assumed that the proportion of faculty who are tenured must decrease,” the creation of non-tenure tracks for faculty employment. “Perhaps tenure should be available only under exceptional circumstances in certain areas,” Hasselmo wrote. . . .

With friends like Hasselmo, the tenure system hardly needed enemies. Perhaps the most blatant sign of Hasselmo’s weakness -- or collusion -- on the tenure issue was the extent to which he allowed Brody to lobby against it at the State Legislature, a primary source of University funds. In December, Reagan had told a faculty governance committee that the Legislature and the governor had both been pressuring the regents about tenure. Not coincidentally, Brody had been a frequent presence at the Capitol, lobbying for \$50 million for the AHC -- half of it designated to go toward re-engineering -- and negotiating the particulars of a merger between the University of Minnesota Hospital and the Fairview Health System.

Hasselmo, as noted earlier, denied he had any intention of proposing specific changes with the letter, and said he was only identifying the issues that were on the table. He explained on another occasion what led to the letter. “I accepted the fact that tenure had to be reviewed by the [regents] after Jean and Tom had made public statements to that effect. That was after I had been quite explicit in that I did not want them to take up tenure. I had begun, however, to accept that, given the serious local and national misunderstanding or lack of understanding of tenure, there might be some benefit in discussing it -- when it seemed unavoidable anyway. It would strengthen our case for tenure -- in which I have always believed very strongly, and still do -- if we could lay to rest the ideas that (a) faculty who do not perform are protected by tenure from the consequences of non-performance (post-tenure review was important from that perspective -- and I became an advocate for post-tenure review), and that (b) necessary programmatic changes cannot be made because of tenure (we had of course demonstrated [by closing one University campus] that we could make changes, that no one else at that time had made, with tenure protection, and I supported reassignment as a means to facilitating such changes -- and we had, of course, quite successfully used reassignment [when the Waseca campus was closed].”

Apropos the November 20 letter, Hasselmo reiterated that

it “was intended to be a statement of issues that had arisen. It was not intended to be a statement of my opinions. It is stated in terms of issues, but the tone is of course not what I would have written -- and as I have said before, I should not have let the letter go out over my name as it stood. It certainly did not represent a compromise between my views and views pressed by Regents.”

Hasselmo underscored his view that “I did not change my views between that letter and when I testified, in the presence of Craig Swan, Virginia Gray, John Adams, Mario Bognanno, and others, before the Kelso Committee and strongly defended tenure and no layoffs for programmatic reasons against harsh questioning by Kelso.” He said that “there could be no doubt about where I stood, even under serious pressure from the chair of a key committee. Those present at the time congratulated me on my statement. (I remember being somewhat surprised that none of those present seemed to make public what I had said, when the debate about the November 20 letter arose, and other questions about where I stood. But, that was a generic mistake on my part: assuming that people knew where I stood.) The legislative record should show what was said.” Hasselmo recalled that he had quoted his legislative statements in his opening remarks at the April 18 Faculty Senate meeting; “the two statements at that time are pretty good versions of what my views were all along.”

* * *

The joint letters from Hasselmo and Carl Adams about the Washington Post editorial provoked a contretemps at the next FCC meeting, on March 21. Committee member Roberta Humphreys noted that all were aware of the contentious tenure forum held the previous week with the AHC faculty; she concluded that there was also growing mistrust of the faculty governance, and especially of FCC. She introduced a resolution saying the letters were “intentionally . . . misleading” and insisting that Chair Adams review with FCC what he signs before speaking for FCC. Humphreys said the point of the resolution was to set the record straight for faculty; many do not believe the process is “faculty-led.”⁵⁵ Humphreys’ resolution said the December 12, 1995, resolution by the regents ““directs THE ADMINISTRATION to develop policy recommendations”” for review of tenure, NOT THE FACULTY and administration,” as stated in the . . . letter,” and that “the tenure review process began much earlier and was initiated by the Board of Regents at their October

⁵⁵It is probably fair to say that many faculty flinched every time they heard the President or anyone else describe the process as “faculty-led.” This phrase was the subject of acrimonious exchanges on more than one occasion. A few faculty distinguished between “faculty-initiated,” which all agreed the tenure review process was not, and “faculty-led,” meaning the faculty were doing the work, but most objected strongly to the phrase.

meeting” (emphases in original). The resolution also said that the Washington Post editorial was “a fair summary” of Hasselmo’s November 20 letter to Regent Reagan. This resolution, she maintained, is necessary “to help restore the credibility of faculty governance.”

The FCC spent a good part of its meeting arguing the merits of this resolution, especially whether the Post editorial was, in fact, a “fair summary” of Hasselmo’s letter. Some argued there was no point to saying that; others were not sure it was an accurate statement. Some FCC members objected strongly to Chair Carl Adams having signed the letter, as FCC chair, without previewing it with FCC members, and they alluded to the Najarian press conference incident. There was also debate about whether the process is “faculty led”; some interpreted the term “faculty led” to mean that the faculty initiated the effort and inspired the action; others that once it arose, the faculty led the effort.

One committee member maintained that in light of questions about tenure, FCC was asked, as part of John Adams’s and Carl Adams’s conversations with the President and the President’s conversations with the Board of Regents, to look at the tenure code. As part of the rules, that activity is faculty-run. The rule is that regardless of where the discussion originates, any proposals must go to the Tenure Subcommittee. Said one committee member: if one wants to argue where these ideas come from, it is the condition of higher education for the last five years, the reduction in legislative support for the University in this state, a fast-changing environment in health care and the Academic Health Center, among other things. In terms of changes to the code, however, the process is quite clear: language goes to the Tenure Subcommittee, the Committee on Faculty Affairs, this Committee, and then the Faculty Senate. If the Faculty Senate approves recommendations, they are handed to the President and Board of Regents. John Adams commented that “these facts are unexceptionable, but the ways that fearful and opportunistic elements understood or distorted them is the real story.”

Professor Marquit was attending the meeting; he had sent out the national email on February 21 claiming Hasselmo and the regents wanted to destroy tenure. He told FCC that he thought he was quoted as the source for the Post editorial, and that since he was being accused of distorting the issues and the President’s letter -- which he believed this discussion has made clear he did not -- and that since the Hasselmo/Adams letter had gone all over the country, the record needed to be corrected. FCC finally decided to cite the specific text of the November 20 letter in its resolution, rather than simply refer to it. Two weeks later, the resolution was distributed to all faculty by email.

At this same meeting, FCC also discussed the status of the tenure review. John Adams noted that the Tenure Subcommittee had draft language proposing changes to the tenure code; Dempsey reported that the proposed changes had been sent to all faculty. She said she had informed the faculty

that the Tenure Subcommittee has not acted on them and that there will probably be amendments, and that some of the proposals may be approved while others may not be. Morrison reported that much of the language (from the Gang of 4) was his. The intent was to have proposals to place before the Faculty Senate for discussion on April 18.

FCC spent considerable time grappling with the concept of base salary, of particular interest to the AHC (and a point of contention at the forum with AHC faculty). Carl Adams said he told both Provost Brody and Dean Cerra that they cannot expect FCC to bring to the Faculty Senate positions which are not seen as reasonable by the AHC faculty. Former FCC chair Judith Garrard also attended the meeting, and maintained that the faculty must see that the problem is the Medical School, not the rest of the Academic Health Center.

Tom Walsh commented later that “part of FCC’s problem was that they sent out excerpts of the November 20 letter after we [UFA] had emailed it to everybody. It made them [FCC] look bad.”

Fred Morrison observed that “this is a place where the little missteps cause you real problems. There was a misstatement in the letter to the Washington Post. It was a fairly minor misstatement, but it was false. It was false in a way that covered up something Nils had done. I’m sure Nils or Mike wrote the letter, and Carl thought it was generally accurate, and signed it. It was not accurate in that specific detail -- I don’t even remember what the detail was -- it was a detail -- I think it was articulated that the FCC had requested that this be done, but in fact it was the other way around. After that, even though it was a fairly small thing, he [Carl Adams] wasn’t trusted.”

Morrison said, apropos the FCC meeting at which the Post editorial was discussed, that “I would describe it as a very contentious meeting. I perceived myself as being somewhere towards the middle of that meeting, and people like [Professor Mike] Steffes and [Professor Roberta Humphreys] were out for blood on the table and the floor, and it seemed to me that was a bit much. On the other hand, it became clear that Carl could no longer lead the group.

“It started over the Najarian press conference. I think the Najarian press conference was a serious mistake, and I think Carl went way too far in signing on and saying everything is wonderful.”

Swan agreed with Morrison’s view about the Najarian incident. “Why Hasselmo had to have a news conference, I don’t know; he could have responded to questions if they were asked, but he called a press conference and had Carl there. I think FCC felt ‘what the heck, this isn’t our issue, what are you doing there?’”

Bland, who had defended Carl Adams on Najarian, concurred with her colleagues on this point. The letter [to the Post] “was a bad decision on Carl’s part.”

The Daily carried an article about the FCC meeting the next week. It reported that FCC had

reviewed tenure amendments and that Morrison said the process was still open and that ““if anybody has any ideas, you should draw up some text.”” Much of the meeting was devoted to the Humphreys resolution. One point was that the regents directed the administration to propose tenure changes, without reference to faculty participation; the Hasselmo-Adams letter implied faculty participation was included. Several FCC members “expressed dissatisfaction” with Adams’ signing the letter; “apparently surprised by the criticism, Adams acknowledged that he should have consulted the group before signing.”

Marquit followed up on the FCC meeting by writing to the Daily a week later and criticized Hasselmo, who “denounced me [at the March 14 meeting of FCC] for spreading misinformation on the Internet about the nature of the planned revisions of the tenure code.” The weekly newsletter Brief quoted Hasselmo about the letter and attributed to him the view that the Washington Post editorial may have been based on the Marquit email. Marquit said Hasselmo and Carl Adams -- the latter “without authorization of [FCC]” sent letters out in response to the editorial, and that Humphreys had proposed a resolution to FCC saying the Post was accurate. “The complicity of Carl Adams in Hasselmo’s efforts to spread misinformation . . . raises serious questions about his integrity,” Marquit wrote, and suggested he should not continue as FCC chair, because both Adamses “have both repeated falsely that Hasselmo is committed to preserving tenure when his true intent is to dismantle” it.

* * *

THE WASHINGTON POST EDITORIAL

Walsh later commented that “the Washington Post does not publish editorials based on professorial email. Have you ever heard of them doing that? I have always felt that the editorial was based on a story planted by someone. The Post just checked out the story. We put the editorial on the UFA Web page. It was an unwelcome moment of fame for Minnesota, but it was not too important in the tenure fight.”

Morrison made a similar observation. “I don’t know where this [Post editorial and other national coverage] came from; there clearly is some press agent in Washington for somebody, who’s planting stuff with the Washington Post, and maybe even planting the initial Chronicle story in April [cited shortly], saying ‘here’s a big issue.’ That’s not just accidentally there.” Morrison agreed it was odd that such an arcane story would be picked up, and noted “some rather odd things in November as the story unwound. They had a complete piece of disinformation, as a news story. After Sullivan II, they had a description of Sullivan II which made it look like the regents won. That kind of stuff doesn’t happen accidentally. There was

somebody there who, for some purpose, was stimulating the Washington Post to move in this direction. It may have been a press agent for Jean. Or it may have been Tom's connections with Washington.⁵⁶ But those things don't accidentally happen."

Several individuals suggested another possibility for how the Post might have come to write the editorial. Two or three (including Berscheid, noted earlier) pointed to the relationship between Hasselmo and C. Peter Magrath, chief executive of the National Association of State Universities and Land Grant Colleges (NASULGC), for whom Hasselmo had worked as a vice president). Hasselmo was president of NASULGC, so worked closely with Magrath; Magrath's wife worked in the news media in Washington.

When informed of the various theories, Magrath rejected all of them. He doubted Keffeler or Reagan had contacts at the Post and said "I can never get the Post to run the higher ed stories we are interested in" and that his wife was not involved in higher education issues at all. He agreed with Walsh that the Post would not have picked up the story from email exchanges. Magrath concluded that "the Post is generally quite or relatively anti-higher ed establishment on tons of issues; they are very unsupportive on college costs, funding, etc., and generally cool to mildly unfriendly." His guess was that "they picked up the story from the Chronicle and the wires."

Hasselmo described as "preposterous" the "idea that I would have been involved in planting the editorial in the Washington Post! I have no idea who was behind the Washington Post editorial. I was appalled when it appeared. I believed, and this is still the only explanation I can think of, that it was inspired by Marquit's e-mail -- with its assertion that the board and I were out to abolish tenure at MN and nationally! As you know, I took strong issue with it in the letter Carl and I sent. That was my honest opinion, and still is."

"(I think Peter Magrath would be highly amused by the thought that he and I were scheming! We do, by the way, not agree on the importance of tenure in addition to the first amendment as protection for academic freedom.) "

"Whether Jean or anyone else had anything to do with the editorial, I don't know. (The thought that there was some collusion was new to me. The extent to which conspiracy theories have flourished in regard to tenure has flabbergasted me, and I'm still getting more and more flabbergasted!")"

On the matter of how the national newspapers came to write about tenure at Minnesota, one sage outsider pointed out that "one of the things this shows is the communications in the computer age. When Reagan and Neel were called, they

⁵⁶Regent Reagan had been chief of staff to Minnesota Congressman James Oberstar.

were told that ‘on every campus in America, people are talking about nothing other than tenure at the University.’ They thought this was an exaggeration. But it wasn’t! You get some of that email, and people who receive it believe that what it says is true. All these faculty were hysterically emailing their friends, and it was all over the country. That’s how I think it made its way to the Washington Post. And correctly so.”

This person did not believe it was an odd and arcane subject for Post to be editorializing on. “One of the great issues that America will face in the coming decades is whether the universities should provide trained people to be generalists and fuller human beings, or whether the universities should really be creating fodder for the factories of the land at higher levels. I’m obviously on the first side, but the local business community doesn’t get it. They think they want to have second-level managerial employees of their companies come from the universities. That’s crazy. This was the first battle in that war.”

* * *

On March 22, Professor Bob Sonkowsky (member of the UFA, later on the Committee of 8) emailed to Mary Dempsey and Dan Feeney, and almost echoed Feeney’s words (in his summary of the March 7 Faculty Affairs meeting for Carl Adams) back to him. He wrote that “however well intentioned our governance committees may be and however tentative present wording may be, last week’s Brief quoted a Regent that faculty efforts ‘may be insufficient.’ I remind you that the Regents have the legal power to change the tenure code regardless of any recommendations of faculty governance.”

One of the members of the Senate Judicial Committee [cited as SJC in this message] took considerable umbrage at a message he had received notifying him of a meeting of the committee to discuss tenure. He had also received the email messages transmitting possible tenure code changes (from Mary Dempsey, in response to the demands at the forum held in the AHC), but was unable to study them during spring break. “A rapid glance through some of these issues raises some very serious questions.” He was also dismayed that when he returned at the end of spring break, he discovered “(a) that an important covering message from Mary Dempsey was omitted from the original set of postings; (b) that fortunately two members of the SJC who were in town during the break between winter and spring quarters were also astonished at the ‘manner’ in which our ‘meeting’ was called and (c) pointed out that these proceedings violate provisions of the tenure code.”

He also reported that “at the meeting of historians that I was attending, I discussed what was happening at the University of Minnesota and how it was dealing with the issue of tenure reform. In

conversations with colleagues from Indiana, Toronto, Berkeley, Vassar, UCLA, Columbia, Ohio State, Virginia, Salford (UK), and several others, the reaction was one of astonishment at what was happening at Minnesota. We have acquired an unenviable reputation.”

He noted that the Judicial Committee had a required role to play, and concluded that “the way matters have been handled show scant regard for the committee, its members or even faculty governance and rights more broadly. At least we should be notified of such an important meeting and notified in a way that shows some respect for faculty obligations, not only in matters of governance, but also our professional responsibilities. . . . I intend to contact Professor Fogelman . . . to urge, as I am sure other members of the SJC will urge, that a vigorous protest over the way in which this entire matter has been handled be made to the Senate and to the President of the University.”

The message prompted Dan Feeney to inquire “is there a breakdown in communication between the Judicial Committee and the Tenure Subcommittee???” He asked Mary Dempsey to respond to the message, and said that “I don’t want to see internal bickering among the Senate Committees over perceived ‘turf’ issues or the perception that one or another is being slighted. The letter from Professor Morris [to Hasselmo about presentations to the regents] may just be the start of individuals accusing segments of faculty governance of ‘jumping the gun.’ In reality, I think these individuals believe we are actually further along in the process than we are. If my assumptions are correct, revisions go from the Tenure Subcommittee -->[Faculty Affairs] -->Judicial Committee -->FCC. I think that is our plan. I can’t help but think the revision showing up on [email] without Mary’s cover letter fueled these suspicions.” It may have been, one staff member told Feeney, that Fogelman had not notified Judicial Committee members of the meeting.

A message sent to Feeney and Dempsey, which Feeney forwarded to Faculty Affairs and the University’s senior officers, responded to the proposals that Dempsey had distributed earlier. They reflected the concern the Judicial Committee member had voiced. The message said that “these proposed changes confirm my opinion that we should expect the worst from the current administration, and that the established faculty committees are not going to help us preserve our rights.” The author pointed to particular provisions concerning base salary, post-tenure review, a longer probationary period, and changes in assignments as “simply a license to harass unruly faculty until they are forced to leave. ‘Tenure’ is meaningless if one’s salary may be reduced, or if one may be forced to teach in a field in which one has no training (as is the case now at Metro State [a local state university not part of the University of Minnesota]) or work as an administrative assistant. I am not reassured by your statements that we should not be alarmed. Please do not collaborate in this attempt to destroy our university!” This is a suggestion, Feeney warned, about the reception the

tenure code changes would receive from at least some of the faculty.

Feeney wrote to two of the senior officers of the Medical School, Frank Cerra and Leo Furcht, on March 26 to ask for information. He reported that at the most recent Faculty Affairs committee meeting, “there were several questions about the fiscal problems in the AHC. . . . The questions arise during the discussions of the Tenure Code changes being proposed and their justification (e.g. justified by current financial problems vs. long-term fiscal responsibility). Also, questions about the AHC finances come during the description of the various proposed pay schemes [and how] these may relate to base pay across the whole system, if incorporated into the Tenure Code. . . . In an effort to limit speculation and give all proposals a fair hearing, I would appreciate anything you have ALREADY PREPARED on the subjects of 1) a summary of the Medical School financial situation similar to that given to the AHC senators . . . [and] 2) a summary of the proposed pay schemes involving definition of a base salary, yearly bonus, practice augmentation, administrative augmentation, merit pay increases, etc.” This would not only help Faculty Affairs, he told them, but would also “limit speculation” about implications for the rest of the University.

On March 27, another faculty member in the AHC emailed to Dan Feeney about the language of the tenure changes that Dempsey had released. He wrote that the “changes seem to be intended to greatly increase the power of administrators at the expense of academic freedom” and specifically pointed to the possibility of elimination of tenure in all clinical departments and allowing cuts in the base salary of AHC faculty without protection for the faculty. Of greatest concern, however, was a proposal (presumably from Provost Brody) which would not permit Judicial Committee review in cases where the provost made a tenure decision on the basis of the needs of the communities the AHC served. “This provision is outrageous. The provost of the AHC is being given absolute life-or-death power over the faculty member and his decision cannot be reviewed or appealed. The potential for abuse is staggering. The faculty will simply be denied any due process. This is certainly immoral and is probably illegal. I am really shocked that this sort of anti-faculty wording has appeared even in a draft. I find it frightening that an administrator would want this kind of unrestricted power. I am also disappointed that members of the faculty would even consider this provision.”

Feeney wrote back to assure him that “your comments paralleled mine. Because of the time lines, the draft was distributed without [Faculty Affairs] or its Tenure Subcommittee’s redrafting. I doubt that any of these provisions would have been allowed to stand as they are. Some require clarification, some require modification, and some require elimination. I indicated to Mary Dempsey that I would block the AHC Provost final word on tenure at the level of Faculty Affairs and, if

necessary, on the Senate floor for the very reasons you described. In that respect, maybe allowing the faculty at large to see the draft with these controversial parts available will stimulate both interest and the necessary ire to assure the administration and the regents know how the faculty feel.”

A few days later, a member of the School of Nursing reported to Mary Dempsey and Dan Feeney that “the General Assembly of the School of Nursing unanimously supported [Faculty Affairs’] position that ‘all faculty should be treated the same under the Code.’ Our Assembly strongly supports eliminating wording pertaining specifically to the AHC.”

On March 27, Hasselmo sent an email to all faculty announcing academic program changes at the University. One of the proposals was to phase out the University’s General College. The significance of this proposal, and its relationship to the tenure debate, would become apparent later.

Chapter Four
Faculty Apprehensiveness Crescendos
Events Leading up to the April 18 Senate Meeting

By late March and early April, only shortly before the April 18 Senate meeting that was to take up tenure code revisions, there were at least three identifiable faculty groups at work. One was the formally-chartered FCC, one was the UFA, advocating unionization, and the other was the Gang of 19.⁵⁷ Faculty members (in significant part depending on where their allegiances were) had different views on which of the three groups was the most credible.

It was in early spring that stories about the Academic Health Center re-engineering process, led by the consultants hired by Provost Brody, began to seep out to the rest of the faculty. The AHC faculty, in the final faculty forum on tenure in March, as well as in earlier newspaper editorials, letters, and emails to their colleagues across the campus, described a process they saw as shrouded in secrecy, accompanied by intimidation, aiming for a top-down management structure, and alien to the academic culture. There were also several newspaper articles about it.

“U tenure: How much change is enough?” (Pioneer Press, March 25; two editorials, one by Professor John Adams, one by Representative Becky Kelso). **“Job security key to academic freedom”** by Adams, said tenure would stay because “it is the crucial human resources policy in every major research university” and required for competitive reasons. Adams maintained business is criticized for short-term thinking, described the process of achieving tenure, and explained its role in protecting academic freedom. Tenure permits long-term initiatives, and allows hiring talented people at less than what the private sector pays; Minnesota is among the top 30 of 3600 institutions, and could not stay there without tenure.

“No choice but to downsize” by Kelso, said her committee had discussed tenure and the AHC in particular through the legislative session. “Tenure and academic freedom are not synonymous”; the code provides job security beyond that for anyone else in society, even when there is no job. The AHC is important to the state and must change quickly; the University faces a difficult financial future, so it must downsize. She is unwilling to invest tax money in an institution “structurally incapable of change” and while the regents are to be commended for a tenure review, “it is difficult to have confidence in a process that is controlled by faculty members with clearly vested interests in preserving the status quo.”

⁵⁷It amused greatly several of them when they were subsequently politely referred to, in meeting minutes and press accounts, as the “Group of 19.”

“Faculty concerned about tenure discussion” (Minnesota Daily, March 26, an opinion page article). Three faculty leaders wrote a long opinion piece, and the sentiments they expressed likely represented those of many in and outside of the AHC; what they said had been expressed orally by numerous faculty at many meetings. Two of the three were former FCC chairs (Judith Garrard and Richard Purple) and the third a long-standing faculty leader in the AHC (David Hamilton); two of the three were from the Medical School and the third from Public Health. They wrote that the tenure debate was driven by the administration and FCC leadership without faculty input, that separating compensation from tenure is to solve Medical School problems but guts tenure for all faculty. They charged that the review process should be open but has been secretive and rushed, and that the changes were being pushed by the administration and a few faculty “who have the mistaken conviction they speak for the faculty.” They asserted that the impetus for the changes came from the November 20 Hasselmo letter to Regent Reagan. While there were initial discussions with regents in October and December, 1995, the first presentation of 14 changes was provided to faculty at the forum on March 14. They cited John Adams’s claim that the changes were based on faculty forums, but the first three were poorly attended, and only when faculty at the March 14 forum insisted on seeing proposals were they made available by the March 20 email from Mary Dempsey. They also charged that the proposals were drafted by the four lawyers, of whom only Fred Morrison was not a consultant or administrator. They said the most controversial provision separated tenure from salary, a proposal still being developed, and the faculty needed a budget-based explanation of the problems requiring such a change. They asserted that only three colleges in the AHC have financial problems, but the changes would apply to everyone. They concluded by saying the University will be irrevocably damaged by the changes and demanded modification of the schedule, an open discussion, and an end to secretiveness.

At the same time, the legislature was acting on the proposal to make part of the appropriation contingent on changes in the AHC.

“Proposal ties health center funding to tenure revision” (Minnesota Daily, March 26). The article reported that the Minnesota House of Representatives, following the Senate, approved \$8.6 million for the AHC, contingent on changing tenure. Rather than so stipulate, however, the legislation requires that the regents “certify that changes have been made in personnel policies so the University can downsize and change the salary of faculty at the [AHC].”

“Bill tying funds to tenure inches closer to Carlson’s desk” (Minnesota Daily, March 27). Legislators “linked funding for the [AHC] with changes in the University’s personnel policies because they are skeptical of the school’s ability to deal with its financial problems.” The article cited

Kelso saying she did not wish to invest taxpayer money in an organization that could not deal with its problems; Representative Kinkel said external motivation was needed. Hasselmo said neither the regents nor administration helped write the language that was adopted. The language of the bill had been changed so that tenure was not mentioned, and the regents were to decide when sufficient change had been made.

Presumably at least partly in response to events, early in April Provost Brody and Medical School Dean Frank Cerra distributed a memo with 16 pages of data and information on the AHC, responding to “many requests for the programmatic and financial status” of the organization. They noted that the requests emerged from the tenure and re-engineering discussions, and promised that more information would be distributed as it was available.

A day later, the staff to FCC⁵⁸ emailed to Carl Adams and Virginia Gray concerns he had heard about what was occurring in the AHC; “I have heard a number of stories that give me the creeps.” One of the re-engineering consultants (with the firm of CSC Index) allegedly said that “these faculty will have to learn they are simply employees.” The deans were told they were to bring their faculty in line to support a reorganization plan that called for the elimination of colleges and departments. Faculty were told there will be no dissent about the structure. One faculty member declined to speak to FCC for fear of retribution. The FCC staff also passed along a message received by an AHC faculty member: “I should tell you that although I am unconcerned about University action against xxx, I am very concerned about the potential for CSC (the Index consulting group) to nail anyone who goes up against them. And I bet the action will be through H&H [Hogan & Hartson] (the legal group that the Index group has hired, the group from which the lawyer from Washington, D.C. was hired)” [Steven Routh, who served on the Tenure Drafting Group].

In late March, all of the involved Senate committees were at work on tenure. Edwin Fogelman, Judicial Committee chair, wrote to Dempsey to say that the proposed amendments to Judicial Committee procedures had been distributed the previous week (spring break) but that the Judicial Committee had had no opportunity to review them so meaningful discussion was impossible. He said his committee would move on an expedited schedule. He pointed out that one of the items, a proposal for a professional hearing officer, was considered by the Judicial Committee last year, again this year, and was “firmly rejected.” Although not the major factor in the larger tenure debate, these complexities about procedure and the status of a judicial officer continued to be an underlying irritant to those faculty who understood the nature of the issues.

⁵⁸That is, the author of this book.

Fogelman later commented that “as members of the Judicial Committee, we were particularly concerned about what was going to happen to the Judicial Committee. There were big changes in store for the Judicial Committee. From our point of view, it was going to be transformed into something we did not approve of. It would not be a peer-review body any more, it would be headed by a professional administrative type, and various other things would happen. We were most concerned about those provisions.”

“We wrote collectively the provisions dealing with the Judicial Committee. At the meeting in the Campus Club, there were about a dozen of us sitting around and chiming in. I advocated [the provisions] very strongly with the President. There was a meeting of the President and Marvin [Marshak] and others; I said that what they were proposing would not be acceptable. In the end, our version is in the code, and the Judicial Committee with some changes, is basically still a peer-review process.”

On March 28 FCC met and was joined by former chairs Judith Garrard and Warren Ibele (the latter of whom was also former Dean of the Graduate School). Garrard said amending the tenure code was akin to changing a constitution, and it would take longer than two months. Ibele (like others) expressed doubt the process was faculty-led, and related that normally calm faculty colleagues of his were alarmed about misleading information on tenure being distributed; he said the credibility of the governance system was at risk. Tenure changes should not be made only for the Medical School, he also said, and the pace of the discussions was too fast. FCC endorsed meetings within the colleges, John and Carl Adams to attend, and bulletins to faculty about the process -- neither of which ever occurred. Issues of contention now were separation of tenure and base salary and the authority of the AHC provost to overturn tenure recommendations that he deemed not in the best interests of the AHC.

Also a concern at the FCC meeting -- again -- was participation of Brody’s lawyer in the tenure revision drafting process; Chuck Campbell, an observer at the meeting, raised the issue. Dan Feeney, chair of Faculty Affairs, said Farber and Morrison were committed to the process, the General Counsel’s office had to be included, and no one had objected to Steven Routh (from Hogan & Hartson) participating.

Questions were raised about why the University is again “bailing out” the Medical School (a reference to the fact that when “temporary” appointments were converted to permanent tenured faculty appointments several years earlier, the University had to divert a great deal of recurring funding to pay for those positions). This echoed comments a number of faculty (mostly although not completely outside the Medical School) had made, reflecting animus at the fact that the University

was again in trouble because of the Medical School.

The Committee on Faculty Affairs also met on the 28th, joined by the Judicial Committee. Fogelman noted that any changes to procedures required the approval of his committee -- and that it “unanimously opposed a professional judicial officer appointed by the administration” as suggested in the proposed tenure amendments. The changes in the code would undermine its effectiveness, Fogelman maintained. The Committee spent a long time discussing the proposed officer, with some seeing a conflict of interest in having an administratively-paid and appointed officer presiding and others questioning the process that would be used. The committee also expressed concern again that tenure changes were not following procedure. It was explicitly noted that the committees had not had time to review the amendments and act as a committee, and that they would reconvene jointly in a month.

Dan Farber reported his reaction to the joint meeting of Faculty Affairs and the Judicial Committee to Carl Adams, Dan Feeney, Fred Morrison, John Adams, and Mario Bognanno. “We had a rather interesting meeting with [Faculty Affairs] and the Judicial Committee today. The committee feels quite vehemently opposed to the idea of having a professional ‘hearing officer’” but was “quite pleased with their experience with having legal counsel, and open to the idea of allowing the legal counsel a greater role. They also seem interested in other ideas for speeding the process. It seems to me that we might be able to work something out by dropping the title of hearing officer (maybe in favor of Legal Officer), giving the committee some flexibility about just how much authority to delegate, and pushing the committee hard to come up with and implement other procedural changes. If we are willing to think about modifications to the current proposal, we have to find ways to get [General Counsel] Mark Rotenberg to ‘buy in’ -- otherwise, the final proposal will lack credibility with the administration and regents.” Farber said he would meet with Fogelman to try to reach some agreement. “Interestingly enough, they had less to say about the suspension without pay issue, and little or nothing to say about any other proposals.” Farber added a footnote to Carl Adams and Fred Morrison that “you’ll be pleased to know that at least one member of the Judicial Committee is completely shocked that any faculty member would be associated with these outrageous proposals. Shame on us!! There were also many complaints about ‘Washington, D.C. lawyers.’ It’s those outside agitators who come in and stir up trouble.”

“Faculty don’t want judicial officer on review committee” (Minnesota Daily, March 29). The article reported on the joint meeting and opposition to a legal officer for the Judicial Committee. Fogelman said adding the officer “would transfer control from the faculty to the administration” and the Judicial Committee has twice rejected the idea. The schedule was also a concern; “We can’t be

stampeded into drastic changes,' Fogelman said.”

The next day, Dan Feeney wrote to the members of the Faculty Affairs and Judicial committees, Tenure Subcommittee, and senior officers about the joint meeting of the three groups that had taken place the day before. He said that the “discussion indicated both the depth of feeling among the faculty on the possible agenda(s) behind the proposed Tenure Code revisions, and the problems we face with maintaining credibility of faculty governance in the face of strong criticism about methods as well as driving forces behind the Code revision. I hope that, after the dust settled, [Faculty Affairs], the Tenure Subcommittee, and the Judicial Committee can become a team working to preserve academic freedom and the integrity of our institution.” Feeney promised to involve the Judicial Committee in all future deliberations and that its views were “essential to the debate.”

Feeney concluded that “it became quite clear that the ‘fast track’ on which we find ourselves may be the prelude to a disaster on the Senate floor. It seems we find ourselves with some Code revisions authored by a group of 4 individuals (two of whom are not faculty) which has initiated considerable criticism among faculty to whom we have spoken as well as in our respective committees. . . . I’m concerned that we have a diverging philosophy between the Board of Regents and the legislature on one hand and the faculty on the other. Our Administration is trying to have a foot in both camps. . . . I sense that our institution may be charting a course to disaster in its zealous attempt to quickly palliate critics among the Regents, the public, and State government. . . . After yesterday’s meeting, I felt that the hastily plotted course to Code revision could do more damage among the faculty than any perceived problem of Regents-imposed changes, legislative mandates, or administrative operating decisions. . . . A colleague in [Faculty Affairs] suggested that this is fertile ground for unionization; the point is well taken!” Given the resistance of the committees to the proposals, he also asked if they should simply start over.

With his own message, Feeney forwarded another comment that he had received from a colleague. “The discussion about and the revision of the tenure code is symptomatic of deep change in the U of M and perhaps American universities in general. We have lost the concept: the university is a community of scholars centered on the faculty and libraries. . . . We have arrived at the state where the University is programs for the public good as defined by administration. The faculty are to perform this service. The new definition of the university increasingly is couched as an adversary relationship between faculty, the workers, and administration, the bosses.”

The language that had been released contained a “number of ominous changes, so many that it is impossible to find all the potential assaults on academic freedom either directly or indirectly. . . . The new Tenure Code, from the new preamble on, is a job description rather than a document in

defense of academic freedom; it appears to be directed towards LIMITING academic freedom, i.e., this is a document about what academic freedom and tenure ARE NOT rather than what they are. These are work rules which suggest that the Regents and the administration consider us workers in a commercial operation rather than the essence of the University. If we are to be considered workers and the Administration is the boss, then the faculty are foolish not to unionize.”

The author concluded that “there is only one solution; the process must be slowed to a more deliberative pace. The faculty committee should write a simple document defining academic freedom as the foundation of the University and in terms of its protection not in terms of its limitation. Flexibility and expedience cannot take precedence over the more fundamental need for academic freedom.”

Associate Vice President Dan Farber responded to Feeney’s message. He wrote that “I left the meeting in a somewhat more optimistic mood than you did, based partly on a long conversation with Ed Fogelman about the possibilities of constructive dialogue. I must say that I am concerned about the level of the debate, particularly after reading your last communication.” Farber explained that some of the provisions arousing the most alarm were misunderstood, and that they were in some cases only amplification of existing provisions in the tenure code. Farber recognized that “apparently, we have not been successful in clearly communicating with the faculty. Of course, I realize that the process has been more rushed than we would like, but it seems to me that all of us need to work harder on dialogue. I believe as strongly as anyone else in faculty governance. We’re going to have a hard time persuading people that the process is working, however, if it begins to look like we are stonewalling in defense of our prerogatives rather than attempting to work constructively to improve the University.”

A contrary view, however, was expressed by a Judicial Committee member who had also attended the joint meeting, and who emailed in response to Feeney’s message. He wrote that he agreed with Feeney about the difficulties of the “fast track” and that “having the wording of the changes drafted by a gang of four, two of whom are not faculty, has proved to be a terrible idea. The draft is so awful that it is better to throw it away.”

“The Tenure Subcommittee should draft their own language starting, not from the gang of four draft, but from the suggestions from the Regents. Since the Regents do have the right to initiate changes in the Tenure code, they cannot be ignored. (This is NOT the same as saying that we should accept everything they suggest). On the other hand, the gang of four has no legal standing whatever, and what they have written can be used for toilet paper. . . . Everything began with the Regents. But they have repeatedly said that they do not want to abolish tenure (I myself have a letter from Reagan

saying so). Since the gang of four draft does abolish Tenure, it runs counter the Regents directives. This should be pointed out in throwing it away.”

“Similarly, the ‘ad hoc’ group chaired by John Adams has clearly proved out of touch with the Faculty. It has no legal recognition in Section 19 and should now be decently buried. All interaction between the Faculty and the Regents should be through you and the other Committee Chairs (Dempsey, Carl Adams, Fogelman) and John Adams should be enjoined from going again to Regents meetings and shooting off his mouth making all kinds of promises he is not entitled to make.”

Later the same morning, Feeney again emailed to the three committees and a number of senior administrators, this time forwarding a message from a Faculty Affairs member. He reported that the individual would offer, at the April 1 meeting of the committee, a resolution saying that the climate at the University made “rational discourse about the tenure code next to impossible” and time was too short, and calling on Hasselmo to “withdraw from consideration the current proposals and timetable to modify the tenure code, to articulate to the appropriate Senate committees the specific financial and political problems facing the University that led to the present questioning of the tenure code, and to request that those committees study the problems and recommend appropriate action in a timely, but deliberative manner.” Feeney asked for comments from those to whom he sent the email, and said he would also ask for reactions from FCC leaders.

Hasselmo emailed to Feeney the next day about the proposed resolution. He set forth his views on the process, on tenure, and asked that Faculty Affairs “consider the fact that the Board of Regents has laid down specific expectations concerning the review of the tenure code, and that it is their time lines that are in effect.” He said that “I do not know to what extent I can affect those expectations and time lines. I have tried very hard to channel this sensitive discussion in constructive ways, given strong pressures from the Regents and the legislature to take up these issues.” He cautioned that “it is extremely urgent that we find a way to address these issues. I regret more than I can tell you that things have become so muddled, especially since I have ended up, on the one hand, being characterized as the main obstacle to reform of tenure because in the legislature I affirmed its fundamental importance and refused to accept any form of “layoff” and, on the other hand, being characterized as someone who wishes to abolish tenure (the height of distortion in terms of everything I have said and done).” He told Feeney that “I will also be happy to sit down and discuss time lines with you, although, as I said, they are not ultimately in my hands! Let me also assure you that I have stressed over and over again the absolute necessity of having the faculty leadership conduct the review, and having the revisions come through the proper faculty governance mechanism. I have also

stressed that we must, given the pressures from several quarters, complete a thoughtful review and make sure that the code meets the requirements of clarity, flexibility, accountability, and efficiency that have been put forth. We can only create credibility for tenure as an absolutely indispensable aspect of university life, if we are willing and able to state the purposes and the procedures clearly, and define more precisely why, where, to whom, on what terms tenure should be granted.” Feeney circulated the President’s message to the three committees.

Brody also responded to the proposed resolution, on April 3. He asked that “despite the fact that the Regents have put the tenure issue on a tight timetable, I would like to encourage the [Faculty Affairs committee] not to endorse a resolution to delay the discussions regarding tenure code modifications.” He outlined a number of reasons. First, “time is of the essence for the Academic Health Center. We are trying to cope with extraordinary financial pressures without the ability to manage our way through them.” He noted that the finance vice president had “put together a financial model for the entire AHC that projects significant shortfalls and spending of our reserves over the next 3 years.” Second, Brody maintained that “although the changes to the tenure code currently being considered by the faculty are significant for the U of M, they do not place the AHC at significant variance from many of our competing institutions, and many of those are considering even more significant mods to their tenure systems.” Third, Brody warned, “without faculty input, there is the risk that the Board of Regents will act unilaterally. We have an opportunity for the faculty leadership to move toward a position that can be supported by the faculty, the administration and the BOR: one that preserves tenure for the protection of academic freedom but provides the flexibility needed to cope with potential financial insolvency of many units of this University.”

Brody also cautioned that “public opinion may not be on our side, because many voters have lost jobs to corporate mergers, downsizing, etc., and they don’t understand why the U of M faculty should be immune, especially when MnSCU⁵⁹ doesn’t have the same restrictions and is currently handing out pink slips. If we grab the high ground and acknowledge the need for change, we can get out in front on this issue and preserve elements that are critical for our future success.”

FCC member (and Faculty Affairs member) Carole Bland emailed to Feeney about the proposed resolution as well. She recalled that she had told him, after the joint meeting, that “I am very alarmed at the hostility and lack of confidence expressed by our faculty colleagues about the tenure code review process. I totally agree that if the conditions we witnessed among our faculty colleagues on Thursday following the FCC meeting and at the [Faculty Affairs] meeting are

⁵⁹Minnesota State Colleges and Universities: the other public higher education system in the state, comprised of the technical and community colleges and the four-year state universities.

representative of the broader faculty group, it is not possible to have a rationale discussion about the tenure code. I am pleased that this resolution proposes a strategy for a ‘cooling off’ period and a restart under different conditions. However, I am not sure that this is the appropriate ‘restart’ strategy.” Bland recalled that FCC had discussed various strategies for better informing the faculty about the tenure review process, but said that “I believe we do need to stop the perception of this process being too fast and out of the senate’s control.”

Another of Feeney’s Faculty Affairs colleagues also emailed in support of the resolution as well. He wrote that “I have gotten numerous e-mails and from more numerous conversations, it is clear that the faculty is more than suspicious about this whole process. I for one do not want to see a union movement take hold here, but it is a real possibility if events continue toward their present logical conclusion.” He urged the process be slowed down.

FCC chair Carl Adams wrote back to Feeney, and to all the others to whom Feeney had emailed, to say that “I think I hear the frustration implied by the proposed resolution. I would prefer that such a resolution be directed to the FCC since I don’t believe that the president should be dictating the calendar of our work. I do think that we must be careful not only to give ourselves adequate time to do our review of tenure but we must also seem to be properly responsive to the interests of our constituents for a prompt conclusion of it.”

One Faculty Affairs member wrote to Feeney on April 8 to say that “Brody’s memo causes me to amplify my request for an executive session. Each day the union movement gathers strength. Once a faculty member is committed to the union, he or she then has a vested interest in seeing the faculty governance system fail. I believe that people like Brody, the Regents, and the State legislators are, at best, indifferent to the success of faculty governance. It appears to me that a lot of people on all sides are now waiting for the Senate to defeat the tenure change proposals so that they can move forward with their agendas. I don’t have an alternative, but I am convinced that the course we are on is headed for disaster.”

Feeney wrote to his committee a week later to report that he had been requested to have a closed discussion of the proposed resolution with committee members only. He agreed, “because of the gravity of this situation and the subsequent e-mail from the President and Provost Brody.” He said he would also ask for an expression of views on the 13 items that Mary Dempsey had circulated, and “depending on the feelings of the group, it may be wise to take a ‘straw poll’ to see how the group feels about each of the listed items” during the closed session. This, he said, would “help our discussions on 4/18/96 with our Senate colleagues because we can give some idea of the prevailing

feeling about each item from [Faculty Affairs]/Tenure Subcommittee combo.”⁶⁰

Feeney also reported that two student leaders had “approached me with a proposal regarding the relevance of teaching evaluations in annual merit reviews, tenure decisions, and possible post tenure reviews” and said that their points should be discussed by the committee. He asked if the matter should go into the tenure code, or into an interpretation, or as part of other Senate policies.

One of the members of Faculty Affairs emailed to Feeney about the situation and the straw votes. “My concern is that we as a faculty now find ourselves in a lose-lose situation from which it

⁶⁰The items under consideration, set forth in the Dempsey summary, were as follows. “The overall goals of the Tenure Code revisions are to improve the Code in four areas”: clarity, flexibility, efficiency, and accountability. (The language is taken directly from the Dempsey summary; the formatting was changed.)

CLARITY

1 -- Adds a descriptive preamble

2 -- Section 1.1 and Appendix -- Adds recent academic freedom statement of the Regents

8 -- Interpretation of Section 10.2 -- Clarifies the role of a Dept. Chair/Unit Director in assigning tasks to faculty members and the restrictive options of faculty members to refuse reasonable assignments. Also, provides for the carrying out of assigned duties during a related grievance proceeding.

FLEXIBILITY

3 -- Sections 3 and 8 -- Defines appointment categories as Regular [tenured, tenure tract] or Term [previously called Non-Regular]. Simply a clarification of the appropriate use of Term appointments. The Term category includes clinical track and appointments supported by nonrecurring funds.

4 -- Sections 4.1, 4.3 and 4.4 -- Defines that base salary is guaranteed by a tenure appointment. Also introduces the concept that bonuses and other nonrecurring salary adjustments are not included under base salary.

5 -- Section 5.1 -- Permits units to elect a probationary period [maximum 9 years; presently 6 years for tenure track faculty].

9 -- Interpretation of Section 12 -- Reaffirms that programmatic change is not grounds for layoff of tenured faculty and emphasizes the creative ability of tenured faculty to adapt to changes, if they have a commitment from the University.

EFFICIENCY

10 -- Section 13.2 -- Adds the Vice President for Academic Affairs as an approval step over and above the Subcommittee on Tenure of the Faculty Affairs Committee.

11 -- Section 13.5 -- Adds a so-called “Judicial Officer,” who is not a faculty member, and who will preside over hearings and deal with procedural matters in cases before the Judicial Committee. If implemented, the Judicial Committee will become a jury.

12 -- Sections 14.1 and 14.5 -- Eliminates two administrative levels in the present process of termination for cause, i.e. the Provost or Chancellor level and the Board of Regents.

ACCOUNTABILITY

6 -- Interpretation of Sections 7 & 15 -- Goes beyond the usual Provost level approval of process and content of promotion files coming from an academic unit. Allows tenure decisions in the Academic Health Center to be based on a Provost’s concept of community needs and denies Judicial Committee review of the decisions.

7 -- New Section 7A -- Outlines the concept of post-tenure review. Provides for individual unit policies on intensive post-tenure review beyond the usual annual merit reviews. Describes possible disciplinary actions in cases of substandard performance based on peer review policies in a unit.

13 -- Section 14.6 -- Describes two situations in which a faculty member may be temporarily suspended without pay by a dean before completion of regular disciplinary proceedings. These include proceedings on the way to termination or failure to appear for work. In addition, a faculty member may be suspended with pay if he/she presents a clear danger.

will be very difficult to reach positive results on the issues of tenure reform and related processes of institutional reorganization. The window of available time for consideration been so compressed -- and the appearance of a coercive administrative agenda has been so much in the foreground of discussion about the issues -- that the process of faculty inquiry and even reasonable resistance to the rationales for and some of the components of the proposed revisions have been represented to the regents as faculty intransigence or, as some of our colleagues have stated publicly, 'paranoia.'"

The dilemma was that "if the governance committees and the Senate do not now comply with both the timetable and the substance of the revision proposals, then the faculty will, it seems to me, inevitably be damaged by the Regents,' and perhaps the public's, perception of us as cynically self-serving and obstructive -- an unfortunate outcome that reflects the self-fulfilling prophesy of a flawed process. If the reform proposals are somehow pushed through the Senate in the next couple of months without the deliberation and clarification they deserve . . . then we will almost certainly have to live with the destructive consequences of deeply divisive internal differences and a potentially dysfunctional tenure code. This scenario is made even more grim by the implication of already lost autonomy in the process of collegial governance signified by the Regents' decision to bring in an external consulting firm."

"No matter what we now do, it is not clear that any decisions the faculty comes to would stand in the face of either this external source of opinion or outcomes the Regents may already have in mind. It seems important to work from this larger context in the crucial decisions we must make in the immediate future. As we continue to consider the constraining options remaining to us -- and begin informal polling to try to find out more about where the tenure process stands -- it might make sense to try to reopen our (the faculty's, rather than the administration's) communication with the Regents so that they -- and we -- understand more clearly where we stand and what the stakes are."

The question of student evaluations and the tenure code received a quick reply from one member of FCC. "I would strongly urge your committee not to load down the tenure discussions further by adding the students' suggestion about teaching evaluations. We do not need more issues to argue about. . . . We have plenty of policies about teaching evaluations and their use in tenure and promotion decisions; the students should concentrate on making sure they are enforced rather than coming up with new policies in inappropriate places."

Fred Morrison wrote to Dempsey and Feeney to outline his views on the 13 points that Dempsey had identified. Some he found acceptable, some he did not, and some needed further comment. He asked how the April 18 Senate meeting would be handled (e.g., whether they would talk only about the original drafts from the Gang of 4 or provide redrafts). One issue that had not

been resolved was how “to deal with the issues that will ‘not go forward.’ There are certainly some other ideas that neither you, nor I, nor the committee favors. I assume that these ought to be left to others to propose language. You need, however, to discuss how you would deal with the ‘layoff’ issue: should it be formally discussed and rejected, or should it not be on the Senate agenda unless someone else raises it.”

Dan Farber emailed on April 10 to John Adams, Feeney, Morrison, as well as Senior Vice President Infante and Medical School Dean Frank Cerra concerning the Judicial Committee matters. “I had a very productive conversation this morning with Ed Fogelman and others from the judicial committee. Although neither of us was in a position to make binding commitments, we were both favorably inclined toward a proposal” that dealt with the hearing officer issue.

Farber also wrote to Feeney the same day about faculty concerns over the schedule. “Some of the concerns relate to the lack of time to carefully fine-tune the language and to consider fully issues of implementation. It seems to me that these specific concerns might be curable. As to the first, an analogous situation arises in Congress. For example, when Congress passes a major tax bill, there are almost always glitches because of the complexity of the statute. Customarily, Congress passes a Technical Amendment to clean up the glitches. The understanding is that such amendments will not be used to revisit major policy questions. The tenure subcommittee might well want to propose technical amendments next year, which hopefully could proceed quite quickly to the Regents for approval. As to the second concern, I agree that the proposed amendments will need some careful thought regarding implementation. I would hope that [Faculty Affairs] and other Senate committees would turn to the task of developing appropriate Senate policies covering matters such as post-tenure review. I realize that these suggestions by no means address all of the faculty’s concerns about the timetable, but perhaps at least some of the concerns can be reduced.”

Rick Purple wrote to Feeney on April 1 to commend him for his work (which Purple assessed through reading various committee minutes he received electronically), “even though you may not have been listened to often enough by the powers that be.” Purple sent Feeney a copy of a letter he had written to Medical School Dean Cerra, in which he commended Cerra for providing information on why tenure and salary should be separated in the AHC. Purple said that “in legal terms this is equivalent to a declaration of financial exigency within a part of an academic institution,” which is “what roughly bankruptcy is in the private sector.” Purple remembered that the University “went through this argument before in 1980, when instead of cooperating with the Legislature when they raised it, the administration joined with the faculty in pointing out the folly of this course. The long history of the AAUP’s scholarly and legal efforts has been to insure that salary is tied to tenure,

for without this guarantee, academic freedom will wither.”

In his letter to Cerra, Purple thanked him for sharing information, but took him to task on his premises. “I believe, however, the proposed solution has incorporated a fundamental error which overlooks the history of financial exigency, tenure and academic freedom in educational institutions. Your profit-loss analysis was excellent and was based, in my opinion, on the ‘for profit, private corporate’ model. This analysis may be quite applicable to universities and divisions of a university. The proposed solution is also unfortunately based on the same ‘for profit,’ private corporate model. I say unfortunate, because the laws of the land treat ‘for profit’ private corporations quite differently from educational institutions.” Purple cited Morris’s message to Hasselmo and urged Cerra to read it.

Morris was quite critical of Hasselmo. “He either should have stopped this thing, and he should have gone as far as he could to stop it before the train got running down the track. One of the things he should have finally done, if he couldn’t stop this train, was to say ‘I’m getting off. I’ll be out of Eastcliff by the end of the weekend, if you don’t stop this. This is not the kind of thing I can be involved in, it’s destructive of the University.’ He could have listed the kinds of things which were going to happen, which I understand have happened. You’re going to have a hard time with retention cases, it will cause difficulty in getting applications for graduate school -- these are ways of wounding the institution.”

A number of his colleagues were worried about who the regents might have appointed in Hasselmo’s stead. Morris maintained that his resignation “might have stopped things. And if it didn’t, it would have galvanized things much more; we wouldn’t have had to wait for the Gang of 19. The faculty would be riveted to it at that point. I don’t know that we could have gotten anybody who would have been any worse. We very likely wouldn’t have gotten anybody any better. We might have gotten Jim Infante, but I don’t know that he would have been worse. A cipher is about as bad as you can get.” Hasselmo, Morris said, was the cipher. “He didn’t do anything at all, except take up space. That’s what you’re saying; some people said ‘he’s taking up space; that keeps Jim out.’”

Hasselmo did not agree. “Should I have resigned over the issue? I don’t know what good that would have done. It seems to me that my staying on may even have helped bring about a resolution that was acceptable. In spite of a certain amount of acrimony, I think the transition went relatively smoothly -- and served the university better than a resignation. I have found no reason to second-guess my decision. (I never threatened to resign, or even thought seriously about it!) (Nor did anybody threaten to fire me!)”

Carole Bland emailed to her FCC colleagues and related her alarm “at the hostility and lack of confidence expressed by many” faculty about the tenure review. If the reactions of colleagues the

previous week at FCC and Faculty Affairs meetings were representative, “it is no longer possible to have a rational discussion on the tenure code,” and further discussion would only add to fears and lend support to unionization. She urged that all efforts be directed to explaining the purpose, the steps in review, and the people running it. John Adams wrote later that “in retrospect, FCC and especially the Working Group, were easier targets for AHC malaise than CSC or Brody or anyone inside AHC. This was not obvious to us at the time.”

The campus newspaper covered the meetings of the preceding days.

“Proposed tenure changes raise faculty debate” (Minnesota Daily, April 4). “Faculty members who met Wednesday to discuss proposed changes in tenure spent most of the afternoon questioning the reasons and motives behind the move to change the University’s current policy.” Faculty Affairs met; Morrison presented the text of amendments. “Many professors on the committee and others in attendance voice frustration with the process and questioned its purpose. ‘The overriding issue here is academic freedom,’ said Bob Morris [Law]. The drafters do not seem to have kept that lone star in sight, and we must. We cannot have it any other way.” “Morrison and others” said the language was full of “jargon” and some said they “would compromise academic freedom.” They were concerned about one provision that would allow the AHC provost to make tenure decisions without review by the Judicial Committee.

On April 5, Richard Chait and Cathy Trower responded to the Request for Proposals from the Board of Regents, outlining their experience. In their work plan (“confined to tenure as a term and condition of employment, rather than a philosophical precept”), they provided that the regents would be their client; they would help “objectively assess the validity of impassioned arguments that will be raised by proponents of various points of view,” provide “information and knowledge . . . to reach enlightened decisions,” talk with “key constituents,” “offer a set of policy options that we believe are most compatible with the Board of Regents’ policy objectives and most feasible in light of the political climate on and off campus,” “placed in the context of the University of Minnesota” with the understanding that a uniform policy may not be appropriate. “Our approach is not to advocate, but to analyze.” Bosacker and Isenberg had a discussion with Chait later in April to amplify on the proposal, and reported that he would not do quantitative analysis, only policy analysis. “His assessment is that tenure policy issues are almost always decided on a political/policy playing field, not by data sets.”

In early April, the campus newspaper reported that the regents intended to spend \$25,000 to hire a consultant to “review data gathered by the faculty and administration during the tenure amendment process and verify the numbers” as well as propose code changes. The reporter also

quoted Cathy Trower, at the University of Maryland and associate to Richard Chait, as saying she had received an email requesting the service, and that many institutions “have chosen to strengthen their review processes rather than overhaul the [tenure] system. Yet a significant number of schools have chosen to abolish tenure.” Carl Adams was quoted as saying that he doubted a consultant would be able to “understand the nuances of the tenure situation at the University.”

Attorney Martin Michaelson responded on behalf of the law firm of Hogan & Hartson to the Board of Regents’ Request For Proposals for analysis of the tenure code. He noted the previous participation of his firm in education and tenure matters, including at Minnesota. Because tenure revisions are “likely to entail some degree of legal risk, and possibly litigation risk, we recommend that a considerable part of the analysis be held within attorney-client privilege. We also recommend that part of our conversation with the Board be oral, to foster responsiveness to Board members’ questions and concerns about the topic, and to promote cost efficiency.” Hogan and Hartson was the same firm from which Steven Routh had come, the attorney representing Provost Brody on the Gang of 4.

FCC met on April 4 and devoted the entire 1-hour meeting to a discussion of tenure. Chair Carl Adams reported that Medical School Dean Frank Cerra had begun meetings with all AHC senators to discuss the financial situation of the Medical School and how it intersected with the tenure discussion. Dean Cerra appeared to be willing to have these meetings weekly with AHC senators. Adams reiterated that the faculty leadership would not bring to the Senate tenure code revisions that were not seen as beneficial by AHC senators.

Committee member Roberta Humphreys addressed several questions to John Adams, spurred by the email message from Carole Bland noting hostility and mistrust in the process. One question was “what are the origins of the proposed revisions?” The answer, and the ensuing debate (as recorded in FCC minutes; the quotations are from the minutes, not speakers), illustrates the division that existed.

Adams said that “starting last fall, several individuals were asked by Senior Vice President Infante to start thinking about faculty tenure because it was being discussed around the country and because it had apparently come up at a Regents’ retreat; there had been agreement early in the fall between the Regents and the administration that tenure would be a Regents’ policy for review during 1995-96. That coincided with understandings by Provost Brody that as the re-engineering effort in the AHC moved forward, there would be a need to deal with personnel issues. It appears that the AHC leadership believed at that time, and may continue to believe, because of the way it understands the tenure code, that tenure presents problems to the AHC re-engineering process. Added to this were issues the administration and Board of Regents were thinking about as well as matters raised by the Human Resources task force. This may sound like a bunch of gobbledygook,

Adams said, but there were about half a dozen things in the air, and the President was asked by the Board of Regents to address them.”

Adams “said he did not know what went on between the President and Board of Regents, but the President was asked to write a letter to the Board to explain what he would like to see done with the review of the tenure code this year. This is the November 20 letter that the faculty have seen. After that letter, he was asked by Carl Adams and Dr. Infante to lead the working group to coordinate discussions and to write an “issues document” that contained everything that had been talked about. Where did all those items come from? From his notes, from all over, he explained. He thought, perhaps naively, it would be a discussion document; some apparently thought it was a set of proposals. The document served as the basis for the first public discussion, and dealt with the question of the location of tenure, among other topics.”

“After the discussions in January, there was agreement that a number of issues would be dropped and effort would be concentrated on a few. Why that few? Because the working group agreed with the administration and the faculty on what was needed; the list contained 14 items.”

“Who decided on those 14, asked one Committee member? They were developed in conversation with faculty leaders, the administration, and in response to the first faculty forums,” Adams said. He “took pains to explain that they came out of the back and forth between Regents, faculty, administrators, and the members of the working group; it was a judgment call, he said, on what to include and what to drop. The proposals came from several sources -- the Dean of the Medical School, the Judicial Committee, faculty members -- there was no single place where the 14 originated. They dropped the location of tenure; there would be no progress on reorganization if it were retained. After the 14 were identified, the four attorneys started drafting specific language to amend the tenure code.”

“The origin of the proposals is cause for a great deal of concern, it was said. One member of the Tenure Working Group said that the group only met two or three times during Fall Quarter, and said he did not know the origin of the 14 points. That is why the question about where they came from.”

[About this entry, John Adams wrote that “they just would not believe that I went through hundreds of pages of notes and minutes and compiled a discussion document that listed and discussed things that had come up. The purpose was to get the discussion going. I suppose that if there had not been the mess in [the] AHC and the initiatives by Brody, we might have had the desired discussion.”]

....

“Another concern is with the drafting committee of four attorneys. It has never been clear how they were appointed. One understands how Professor Morrison and Professor Farber were involved, and the representative from the General Counsel’s office, but the sticking point is the fourth member, the attorney recommended by Provost Brody. Who appointed this group?”

Adams “explained that Professor Farber was appointed by Senior Vice President Infante to take the responsibility on the part of Academic Affairs to coordinate the drafting effort. He said he did not know how the group was created. It became clear, however, that the way to make progress in the discussion of the 14 points was to deal with specific proposals.”

[John Adams wrote, about this, that “people demanded specifics, then when the specifics came forward they wanted to know where the four people came from. Behind it all were questions about process, but the real source of the concern was simple fear.”]

“Professor Morrison related that he had been asked by Professor Dempsey, chair of the Tenure Subcommittee, to help draft language. He talked to Professor Farber and said he would help represent the faculty perspective. The representative from the General Counsel’s office appeared. The lawyer from Washington came with proposals from the health sciences.”

“The question is why the other provosts were not asked to send their attorneys as well. Professor Morrison said he did not know; they were just drafting language. They treated the matter as four who were skilled at drafting, pulling ideas from the Tenure Working Group and the January discussion document.”

On April 4-5 Mary Burgan, national AAUP General Secretary, visited the University. She had dinner with several faculty (including Garrard and Swan) and two regents (Sahlstrom and Spence) and had a general discussion of tenure. The next morning she met with Regents’ Professor Ellen Berscheid along with Virginia Gray and Craig Swan and Regents Keffeler and Kim. She met with the Twin Cities campus AAUP and said that the issue was the breakdown of governance. Burgan also met with representatives of the Tenure Subcommittee, the Faculty Affairs and Judicial committees, and with representatives of UFA.

Berscheid later recalled that it was after her breakfast meeting with Burgan that Bob Morris in the Law School was drawn into the Gang of 19. “I was walking through the lobby [of the faculty dining club] and Bob Morris was bustling through for an early lunch. I stopped him and asked if he would come to a Gang of 19 meeting we had scheduled because we needed some legal advice about the meaning of Section 19 of the current code, as well as some information about case law on the matter.” Berscheid pointed out that they could not ask Morrison “as he was working with the administration’s lawyers. [Morris] agreed to come. Bob had worked with Fred on the 1985 tenure code.”

Berscheid related that at that breakfast meeting, she had “asked Keffeler what the Regents would do if we managed to get the faculty’s tenure revisions through the Senate. (At this time, we were under great pressure from the administration to get something through by June so that the Regents could ‘act’ on it -- ‘accept it’ was the explicit meaning -- at their July meeting. Keffeler

replied, 'we'll kick it around over the summer and then we'll see what we want to do in the fall.' This was not what the administration had been telling us." At this point Berscheid said she told Keffeler "if that is so, we're heading for a train wreck. There was a bit of silence, and then she asked, 'What do we do to prevent that?' and proceeded to give me her chronology of events that escalated the tenure stakes, to wit: she asked Infante for information on the number of tenured professors in individual departments, he did not respond, so, as she put it, 'we upped the ante,' with a review of tenure, he still didn't respond with the information she requested, 'so we upped the ante again,' she said. We told her that we had our own problems with Infante, but that we were heading for a crisis if the Regents did not act on the faculty's tenure recommendations."

Berscheid remembered that after Regents Keffeler and Kim departed, "Mary Burgan turned to me and said, 'well, you slowed her up a bit but she hasn't changed her mind.' That was why, when I saw Bob Morris in the lobby of the Campus Club, I immediately asked him to the meeting; I knew we were heading for trouble and needed legal advice."

After this, Berscheid recalled, "then, proceeding down the elevator heading for my car, who should I run into but Keffeler. When she came into the breakfast meeting, she had extended her hand to me, which I immediately shook, and then said something quite bizarre, 'you can go wash your hand now if you want.' So, when I saw her in the basement, looking rather worn and forlorn, I put my hand on her shoulder and said something consoling. She said something about being surprised that we continued to support Nils." Berscheid maintained that "this is what it really was all about -- Keffeler's and [Governor Carlson] Arne's desire to get rid of Nils. I said we were supporting Nils, not because we could not get a faculty vote of no-confidence in him in a nanosecond or that he didn't deserve it, but because we did not want Jim Infante as our President -- that in addition to being an organizational disaster, as she had outlined in our meeting, he also was hostile to the faculty. That is when she said, 'so this is what it's all about' and I replied, 'no, this is not what it's all about, but it's part of it.' Then she said that they would never put in Infante as President. She again said that she wanted to talk to faculty to work out some sort of resolution. I said maybe I could get together a group (thinking of the Gang of 19) to discuss the situation and I'd call her. I kicked that around with Fennell for a bit, and also Mike [Bognanno], but, in the end, we were concerned that we would get 'used' in the same way that she used everyone she talked to; that is, Keffeler's reputation for being untrustworthy and unscrupulous was, by now, very salient to all and so I decided that talking to her wasn't going to help our situation and might hurt it. (This opinion fueled our later frustration with Rama, who was so naive on the subject of Keffeler; she used him for information, and also to try to prevent faculty action by misleading him about what the Regents were doing). In any event, I never

called her, and I don't believe I ever spoke to her again. (Note that my gut feeling about trafficking with her was later confirmed when poor Fogelman and Feeney had lunch with her at her invitation.)”

With respect to the Burgan meeting with UFA representatives, Walsh said they expressed the view “basically that many faculty did not trust AAUP because of its role post-'73 [when some saw the AAUP as a spoiler in the collective bargaining elections] and [its] present leadership. We wanted to work with AAUP but could not trust it.”

Purple recalled that when there was talk about organizing the Gang of 19, he maintained “that there ought to be an alternative. For those of us who don't want to be leaders of the FCC and all of that, there's another mechanism. It's well-established, it's nationally organized, and it's the AAUP.” The AAUP chapter had faded, “because it wasn't doing anything; it withered after the 1981 election. We got Mary Burgan to come on campus. All of us felt very strongly that this was the time to revive the AAUP chapter. Part of what has happened here is sociological. Over the 20 years or so that we're talking about, when the AAUP used to be a voice but isn't any longer, a lot of collegiality has broken down because of the pressure on young faculty and the specialization. For so many of us now, it's our national meetings that are important, rather than a professor of poetry and professor of physiology [working together]; that's not collegial any more. It's fellow neuroscientists. People get so busy [that] things have fallen by the wayside. That is indirectly the result of the tenure crisis. Because when those things happen, your guard goes down, you forget that you really are a community of scholars, and people like the Brodys can creep in and start chipping away at it. All of a sudden you wake up one morning and you realize the chipping has undermined the thing to the point where it's about to topple. It is critical to somehow reawaken this sense of collegiality across disciplines. We all wanted that. Craig [Swan] got Mary [Burgan] to come out and talk. My suggestion to the Gang of 19 was that if you want a formal group to associate with, do it through the AAUP. The union group may want to go on their own; that's their decision, we can respect that, but you know who most of the faculty are going to follow; they're going to follow the AAUP, if you want an outside watchdog.”

Did the visit of Mary Burgan of the AAUP have any impact?

Swan, the long-time AAUP member, thought so. “I would say yes, but on a longer-term basis rather than a shorter-term basis. It underscored the national visibility about what was happening here. It also showed to different faculty that there were national resources they could turn to, in terms of traditional defenses of tenure and academic freedom. There's now an active AAUP chapter on campus.” Pick pointed out that “at the beginning of the last academic year there were 70 or 80 or 90 members; at the end of the last academic year, there were 400 and some.”

One faculty member recalled that “there were two meetings with Mary and a couple of faculty and a couple of regents. The number of regents was at two, in each case, because of concerns about the open meeting law. It didn’t take much to get regents to agree to come to those meetings. Things changed by June, when the regents refused Virginia’s invitation to meet. I think it showed the clout the national AAUP carries.”

Another individual recalled the same meeting that Berscheid remembered, but with different emphasis. “The biggest surprise of those meetings was after Regent Kim left, when Jean Keffeler talked very directly about her problems with Nils, and Nils’ leadership, and essentially said ‘if you will help me force the President out early, we can change this tenure discussion.’”

In April, “the Executive Committee of the Minnesota State Conference of the AAUP asked to meet with President Hasselmo to discuss their concerns about the spill-over from the tenure debate at the University for other colleges in the state. Hasselmo was unavailable. A small delegation met with Mike Bognanno on April 9. One University faculty member thought the clearest impression from the meeting was one of disarray among the University’s central administration.”

April 8: The Academic Senate of the University of California at Berkeley adopted a resolution calling for Minnesota’s regents to “cease all efforts to undermine the institution of tenure, whether by easing restrictions on the termination of tenured faculty or by forcing tenured faculty to leave by decoupling their compensation from tenure.”

April 9: two governance leaders at Michigan write to Hasselmo and the regents to protest the November 20 letter and the University’s process of reviewing tenure.

A week later the UFA distributed to all faculty copies of the Berkeley resolution. The next day the Daily had a page-one headline, “Berkeley condemns U’s tenure shake-up,” and an article reporting on the resolution, and also that faculty at Northern Illinois and Florida State had criticized the process at Minnesota. FCC Chair Carl Adams “said those critical of the University’s efforts probably didn’t have enough accurate information to formulate an opinion.” Humphreys said “this issue has gotten national attention. . . . If they (the administration) want this to remain a top research university, then they need to stop and think.”

The Daily reported on April 9 that AHC Provost Brody would be leaving the University to assume the Johns Hopkins presidency and would start by September 1. Hasselmo said he would hire a successor by end of the week without a formal search, using emergency procedures. One AHC officer (Vice Provost Leo Furcht) said re-engineering would continue and that Brody “took on many sacred cows.” Hasselmo hired Brody’s successor within the week, Medical School dean (for 11 months), Frank Cerra.

Shortly after Brody announced his departure, there was circulated among AHC faculty the

following announcement:

U of M Dinner Theater Presents
Bye Bye Brody

A new revival of an old favorite that might better be titled The Music Man. In this 90's version, the slick out-of-towner arrives with much fanfare and quickly sells the locals an elaborate bill of goods (magical org charts, powerless committees, another useless newsletter, and, yes, re-engineering!). Amidst all the excitement and confusion, Brody slips out of town before it hits the fan. Enjoy it while you can!

* * *

THE ROLE OF WILLIAM BRODY

One question about these events was the role that Brody played. From the faculty perspective, it was central.

Before getting to the faculty views, however, it is worth noting the views of Brody's successor. Cerra recalled "the first public meeting that Bill had with the AHC, in the Mayo Auditorium. It was the first public meeting about re-engineering. The QRTC had been going for awhile. One of the first things he talked about was tenure, and that tenure was the limiting process and it just had to be changed. This was before the whole thing got heated up, before the legislative session."

Cerra said that the comment "got people's attention. He would make similar presentations over in the legislature. I think that really stirred the pot. Then you put that together with re-engineering, that basically got rid of each and every anchor, whether you were a department head or a faculty or a dean. It created this model that completely divorced education, research, and mostly clinical care and outreach, and made three separate businesses -- in the real meaning of that word."

"That's where Bill's and my view of life began to separate, because that just didn't sit right with me. And I never bought into the philosophy that you needed to get rid of the tenure code. I like my tenure! It serves a very useful purpose for academic freedom, and I think there should be a guarantee of a base salary. That's been my position all the way along; I believe that in my soul. I think it's the right thing."

John Adams summarized his view of the events up to this time as follows. "Brody was more important in setting things in motion in the AHC and the University and the community and the legislature than comes across [in this chronology originally]. The frustrations and the ignorance of what was happening and why among AHC faculty finally burst out, and then the FCC and others in the leadership became targets for their frustration. Moreover, within the AHC, the troubles in the [Medical School] led to the perception within other AHC units that [people believed] all colleges and schools in the AHC were screwed up, which led the School of Public Health people, and some of the

respectable people in the science departments in the [Medical School] to be especially angry at Brody and CSC Index, and for good reasons. This failure of Brody and of colleagues outside of [the] AHC to make distinctions among units and operations that were in trouble from those that were run responsibly is what angered [AHC faculty leaders], but they came into the university-wide discussions in mid-stream after they were frustrated and angry, not at the start (early fall 1995) when their inputs might have made a bigger difference.”

Bloomfield offered a view about Brody similar to that of John Adams. “As far as I can tell, Brody was indeed one of the real bad guys in this. He seems to have paid no attention to the rest of the University, to the sensitivities that the rest of the University might have about tenure or consultants or re-engineering. He took this stuff to the legislature, as far as we can tell, without the OK from Hasselmo. I think that he really kindled the fire and kept feeding it fuel. He wasn’t the only one, but he was one. The AHC is still in terrible shape [in terms of] morale, [and still has] its other problems, because of that. Even under Cerra, they have not gotten over it. He really opened a Pandora’s box.”

Gray’s view was close to Bloomfield’s. “As far as I am concerned, he is the principal culprit in this battle. You might wonder why I don’t think Jean Keffeler is the principal culprit; she is definitely culprit number two. But I think without Brody, the legislature never would have gotten stirred up. And without Brody, Keffeler wouldn’t have been as important. She would be talking in general corporate lingo about downsizing and restructuring. Brody comes in, there is a specific financial problem -- objectively, you can’t deny that we needed to do something about the AHC -- and then when he says ‘tenure is the problem,’ bingo, it links finance and tenure. Then she can ride off and talk about those two as if they were one. I think if he hadn’t been here, that link would have been much harder to make, and make sense.”

Marshak’s view was that “if we had to pick two people who started the whole thing, Bill would be one of them, and Jean Keffeler would be the other. The alliance between them was an alliance of convenience; each of them had goals that were fairly different, but they came together in this tenure affair. My own cynical view is that Bill [Brody] came here with the intention of being President of Johns Hopkins, and he’s a very smart guy. My view is that he came here with the intention of doing something big, fairly nationally-noticeable, fairly quickly. There were really two things. One was the sale of the hospital; the other was the reform of the health science faculty structure, the re-engineering or change of it. Whether it was necessary for him to take on tenure as part of that, I think that was actually a mistake on his part. Nonetheless, he did take it on, so he had a big role. And Jean had the other big role,

for her own reasons, that were different.”

Vikmanis offered a perspective on the interaction between Brody and the Governor. He recalled that “there were a couple of meetings in the Governor’s office, where I was present, where the issue of tenure was raised, where Brody said ‘Governor, we also have to do something about tenure.’ Arne said ‘absolutely, we have to do something.’ But he was not directly involved in any way in egging anybody on, saying you have to do this. When the issue was thrown out, he said ‘yeah, you’re right, gotta do something about that.’ But then when the fire hit, given the circus that it finally became, I think the Governor probably did the right thing by saying ‘OK, guys, pull off.’”

Dempsey summarized her views tersely. “He obviously went to the regents and the legislature, and talked publicly and said tenure was holding up the reorganization of the health sciences, that there were all these doctors just sitting on their hands over there, and we’ve got all these specialists that we don’t need, and it’s all tenure’s fault.”

Purple said that “sitting over here in the AHC, I would say he was the spider pulling the strings. What I want to know is if there were any spiders pulling his strings. I don’t think so.”

Walsh also provided his views about events up to this point. “I think that Brody and the AHC crisis (really a crisis of the Medical School) started things rolling. But there were other factors. For a long time there had been this momentum built up by the AAHE and the ‘Dupont Circle Crowd’: tenure is not in the public interest and we have to fix it. All that was self-serving talk among the educational managers at their workshops paid for by big foundations. But then we found that some of our own faculty had bought into it. They wanted to get to work to ‘fix’ tenure; so they were ready-made help for Brody and his friends. There were powerful people who saw the tenure issue as an opening to increase their control of places like AHC. I think that a lot of our faculty leaders were naive about where all this was coming from. What is appalling is that there never was a serious discussion of the real problems of the University of Minnesota -- financial mismanagement, managerial ineptitude, and our sinking reputation.”

Morrison said that “Brody played a couple of roles. At this stage, [Washington law firm Hogan & Hartson attorney Martin] Michaelson was already on board, from about October of 1995. I met with Michaelson in October or November of 1995, about tenure in the AHC. It was clear at that point that Michaelson didn’t understand much about Minnesota. I tried to give him some background. So Brody was having a tenure code written for him by the consultants, and I think the consultants had employed Michaelson, rather than Brody employing him.”

“Brody,” Morrison said, “clearly is one of the people who was promoting [changes in tenure]. He clearly was very much in

alliance with [Regent] Jean Keffeler about new management coming to the University, and doing new management things in the University. I'm certain he promoted this kind of idea along the way."

"He [Brody, Morrison said] never was very interested in tenure. He never was interested in presenting any ideas, or asking for any input other than this one meeting that I had with Michaelson. He wanted radical reform, as far as I can tell."

"It's apparent to me that he had some influence in the legislature, in trying to drive the legislature in that direction, too, among other things from some of the comments in one committee hearing. It was clear he had been singing privately a different tune from the one Hasselmo was singing publicly."

"In the sense of stirring up the pot, he had a great influence. In terms of the actual events, he was out in April and I think he had not that much influence."

Another leading faculty participant agreed with the general drift of these opinions. "I think Brody played a key role in events. I have no facts on this, but it was widely believed that between February of 1995 and December of 1995, Brody was working behind the scenes and outside the University to break the tenure code. Partly through his consultants' work, but also by talking with Becky Kelso and others. I don't know that we will ever know for sure."

"At some point Brody had rapport with the Governor and the President didn't. It's not clear how many independent ideas the Governor has on his own, but he certainly picks people and backs them; he could have picked Brody."

"I don't think Brody ever really tried to work with the Minnesota tenure code, so his reaction was 'gee, if I say something at 3:00, it might not happen at 3:30.' At times that's one of the weaknesses, but more broadly, it's one of the strengths of the University."

"I think Brody was a very prime mover. When Brody testified before the House Higher Education committee in February of 1995 -- and that was the first time I'd heard him attack the tenure code -- he and I had an exchange of emails the following weekend. I didn't quite understand what was going on at first, but finally it became clear to me that he wanted to be president of the AHC. Provost wasn't good enough; he wanted to be president, and wanted absolute autonomy from people in Morrill Hall. I thought he was using everything he could, even to damage the institution if necessary, to get that gain. It made me wonder why he'd even taken the job in the first place! Why he turned on the people who hired him, so quickly, I do not know."

Bland said she had "tried to really understand what he did that contributed to this. I think he played a major role in four ways. He played a major role in going to the legislature directly and saying that tenure was a problem. He played a major role in

not working with the President; I don't think he ever saw the President as his supervisor. And he played a major role in calling in those consultants. And I'll add a fourth one: he never understood nor honored Senate governance. At the time he was here, I was trying to organize an assembly in the health sciences. We had an assembly going; it wasn't official. The senators in the health sciences met before the Senate meetings; we met with the deans. We elected a consultative committee. He wasn't the least bit interested in working with us. Instead, he set up these ad hoc groups, those design committees."

Told that some took the position that Brody, more so than Keffeler, was the chief villain, if one wanted to identify villains, because he was the one who got the legislature and possibly the Governor interested in tenure, Bland responded that that may be correct, "but I think it's important to view the context. The Medical School was bleeding red ink all over the place, and crashing. Bill's intentions were always good. If you sat in a room and had a glass of wine with him, his intentions were always to maintain a quality medical school, to maintain a good health care system. I think his big mistake was that he didn't know how to do it. He was an inexperienced administrator. His entire experience as an administrator was as head of a department with about nine faculty. And he'd never been at a public institution. He'd run a business. I suppose you could say the same about Jean Keffeler; I don't know that her intentions were bad. Given that context, I'd say the real villains were the people who did away with our revenue source. We wouldn't have been in that position if the legislature hadn't written the rules and made it so that HMOs never had to send any patients to us."

Feeney recalled that he had tried to contact Brody to talk with the Faculty Affairs committee, but to no avail. He recalled that "I had high hopes for this individual. He was a radiologist, I was a radiologist, most of the radiologists I know are fairly rational people. He was an utter disappointment from the first time I met him. He was not the dynamic individual I thought he should be, he was very, very biased by a couple of paradigms that had been shoved his way by his staff or members of the administration. One of the first things out of his mouth at an FCC meeting was that the problem around here was the faculty culture."

"What this basically said to us is that this is an individual who has a task and he doesn't give a damn who he steps on or kicks in the process. I think his way of approaching it, the CSC Index stuff, was just textbook about why he didn't respond to [Faculty Affairs]. He didn't want to deal with us, he didn't want faculty governance involved, he wanted to have a few henchmen and a few puppets in there, and that was the way it was going to be. That was his solution."

"He was also known for repeated political end-runs. Why

would you go to the legislature and blame tenure for every problem you had? When you didn't understand the history of the Rajender consent decree or any of these other things that had influenced how tenure had evolved at this institution? Why there were certain things in the code, why there was system-wide tenure, and why there were so many tenured people in the health sciences? There was a big balloon of those appointments after the consent decree; is that to blame the tenure process or the tenure code? That was just stupid."

"I think he thought he had the political clout, and maybe the charisma, to pull this off. It's very obvious he didn't. All I can say is, 'thank God he's not here any more.' You can quote that."

Another faculty member expressed a similar view. "I think this stuff was engineered by Brody. The link between re-engineering and Brody and the tenure crisis is there. There is significant information suggesting this crisis may have started with Brody. I think Brody was chosen by Keffeler and Win Wallin -- as I mentioned, the role of the Governor's kitchen cabinet has not really been brought into this document. Britt Robson starts his article with the summer of 1995 meeting. I think that's where it all started. That's where I disagree sharply with some of the things that John Adams wrote about those over-reacting AHC faculty and not really understanding. If you had studied what re-engineering was all about, you would read about people being co-opted and given specific tasks and not told the big picture."

Purple's view was not dissimilar from that of his colleagues, but he enlarged on the reasons. "My perception of Brody was that when he first came, I was a little suspicious of him. I've never been happy about Hasselmo's ability to judge personnel for top management. When Brody made his first couple of speeches, and said 'read the book on re-engineering the corporation,' I got a little nervous."

"The first year was pretty quiet. He didn't see the faculty at all; we didn't see him at all. My impression is that he spent the first year talking to the medical alley corporation folks, and to the legislators, and perhaps to some of the regents."

"Way back in early March, he appeared in front of the FCC. They were horrible minutes. He was talking about how horrible tenure was, and that he couldn't get a professor to teach a 10:00 class because of tenure, which is the biggest batch of bull that ever came down the pike. He was spinning lies like this all over the place. He lined up his ducks, and then the re-engineering started inside the health sciences."

By that comment, Purple explained, Brody "got the support of the downtown medical alley people, he obviously got into the ear of the Governor, he got into the ear of Becky Kelso and two or three of those people. He obviously got into the ear of some of the regents. He spent his time, as far as I can see, in

that first year lining things up that way, getting his outside support. Somebody would ask him, why don't you talk to the faculty? He said 'I've got too many things to do; I'm too busy to talk to the faculty.'"

Shively did not disagree with the view of his colleagues, by and large. "He played a key role in this. He and I were arguing all along, about all kinds of things. He saw me as a sell-out to the unions; he said so. To a union mentality. When I was saying I thought it was critical we get faculty salary increases, that faculty morale was a critical thing for recruitment of faculty. He didn't like that."

"On the tenure business, one thing I was arguing fairly early on was that we had to worry about was one possible outcome was having the faculty unionize." Brody, Shively said, did not believe him.

"The critical thing he did was give credence at the legislature to the argument that tenure was a problem. I think he turned a bunch of key legislators, like Becky Kelso, against the faculty position. But not against the University; they cared a lot about the University, and here was a key central administrator saying 'I care a lot about the University but I can't change it because we're stuck with tenure.' That sort of validated what were nascent instincts anyhow. The ordinary public has trouble understanding why you would have tenure, so that just clicked. It was just like throwing a little stone into super-cooled water. For a number of legislators, that just clicked."

Sturdevant's view, as an outsider, was not dissimilar from that of the faculty. "I do think it was Bill who got Becky Kelso going, and probably originally Arne, too, along with Jean. Jean and Bill together probably got Arne going. In a way, I admire Bill, because he was trying to fix a really big problem, and fix it kind of quickly. He was probably trying to fix it too quickly. But I admired him for what he was attempting to do. I think his political judgment, for this place, was not good. It was good that he left when he did, or his faculty might have tarred and feathered him. He was a classic change agent, who comes in and makes a lot of waves, but has to leave, then, because you can't sustain that. A lot of faculty think that Bill was the villain on tenure. I remember one of the last interviews I had over the phone with him, when the Faculty Senate tenure proposal was almost done, and close to the shape it was passed in, in June. I said 'are you liking what you're hearing from the Faculty Senate on tenure?' [He said] 'oh yes, this satisfies me just fine, this is going to be great. This would give us all that we need.' He was really putting a new spin on things."

"So I think he was backpedaling already then, seeing that he maybe had gotten too big a genie out of the bottle. I think Bill was focused very narrowly on the needs of the Academic Health Center, and didn't think much about the University as a

whole. He was thinking about bottom-line questions for the medical enterprise of the University; the hospital probably weighed more on him at the time than he cared to admit. I remember that how I got to know him was that I wrote an editorial in the fall of 1995, saying it was time for a new financial underpinning for the University Hospital, and it was time to consider merger or something. He was helpful to me on that editorial, and he very much wanted that quickly to happen, along with a major re-engineering of medical education. That whole medical world has changed dramatically, and while it was changing, we were fussing with John Najarian. He felt that they were behind the curve, and for the sake of their reputation and the future of that enterprise, they needed to do some dramatic changing. I think he was wrong in how far, how fast he wanted to change things, what tools he was willing to use to change them. But his department was in a crisis, unlike that of the rest of the University. The rest of the University had lots of troubles, too, but his were unique.”

“He’s the one who got Win Wallin and Becky Kelso stirred up enough to come see me. He probably got the Governor stirred up. Maybe Jean had already planted some seeds, but I’m sure Bill got things stirred up. Bill was good at convincing people outside the University that change was needed. To the extent that that helped the community accept the eventual spin-off of the hospital that came, he was pretty good at rallying opinion leader support for the fact that change was needed. That may be his best continuing legacy; he made some changes easier for the whole community to swallow than would have been otherwise.”

Vikmanis responded to the proposition that Brody may have instigated what became the active interest in tenure. “That’s a question I’ve asked myself a number of times. Neither you nor I will ever know. When I took Brody to meet with Keffeler when he was being interviewed, I don’t know if Brody was reflecting the concern that perhaps Keffeler [expressed]; ‘OK, Bill, if you’re selected as the next provost of the AHC, here is a major issue.’ One very clearly is the economics of the hospital. [On] the other one, I don’t know to what extent Keffeler said ‘if you’re selected, you gotta do this’ [about tenure]. Or if the reverse was the case, if Brody said ‘if I think about coming here. . . .’ [His] conversations with people here were extensive. The guy is very savvy. I’m sure he talked to a lot of people about the marketplace, what’s happening with health economics, tenure, etc.”

“When I think back through some of the presentations, and [it appeared that we were] going to tear down all the silos, it looked like there would be a totally open field, no silos. Some faculty said ‘is there going to be a degree in Dentistry, Nursing, Pharmacy, Public Health?’ All the silos would be gone. I can see that tenure would suggest that no, it would be tough to

dismantle the bricks that all these silos are built of.”

“I want to be fair. I honestly don’t know. My guess, my gut feeling would be, that Brody being the savvy guy he was, probably realized that in order to do what he wanted to do, what he perceived needed to be done, he really believed he had to have complete flexibility. If I were to guess, I would guess tenure was a real issue with him. I’m not sure he did fully realize he was really starting a firestorm.”

“The other thing that I find amusing, as I reflect, is that I think . . . Jean Keffeler pulled the ultimate Pontius Pilate act. ‘Who, me? I never wanted to do this thing with tenure. It was never my intent to abolish tenure.’ It’s ‘goodness, it was mishandled, the process was wrong.’”

In the words of one observer, “we are now at the point where Hasselmo has his two-year contract and Keffeler is moving forward. This is the background, with a president who’s so shell-shocked by Keffeler that he now has very little communication with any member of the Board and is emotionally upset.

“All of a sudden, University Hospital is going to merge with Fairview Hospital. And in comes Bill Brody.”

“The genesis of the tenure fight came at the moment the University Hospital was going to merge with Fairview Hospital. The Fairview doctors pointed out, at a negotiating meeting, that if half the doctors -- the University doctors -- had tenure and could not be fired, and none of the Fairview doctors had that, that it wasn’t a very good deal for them. Everybody they would let go would be a Fairview doctor. That was a perfectly intelligent and reasonable point.”

“It was suggested by all the negotiators and all the University officials that perhaps there would have to be an amending of the tenure code to exempt the University of Minnesota physicians who were going to be part of this Fairview deal. There probably should have been. I don’t think that would have caused any stir among the faculty. There was a good, specific, practical reason. It could have included the Medical School faculty who were working full time in the hospital. A Medical School physician who didn’t do much clinical work in the hospital probably wouldn’t have been covered. But if there is a surgeon who is working full time at the hospital, even though he’s a professor of Medicine, maybe you could have amended the tenure code. I think the general University faculty would not have been offended; the FCC probably wouldn’t have been too offended at that. These doctors were all people who were making a lot of money, who could have joined any hospital staff; they had vastly more freedom and independence than most faculty. One of the reasons for tenure, which is to protect them from unpopular views, wasn’t even applicable, because they didn’t have any unpopular views. They didn’t express their views. The tenure

code never particularly was meant to apply to these kinds of situations.”

“But then Bill Brody has the wonderful idea that ‘as long as we’re streamlining, getting rid of this old-fashioned thing like tenure, let us do it University-wide.’ I may be incorrect on this -- I wasn’t there -- but my understanding is that he, working with Keffeler, thought that maybe a streamlining would be good for the University. We get back to the first words I uttered to you. There is this corporate model of ‘we need hard-nosed managers.’ What do managers do in American corporate society today? They downsize corporations. Streamlining the tenure code seemed like a great thing. This would only seem like a great thing to someone who knew nothing whatsoever about a university.”

“So Brody and Keffeler went over and met with Representative Becky Kelso at the legislature, and said ‘Nils Hasselmo is a terrible manager.’ If the former chair of the Board of Regents and the head of the health sciences say the president is a terrible manager, people believe this. They met with the Governor, and they met with Becky Kelso, and they said ‘we need tenure reform.’”

* * *

BRODY AND THE PRESIDENT

A related question of importance in the minds of many faculty was the extent to which Brody, in his representations about tenure, reflected the views of the President.

Robson, in his article, described one view.

Brody was a gifted salesman. “He was one of the main people I dealt with,” says Rep. Becky Kelso (DFL-Shakopee), then the chair of the House subcommittee dealing with University funding. “Provost Brody made it clear that the tenure code as it applied to the Academic Health Center was a problem. He said [the AHC] was an incredibly important resource, with a hospital that treated people with life-threatening illness and trained physicians to treat the people of this state. He said it was vital beyond higher education, and that it was in crisis. That was the perspective he brought to us... and certainly it is safe to say he was interested in involving the Legislature in those problems. I think he was right. We agreed there was a need for strong changes.” Kelso adds that she believed Hasselmo was aware of what Brody was doing: “I didn’t get the impression this was a rogue operation.”

Gray recalled that “we continually reported to Nils in our private meetings that ‘you’ve got to do something about Brody.’ The first time I had a cogent email from the AHC that told me something awful Brody did, I stripped it of its identity, I sent it to Infante, and said ‘you have got to take this seriously.’ I think they were very careful about what they said, but I think they did agree with us that he was out of line.”

Gray also suggested that a political problem existed. “I think Brody was more powerful than they were, at the time. He had the Board’s support, he had the legislature’s support -- I don’t think Nils and Jim could have stopped him. They just breathed a big sigh of relief when he got this job offer. If he hadn’t gotten that, who knows, he’d probably be president today. He would have been very hard to stop.”

Purple asked “what was Nils’s role in letting Brody go like this? Is it another one of ‘Nils didn’t know’? This guy Brody was over in the legislature, testifying and whispering to legislative ears that the problem at the University was the faculty. It’s the first time we’ve ever had a high University official, to my knowledge, openly campaigning against the faculty. What was Nils doing? Nils didn’t know of this? Donna Peterson⁶¹ didn’t know of this? That’s what fed a good part of the paranoia around here. Brody was doing this all on his own? It’s the Hasselmo regime’s technique of hanging people out on a limb, on a trial balloon, then saying ‘I had nothing to do with it.’ Come on; this is a provost. This is the guy who sold the hospital.”

Another faculty member in the health sciences commented that “Nils was unable to handle Brody; he was like a loose cannon. Why, I don’t know, because he did work for him. Of course, he was hired to do a job, so they had to trust him to sell the hospital and get the private practice plan under control.”

Bland thought that “Hasselmo did not have control of Brody. Brody was doing all kinds of things, I think, without input or consultation with the President.” In response to the observation that some thought Brody’s comments about tenure were with the endorsement or acquiescence of the President, she said “I have to believe not.”

Shively thought any division between Brody and Hasselmo may almost have been accidental. He did not believe Brody said what he did with Hasselmo’s endorsement, but said that “I don’t know that he went over and said it deliberately against Nils’s blessings. I think he was just winging it on the floor. But that was certainly not with Nils’s blessing that he did that. Nor was that Nils’s intent. Nils would not have said that.”

Hasselmo said that Brody “and I disagreed about tenure, and I told him so on several occasions -- and he himself

⁶¹The University’s lobbyist at the state legislature.

acknowledged that on several occasions. I supported his attempts to restructure -- indeed that was his task when he was hired -- but I never in any way supported any abridgement of tenure, and had some doubts about some other specifics as they began to emerge.”

Hasselmo said he “was taken by complete surprise when I met with Kelso on one occasion, and found her extremely hostile to me. I believe that Brody had made statements to her that indicated that I did not support restructuring at least as far as tenure was concerned. Clearly, the ‘reengineering’ in the AHC did have a major impact on the tenure debate.”

* * *

THE EFFECT OF FRANK CERRA SUCCEEDING BRODY

Frank Cerra replaced Brody as AHC provost on April 15. Did this have any effect on events? Opinions varied widely.

Morrison thought “not really. Cerra was much more pro-faculty, or at least not anti-faculty, but by that time the train was already running down the track, and it didn’t need any more impetus. Cerra did help us a couple of times in saying ‘no, I don’t need this’ to various things that had been promoted by Brody. That persuaded a couple of people not to pursue certain points.”

“Brody had given in on the base pay issue. He said there could be base pay and additional pay, but ‘I want just once to be able to re-set everybody’s base pay; after that it will be fixed.’ Frank said ‘I don’t need to do that. I can deal with that prospectively. It isn’t that big a problem.’“

Murthy was direct. “I don’t think the change has significantly changed anything.”

Gray thought it “was a marvelous change, a 180-degree turn. First, things in the AHC calmed down from a boiling heat to a simmer. Then Cerra was really on the team as far as tenure being important and saying the right things in the community.”

Gorham largely agreed with Gray. “I think it calmed things, at least at first, although a lot of concerns have resurfaced, and faculty are saying that re-engineering has not stopped. I think it helped.”

Bloomfield thought the change had some effect. “Cerra is certainly a more acceptable provost, and he fairly rapidly calmed down some of the stuff that was going on. He’s just a more engaging person. People responded to that. But I think a lot of the animosity toward Brody rubbed off on Cerra fairly quickly; there was some change, but not a lot. The intensity of the fire was turned down a bit, but by no means extinguished.”

Feeney felt more strongly. To the question of whether the change had an effect, he said “unquestionably. My first dealing with Frank -- I had never met Frank before -- there was a

meeting of administration and faculty governance people that was held shortly after Frank took over. Frank as a provost was there. Frank's method was "is there anything else we should do to make sure faculty are in on this thing?" This is the guy who followed Brody? This was like opposed bookends."

"I mentioned casually to Frank, 'maybe you ought to consider trying to get the health sciences senators together.' 'Consider it done!' Within no time at all, there was a meeting of the health sciences senators, Frank was doing everything he could to disclose what financial information he could nail down, he came to [Faculty Affairs] and we discussed a number of things. He was very sensitive to what was going on with CSC Index. There are some criticisms of Frank, but I think he is perceived as a guy who is straight, honest, and hasn't got a bunch of agendas in the back. He's doing what he thinks he should. You may disagree with the way he's doing it, you may not buy in 100% to what he's doing, but is what he's doing appropriate and following the rules that are laid out? I think the answer is yes. He seeks input all the time. That made a big difference."

Another health sciences faculty member agreed somewhat with Feeney. "Yes, it helped. Obviously, not to have Brody's leadership any more was the important thing. Cerra has a different kind of personality; he's a little more laid back. But the unfortunate thing, in people's minds, is that they know he was chosen by Brody to do a job. He was Dean of the Medical School. Brody met with the Senators in the Medical School to say he was going to pick Cerra. People said 'why didn't you have a search?' He wanted him because he thought Cerra could handle the private practice plan and the financial problems. He said 'if he doesn't do the job, I'll get rid of him.' But then Cerra did do his job, and he was involved very tightly with the CSC Index operation. He even retained some of those people; they did get rid of most of them, finally, but he did retain some of the people, the publicity-type people. I think it's tainted his administration. He's doing the best job he can, but people don't forget those things."

In the words of one faculty member, with the change to Cerra, "certainly initially the level of hostility came down dramatically." Another commented, however, that the change lasted "only for about 15 minutes."

"There are people who are saying now that this is just Brody revisited, and that [Cerra's] manner is a little nicer, but all this stuff is happening. I would say that at least for a couple of months people were willing to give Frank the benefit of the doubt, where they weren't willing to give Brody that. Certainly some of Frank's language on the tenure stuff is quite different."

Another faculty member picked up on this more negative tone and suggested that the role that Provost Cerra played in the events was not well documented. "What happened is that

Brody, obviously the faculty distrusted. Cerra came on, and it wasn't as obvious whether you could trust him. There were a fair number of meetings that Cerra came to," including the AHC town meeting at the end of April, 1996.

"A friend of mine faxed me something; I don't have permission to give it to you, but let me read the comments from it."

"The AHC town meeting was, in my view, a disaster. Cerra began by telling everyone that several rumors were not true. He had not resigned. The deans had not been fired. The whole talk [Cerra's] was being videotaped, and the content of the talk would be on the QRTC web page. The videotapers were the Index corporation people, who also -- in expensive outfits -- were the ones who handled the microphones for faculty comment."

"Cerra said, basically, that he wants us to 'walk the talk.' That was on a slide. 'The talk' means re-engineering. He said it is needed and will continue. The consultants will also continue as long as they are needed, until we are ready to govern ourselves. Of course, he gave no rationale for re-engineering or for his approach. He stressed that he would visit the schools and divisions and invite us all to participate in the QRTC. He noted that 65 faculty are already involved and over 100 have volunteered."

"He'll be hiring the vice provosts for education, research, and clinical in the near future, so re-engineering will be on its way. This took about thirty minutes and left twenty minutes for questions. Several faculty from the Med School asked him, why is he supporting a corporation with unethical business practices when he, Cerra, has always been so ethical. He got upset with this guy and said he shouldn't have been asked that in a public forum. The guy said he had been trying to see him but he was too busy. Someone from the School of Public Health asked about the reorganization structure -- whether the ovals, which were not attached, would become attached."

"The ovals were the schools and departments and divisions, and they were always out in left field. Would we be attached in this flow chart?"

"Someone else asked whether we should rename the process, not re-engineering, if it is really not a top-down, Champy-defined organization. He says he's open to new names, turning questions into non-questions and avoiding any real discussion about Index. One thing is for sure, it is clear that the faculty and staff are against Index."

"It was very confusing when Cerra was appointed, because on the one hand he would come to meetings with faculty and say 'of course I believe in faculty governance; I'm one of you,' but re-engineering just continued. We now have a re-engineered health center; we have a new administrative structure that mirrors the CSC Index plans. Most of the current deans and all the new administrative positions are supporters of re-

engineering, and that's who Yudof is hearing from. But we still have schools and departments; Index would have done away with that. So now we have two administrative structures instead of one."

"That's pretty offensive for a provost to get up and tell you to 'walk the talk.'"

* * *

On the same day that Brody's resignation was reported, April 9, Medical School Professor Carol Wells wrote to the regents about CSC Index, the AHC re-engineering consulting firm. "According to the re-engineering philosophy, authority is top-down, and requires that all major resources be in the hands of the executive. . . . Tenure is one barrier preventing total incorporation of the re-engineering process." She related her experience in the corporate world, where authority must follow responsibility. She said that the areas where tenure improvements were being sought did not include any increase in administrative accountability; "rather, I found many revisions (weapons) that administrators could use to either harass, intimidate, or pound down the faculty nail-heads that might stick up in the board." Re-engineering was inapplicable to a research university.

"Money, Tenure, and the Brave New U: Is the University trying to carve up the academic tenure system under cover of saving its beleaguered medical complex?" (City Pages, April 10). The article said targeting tenure is happening all over, and quoted Cathy Trower, Richard Chait's⁶² associate: "this isn't exclusive to Minnesota. In fact, Minnesota is kind of behind the curve." Two dozen legislatures have examined workload and tenure revisions, and usually back away from them, but in Minnesota the Governor and legislature have gone farther. The process has "spawned a growing miasma of fear, anger, and distrust," and Trower warned the University risked damage to its reputation. The article cited the November 20 Hasselmo letter and said tenure changes had been an administrative priority before the legislature acted because of the need for flexibility. Brody said the Medical School had a problem, and the solution was to cut the number of tenured faculty; the faculty did not believe him. The reporter said 85 faculty "were publicly howling" at the administration at the March 14 forum and that the Post editorial damaged Hasselmo's standing with faculty. Carl Adams had not checked with FCC on sending a letter with the President, which the faculty interpreted as Adams siding with regents and the administration and led to "nasty words for Adams." The legislature linked the AHC appropriation to tenure changes because it does not trust Hasselmo and the regents to change tenure without financial incentive. The article quoted Trower as

⁶²Richard Chait, then of the University of Maryland, was hired by the Board of Regents as a consultant on tenure; he will appear more later in the record.

saying that the University could be “vastly decreasing its standing” because of the hurry.

On April 11, the School of Public Health Assembly (including all faculty, students, and non-unionized staff) voted (61-0-1) that “the School of Public Health Assembly wishes to express to the Board of Regents that the Assembly has no confidence in the process and results to date related to the reengineering of the Academic Health Center. The process represents a grave threat to academic freedom and to the viability of the School as an academic institution. We have not seen evidence of any crisis in the School of Public Health that warrants the changes now under consideration. We are concerned that we are being prevented from participating in an open and full discussion of this plan.” The resolution was provided to the regents at their April meeting.

The next day, the faculty in the School of Nursing took similar action. “We as members of the faculty within the School of Nursing wish to express our support for the substance of the resolution provided to you by the School of Public Health Assembly. During the past several months as the re-engineering process has been underway, the faculty of the School of Nursing has met several times to seek information about the process and substance of the re-engineering effort. Given the limited information that was provided the faculty expressed many concerns including” secretiveness, “the scripted nature of the information provided, the utilization of selected survey data to support the purposes of the re-engineering process,” inadequate financial data to support re-engineering, “lack of identification of the problems specific to the School of Nursing that require such drastic action,” and limited access of faculty governance to the process. “These concerns describe a process of change which is closed to the democratic process and the spirit of inquiry that are crucial to the principles which underlie a University.”

Purple said that “by that time, paranoia was beginning to creep in like crazy. Once Brody accepted the position at Hopkins, he still had that meeting with the deans and asked the deans to resign. Frank Cerra denies that that meeting ever occurred. [One dean’s] description of that meeting was pretty straightforward. That’s the meeting at which the CSC guy got up and said it was now time to embed the re-engineering. Everything had been set up, they’d been through phase 1 and phase 2, and now was the time to start kicking asses and taking names. [The dean] objected to his use of the language, and he just turned to [the dean] and said ‘you’ve got an attitude problem.’ That’s the way these guys work.”

“That’s the meeting that Frank Cerra says never took place. He sat in the corner and Brody ran the meeting. It was schizophrenic! Brody is no longer anything at this University, except a consultant to the President. Brody and CSC are leading this meeting, telling the deans they have to resign. When word of this leaks out, there is denial this meeting ever happened.”

The April, 1997, Robson article in City Pages summarized the events that had been taking place in the AHC.

“Big change fast.” That was one of Champy’s re-engineering mottoes, and Brody was determined to implement it. Even as he was merging the hospital and lobbying at the Legislature, the provost drove the QRTC process faster than it was institutionally capable of moving. When the committee was announced in July 1995, Brody said it would present three things -- a case for change, a clear new mission statement outlining vision, values, and goals, and an outline of the next steps for action -- all by October. A couple of months later, he extended the deadline to December. When December arrived, Brody announced that “the train is leaving the station,” while acknowledging that he didn’t know where it was going. As the AHC biweekly publication this Thursday put it, “The need for change is so great, [Brody] said, that even though re-engineering plans haven’t been completed, decisive actions must be taken.”

Those actions included the merger of the hospital with Fairview, a 30 percent reduction in medical school enrollment, creation of a rural health school in Duluth, and a new batch of committees to start “Phase II” of re-engineering. Specifically, this second phase would consist of 10 “design teams” of about seven people a piece to move the AHC through the “implementation” part of the process. Phase III would be the “realization” part. Whether QRTC was ready or not, Brody seemed to be handling Phase I -- the “vision” part -- pretty thoroughly on his own.

By this point, many AHC faculty members were understandably feeling anxious and confused. For months they’d been promised and threatened with massive, fundamental changes. They’d seen corporate consultants coming and going, and jokingly referred to them as “aliens in Armani suits.” They’d read QRTC surveys indicating a strong desire for change among consumers (the re-engineering term for students) and stakeholders alike. Now, change was indeed happening, but nobody really knew what it meant. Nobody could say how the pieces of the University Hospital-Fairview merger would fit together, or what the fallout of a 30 percent drop in enrollment would be, or whether the QRTC vision plan would already be outmoded, overtaken by Phase II, by the time the committee completed its vision plan. In terms of their future, the faculty were still operating with “a blank piece of paper.”

They finally got some answers in the first week of February 1996, when the QRTC presented its restructuring plan. The AHC has been a politically charged environment ever since.

The setting was another AHC town meeting. In accordance with Champy’s dictum about decisive action, Brody began by telling the assembled faculty and staff that what they were about to see was the new structure of the AHC, and that none of it was negotiable. There were precious few written materials; most of the information was on slides containing a series of charts and boxes. They showed that, instead of seven individual schools of medical discipline, such as nursing, dentistry, or public health, the new AHC would be divided into two enterprises: one devoted to education, one to research, each headed by a vice provost who would assist the provost in performing many of the vital responsibilities now carried out by the deans

of the schools, such as configuring the budget, designing the curriculum, and hiring the faculty.

Brody explained that the purpose of the new structure was to create interdisciplinary and multidisciplinary teams for research and education, as well as cut costs by streamlining the infrastructure. But some of the slides contained many boxes for new administrative positions -- a faculty member from the school of public health eventually counted 35 of them -- including an expansion of public relations and legal affairs. In any case, the restructuring clearly seemed to concentrate more power in the hands of the provost and the two newly created vice provost positions. Brody acknowledged that the change "results in a great deal of personal anxiety for all of us, especially since there are many details that need to be worked out." (In fact, a third vice provost, this one coordinating clinical affairs, was later added.)

After the slide show, the dean from the school of dentistry rose with a pertinent question: If the AHC did away with the structure of individual schools and colleges, what would the fallout be? How would the University continue to solicit loyalty from alumni, who often contribute specifically to the school of medicine, say, or the school of nursing? (Not mentioned was that the University had to retain the schools as discrete entities to keep their accreditation.)

According to medical school professor Carol Wells, Brody replied that it wasn't exactly true that the schools were being done away with. He urged the dean to think of the schools and colleges like a Visa card, where the name has recognition, but everything behind the card, such as the billing and credit checks and so forth, is contracted out to another place. "When he said we could consider the school of dentistry valuable for its name recognition, like a Visa card -- that's when I knew we were in trouble," Wells says.

News of the town meeting spread rapidly and further polarized supporters and opponents of Brody and re-engineering among the AHC faculty. At the school of public health, the faculty exercised their right under the school constitution to call an informational meeting to help quell the secrecy and rumor-mongering. Asked why the faculty couldn't also get handouts of the new plan, if in fact it was going to be the new structure, the dean replied that she was told it was confidential and not to be shared. A formal resolution of nonsupport for re-engineering then passed 61-0 with one abstention, and a letter of protest was sent to the Board of Regents -- one of three that were made public in the school newspaper of April 16.

"Regents to debate tenure system at U" (Minnesota Daily, April 11). The article reviewed the history of the discussion, including a reference to Hasselmo's November 20 letter, and outlined the issues. The article reported that proposals to change tenure were not unique to Minnesota, and the reporter spoke with the national AAUP office about the situation. It also touched on the AHC changes.

"Past injustices, struggles gave rise to tenure code" (Minnesota Daily, April 11). The reporters reviewed the history of tenure in the United States and at Minnesota, including the firing of

a political science professor (William Schaper) in 1917 because he was accused of being pro-German. The regents apologized to Schaper in 1938 and adopted a strong statement on academic freedom the same year. The statement and tenure code remained the same until 1985, when there were substantial revisions.

On April 10 Craig Swan forwarded to several colleagues (including Bob Morris, Fred Morrison, Feeney, Carl Adams, and Virginia Gray) an exchange he and Morrison had had about the status of tenure changes. Swan had originally emailed to Morrison, the day before, that “I have heard several alternatives about how to proceed with the discussion of possible changes in the tenure code and how to interpret Section 19 [the provision requiring the regents to consult with the Faculty Senate before adopting tenure code changes]. Some are arguing, ‘let the Senate vote on everything.’ Others suggest that the wording in section 19 (‘Proposed amendments from any source will be submitted to the Faculty Senate for its advice and recommendation before final action by the Board of Regents’) means that if an issue does not come before the Senate as a whole the Regents cannot act unilaterally. Those who offer this interpretation argue that faculty should be very careful about what comes before the Senate.”

Morrison responded that “I wish that the view you express were true. It is not. The Tenure Regulations only require that the Regents SUBMIT any proposal to the Faculty Senate for its advice and recommendation. They do not require the Regents to follow that advice. They also do not require the Regents to receive advice. My expectation is that a court would hold that the Regents must submit any proposed change to us, and that they must wait a reasonable time for a response. If we do not respond within that reasonable time, they can probably proceed. If we do respond, they may decline to take our advice.”

This led to questions from Swan. “1) some still wonder whether a strict interpretation of section 19 doesn’t call for specific action by the Senate. ‘Proposed amendments from any source will be submitted to the Faculty Senate for its advice and recommendation before final action by the Board of Regents.’ 2) If the Regents wanted to do something would they have to submit it to the Senate first?”

To the first question, Morrison responded “I suspect that ‘to submit’ means exactly that: it must be sent to the Senate for comment. If the Senate does not timely comment, it has still been ‘submitted.’ This answer is colored by the fact that the Regents need not follow the advice and recommendation of the Senate after they receive it, so why should the Senate be able to block action by not giving the advice and recommendation that it is required to give. An old maxim: ‘Equity treats as done those things that ought to have been done.’” To the second question, Morrison

answered “in my view, ‘yes.’ But see the answer to item 1.”

The day before the regents’ April meetings, the Academic Affairs office provided to Regent Keffeler data on turnover of tenured and tenure-track faculty. The data indicated a turnover rate of about 5% annually, and noted that if there were no replacements for five years, faculty numbers would drop by about 600 (20%) and save \$47 million.

The Faculty, Staff, and Student Affairs Committee of the regents met on April 11, with Regent Keffeler presiding. Associate Vice President Robert Kvavik reported on a survey of tenure practices at 30 AAU universities. His major findings were these: tenure is under increasing review; language on dismissal for programmatic change is being clarified or strengthened, but few institutions are using the option; there is more post-tenure review, primarily for faculty development, with little use of salary reduction for discipline; and reasons for dismissal are being clarified. (Now) Provost Frank Cerra told the Board that if the 13 revisions proposed are adopted, they will meet the legislature’s conditions in the AHC funding request, but “there is strong sentiment at the legislature that tenure code revisions must include the ability to lay off faculty as a result of programmatic change.” Carl Adams told the regents’ committee that the two most controversial issues were lay-offs for program reduction and pay cuts, and maintained that the impact of these two items on morale and productivity must be kept in mind. Dempsey reviewed the process (review and action by the Faculty Senate in April and May); Feeney reviewed the amendments.

Fogelman, chair of the Judicial Committee, told the regents “that the tenure debate has already sent a negative ripple throughout the faculty ranks” and said the liberal arts college faced 18 retention cases this year, four times as many as the previous year. “Fogelman warned that the University of Minnesota is becoming a target of opportunity for institutions seeking to recruit U of M faculty.” “‘There is a perception that if not for tenure, we could get rid of deadwood,’ said Fogelman, ‘but if we get rid of tenure, in five to ten years, we will have nothing but deadwood here.’” One regent said it must be made clear the review is not a “witch hunt” to fire deadwood.

Regent Patricia Spence said higher education is in a difficult position, but she “is happy that they are reviewing the tenure issue with the faculty as the leadership,” and that there must be strong faculty support for needed changes -- changes that will come from outside if the University does not make them. Keffeler agreed and said the goal is flexibility and the ability to “shape the institution.” Spence also reported that the regents had sent out an Request For Proposals for a consultant.

At the meeting of the Committee of the Whole on April 12, the regents voted 9-1 to direct the administration not to consider further any proposals to close General College. Some believe Keffeler

played an instrumental role in organizing Board opposition to the administration's recommendation.⁶³

Marshak said that "there are people who used to be in Morrill Hall who swear the night before they had nine votes to close General College. Jim Infante always claims they never had nine votes; he claims they never had more than one vote. That was another example of how things came to no good, and it propelled us into the tenure thing. The next step was directly from there into the tenure thing."

General College was part of a larger issue of access and a changed university that the alumni had studied. The alumni came out very, very strongly saying that the regents needed to study the issue. The day the regents voted, there was about a fourth of a page with an editorial.

This got the alumni into pretty close conflict with the regents themselves. One observer reported that Bognanno went to a meeting of the Alumni Board and asked them to stand up and be counted. He said the reason they wanted the alumni to do so was that in December, 1995, four months earlier, the regents had chastised the President, saying "you need to make cuts. We've told you to make cuts, you don't want to bring us those cuts to approve. Make the cuts." So Bognanno told the alumni that "this is logical, this says we're moving in a new direction, and there will be some other cuts made."

At the April regents' meetings, the Alumni Association Executive Committee had its yearly lunch with the regents -- the day of their vote, and they were fighting among each other, and with the President. According to one who was present, "it erupted into a shouting match. . . . they were literally shouting at each other. One regent would say to another 'but all of us don't feel that way.' And Reagan said 'I'll call for a vote right now, then.' Sahlstrom was saying 'this doesn't make sense.' It was one of the most bizarre things that I have ever seen happen at the University. It was an embarrassment to the President," and the alumni were privy to the exchanges, which were seen as totally inappropriate. "Out of that came a certain power that the regents might have felt, among themselves, that they could muscle some things through, and that Nils was perhaps weakening."

One observer linked events to the General College vote. "Thrown into this mix you had the General College fiasco, in which everybody concerned did such a bad job. It was correct to close the General College, but such a bad job was done in lobbying it and getting the regents in line that it fell apart. Then this was really a serious crisis. This was a disaster, no matter whether

⁶³This vote probably exacerbated the growing distrust and ill-will that at least some faculty felt toward the Board, because a significant number (perhaps a significant majority) of the Gang of 19 supported the Hasselmo-Shively proposal to consider closing General College.

you were for or against General College. It was so screwed up that the Board-president relationship became dysfunctional. They weren't even speaking to one another. It was a disastrous situation."

"Then this tenure thing comes, at a time when there was such a lack of trust in the president by the Board. They couldn't fire him, because he was leaving at the end of two years and he had a two-year contract. So they just ignored him. In effect they weren't speaking to one another, to a large extent."

This observer agreed with an hypothesis that that the administration almost became irrelevant. "That is correct. Nils should have quit at that point, I think. Hasselmo is a wonderful person and he was a good president. If he would have left a couple of years earlier, it would have been better. And he was handed a bad hand with those regents, and with Keffeler. It was impossible. You get a regent so horrible, on a personal basis, that the president stops talking to the Board. But you can't stop talking to the Board. The President should either quit or demand a resignation; he must force the issue with the Board."

Two newspaper articles amplified on the events at the regents' meetings.

"Tenure plan starts U brain drain" (Pioneer Press, April 12). The article reported faculty told regents the University is being raided by other schools because of the tenure debate. The email messages on the Internet may have exaggerated the threat, but many believe Hasselmo wanted radical change. Hasselmo supports tenure but it must be changed and improved. The effort started with Brody in the AHC seeking more flexibility, but since the tenure code is institution-wide, the changes affect all. The article quoted a CLA associate dean as saying "this is just off the wall" and that he is spending hours negotiating with faculty who received offers from elsewhere.

"Faculty members, regents address tenure at meeting" (Minnesota Daily, April 12). "University faculty members brought their frustrations about changes in the tenure code to the table Thursday, prompting cries of concern and surprise by the University's Board of Regents. 'We need to send a signal out, right here and now, that this is not a witch-hunt,' said Regent H. Bryan Neel." "The meeting's agenda took a back seat to a passionate discussion about fear, low morale and overworked faculty." Fogelman was quoted as saying "I'm urging great caution in the handling of this issue' and, apropos retention cases, 'if they can leave, they will.'" The article said the process "has frustrated faculty. The proposed revisions were largely drafted by a group of lawyers with little faculty input. And although the regents will need to see the final draft by June, faculty members did not received the proposed revision until March." John Adams described the proposal to permit layoffs for programmatic change as a "litmus test" by the legislature; Dan Feeney said of the

proposal to permit the AHC provost to deny tenure because of community needs that “if there was a hot button, that’s one of them.” Keffeler said the University must be able to restructure when it faces financial difficulties, urged “cooperation and communication among everyone involved,” and concluded that “at issue is how do we reshape the institution, not just making places for people within the institution.”

Garrard promptly emailed to the Gang of 19 to report on the regents’ meeting. She noted the resolutions from Dentistry and Nursing and said that with Cerra as provost of AHC, perhaps “we will see some modification of the drastic tactics that have gone on as a result of the consulting group” (CSC Index). She said she had delivered the Public Health resolution to the Board secretary, and had been asked to speak with the regent (Bleyhl) chairing the meeting responsible for the contract with the CSC Index consultants. Regent Bleyhl said she would incorporate the concerns in her remarks. The regents said the contract would be approved, but as a result of what they have heard from those in the AHC, they included a proviso that it could be cancelled at any time and that performance would be monitored. Regent Bleyhl also expressed concern about lack of faculty involvement in re-engineering. Garrard assured the Gang of 19 that the sentiments of Public Health were conveyed to regents and the concerns were heard, although not publicly.

Later in the day of the regents’ meetings, the Faculty Affairs committee met; Feeney reported on the meeting and said his and Mary Dempsey’s comments were “received well” and that the regents “expressed interest in being involved with [Faculty Affairs] and faculty governance on this matter.” The committee also received a report on the finances of the AHC, and agreed to talk with Dean Cerra about it.

The committee went into closed session to discuss the tenure review. There was a motion to suspend discussions of tenure revisions; the committee voted to table it and then took straw votes on each of the 13 proposed revisions. One item that received no support was a proposal to allow the AHC provost to deny tenure based on community needs. Feeney said he would report the results at the April 18 Faculty Senate meeting, and that the Tenure Subcommittee and Faculty Affairs would present their own proposals on May 2. Dempsey “recommended that only proposals approved by the Tenure Subcommittee/[Faculty Affairs] will be released throughout the remainder of the review process.” Feeney requested committee members to provide him comments, from discussion during the closed session, for a letter he would write to the regents and administration.

The furor about re-engineering increased in the days following the April regents’ meetings. FCC received an email copy of a message sent by Judith Garrard to a colleague at the University of Southern California, in response to an inquiry about the AHC consultants. She wrote that “the reason

the consultants want to have tenure on the table is because the ability to separate tenure from compensation is the linchpin of implementing changes.” The consultants “have been here for at least 10 months (that we know of) and have proceeded to create an atmosphere of distrust, paranoia, and fear among the faculty throughout the [AHC]. Their hallmarks are secretiveness, top down orders that are not under any kind of review process, scripted presentations by the deans, and very, very harsh language. Distribution of information is very limited. When the deans make presentations to the faculty about the proposed changes, they are not allowed to provide copies of the overheads -- orders from above.” The message described the re-engineering plan (elimination of colleges and departments, substituted with focus groups) and the centrality of separation of tenure from compensation. Many recognize that change is needed in the AHC, Garrard wrote, but “the way in which this group has moved in, like a group of corporate thugs who verbally mug everyone they encounter, is not the way to do it -- at least not here in Minnesota. In a system that requires collegiality, mutual respect, and cooperation, you do not begin by tearing the place apart. Apparently, these tactics have been known in the corporate world for some time, but Minnesota is the first ACADEMIC account this particular consulting group has had.” The message admonished the recipient to “think very, very carefully about whether you want to unleash what amounts to an organizational bomb on your faculty and your academic institution by inviting in corporate re-engineering experts from any firm.”

The message had originally been circulated to members of the Gang of 19 as well, and Walsh distributed it to the faculty with commentary. He wrote that the tenure revisions and re-engineering were linked, rather than unrelated, and maintained that Garrard’s letter showed that “the two administration-driven activities are intimately related.” Walsh’s email also said that “because of fear of retaliation from Administration in the Academic Health Center, the faculty member has requested anonymity.” (Garrard subsequently became known as the author.)

In mid-April, Chuck Campbell forwarded to Tom Walsh an inquiry from a faculty member at USC about CSC Index consultants. Campbell told Walsh that if he -- Walsh -- were going to forward it, he should strip off the identifiers; “I would like to avoid the Armani suits as long as possible.”

John Adams sent to the Senate on April 15 a memo commenting on the thirteen items being presented three days later; he said the intent was that the Senate discussion would allow the committees to “hear all sides of the issues, and consider the appropriateness of corresponding language.”

“AHC faculty feel excluded” (Minnesota Daily April 16). The article reported on the three statements sent by the AHC colleges to the regents saying faculty have been excluded from re-

engineering. The regents did not discuss them at their meeting, but Regent Bleyhl “recommended the re-engineering process be more inclusive.” The article also reported that Brody was “frustrated that disgruntled faculty went directly to the regents without first talking to him or the dean of their school.” Garrard was quoted as being “satisfied” that the concerns were taken up by the regents.

“Attack on academic freedom at U requires action” (Minnesota Daily, April 16, an opinion piece jointly written by the two co-coordinators of the UFA, Tom Walsh and Paula Rabinowitz). They wrote that there was a long history of bad management in the Medical School, earlier crises, and now a financial problem leading to an attack on tenure. The changes proposed are the work of “lawyers working for the administration” with “unacceptable input from an outside law firm, Hogan & Hartson.” The restructuring of the AHC will lead to all authority being held by management and the faculty made powerless, and the restructuring could be then applied to the entire University. This is “epochal change . . . driven by arguments to which the faculty are not privy” and the University is becoming more like a corporation. They said that those who were skeptical should talk to AHC colleagues, read the proposed tenure changes (which include having peers defined by the administration), and urged faculty to “lobby the Faculty Senate to reject the proposed tenure modifications in their entirety, without discussion. These are plans of the administration and regents and are intended to work in conjunction with a radical and destructive reorganization plan for the [AHC]. These plans represent a massive attack on academic freedom and the very character of a University.” They also suggested lobbying the regents to reject the AHC plan and joining the UFA, because “the regents do not appear to appreciate the seriousness of what they are planning to do” and the University would enter a “death spiral” because the best faculty will leave and the reputation of the University will decline.

The day after these two pieces, Walsh and Rabinowitz circulated to the full faculty a two-page memo by an unnamed tenured Medical School faculty member [later identified as Carol Wells; more on this later] describing CSC Index papers calling for changes to be implemented rapidly, including tenure and governance, indicating that faculty research will be approved indirectly by the provost, that the schedule precludes complete review of tenure revisions by the Faculty Senate, and that at least one senior administrator (Vice Provost Leo Furcht) knew of the “assault on tenure” since fall of 1995.

At the same time, the chair of the Institute of Technology (IT) Consultative Committee (the physical sciences plus the engineering departments), who happened to be Rama Murthy, wrote to Regent Reagan on April 16. The letter expressed faculty concern about the lack of information and alarm about the “presumed agendas circulating here and across the country,” and asked for a public

statement from the regents in defense of tenure as the only way to stop the damage. Murthy asked that the regents explain the purpose of the review, how tenure has failed, what problems the tenure changes are to address, and the relevance of the tenure code to the problems. He assured Regent Reagan that a response could help “focus faculty discussion into a constructive and participatory mode.” The letter was circulated to all regents, senior offices, Senate committees, and IT faculty.

On April 15, Campbell sent an email, on behalf of himself, Fennell Evans, Roberta Humphreys, and two other Gang of 19 members from IT, to all Institute of Technology senators notifying them of a meeting of their group the day before the Faculty Senate meeting. They said the April 18 meeting “is likely to be extremely important.” Nearly every IT Senator was there, Campbell recalled, and there was unanimous support for the Gang of 19 motion [cited shortly].

On April 15, Hamilton wrote to his Medical School colleagues that there was concern in the Medical School “about our lack of interaction with senators from the Medical School.” He said the April 18 Faculty Senate meeting would be extremely important, and that there would be a meeting with Medical School senators on the day before.

The next day, Hamilton forwarded to the Gang of 19 a message from FCC member Carole Bland. She supported the idea of having a meeting of the AHC senators, but cautioned that “there is a great deal of misinformation out there about the process which makes people concerned that they will not have opportunity or time for input.” She commented that Morris’s letter to Hasselmo “jumps to the conclusion that the statement in the Brief is correct about John Adams and Carl Adams reporting changes to be made in the tenure code to the Regents. He states this is inappropriate.” She said that “of course, the statement in the Brief was incorrect. A poor choice of words by the editor in trying to summarize the progress report that was made to the Regents, that included possible changes that were being considered. While in retrospect, I think any of us could now suggest better ways for this process to have proceeded, there was never any suggestion that the review would not abide by the procedures outlined in the code.” The Tenure Subcommittee would consider all proposals, but that does not mean they would all be brought to the Senate. Bland noted the schedule, and guessed that “the senate will pass some amendments and report to the Regents that we need additional time to consider others. I think this would be a good outcome. It would demonstrate the faculty’s ability and willingness to make changes in the code, while lengthening the timeline to allow for the necessary discussion to occur on the more complex issues.”

On the 16th, Feeney again emailed to the senior officers, Faculty Affairs, Tenure, and the Tenure Working Group about student evaluations and post-tenure review. He had received a proposal requiring faculty to attend seminars on teaching if they received two consecutive negative

reviews from students, and if the negative reviews continued, to invoke the salary reduction penalty in the post-tenure review process. Feeney reported that Morrison had said the proposal was “too detailed to be considered for inclusion in the Tenure Code, but the message can’t be left out. In a revised draft I received from Professor Morrison yesterday, teaching evaluations are specifically mentioned.” He asked where the issue should be taken up, and concluded that “this tenure code revision business may not be hell, but we can see it from here!”

One of the members of Faculty Affairs and the Tenure Subcommittee wrote to Feeney on April 17 to inquire, “in view of the IT Consultative Committee letter to the Regents and other recent discussions, I wondered whether in advance of the Senate meeting tomorrow it would be helpful to communicate with the faculty as a whole the attitudes expressed at our recent [Faculty Affairs] meeting, so that the faculty is reassured that the concerns being widely expressed are shared by the members of the committee designated to play a formal role in the process. If you put together a letter to Hasselmo and the Regents based on our various messages last week and our discussion on Thursday, perhaps it would be appropriate to release that letter to all or some faculty. I think it would be especially helpful because the faculty voices heard most often are those of John and Carl Adams, and I think you have a more faculty-centered approach to what’s going on.”

Feeney was also told that “I spoke about the tenure issues at the University with my own legislators.” One commented that “he wouldn’t really worry too much about legislative intervention on a broad scale.” But in the case of another, “[I] was surprised at how much she has been captured by the rhetoric of those who are attacking the tenure system. I offered to talk with her at greater length about the issues, and she is more than willing. She also asked whether I’d want to sit down with her and Becky Kelso, who seems to be at the forefront of this issue in the legislature. I said yes, though now having read an article that Kelso wrote for the Pioneer Press I think it may be hopeless to think one could convince her.”

Feeney wrote back and said that “I don’t think there is time to get a letter to the faculty, but Mary Dempsey, Ed Fogelman and I will be facilitating the Tenure discussion at tomorrow’s Senate Meeting. . . . I would encourage you to speak with anybody who will listen from the political or public arena (as well as the general faculty groups, obviously). I think we all should have trust in each other’s motives. Even if there are points on which we don’t agree in detail (we may find some when we get into the debates), we don’t want this to seem rehearsed or restricted. Just look at the flack created by the concern over the Health Sciences Deans being ‘coached’ and ‘critiqued’ by the consultants.”

In what turned out to be an extraordinary case of inopportune timing, the May issue of Kiosk

(the faculty-staff newspaper) carried an article on tenure by John Adams describing the process and issues. The article was clearly written before the April 18 Senate meeting, but did not appear until afterwards. Adams wrote that “one of the most important efforts at the University right now is the faculty-led plan to change the appointment and tenure system to meet today’s need for flexibility, responsiveness, and accountability. To meet those standards, we [the Tenure Working Group] are moving ahead to recommend necessary changes in personnel and tenure policies, while at the same time striving to ensure that freedom of scholarly inquiry remains the very highest priority for a research university.” He said the process would go through the Senate, and identified the schedule. He said that “at the May Senate meeting we expect to act on the changes. Then at a special Senate meeting in June we expect to finish our business, and to forward recommended changes to the administration, which then transmits them to the Board of Regents. At the end of the summer, the recommended changes will be reviewed and acted on by the Board of Regents.”

Adams then laid out the issues. “First, we’re developing a new faculty compensation plan” which included a compensation plan with base and variable portions (the latter of which might come from private practice or other sources) that would provide more managerial flexibility while also protecting academic freedom. A second change was proposal for a post-tenure review process. Third, there were a series of other changes that “will improve performance and clarify faculty personnel policies in significant ways.”⁶⁴

Adams concluded by saying “we have one University and we need policies that apply to the whole University, but that recognize distinctive issues on certain campuses and in certain provostal areas and colleges. We know the personnel policy changes that are needed to get us to our goals. We are reworking the rules carefully to reach goals without creating additional problems or obstacles.

⁶⁴The remainder of the points were these:

- “1) We’ll prepare a new introduction to the Tenure Code -- for internal as well as external use -- that will describe the nature of the social contract embodied in tenure and explain why faculty tenure is essential in a major research university.
- 2) We’ll clarify that faculty tenure is systemwide.
- 3) We’ll refine the classes of academic appointments to distinguish among the different kinds of academic work to be done, the appointment types appropriate for different kinds of work, and the revenue streams available to support the work.
- 4) We’ll adjust the maximum probationary period of faculty appointment from the current 6 years to 9 years.
- 5) We’ll elaborate the managerial authority and flexibility already permitted by the Tenure Code to meet the needs of programmatic change. The rules already permit the reassignment of duties by deans and department heads.
- 6) We’ll clarify that refusal to accept new assignments, and appropriate retraining needed thereto, is a basis for discipline, such as temporary or permanent reductions in rank and/or salary.
- 7) We’ll streamline judicial processes in termination-for-cause proceedings.
- 8) And in all our redesign efforts, we’ll be paying special attention to protected classes.”

We can and will deal with non-performance, unsatisfactory performance, and reassignment.”

Campbell and Humphreys commented on this article. “John’s position that these were all just ideas that were being tossed out and would be handled is really betrayed by the article he wrote that was published in Kiosk. Even though it appeared after the April 18 Senate meeting, it was written before that. Anybody who would read that would recognize that here is someone who says “this is the way it is going to be, people.’ The tone of that article is not that this is stuff to be thought about; this is what we’re going to do.”

“And his comments in talking to you, and in talking to the Senate and other people, really are at odds with that. If anything gave a clear impression, clear evidence about that, [it was that article.]”

FCC members were deliberating among themselves by email on the day before the April 18 Faculty Senate meeting about how to handle the meeting. One major question was whether to seek a delay in the schedule. “To give you some idea of what FCC members are thinking,” Humphreys forwarded to the Gang of 19 a message that Bloomfield had sent to his FCC colleagues about the Senate meeting. Bloomfield wrote with suggestions “for our [FCC] meeting tomorrow, and for the Senate meeting that follows, on how to deal with the increasingly difficult tenure debate.”⁶⁵

One possibility, Bloomfield said, was to “send a letter from the FCC to the Regents, urging that the timeline they have put us on is unrealistically fast for the kind of faculty discussion and understanding of complex issues that is needed. Two months (Regents’ time) is too short; two decades (faculty time) is too long. Two years (i.e., one year more than we’ve had) might be a good logarithmic compromise.” Another was to “ask the Administration to prepare simulations of likely scenarios” related to University finances for the next decade “to be used as the basis for public discussion.” Some of the alternatives might include “(1) Keep things as they are (Do we go broke, and if so, how fast?); (2) Reduce the size of the faculty, and reduce UM offerings in proportion; (3) Reduce the fraction of faculty who achieve tenure, and rely more on non-regular faculty (who while they work for us are given decent salaries and working conditions); (4) Decouple tenure from salary based on clinical income; (5) Decouple tenure from salary based on all revenue streams.” Bloomfield

⁶⁵ FCC had a committee listserv set up whereby FCC members could email to each other, as a group, about whatever they wished. Some FCC members were dismayed to learn later that some of these messages had been distributed beyond FCC. Gray described this as “unethical behavior” and wrote that “FCC members’ private statements were being ‘wiredtapped’ and circulated without permission or knowledge, and . . . when FCC members later found this out, they were shocked at their colleagues’ behavior.” FCC in 1998 adopted as committee policy the understanding that email exchanges among committee members were private and not to be quoted without the author’s consent. (All FCC exchanges quoted in this volume have the consent of the author.)

said that these could be used “to get faculty (and administrators and Regents) to seriously consider alternatives, not just the all-or-nothing choices now being debated.” Two more options were to “separate the 14 points of the tenure revision draft, and try to deal with them sequentially rather than all at once” and to poll the faculty after a debate and presentation of alternatives.

Humphreys also forwarded to the Gang of 19 two messages that Morrison and Gray had sent to their colleagues on FCC; Morrison had responded to the suggestion from Bloomfield that an extension be sought for the tenure debate. Morrison agreed that “the debate has gone in a negative and destructive direction, in part because of the timetable, in part because of some parallel activities in the AHC, and in part because of the content and tenor of some of the early discussion.”

Morrison thought “the real question is whether to try to ‘wrap it up’ and get it off of the agenda or to try to ‘spread it out’ and cool down the debate.” The reasons for extending it were to provide “time for adequate discussion, deliberation, and direction” and to “allow tempers to cool (and in particular may allow a new AHC administration to restore some confidence in that area).” The reasons to “wrap it up” included the possibility that “given the present levels of anxiety and hostility over this issue, delay may simply magnify the controversy,” it could harm the presidential search, and possibly damage the University’s legislative request as well as lead to possible legislative involvement, and “postponement may play into the hands of (some) regents who seem to want an excuse to take unilateral action.”

Morrison said that “I continue to believe that the timetable that was imposed on us was a blunder. We had no role in establishing it. (You will recall that I protested when the President informed us of it.) It will lead to a less-than-desired result. At this stage, WE should not seek to change it. My own impression is that, given what has already happened, a longer discussion would simply increase the damage.”

“At the same time, we must remember that FCC and the Faculty Senate are representative of the Faculty. We should lead the faculty to be aware of their own interests both broad (for the University as a whole) and narrow (for the faculty, who are essential to a high quality institution), but we have no obligation to put forward the interests of other individuals or groups. We should only take action to pursue those broad and narrow goals, and not merely because some other group (administration or regents) has an agenda of its own.”

Gray’s views were not dissimilar. “On balance, I believe we must plunge ahead and finish this year if we can possibly agree as a faculty to a set of revisions in the tenure code. The publicity has done grave damage to our reputation for years to come; a prolonged debate might do damage for decades to come.” She also maintained that morale was being damaged and the tension should not be

continued. She also wrote that “I hope the committee will also discuss FCC’s image and credibility with the faculty. Every communication I get, and they are legion, expresses dissatisfaction with our role in the tenure debate. I have tried to relay the gist of these criticisms to Carl; I sincerely hope the committee can do something to restore faculty confidence in us. It is not a time for faculty to be divided; it is a time for us to be united.”

While the FCC exchanges were occurring, Committee chairs Feeney and Fogelman sent a message to Faculty Senators reporting there would be a motion to suspend the rules at the Faculty Senate meeting the next day and introduction of a resolution calling for “an end to the highly irregular process for revising the Tenure Code” and a return to the process prescribed by the code. The reason was that “this is the means to forestall any discussion of the revised Tenure Code that has been circulated to the faculty via e-mail which was drafted by four lawyers, including one from outside the University, who have no standing under Senate procedures. Any discussion of this document could be construed as ‘consultation’ with the Faculty Senate, opening the door to its subsequent adoption” by the regents. The memo said the committees are ready to act quickly, and rules should be suspended so responsible and constitutional process can be followed. Walsh and Rabinowitz forwarded to the faculty the Feeney/Fogelman email on the same day.

Fogelman recalled that “we were in touch with the Gang of 19, and we were talking strategically, how should this be done. We wanted people to know that this was going to happen. It was an agreed strategy to do it this way. That’s what the Gang of 19 wanted to know: how would we, as representatives of the members of the Senate’s official process, respond to this? I was very sympathetic, very favorable. This had come up before, in the meeting of our committees. We had expressed strong reservations about what was being done. What was being done was this ad hoc committee and the Gang of 4 had just prepared something; there was no real faculty input to it, and that was going to be the basis for the discussion. I thought that was the wrong thing to do.”

The same day, April 17, all faculty also received an email signed by 19 senior faculty (hence the appellation “Gang of 19”) transmitting a resolution that would be presented at the Faculty Senate meeting the next day. The authors wrote that they sent it because of their “deep concern and to urge that you let your senators know how you feel about the assault on tenure that is currently being waged.” The resolution rationale was to “alert the leadership of faculty governance, the administration, and the Regents that the Faculty Senate has grave concerns about the process and progress to date of the revision of the Tenure Code.” It explained that the resolution came about as a result of meetings among senior faculty from across the Twin Cities intended to “define the focus of growing faculty confusion, discomfort, and dissatisfaction about the way” tenure revision was going.

The “whereas” clauses maintained that the process “has been flawed from the beginning” and was not faculty-led, as claimed by the administration and John and Carl Adams, that required reports from the three committees have not been provided, that the administration and regents had not provided information about “the extent and cause of the financial crisis that justifies drastic changes,” that the process has had an adverse impact and led to national concern, and “there is increasing lack of faculty confidence in the faculty governance leadership.” The resolution called for the process to be stopped, for FCC to direct the three committees to “present in writing to the Faculty Senate at the May 2 meeting a revised plan” for tenure review, and for the Tenure Working Group to “be disbanded immediately and its functions” given to the three committees. The 19 signatories included two regents’ professors (Ellen Berscheid and John Chipman), two former FCC chairs (Garrard and Purple), and two current FCC members (Humphreys and Michael Steffes from the Medical School). The others were well-known senior faculty.

* * *

VIEWS ABOUT THE GANG OF 19

There were a variety of views about the Gang of 19, almost all of them positive. Fred Morrison’s view was that “the Gang of 19 was a fairly representative body of faculty. Maybe more representative than the FCC,” at least on the specific issue of tenure. “This is one of those cases in which most of the people on the Gang of 19 would not have had the willingness or patience, at this point in their careers, to sit on FCC and deal with all of the various issues. But here was a kind of major issue that coalesced what I would call the natural leaders of the University. Many who had been FCC chairs and now wouldn’t do that again for anything -- it was terrible, it was a tremendous amount of work. Here was an FCC that seemed to have gotten itself enmeshed in the semester conversion, and wasn’t paying attention to the broad representation, with broad views of the University, on this issue.”

“So I saw them as a broadly representative, although self-selected, group. Also fairly senior. And not selected with the ticket-balancing that is usually done by those special nominating committees. So in many ways more representative of the University than the FCC is.”

“I had a very positive impression of them. Their main disadvantage was that they didn’t have organization or staff, so it had to be put together on a kind of ad hoc basis. There never was a conclusion about anything, except let’s worry about April 18.”

Feeney agreed. “I think these were credible individuals

who were outspoken and who had the best interests of the institution at heart. This was not a gang of radicals trying to do something on the fringe. I thought their influence was positive. When one of those people came to me and said something, I listened.”

Had Fogelman not been chair of the Judicial Committee, perhaps he would have been a member of the Gang of 20. He related that “I was asked to join, and I said I didn’t think I should, because as chairman of the Judicial Committee, I had an institutional role in this. I shared their views, but said I thought could be more effective in this process by not being one of them. I met with them, informally; when they had their meetings, I was there. And I said at that [April 18 Faculty Senate] meeting, I think my words were ‘the voice of the faculty has been compromised.’ That is exactly how I felt, and that is what they were saying. Whatever the document that had been produced, it was not a faculty document.”

Marshak recalled that he had spoken often with the members of the Gang of 19. “My view of them is that they were very effective. I guess their roots probably go back to [the anti-union group in the 1970s]. These are key people in University. They are people who have been in faculty governance, they have been in administration, they’re people who are major faculty member-scholars, and they’ve all been here for a long time. I think that’s what unites them all. And they’re all somewhat politically connected or involved. They’ve been around for many years, in many combinations, and they appear when the University is threatened. I think that’s great. It is a key part of institutional history, that this rolling coalition -- and they didn’t have 19 by the time they finished. The number was soft; they had people who came in and out.” Marshak said he had spoken most often with Campbell, his colleague in Physics. “My view of them is that they contributed very positively. What were their goals? They felt the University was being threatened, and every time the University is being threatened, that group has come out from wherever to do something about it. About every seven years they come out, either because of a threat or because of a perceived opportunity to do something positive.”

Bland was less positive than others about the actions of the Gang of 19. She recalled that she had spoken often with Mike Steffes and Roberta Humphreys, on FCC. “I remember being particularly upset with both Mike and Roberta because when they came out with that original letter, talking about how they were unhappy about how things were done, they had not talked to FCC about it. I think it was the original statement, before it went to the Senate. It seemed like such inappropriate behavior to me, that they wouldn’t say these things at an FCC meeting to our face, and yet they put it in an email to a bunch of faculty. Several times I talked with people on the committee, saying ‘if you think things are going wrong, why don’t you come

and say something? Why don't you send me an email, instead of sending an email to the world?' Judy Garrard said they came to one meeting [and Warren Ibele], and expressed some displeasure with what was happening with FCC. That's the only time. They never tried to work with us."

Bland said that when the collective bargaining effort started, she talked with Gang of 19 members in the AHC. She noted that "there wasn't much of a Gang of 19 until they did their Gang of 19 thing [in the Faculty Senate in April]. I still don't understand why Michael and Roberta didn't confront the FCC before writing a critical letter to the world -- Michael wasn't shy. But they never said anything or wrote anything to the committee until this thing came out from the Gang of 19." It may have been that they believed they made their distress known over the Najarian matter and the Washington Post letter. Bland said that "they might take that position, but in those conversations they were always unhappy with Carl. They never said they were unhappy with FCC."

If there was a consensus view, it may have been that it was not that FCC per se lost credibility, it's that a number of individuals on FCC lost credibility, primarily the leadership. Bland agreed. "Although I think later the union broadened it to try to make the entire FCC. But in the statement by the Gang of 19, they broadened it; they said they were not happy with Senate leadership. I think of FCC as Senate leadership, not just Carl. They were happy to brush the entire committee, without ever having said anything to us. Which seemed to me inappropriate."

"We never have done ground rules in FCC; I've always thought that would be a good idea to talk about. What do we expect from each other. Mike said to me that was an inappropriate expectation on my part." One FCC member, Hobbie, said he would resign if there were restrictions on what he could say. "Yes. I said 'OK, maybe I've got inappropriate expectations,' but I still think it's just plain courtesy that before you write something bad about somebody in an email to the entire faculty, to say something to them first. They never did."

*** * ***

According to Wells, the Gang of 19 had been meeting earlier to discuss parliamentary procedure and how to get a motion on floor of Faculty Senate, and the importance of not failing, and people were assigned to talk to their senators so they would not be blindsided. They were worried whether they would have support for their action, and when they learned of the Feeney-Fogelman memo saying a resolution would be brought to the Senate, they were more confident of success. The email exchanges among Gang of 19 members, in the day preceding the April 18 meeting, lend credence to Wells's recollection; they were clearly very concerned about the conduct of the meeting

itself and suspicious of what FCC might do in response to their motion.

Wednesday evening before the Senate meeting Humphreys emailed to the Gang of 19 that “I had a call from Carl Adams tonight. Apparently it has now been decided that because of possible action on the floor of the Senate tomorrow that affects the President, he will not preside. However because I am identified with that possible action, I also should not preside.” She concluded that “we have to go ahead with our plans to control the microphones initially.”

Bloomfield was expected to preside. One Gang of 19 member wrote that “I do not care as long as there are no tricks being planned.” The decision would be made at FCC before the Senate meeting. Gang of 19 members were urged not to call Bloomfield; “that is the best way to assure some neutrality.” It was suggested that “the letter from Fogelman and Feeney” would lead the administration to “realize there is little they can do to stop this.”

Campbell weighed in, and responded to Humphreys. “I think that, as vice chair, you should take the chair and then, when you recognize me and I introduce the motion to suspend the rules, you can turn the chair over to someone else so that you may vote. Or perhaps you can remain in the chair for the vote (since others are tellers and, the motion not being debatable, you are not in a position to violate the neutrality of the chair unless the vote is a tie). Then, when I introduce the actual resolution, turn the chair over to someone else so that you can speak in behalf of the motion. At the very least, you should negotiate with the FCC for the acting chair to recognize me in return for relinquishing the chair before the meeting starts. If they refuse, then by all means keep the chair until motion to suspend the rules. I don’t believe that they would be so foolish as to remove you from the chair against your will.” Campbell suggested that Humphreys talk to [FCC member and Physics professor Russ] Hobbie first, and then tell FCC she intended to relinquish the chair to him. Campbell wondered if there were “rules about passing the chair” and worried that “there is some rule which makes the FCC chair the next in line after the vice-chair.” He concluded that “you can be pretty sure that if a fuss erupts over all of this, then there is some scheme being worked out by the ‘leadership’ and we might be in for some added difficulty.”

Hamilton agreed with Humphreys; she should chair.

The next morning Humphreys emailed to the Gang of 19 that she agreed with Campbell and said she would tell FCC she intended to serve as chair of the meeting, and that “if and when a motion is introduced that I am involved with I will relinquish the chair to either [Bloomfield or Hobbie].”

Later in the morning Garrard emailed to the Gang of 19 to report that “I just talked to Mike Bognanno. He said that Nils will step aside and let you chair the Faculty Senate.”

The distrust of FCC was evident in the emails that preceded the meeting. Campbell was still

worrying about the conduct of the meeting, and emailed the Gang of 19 that morning. “My advice about the issue of chairing the senate this afternoon is that, should FCC somehow try to block the motion, then the senate should rise in objection and continue to make a ruckus until the right thing is done or until there is a movement toward the doors. I don’t believe that it will be necessary for one of us to signal the departure. But one of us must stay behind to call the quorum.” He said that “I am still unclear about whether we are going to move adjournment at some point early after our motion passes in order to prevent the planned discussion of the tenure code and possible counterproductive motions.”

Campbell also reported on a conversation with Morrison. “He said that he expects things to be ok at FCC. I told Fred that we are not intending to go after the administration or regents this afternoon, and were somewhat concerned that the meeting would get out of hand. (I am not sure all of you agree with me on that.) Fred repeated his support for the motion, and again explained his role in the ‘gang of four,’ which he described as simply a group of lawyers representing different clients, his client being Mary Dempsey. His interest in that respect was to make the language and issues clear so that they could be discussed and moved upon. That may not be a particularly good paraphrase of his comments, but his message was clearly that his interest is the same as the faculty’s interest.”

Purple on the 18th also expressed views on the conduct of the meeting. If “Nils does not chair the meeting, legally, Roberta has to unless the Faculty Senate votes to have her step aside. . . . If the FCC attempts to order it otherwise, I would object with a point of order and request that the Senate Procedures be followed. If the chair wishes to step down in order to participate in the debate or to remove herself because of some other compelling reason, she may at her discretion do so by advising the Senate and asking for consent that ‘ -- -- -’ (whomever she chooses to designate) take over as chair. . . . Roberta should chair the meeting at least to the point of recognizing Chuck Campbell, and I would suggest until our motion is on the floor for debate.”

Carol Wells emailed to Feeney to thank him for his support for the article she had written, and said that the letter from him and Fogelman was “a breath of relief.” She also sent along a copy of an email to the Gang of 19, with “the marching orders for today.” Wells’s email reflects the final careful planning that went into the April 18 meeting. “At microphones: Rich [Purple?] and Chuck [Campbell], Judy [Garrard] and Carol [Wells?], Bob [Morris?] and David [Hamilton], Hy [Berman] and Marty [Dworkin?]. . . . At the appropriate time, take the microphone and say: ‘Mr. (Madam?) Chairman.’ After being recognized say: ‘I yield to Professor Campbell.’ Professor Campbell: ‘I move to suspend the rules.’ Motion seconded. This is an undebatable motion and requires 2/3 vote. Motion passes. Professor Campbell: ‘I move.....’ Motion seconded. Motion open for debate.

Speakers: Hamilton and ???OTHER. NOTES: (1) If J. Adams filibusters, get the microphone and say 'Please yield the microphone.' (2) If there is a bad motion, get the microphone and say 'I object to consideration of this motion.' (HERE WE WILL NEED THE EXPERTISE OF PROFESSOR PURPLE.)”

The Daily carried, in its April 18 issue, an opinion piece by Carol Wells of the Medical School. Entitled “**Tenure revisions driven by administration,**” Wells maintained there was “evidence of a Machiavellian plot to steamroller changes” in tenure fast, precluding faculty participation. She cited CSC Index documents calling for quick changes in tenure and governance, and that the changes would “force tenured faculty to leave by decoupling compensation from tenure.” The reorganization of the AHC will have employment decisions made by an unidentified unit head leading focus groups, both of which must be approved by the provost. Any faculty member who does not belong to such a group will receive no support.

Wells protested the short time the faculty and Senate would have to debate changes, noting that the Senate would begin debating changes without recommendations from the three committees. Several of the changes provide for “no recourse” for faculty to challenge administrative decisions, and the Judicial Committee has not considered whether they violate due process rights.

Wells described the role of Vice Provost Leo Furcht, who had, she wrote, told the faculty of Lab Medicine and Pathology in November, 1995, that he had assumed several months earlier that “tenure as we know it will not exist next year.” This suggested that “Furcht was aware of the assault on tenure by at least the summer or fall of 1995,” well before the claims of the administration that the process began in October, 1995.

Wells urged that the Faculty Senate not follow the timetable as scheduled because there would be inadequate review, and said that it should not discuss the proposals because “any discussion, . . . no matter how negative, may be interpreted by the administration to have satisfied the requirements” for consultation under the provisions of the code, and the regents could then act no matter the comments. “In this time of faculty mistrust of the administration, this possibility cannot be safely eliminated” and “any discussion . . . endangers all of the faculty at the University.”

Wells was the anonymous author of the April 17 message circulated by Walsh and Rabinowitz about the AHC. Wells later wrote that she had “sent the editorial to the Daily with the request that it be published anonymously. (I feared retaliation for opposing/exposing the administration.) A Daily reporter called me in my office about 7:30 p.m. to state that, according to Daily policy, the piece could not be published without attribution. I then tried to call several colleagues for advice, but no one was available. Eventually, I reluctantly agreed to have my name

attached to the article. After the piece was printed, many fellow faculty members thanked me for informing them of these facts. However, one faculty member (who I had considered to be a good friend) stated that I had gone too far in 'naming names' and that I must not be thinking clearly, and that I was obviously being unduly influenced by other faculty in the 'Gang of 19.'"

Chapter Five

The Events of April 18

In the middle of the day of the Faculty Senate meeting on April 18, FCC met. The minutes of that meeting are 13 pages long, single-spaced, and the meeting was devoted almost entirely to tenure, the Senate meeting, and the resolution. There had been a number of discussions about how the regents would act with respect to tenure. Chair Carl Adams reported that Regent Reagan promised that the regents would not act until receiving the Faculty Senate actions, and that the regents would not act unilaterally, but would come back to the Senate with questions -- but that was his own view, not a Board guarantee.

The Feeney-Fogelman memo was discussed; the psychology of the situation required that things be calmed down, some of its signers explained, and Feeney said that he and Fogelman were trying to accomplish that end with their motion. The Faculty Affairs committee found the majority of the items from the Gang of 4 unacceptable. What was bothersome to the resolution authors was that the only written document was from the Gang of 4 lawyers, and the resolution was intended to make certain all language went through the committees before reaching the Faculty Senate. Two big mistakes were not sending issues to the Tenure Subcommittee and allowing the four lawyers to draft the proposals.

FCC members debated the legitimacy of the process at length, with divided views. One commented that "I think we really have screwed this up badly." There is a need to avoid recriminations about what had occurred and let the two committees (Faculty Affairs and Tenure) do their work, it was said.

A visitor to the meeting, Fennell Evans (one of the Gang of 19) pointed out that faculty salaries make up about 10% of the University's budget, and the faculty bring in nearly twice their salaries in research funding -- but the faculty are seen as the source of financial problems for the University.

FCC was told that the point of the motion was to forestall official discussion in the Faculty Senate so there could be no argument that the Senate had "consulted" on the tenure changes. It was also intended to stop anything worse from happening and to channel the anger into more appropriate activity. FCC agreed to call for adjournment of the Faculty Senate if the motion passed, and then to hold a tenure forum.

Bland recalled that "there was a proposal from Faculty Affairs and the Judicial Committee to disband the Tenure Working Group. But I recall the members of the Gang of 19 on the FCC arguing

that the Senate committee proposal not go forward, but that the Gang of 19 motion should be adopted. I argued that our own Committees' proposal should be the one presented."

Senior Vice President Infante joined FCC, and was informed how the process went wrong. He was told that the Tenure Working Group only met twice and did all other business by consultation, that administrators need to speak for administrators and not ask the Adams professors to represent them, that the deterioration in the situation in the AHC contributed to the concern (increased anxiety and distrust, which might be remedied with the appointment of Cerra as Provost), and that the effort has been poisoned by widespread faculty unhappiness with the process and with the regents. All of this could not be ignored. Infante said the University must accommodate change or external forces will act, and was told that the faculty as a whole are not convinced of those imperatives and even if FCC agreed, which not all of its members do, it could not impose that view on the faculty.

Infante was also told that the AHC consulting firm was infecting the process, that it was doing things to destroy collegiality, and one healing step would be to terminate the contract with CSC Index; Infante was referred to the editorial by Wells in the Daily that day. "In the last month, the levels of anxiety and distrust, the sense that there has not been complete candor and honesty in communications, has gone up sharply." Nor was it a small group of unhappy faculty, or only unhappiness in the AHC; "the stories about threats by senior administrators to other administrators, and to faculty, have spread widely." FCC adjourned to attend the Faculty Senate meeting.

The Senate meeting began with the President distributing an 8-page memo of background materials, including a chronology noting that regental interest in tenure revisions arose in May, 1995 (Keffeler) and the Reagan statement (July, 1995) that tenure may have to be looked at. Hasselmo said "coordinating the roles of faculty governance, administration and [regents] in the discussion of tenure has not been easy. From the very start . . . the administration has wanted the faculty to drive the tenure-change agenda. Our governing code and procedures, which we respect, require nothing less." He acknowledged that the review was initiated by the regents, which was "responding to external pressures," and that issue must be addressed. He outlined his view of the issues,⁶⁶ emphasized his commitment to tenure and academic freedom, and recalled his own testimony before the legislature,

⁶⁶They were: any revision would not change the terms of faculty contract, tenure should be institutional, no layoffs unless there was a University financial emergency, and the "sustainable size" of the faculty needed to be addressed. He said change was needed to "clarify that department heads may assign tasks to faculty members; and that reassignments and retraining may be necessary in the case of program change," to define appointments warranting tenure, to allow a longer probationary period by college, to clarify that tenure was tied to base salary and not such things as "overload or summer session earnings, administrative augmentations, non-recurring salary increases, clinical earnings, bonuses" but that all base salaries were guaranteed, to devise more efficient and effective procedures, and to establish "meaningful post-tenure review."

when he said “we are not going to fire tenured faculty members.”

A motion to suspend the rules was approved 119-9; the resolution, signed by the Gang of 19 and moved by Professor Charles Campbell, “was overwhelmingly approved on a voice vote,” according to Senate minutes. It was said to be a “moderate and appropriate first step in communicating . . . faculty concern.” Discussion at the meeting touched on frustration with the establishment of the Tenure Working Group and that lawyers had been brought into the process, displeasure with the lack of information that had been provided, that there had been no specific language, that lawyers were drafting the amendments rather than the Tenure Subcommittee, the lack of involvement by the three appropriate Faculty Senate committees, and the time lines set. Fogelman said somehow along the way the process got confused and it was important for the faculty clearly to assert its own voice, which had been compromised as a result of the way the process has unfolded. One quote in a newsletter from a senior faculty member was that in the 35 years that he had been at the [U of M] he had never seen the mood of the faculty so negative, so questioning, or so suspicious. These feelings were real and need to be faced, he said. The faculty must also face the fact that a problem exists with the political establishment and the public. He acknowledged that some of the tenure rules may need to be modified but said it must be done under faculty control and jurisdiction and in a way that holds credibility with the faculty. For whatever the reason, there was a belief that the faculty do not currently have control of the process and that it was being driven by other factors. The only way to correct this perception and regain credibility was to adopt the resolution and begin fresh.

The Senate meeting was promptly adjourned and a forum held.

Berscheid later recalled that a “critical event” occurred before the April 18 Senate meeting. The week previous, the President’s Chief of Staff, Bognanno, had called her and suggested that some faculty meet with Hasselmo the following week, before the Senate meeting, to discuss the tenure situation. Bognanno said he intended to invite her, John and Carl Adams, and a few others and asked her who else should be present. She named several members of the Gang of 19, including Evans, Humphreys, and Hamilton. Bognanno agreed, and told Berscheid he would set up the meeting and call her with the time of the meeting. At this point, Berscheid remembered, the Gang of 19, which was meeting regularly to plan opposition initiatives, was incensed by the activities of the Tenure Working Group; bringing a resolution to the Senate was one course of action that had been mentioned to stem the damage this group was perceived to be wreaking on the faculty and the tenure code, but it was only one among several. However, all further planning was held in abeyance until after the Bognanno meeting, given the possibility that now arose of persuading Hasselmo and key members of

the Tenure Working Group to change course.

After the call from Bognanno, Berscheid talked to Fennell Evans, who agreed that the meeting was a good idea, but he cautioned that if they were not successful in persuading Hasselmo and the Working Group, they would need to act before the Senate meeting. They were concerned that the administration and the Working Group were going to present several proposals for revision of the tenure code to the Senate for discussion. They wanted to prevent such a discussion in the Faculty Senate because they worried that the Board would regard such discussion as “consultation,” thus satisfying Section 19 of the 1985 Code and freeing them to act on the discussed revisions at their May meeting.

When, by Monday night preceding the Thursday Senate meeting, no one from Bognanno’s office had called either Berscheid or Evans to give the time of the meeting, they became alarmed. When Berscheid called Bognanno’s office very early the next morning to find out the time of the meeting, Bognanno was not yet in yet but she learned from staff that they had not been given instructions to schedule a meeting. Bognanno called her a few minutes later on another matter, and Berscheid asked what happened to the meeting. He replied that he had decided that there was no need to meet before the Senate meeting and that they could meet sometime “later.” Without asking him why he had not bothered to tell her that he had cancelled the meeting (because, she said, by then she knew that they had been “diddled,” deliberately misled to keep the Gang of 19 inactive until it would be too late to organize opposition for the Senate meeting, and that he now knew that she knew what he’d been up to), Berscheid closed the telephone call by asking Bognanno if he was quite sure that he, Hasselmo, and the Tenure Working Group didn’t want to meet before the Senate meeting with certain members of the Gang. He simply replied that he didn’t think such a meeting was necessary; she said she thought he might be making a mistake, and the matter was left at that.

Berscheid immediately called Evans to tell him there was not going to be a meeting (and that she now doubted that the administration had ever intended to have such a meeting). Both agreed that, although the time now was short, the Gang of 19 needed to get all hands on deck to try to get a resolution before the Faculty Senate Thursday afternoon. The next-to-last draft of the resolution had a final provision calling for the removal of Carl Adams as FCC Chair. After receiving this draft, Berscheid called History Professor Joe Altholz, who previously had served as the Senate’s parliamentarian, to ask him about a point regarding suspension of the rules and, in the course of the conversation, read him the resolution. He advised her that the final provision should be dropped; he argued that it was significantly different in nature from the other provisions that it would invite attempts to split the motion before a vote. Berscheid and other members of the Gang were persuaded

that Altholz was correct and that, Berscheid concludes, was how Adams escaped being removed as chair.

The Gang of 19 then worked out who among them would perform various tasks, including who would request suspension of the rules, who would present the resolution, and who would speak. Late Wednesday afternoon, Morrison called Berscheid to ask who the leader of the Gang of 19 was; Berscheid told him the Gang had no leader, that they were just a “rag-tag” bunch of faculty. Morrison wondered aloud whether the Gang would be willing to see a discussion of the proposed tenure revisions at the Senate meeting; Berscheid replied that she was confident that the Gang wanted to prevent such a discussion within the official Senate meeting (as the Board could consider it formal “consultation”), but if individual faculty members wanted to stick around after the meeting to discuss those revisions, that would not be problematic.

During the days before the Senate meeting, one of the many ideas being considered by the Gang of 19 was organizing people in the community into an active support group for the faculty. This was a time, Berscheid recalled, that the faculty were receiving support from no quarter. The Gang wanted a faculty member to help organize and lead the group, and decided to ask the well-known acting dean of the College of Liberal Arts and former Dean of the Graduate School, political scientist Bob Holt, if he would do it. Thus Tuesday evening, the 16th, Evans called Holt, who said he’d been thinking of such a group himself. In the course of the conversation, Evans read him the resolution the Gang intended to try to introduce on Thursday, and told Holt about the Gang’s worries about getting enough votes to pass it. Holt suggested that Evans call his political science colleague, Fogelman, who was chairing the Judicial Committee -- which eventually would have to consider any revisions to the tenure code (according to the process specified in the current code). When he learned of the resolution, Fogelman said he would support it, and he also said he would call Feeney. At that point, Berscheid recalls, they breathed a sigh of relief because they believed that with the support of Fogelman and Feeney they had an excellent chance of getting the resolution passed.

David Hamilton recounted how the Gang of 19 set up and used email; the question arose right before the April 18 Senate meeting. “We thought ‘we’ll poll all the Senators,’ but immediately realized that was impossible, because number one, they would probably take offense at it, and number two, we probably couldn’t find them, even through email, because we didn’t have an email list. The email list of the faculty that the administration has was one that I started. I went to [the distributed computing administrator] and said ‘there must be a way you can extract the faculty into an email list.’ He said, ‘oh yes.’ I said ‘why haven’t you done it?’ He said ‘nobody’s ever asked.’”

Walsh later commented, apropos the all-faculty emails and the April 18 meeting, that “those all-faculty emails via the UFA listserv were seen as reports of things that otherwise people would never be told about. They created credibility. I suspect that many people paid little attention to FCC after [the events that led up to the April 18 Faculty Senate meeting]. They were seen as cooperating with the administration and regents. . . . A lot of what the FCC was doing was scrambling to recover from their failure to defend the faculty. . . . If the faculty had trusted FCC it would not have needed the UFA. We were willing to work with FCC, but trust [of FCC] was low with us as well. In retrospect, our low level of trust was justified.”

* * *

THE 18TH OF APRIL

Morrison reviewed what was supposed to have happened, and what did happen, at the April 18 Faculty Senate meeting. “The whole notion of April 18, as originally conceived, came out of the 1985 revisions, which is that we should have a general discussion, the committees could be informed by the general discussion, and then [they could] massage and improve the specific language. We had specific language in 1985, but it was written in clay. Rather than take specific amendments, we would listen to a concern, then we’d take it back to committee and re-craft it. The notion was there would be that [April 18] meeting, and then two in May to deal with all the details.”

Morrison also was not sure about one of the underlying rationales for the motion introduced by the Gang of 19. “By this time, the AHC was boiling over, the legislative mandate had come, whatever its status was, the relationships with the Board were already deteriorating. There was some sense, by some people, that the Board was going to take the April 18 meeting as the consultation; that was the concern of the Gang of 19. They [the regents] were going to take this as the consultation and then do what they damn well pleased.”

“I did not share that concern,” Morrison said. “I did not think they would be that foolish. My initial reaction was that we should go forward, and do things that we had planned to do. I had heard some rumblings, but not much; the Gang of 19 hadn’t talked to me because they saw me as part of the Gang of 4. Wednesday and Thursday of that week it became clear to me that there was an overwhelming sentiment [in favor of action] -- and I think at that point Chuck Campbell called me, and I had some long conversations with him.”

“By the time we got to the FCC meeting that Thursday, at noon, I guess I was ready to say ‘we gotta accept this thing, because if we seriously fight it, then we’ll be in the position of a no confidence vote either in Carl or in the whole FCC, or maybe in Nils.’”

Morrison also recalled Berscheid's concern about additional motions, one that would have called for removal of FCC Chair Carl Adams, and possibly one directed at the President. "If we fought that thing [the Gang of 19 resolution] on the floor, and said we really need to debate [the tenure proposals formally], we would have accomplished two things. We would have lost that motion by maybe 100-20 rather than 119-9; some people would have been persuaded, but not many. And that other motion [about FCC Chair Carl Adams] would then have come. After Nils's speech, there might have been a third motion, about Nils. It seemed to me that was the total disaster we didn't want to have happen. Because what I saw, down the line from that, was maybe Nils departing rapidly, some acting president doing something erratic, the Board coming in in May or June and enacting all the stuff that Brody had proposed, through Steve Routh, and so forth. So it seemed to me that to protect as much as we could of the process, we had to get the meeting shut down quickly. That meant taking that vote, rolling over and playing dead for that vote, and adjourning the Senate, so that we could go back and slog away."

Morrison emphasized, however, that "I do not think it would have been construed as consultation. I do not think the regents are that foolish."

Swan put a different construction on this line of reasoning. "I think Ellen [Berscheid] was the one who started that. At one level, in more normal times, you would say 'you couldn't construe that as consultation.' I wondered whether Ellen might have been a little paranoid. But there's this notion that it isn't paranoia if they're really out to get you. Given what happened the following November, and how quickly the regents adopted Sullivan II, I don't know."

One faculty member deeply involved in events recalled, with Morrison, that possibly other resolutions would be offered. He also agreed with Morrison's conclusion. "The question arose, whether to ask for the resignation of Carl Adams. There were some people who favored that. My own view was -- although I sympathized very strongly with that view -- that politically this would be a mistake, because it will divert attention from the issue of 'let's get this tenure process under our control.' It will divert attention to a vote of confidence in Carl Adams, and that could split the faculty in various ways. I thought that if we wanted the strongest possible vote for reclaiming the process -- and that vote was overwhelming, although it was not unanimous -- that that is what we should focus on. Much as I personally sympathized with this vote of no confidence in Carl Adams, I didn't think it was politically the right thing to do. Others felt the same way, so that never came up."

Purple, in a long disquisition, defended the view of the Gang of 19. "We got out that emergency thing on the tenure. I know other people thought it was just garbage; meeting to

consult doesn't mean anything. But we had actually seen how these things had actually been applied in the AHC. Consultation, in re-engineering, is not consultation; it's meeting. It's informing. It isn't give and take, advise and consent. When you read the tenure rules, which say the regents have to consult, it was our opinion that if they were really being driven by Brody and CSC Index, that meeting would legitimate the regents taking action with respect to the tenure code."

"So we were concerned. Paranoia ran deep at that time. For those of us who had been through it in the health sciences, this business of 'we don't want the Senate debating it' was for real. We didn't want them formally consulting. Because if the Board of Regents was in the re-engineering mode, and if Brody really had their ear, they would act upon that. And we had no way of knowing; none of us had ears into the Board of Regents, except for Rama and once in a while Ellen."

"The major thing that happened was, after discussing all of the different problems [in the Gang of 19], the thing we came down on was this tenure business, particularly when the draft came out. You read the thing word for word for word, and you could see where Michaelson's garbage had been put in, you could see where Fred's hand was. Some of it was quite temperate; other of it was obviously a set up. When you saw that document, you knew the process had been tainted by the re-engineers."

"When I say that they are the modern Nazis, I really mean it. Those people are authoritarians in corporate clothing. There are people of that ilk, in my opinion, who, if they had lived in Nazi Germany, would have been perfectly happy to shoot Jews, to shoot political prisoners, and to shoot anybody else who got in their way. In this country, they can't shoot 'em, but they can re-engineer 'em. Every society has that potential, and these are the kind of people who don't fit, in my book. They were sycophants, and I'm not afraid to say it. Carole Bland was one of those sycophants. She was on Brody's bandwagon, on this QRTC committee, chairing that."

"Did I trust the FCC, with Carole Bland backing Carl Adams and John? No, I didn't trust them. I thought had they had lost their sense of purpose, of leadership. I thought they were out there for themselves, that they were more interested in their own egos as faculty leaders than they were in helping the faculty. And I don't like that. The Gang of 19 shared that same view."

"They became distrusted in part because the Gang of 19 came out with that pronouncement that said what they were doing wasn't right. They should never have appointed the working group to begin with. They should have turned this whole matter over to the Tenure Subcommittee and said 'do it. Write us new tenure laws.' They shouldn't have put it in the hands of a working group; that isn't what's specified in the

constitution. It's totally out of line. It's saying 'we're going to be an interest group and we're going to try to lobby the Tenure Subcommittee.' But the Tenure Subcommittee is the group that supposed to be doing this. Unfortunately, the chair of the Tenure Subcommittee is Mary Dempsey, who is not, in my view, the strongest political figure. Fortunately, we had Fogelman on Judicial, one rock in the whole process."

"Did the FCC lose its credibility with the faculty? Yes. What was that vote? 119-9? That tells me the FCC had lost its credibility with the faculty, and that the faculty had listened to the Gang of 19. It wasn't just the Gang of 19; we put in words what most of the rest of the faculty was feeling, and they were angry. The FCC had been warned about this. One of the warnings was this little business about attribution with respect to minutes. You don't lead by hiding behind anonymity. I know what it's like to get plastered when chair of FCC. You get blasted when you make stupid statements. So what? Who hasn't made stupid statements? On the other hand, you learn an enormous amount when you get the feedback. And I was very curious about the minutes, because I would read comments and I knew who was making those comments, i.e., Carole Bland about spoon-feeding the faculty and that crap. Denigrating the faculty who elected her to that position. If comments like that are going to be made, I wanted to see attribution, so that people would know. To me, that's just one little sign that people were fed up."

"That doesn't mean all members of the FCC had [lost credibility]. I can understand that Roberta can be a pain at times, a rebel without a cause or with a cause, but Roberta's a damn good democrat, and she labored in the vineyard of that FCC for a long time. She took abuse. Wasn't it Carole who wanted to pass a resolution saying that FCC members shouldn't openly criticize each other in public? That's one of Roberta's emails to me."

Gray, in recalling the events, said that "Judy [Garrard] called me up a few days beforehand to say 'this is what we're talking about doing, what do you think of it?' At that point they were considering a 'no confidence' vote in Carl. She was telling me what was happening. I suppose they wanted to get me on board. But there was this hint that 'we'll dump Carl and then you'll become chair.' I didn't want to get into that. I don't think that's appropriate, and I was glad I was out of town, so whatever happened, it had nothing to do with my ambition. Because I don't think anybody wanted to replace Carl at that point. But they didn't do the 'no confidence' motion; they dumped the working group, which was fair enough."

Bloomfield concluded that people "were just getting very worried. People's consciousness of the Washington lawyer representing Brody was growing; at that point people didn't really like that. I don't remember what we were being told

about what the recommendations or draft language was, but people were clearly getting nervous about it. And there was clearly a feeling that this was moving on too fast a track, and any way we can find to derail it is a good thing to do. They clearly didn't trust the people, but much of the faculty really didn't want any examination of tenure, period, and this was seen as a way to slow the process down."

Feeney said "there were a number of things that contributed to [the resolution for the April 18 Senate meeting]. You could see the handwriting on the wall; something was going to happen." He recalled being aware of what was going on in the conversations between what became the Gang of 19. "That was why we drafted it. We said, 'all right, the process is beginning to waiver, people are starting to get uncomfortable, and the last thing we need within the faculty ranks is a bunch of dissension.' So we said 'let's go back to basics.' Disband the Tenure Working Group -- which is really not going to change the way things are going, it will just change how things are done. That's why I spoke at the meeting, but I don't think anybody heard it. This was not an attack on John Adams' credibility, or Carl Adams' credibility. Those two were unjustly accused of many things."

"But this way, we said let's put it back and let's not start a faculty revolution; the last thing we needed was the faculty fighting each other when they had one or possibly two common enemies. The one definitely was the Board of Regents, or at least one subset of the Board that was very vocal. I don't know, at least in the initial part of the process, which side of the road the administration was driving on. There was a lot of back-pedaling regarding the Hasselmo letter that made it to the Washington Post. Nils, afterwards, became a faculty advocate, especially when the chips were down and the faculty were going head to head with the regents. But initially, you could interpret that letter as saying that he was going to dance the tune that the regents wanted to hear."

"I had a number of people say to me that they were very concerned about the way things were going and the whole thing was going to turn into a disaster. That included Ellen Berscheid and Fennell Evans, and [these comments] contributed to the idea that we really needed to draft something. So I agreed with Ed. If you want to say anything about it, it was damage control, get the process the back together. There was urging on the part of several to put [the Faculty Affairs committee] and the Tenure Subcommittee back in control, get it out of the Tenure Working Group. I thought that seemed reasonable."

"People were coming to us, rather than FCC, if the truth were known. Whether there was some blame that FCC created this monster, I don't know. But it seemed like [Faculty Affairs], the Tenure Subcommittee, and the Judicial Committee were viewed as neutral parties, with the faculty interest at heart, and they were really the keepers of the process, so [we thought] 'let's

move back to them and forget this other thing.”

Dempsey recalled that she “had thought all along, through the whole thing, that whatever it was [proposed by the Gang of 4] would have to come to the Tenure Subcommittee, and then to the Senate, so that some of what was going on, and what people were getting all excited about, wasn’t going to happen. But it was very difficult, as it got worse and worse, to tell somebody that. They probably didn’t have the experience we had. Mostly what we had done before was make a few interpretations; sometimes we would change the code, and bring the changes to the Senate, but it was usually something everybody thought was a good idea, like stopping the tenure clock. I suppose they didn’t realize we could do all this. And that it would go through [Faculty Affairs], which is a representative body, even though they are not elected. I thought it was going to go all right. I even thought, on the 18th of April, when they were all furious, that they didn’t understand. People can write drafts of whatever they want, but if it doesn’t go through the Tenure Subcommittee, it isn’t going anywhere. Someone could propose something to the Senate that didn’t go through the Tenure Subcommittee, that’s in the regulations, but it’s never been done. I think the regents could have done as they tried to do, almost unilaterally, but that again would be such a negative thing.”

Swan described the meeting as “as much symbolic as anything else. It was a formal repudiation of what had been happening. It was the hand-off time, but it was the Faculty Senate saying ‘we’re appalled at the way this process has evolved, and things have gotten so untracked.’”

The comments of Williams and Murthy ran along similar lines. Williams said she thought it “was an extraordinarily positive meeting. I don’t think there was a mob mentality; I think it was faculty standing up, who had not been represented, standing up and saying this process is wrong and we’re going to correct it. I think it was a very necessary action.”

Murthy generally agreed. “That certainly was a well-attended meeting. I don’t remember any hysterical reactions. There was vigorous debate. This question, if you even mentioned something there about tenure, whether that would be adequate cause for the regents to say ‘it’s been debated’ was talked about at length in that meeting. But that didn’t stop people from talking about tenure. There a lot of lack of trust by this time, already; an enormous amount of lack of trust. First of all, you lose trust in the President because of the letter, rightly or wrongly, then you lose trust with some members of the faculty because of the Adams group, then you lose trust in the credibility of FCC because they’re not doing their share of the governance. Given that, and faced with a document produced by the Gang of 4, it was a pretty bad situation.”

Shively said that “what I’ve heard from a bunch of people

was that that meeting was orchestrated to head off sharper attacks. There may have been some mob mentality, but that some other people managed it so that it ended up being constructive. I was unhappy at the way that Carl and John were attacked. Other than that, I thought the meeting went pretty well [and] the general outcome was OK. I was just sad and unhappy about the attacks on Carl and John. They were unnecessary.”

Shively accepted the proposition that some in the Gang of 19 had taken action in order to stave off other, more damaging actions. “I’m convinced they did. I was sitting among a set of faculty who I don’t think of as emotional types. They were not close friends of mine, but I don’t think of them as emotional types. One of them showed me the motion he had, and he was so upset when he didn’t have a chance to introduce it. I don’t think he was part of any movement; I think he just walked in with this in his hand. I don’t think it was that there was some other movement which got stymied; I think there were just a lot of individual faculty members who had blood in their eyes.”

Sara Evans said that she was not at the April 18 Senate meeting, but she dismissed the notion that there was a “mob mentality” in action. “I think that sounds ridiculous on the face of it. It sounds to me like the Gang of 19 did their politics very well. They got their people lined up, they had a resolution, they made the calls, and that’s what happened. I have no doubt that the Senate expressed the point of view of the faculty, at that point. It got written up; Senators didn’t go back into their departments and have people coming up and saying ‘Are you crazy? What do you think you’re doing? Our leaders are perfect!’”

“I know there was a tremendous amount of fear among the faculty at large, by that time. This had been churning and churning and churning. It appeared chaotic. The issues being raised seemed very threatening. The people in the AHC were beginning to scream in ways that were dire. They were telling us that horrifying things were happening. And it was all tied together, somehow, but nobody understood how.”

“This was all happening together. And it’s no accident. We now know how much Brody was driving the tenure debate, and about this shared set of interests -- not the same, but mutually-reinforcing set of interests -- between Brody, the regents who wanted to challenge tenure, and people in the legislature like Becky Kelso, and probably a lot of corporate interests who would see the world the way Brody did. Which was from the re-engineering, streamlining, top-down, flexibility, hiring and firing, being lean and mean point of view. That coincidence of interests, without strong leadership in the administration -- with regents who were publicly humiliating the administration at every turn -- that was a pretty powerful

coming together. For those of us down in the grass roots, it seemed like it was coming at us from every direction. I'm sure that that Senate meeting was emotional; people felt they were losing control -- and they were."

"To call it a mob mentality is a way of saying that people were acting irrationally. Historians have done a lot of study of mobs; mobs are not actually all that irrational. That is a labeling issue; to say a mob mentality is a way of labeling it. And condemning it. By saying these folks were irrational; they were afraid but there was nothing to be afraid of."

"Look what happened after that! Mary Dempsey is one of the most articulate people on saying 'those people who were saying things were terrible, I didn't believe them, I thought they were all wrong -- and then everything they predicted came true!'"

Purple explained his perception of what had been going on with the Gang of 19 that led up to the resolution for the April 18 Senate meeting. "By this time we had met four or five times, were comfortable with each other, different leadership roles had been established informally, respect for each other was high, and the group was expanding. Drafting was inclusive with contributions by most of the group, with a frenzy of e-mails over versions of the draft, and details on parliamentary procedure for suspension of the rules -- I was drafted into role of Parliamentarian for the group -- who would make the motion and alternate strategies with respect to parliamentary procedure, and how to get it out via Tom Walsh's server and secure lists versus the administration's larger e-mail list, and how to reach the coordinate campuses (mostly my contacts which I handled by phone and by e-mail). Debate centered on how hard our approach should be. At the start there were rumors that others would be offering nastier resolutions and some debate centered on whether to join or try to head off a vote of no confidence in President Hasselmo and the Board of Regents. [Our] resolution took [a] more moderate stance by consensus but no one would stand up for the FCC, as many in the Gang of 19 were very angry with John and Carl Adams. Not included also was another flurry of e-mails when Fogelman and Feeney came on board with their letter. One thing was very clear, however: Our group was confident that we were on the right track in expressing the majority opinion of the faculty, but nervous on the question of how much of a majority we would command. We didn't, however, even begin to suspect that this majority would be so overwhelming and that the faculty anger expressed in the vote was so deep. We kind of thought we were on the leading edge and found out we were actually in the 'middle of the wave.' It was obvious coming into the meeting however, seeing the room fill up with non-senator faculty including a large contingent of retirees. In hindsight I now believe if we had fostered the harsher 'no confidence' stance in

the Regents and Administration, it too would have passed and things would have really gotten nasty.”

An earlier version of the resolution included harsher language. It said that “faculty morale is near an all-time low, and that there is an enormous amount of anger and frustration building. Events and resolutions of the past week from General College, the School of Public Health, the School of Nursing and the Dental School bear this out. The proposed resolution that we are sponsoring is our best consideration for giving the faculty anger a focus aimed at bringing positive change rather than just the outbreak of civil war between us and the administration. We agree that the tenure code needs some revisions, but we disagree that we need a committee of outside lawyers to draft those changes.”

The first draft was also more critical of the FCC. “We, unlike our present top faculty leaders, know well that election to faculty leadership gives one the right to speak ‘to’ the faculty and to speak ‘of’ the faculty, but it has never conferred the right to speak ‘for’ the faculty. Only the elected Faculty Senate may do this. We feel our present leaders have overstepped gravely their bounds on this, and that the faculty needs to put its own leadership house in order. The resolution seeks to put a fast and hard hold on any tenure revision debate that would give the Regents excuse to claim the faculty had deliberated on this issue, and it seeks to begin the process of reorganizing faculty leadership.”

“If we do this now, swiftly and without a great deal of debate, we feel that this resolution will send a very strong message to the administration and to the Board of Regents. We trust our instincts and believe this resolution, while tough, should pass with near unanimous consent as it is mild compared to what we have heard threatened. Its passage would not deter a much stronger resolution of condemnation at the first May meeting of the Faculty Senate. At the same time it should give the faculty a breathing space to get its house in order and to begin work on revisions that do not pose the threat to academic freedom of the present ones.”

The earlier resolution, instead of focusing on tenure, then posed a series of questions addressed to the decrease in support for the University from the state, purported campaigns by administrators against student and faculty interests, the growth of legislative belief the University was mismanaged, and University spending on outside consultants. “As colleagues, we fervently ask for your support on this resolution and ask you to hold off on a move to censor the administration at this time. Let us put our house in order first and give the administration and Board of Regents a chance to begin to refocus too. Then, perhaps, we can begin to emerge from this dismal period with a positive rebuilding effort which can lead to trust between the faculty, the administration and the Board of Regents and higher

priority support from the Legislature and the Governor.”

* * *

Immediately after the meeting, Purple wrote to colleagues at the Duluth and Morris campuses to thank them for their support on the resolution from the Gang of 19. “I think the message got out that the faculty is angry, has no trust in the administration, but at this point are willing to tell them so politely. If the President really believes what he said in his speech and in his views on tenure at the Senate meeting, one question comes immediately to mind. Because they plainly do not believe in what he said, why hasn’t he terminated Brody and the CSC Index team? You might raise that point with your colleagues.”

The two city newspapers both carried articles about the Faculty Senate meeting on page one of the metro section, signaling what would be a continued interest in the debate.

“‘U’ faculty Senate takes over tenure revision” (Star-Tribune, April 19). The article reported the Faculty Senate action, “apparently reducing the prospects for any major change.” The Working Group consisted of four faculty and an administrator, “but it had not been appointed by the Senate. Some thought the group was going too fast.” The vote was for “no confidence” in the process, “seemingly a slap at [FCC] Chairman Carl Adams, . . . at John Adams, . . . and at President Hasselmo, even though he has avoided active advocacy of specific changes.” The article reviewed the controversial tenure proposals, and said that “tenure is virtually a guarantee of lifetime employment” once granted after probation, and that it protected academic freedom. The pressure for change came from Keffeler and Brody, and the legislature. The debate has led to raiding by other schools. “The Board of Regents could make any changes it wants, with or without faculty concurrence. But Hasselmo said in an interview Thursday, ‘The regents have made it clear they want the faculty to deal with revision of the Tenure Code.’”

“U faculty protest tenure review” (Pioneer Press, April 19). The article reported the Faculty Senate passed a “‘we’re mad as hell and we’re not going to take it anymore’” resolution. The Tenure Working Group was seen to have been co-opted by administration and did not represent faculty; John Adams said he did not feel like a scapegoat. The article said Adams was not a popular figure “because many faculty believe he is playing into the hands of the administration.” Fogelman said there is a national perception that tenure is “under fire” at Minnesota, and that “somewhere along the way, the process got confused. Faculty need to clearly assert their own voice in this process.”

Humphreys recalled sitting near Senior Vice President Infante at the Senate meeting. “He must have been stunned by what was going on. The expression on his face was ‘what has happened

here?’ I remember him holding the resolution with the 19 names on it. He was holding it up. I remember seeing his finger move with his pen, reading each name. Then he turned it over and put it down. That signaled something to me. I know Jim. He saw what was happening. I think he realized at that point that these attempts to cajole the faculty, or pressure the faculty into making major changes in the tenure code that he wanted, were over with, that it wasn’t going to happen. That it was over with. The attempts to manipulate the Senate committees through FCC hadn’t worked. He realized that.”

At the end of April, the Daily reviewed the events around the Faculty Senate meeting. In a page-one article entitled “Faculty group up in arms over leader,” Walsh of the UFA and others were quoted as saying that the faculty were not confident in FCC and did not trust chair Carl Adams because he set up the Tenure Working Group and co-signed the March 15 letters with Hasselmo about the tenure revision process at Minnesota “apparently without the knowledge” of FCC. The article said FCC members were upset about the letter. Rabinowitz of the UFA was quoted as saying “the work Carl Adams has endorsed in terms of tenure has been disastrous.” Humphreys said Adams meant well but was not “sensitive to what the faculty is feeling.” Adams was quoted as saying there was not “a widespread difference of opinion within the group” and on tenure that “there is some difference on what road to take.” Adams said he had no plans to step down and pointed out he had little time left as chair.

Bland, on reading an earlier draft of the chronology, expressed concern about the “lack of accounting for senate activities during this time. As I read the document I was struck by the preponderance of reporting by and from the newspaper reporters, members of the Gang of 19, the Regents’ Professors, etc. These were all important contributors but what is missing is the constant backdrop of the continuing work of the senate committees. The Tenure Subcommittee, the Judicial Committee, [Faculty Affairs], and FCC met and worked very hard over those months not only on tenure issues but the other issues, semester change, biweekly payroll, search for a new president, etc. Because of the lack of reporting of these tremendous efforts it does indeed seem like the senate was not working and asleep at the switch as you report several of the activists kept stating.”

“I also thought that the comments of ‘non-activist’ committee members did not receive the same voice/weight as activists members.” Bland alluded to the discussion of the April 18 Senate meeting, and the FCC meeting that preceded it, and wrote that “I was struck by what was missing was a description of what the ‘non activists’ in the senate were doing at this time and how, in some people’s perception, the Gang of 19 were being very self serving and not supporting the faculty governance. Recall, [Faculty Affairs] and Senate Judicial committees were at that very same time

coming forward with a motion to the senate to change the way we were proceeding. It would have strengthened faculty governance for this motion to come from these committees instead of a rump group saying the governance was not working and they were trying to save it. I was very unhappy with the Gang of 19 for making their statement without first seeing if it was not being handled by the committee structure. As you point out, two of the Gang were former FCC chairs and knew full well how the senate worked, but did not even have the courtesy to work through or see what was coming from the committees before lambasting them in public. In fact, the statement you may recall had incorrect information about how the working group was set up, and failed to point out that any and all amendments were in fact going to go through the established senate committees. It was particularly sad that inaccurate information was in the statement and that the motions coming from the established senate committees were unacknowledged when two FCC members were involved in the development of the statement and knew what was occurring inside the senate. Further, both the chair of the tenure subcommittee and the chair of [Faculty Affairs] said this at the senate meeting -- which I do not think you report in your summary -- but by then a mob mentality had been established. So when [Richard] Purple later sends a memo to the FCC saying that their (the rump group's) intent was to effect positive change and that FCC should serve as the faculty representatives, it felt very disingenuous. Had he really wanted to strengthen faculty governance, rather than flex his own personal muscle and position a union effort, he had full knowledge of how to do that."

The April 18 Faculty Senate meeting was clearly one of the milestone events in the tenure debate at the University, and it made manifest the cauldron that had been bubbling for weeks. Several phenomena are worthy of comment.

First, as noted at the beginning of this chapter, there were at least three faculty leadership groups at work, with some overlap in membership, but not all were equally credible with the larger faculty. There was FCC, executive committee of the Faculty Senate; there was the UFA, advocating a union and in fairly constant touch with the faculty by email; and there was the Gang of 19, an amorphous group of senior faculty. Which group carried the most weight with the faculty, and why?

Second, the credibility of FCC was clearly questioned. How or why did this happen?

Third, the leadership of FCC, particularly that of Carl Adams and John Adams, came to be mistrusted in many faculty quarters. Why did that happen, when both had previously been at least reasonably respected faculty leaders?

* * *

THE (LACK OF) CREDIBILITY OF FCC

Morrison commented on whether FCC lost its credibility,

as maintained at the meeting. "I think some people on FCC lost their credibility with the faculty. I think that's maybe a good thing. To some extent, we have worked on the assumption that -- and this is one of the things that the dispute with Carl was about -- there ought to be a unanimous, united front on anything, and FCC should have credibility.

"It seems to me you have credibility when you can show that there are differing opinions, and you've come out with the right one. I don't think that the arguments lost credibility. I do think that some of the positions lost some of the people credibility, and that they were no longer effective spokespersons. I don't think FCC lost credibility so much as Carl did, as John did, and maybe a couple of other people."

"What was the role of FCC? This has always been a problem. Technically, FCC had no role in tenure; although it became the thing that consumed us, technically it's [Faculty Affairs], the Tenure Subcommittee, and the Judicial Committee. There was an effort to coordinate and interface, but that's about it."

"I think the Gang of 19 was a leadership group from about April on. FCC was a leadership group. I'm not sure how much the UFA was, I suppose it was sort of a minority party. We had splintered representation. Carl wanted FCC to go in with closed ranks opposing the Gang of 19, and FCC basically said 'no' to that. The FCC basically said 'no, we're not going that way.' That left Carl and John out there, pretty much on their own."

Bloomfield's view was not far from Morrison's. "Clearly [FCC] lost its credibility with some members of the faculty who were particularly vocal and active. I doubt that was a terribly general viewpoint. I think most faculty had no attitude whatever about the FCC, so probably among the people who paid attention, at least some of them felt that we weren't doing our job. I don't think it was a general attitude, but it may have been a majority among the opinion-makers. I think that the FCC reflected a wide range of faculty views, and that came out on these difficult issues. I'm not sure that it shouldn't. I don't think the FCC should speak with one voice."

"Were there three different faculty leadership groups in 1996? I think probably there were. Was FCC least credible? I frankly doubt that. I think you're talking about different camps. I think the UFA was very credible to people who wanted a union, but not very credible to a lot of other faculty. I think the Gang of 19 maybe had the greatest credibility. They were a prominent bunch of faculty and certainly had large scholarly respectability. They in general took a fairly middle-of-the-road position, but in a more vocal, active way than FCC did. The policies they were coming out with were generally fairly sensible, but they were vigorous about expounding them. FCC held back for a variety of reasons. I don't know if FCC was least credible; I would guess that for a period at least, the Gang of 19

was the most credible.”

Bloomfield also offered another explanation of why FCC may have misread or not understood faculty sentiment. He recalled that Walsh had done an informal poll of engineering faculty after the union election and learned that they had voted 2-1 against a union. “That may well be realistic. I don’t have much contact with CLA [College of Liberal Arts]; I suspect that the IT [Institute of Technology] people and CBS [College of Biological Sciences] people who are reasonably well supported by grants and don’t have terribly high teaching loads and whose offices are reasonably nice and so on are not in favor of unionization. But there are a lot of the faculty who I simply don’t interact with. And the CLA faculty I do interact with are usually the more successful and prominent ones. But even some of them were strong union supporters. I suspect we simply weren’t aware of a lot of what was going on.”

“One of the things that is clearly true about FCC -- Sara Evans made this point -- is that we don’t have a lot of CLA representatives on it. Or from the humanities part of CLA, the oppressed [; those on FCC] are from the social sciences. And then from the Medical School, [which], although it’s feeling oppressed, is generally not in support of unionization. And from CBS [College of Biological Sciences] and Agriculture -- from the non-humanities part of the University. So probably our perception of what sentiment was in a large part of the University was distorted by that.”

Sara Evans touched on the “faculty-led” phrase that echoed through the early part of the debate. “That was Nils’s line; I could hear Nils’s cadences as I read through the chronology, Nils constantly saying ‘this is not a problem, it’s faculty-led.’ All that stuff about ‘it’s faculty-led’ [came] when the perceptions of FCC were that there was no real boundary between FCC and the administration. So people didn’t feel there was a faculty voice. Nils was so beleaguered by the regents, under such attack, I can see why members of FCC might have felt drawn to his defense, vis-a-vis the regents, but that only reinforced the sense that there just is no boundary there. I think that was particularly true for John and Carl.”

“And John said a whole lot of the things that Nils said in his November 20 letter. John often said things like there is deadwood and there are problems.”

“The ease with which the Tenure Working Group and that group of 4 lawyers could get created, the mushiness in the story, testifies to the fact that there was not enough of a boundary there. There was not enough attention to procedure, and whose voice is being expressed, and who’s accountable to whom. There is a sense of disarray in the administration that FCC was a part of, participating in.”

Evans concluded that “there was a real loss of perspective. Faculty, by the middle of April, in all the chaos

which had been going on for months. There were reports coming out and not coming out. I remember knowing about the hearings, and not being at all sure about what was going to happen there. The forums that were so poorly attended, except for the one in AHC, where people were really hurting. And the fact that most of us did not understand what was going on at the AHC at all.”

Bland’s reading of this history was that it emphasized “how the Senate was no longer trusted, and there was no confidence in the Senate. I don’t think that’s generally true. I think a large proportion of the faculty had confidence in it.” She agreed with the interpretation that there was a lack of confidence on the part of some faculty in FCC. “I think that’s always true. However, I was in the health sciences, and in the health sciences there was not this huge lack of support -- surprisingly, when you’ve got people like Purple and Hamilton who were very active in voicing their lack of support for FCC. Further, the votes in the health sciences don’t reflect an overall lack of support. The people who I talked with were not sharing the perception that it was totally amuck. But the Gang of 19 certainly believed that, and they managed to take advantage of the situation, and really make Carl and John the bad guys.”

Bland was also unhappy with the comments and actions of some of her colleagues on FCC. She recalled Humphreys being quoted in the Daily, saying “‘I don’t remember how this task force got started, we didn’t have anything to do with it’ and ‘I don’t know how agendas got set on FCC, we don’t have anything to say about agendas.’ Those are false statements. All of that makes FCC look bad. So some of it surely was things that we did, but some of it was things that were said, perhaps out of naivete or just personal animosity or systematic attempts to destroy FCC. I don’t know. I think it’s unfair to say ‘FCC was bad because FCC and their leadership did bad things.’ I don’t think [Carl Adams] did bad things on Najarian, and some it was just bad press. But yes, some credibility was lost.”

Murthy commented that FCC lost its credibility with the faculty; “it did ultimately, but not right then. Through the John Adams committee, FCC might have been perceived as being defunct, because they had been made defunct because this other committee was working. It was FCC’s duty to look into the tenure matters, through the committees. It was seen as somebody who has lost something. But there was no active distrust of the FCC, back then. It evolved, later on. To take it chronologically, after the Brody mess and the Carl Adams mess, FCC was deeply involved in the sense of having been found wanting. Because they didn’t take the initiative, and that’s what governance dictates they do.”

Williams agreed, although she believed the credibility question arose early. “I would say what happened is that FCC’s credibility and the faculty governance credibility in the fall

[1995] and early winter [1996] was seriously damaged. Then the union folks started getting together and talking. I don't know that they were union folks to start with, but they were certainly people who had that propensity towards the union. And then the Gang of 19 started meeting informally and talking. I think it did stem from FCC and governance being seen as not credible. So it was two groups of faculty -- it was very easy for the UFA folks to come to the conclusion that a union was necessary, and it was not as easy a conclusion for the Gang of 19."

To which Murthy added his observation that "since most of the action with respect to faculty was being voiced not by the FCC, but from other groups outside of governance, that automatically put governance in question." Williams also pointed out their perception that "we didn't have the route through the governance structure because people [on FCC] weren't listening to faculty." Murthy went so far to suggest that "in fact there was no overlap between what was going on and the Senate, at that time."

In Williams' view, "Roberta [Humphreys] was the only credible person, from the perspective of the Gang of 19, and maybe Mike Steffes."

Purple said he distrusted the leadership. "When Virginia, Carl, and John were all on the FCC, and Roberta starts telling me that they're dominating it, I could believe that. I didn't trust them. I had no reason to. Everything I'd asked got turned down, everything I'd opposed got voted in. By that time I'd become a maverick. I was a faculty leader in the late 70s, early 80s; I became the loyal opposition when Hasselmo came in."

Dan Feeney offered an indirect observation on the leadership problems of FCC. "If I look around here, my biggest concern is that the upper levels of faculty governance tend to do a lot of head-nodding. I look back at what went on in FCC over the time I was there, and if I were to summarize, there was probably 75% listening and limited discussion, and 25% real forceful action. You would find yourself as a member of FCC among the most well-informed, but I found myself reflecting, after many of the meetings, 'what did we accomplish here?'"

"In that respect, if you were to ask, what was the FCC's position, the FCC's position in faculty governance was eroding. I don't think the whole FCC was responsible. As you note, it was divided in many ways. But some of the people who were most visible lost credibility with the faculty. I do think the credibility rank for me at that time [winter-spring 1996] was the Gang of 19, number 1, UFA number 2, and the FCC last, because of all these difficulties."

Gorham also agreed that at least in late winter and early spring, the Gang of 19 was the most credible. "[Support for] UFA and FCC was pretty split; for me it was UFA and then FCC, because I felt some of their [FCC] leaders had sold out. But for

many of the faculty, UFA was a bunch of wild men, so undoubtedly they would rank number 3, on average.”

Pick recalled that “FCC didn’t have credibility with some groups of faculty. I remember our AAUP meetings. There were people who, if you mentioned anybody on the FCC, they would hit the roof. Other people felt that we should all be working together.”

Sara Evans commented on whether FCC recovered from the damage it suffered. “I know that last year [1997] there was a lot of effort by FCC, in producing the white papers and being really attentive to process and honoring the committees and not overriding them or dismissing them. This process has strengthened faculty governance a lot. Or at least the faculty’s perception of the importance of its role in governance. I think there may be many faculty who are quite cynical about the Senate. I think the faculty feels empowered after last year, but the mechanism of that empowerment was a collective self-expression that initially had to bypass faculty governance in order to be powerful. I think all those committees were very empowered by the end. One goal that I have is to build a very strong AAUP chapter that will be linked with faculty governance in a lot of ways.”

* * *

THE PROFESSORS ADAMS: WHAT WENT WRONG?

A number of those who were involved in the events commented on why Carl Adams and John Adams had lost the trust of their colleagues. The comments speak both about the individuals as well as the role of faculty leadership.

1. “It’s a problem that faculty leaders have. You have to remember who you are. You’re a spokesperson for the faculty, you’re not a spokesperson for the administration. That may mean, at times, you have to say things publicly that are not 100% in accord with the administration. I think Carl, coming out of the management school philosophy, found that a very uncomfortable thing to do, so when management said “we want you to say this,” he was very willing to say it. Unless it was really wrong. I think you have to remember, as faculty leaders, that you’re expected to be, by the constituency that you represent, cautious and critical. That means you pull together with the administration a lot of the time, but it does not mean you accept what they say in an unquestioned way.”

“To some extent, Carl’s and John’s backgrounds dictated the way that they saw things. Both of them see committees as organizations that are there to support their leader. Most of the people on FCC saw themselves as independent actors who might or might not support a leader, depending on the issue. And

there may have been one exception on FCC, who wanted always to support the leader. Both of them, out of the military background and out of the business background, were upset when the political organization” would not do things as they wished.

“There are two different tracks. One of them is that John, who was supposed to be the chair of this working group, gave everyone the impression that he was not listening to the faculty, that he had an agenda, he would certainly be present while the faculty was talking, but he would not be receptive to anything the faculty said. That’s the impression he gave.”

“Carl’s [case] is more complicated. Carl came to be distrusted, in part because he was too defensive of Nils, and too subservient to Nils. He came to be viewed, by many people, as a spokesperson for the administration who was a faculty member, and not as a spokesperson for faculty interests.”

2. “I suspect I would have been in somewhat the same position, being someone who feels that some of these management issues are in fact reasonable. That department heads should expect their faculty to, within reason, to take orders about what their workload is. I think John and Carl had that attitude very strongly. I know where they were coming from.”

“I remember once making a remark in the FCC, on another issue, when Carl was so enthralled with some management chart that Nils or Jim had put up. The rest of us were saying ‘this is empty words.’ But to a management person, it meant something. So he was very enthused and the rest of us were very cold. I think with Carl particularly, a professional identification with management sort of undid him. With John there were similar things. Not in his profession, but the way he likes to run things. He appreciates efficiency and people doing what they’re told.”

“I think they took those attitudes and didn’t realize what was happening.”

3. “The main problem is what I would call insufficient role separation. When you have the job of FCC leader, you wear a specific hat, which is to represent the faculty. Carl, and John before him, defined the role as being on the management team, making the University work. It’s not that I think the FCC chair should make the University not work, but your job is not running the University, your job is to represent the faculty.”

“A lot of people think John and Carl were duped by Brody, or sold out, or whatever. I don’t think that at all. They have a managerial view of the University, much more so than the average faculty member.”

“So when Brody comes in and says he wants to shape up the University and so on, and uses all this business lingo and re-

engineering, John and Carl think that's fine."

"I don't think they were led down the garden path. To some extent, they believed this. So when Brody says tenure is the problem, they would try to find out "what did he 'need' as far as tenure reform was concerned. Unfortunately, I remember them coming back and saying 'he has no idea! He hasn't read the tenure code! He has no idea what changes he needs. He doesn't even know what the tenure code says!' So they were frustrated in satisfying him. They were just the wrong type for the times. They have the best interests of the University at heart, they are very hard working, but it was not a year where their skills were helpful."

4. "My impression is that they really were not doing a good job of finding out what the faculty thought or representing the faculty view."

"I also heard an MPR [Minnesota Public Radio] interview with John Adams. [There was a lot of] hostility directed towards the lazy faculty -- and this is somebody in a faculty governance position!"

"The other question about Carl -- he's from the Carlson School of Management. I assume he has some expertise in management. I'm in [another college] and have no expertise in management, but the first thing I did when I saw there was trouble here was that I started contacting national leaders about CSC Index and what was going on and started reading their books. As soon as you scratch the surface, you could see this would be very inappropriate at a public institution. The tactics of depriving people of their right to speak and criticize. You didn't have to look very much beyond the surface to see that this was a management technique and strategy that was grossly inappropriate."

"The other thing is, if you actually looked at the documents, read Champy's book, what was going on on campus was in those books. So all of the paranoia and suspicion and the problems you could well trace to the Index consultants. Giving them the benefit of the doubt, [the Adamses] didn't read the books. So they really, in my opinion, were not listening, not seeking information from the faculty. And that was their constituency, not the administration and not the regents."

5. "I remember in the Senate, after the Adams committee came out, and then after all the distrust grew in the faculty, both Adamses to some extent but John at the time, would make presentations about his position paper, and plug for it, in spite of the fact the Senate would not go with it, saying basically the procedure has been violated. At the same time, Hasselmo made a public comment that this is a faculty committee that is looking into it. The Senate did not believe that. So [John] Adams presented in the Senate [in the winter and early spring],

before anything started. That is when the grass-roots faculty became aware that something drastic was going on.”

“[John] Adams made a presentation to the regents, and [John] Adams presented initially to the Senate. There was a lot of opposition, but nobody could convince John to look at the faculty point of view. Then he followed it with the regents, and that created an awful lot of dissension.”

“I think that’s the point: from then on, these two faculty members, who were well-known in the community, suddenly became intellectual untouchables.”

6. “They sort of arrogated to themselves the status of knowing what was good for the faculty, without necessarily having consulted with the faculty. Substituting their judgment for any kind of real consultation.”

“There was clearly a close connection between Carl and John and Nils, and I think Nils in some cases was ill-served by them, by having been given the impression that the FCC approved of things which were only actually approved by John and Carl.”

“John is somebody I had a lot of respect for, before all this happened. I think that a lot of people pulled their punches with regard to John and Carl, because of their respect for John.”

“There was clearly what I would consider deception or a lack of attention to making sure issues that were dangerous were aired before FCC. I think he was nervous.”

7. “Part of the problem was that the leadership of FCC -- and by that I mean primarily John and Carl -- identified with the goals of the administration, and not with the faculty. It’s not that they failed; they knew what they were doing. They failed the faculty. They identified with the administration, and maybe even with the regents. Part of the problem -- and you could see this in the way they presented themselves and conducted themselves at meetings -- was that they seemed to see their role to communicate the goals of the administration and regents to the faculty, not the concerns of the faculty to the administration and regents.”

“The only thing I can say is that I watched the two of them. John was chair [of FCC] one year and Carl was chair the next. When Carl became chair, I was so relieved, because John had been so stiff, and so controlling. Carl seemed to be more laid back and more relaxed. I thought ‘this will be better.’ It seemed to start that way. But as this tenure issue developed during the year, Carl became more difficult to communicate with. It was very difficult to express an opinion different from either John or Carl in the FCC meetings. It was very difficult to be heard. I don’t know what caused the change in Carl. There were several incidents [that] made me wonder, what had gotten into him? My feeling was that he may have been well-

intentioned, that he thought he was doing the right thing, but he was not sensitive to where the majority of the faculty were coming from.”

8. The fact of the matter was, this had been building. John Adams had made a number of hostile comments about the faculty. They were published in Brief, so everyone knew it. Not only that, this so-called white paper that he maintains it was not, apparently there was a paper before that that was much worse, and that listed every single thing he thought was wrong with the faculty. That was what was wrong with John Adams. The faculty aren't fools. John Adams, nice man though he is, is known to be an administrator-want-to-be. That was what was wrong with that Tenure Working Group; they picked their people very wisely, and got people who wanted to be administrators or were administrators.

The problem with Carl Adams was his closeness to Nils. Everyone knew that. They weren't representing the faculty.

9. “From what I knew of John Adams, I liked him as a person, thought he was a decent human being. I did not see him as a heavy-weight intellectual. Carl Adams always struck me as an egotist who was more interested in the trappings of power and Carl's ego than he was in your opinion. I always got the impression that when I talked to Carl, it was going in so far and then bouncing back out, that Carl was highly opinionated, wanted to be a leader.”

“It was the general opinion of the Gang of 19, in their discussions, that John and Carl didn't know what they were doing on this one. Either they were not aware of the AHC problems with tenure, and what Brody was up to, and that Brody was injecting a strong bias or taint into this whole thing, and that he must be being backed by leadership from somewhere -- or they were with him on this. None of us wanted to believe they were with him on this, so therefore we believed -- we just didn't trust them. We thought their leadership was very ineffectual.”

10. “Carl was trying to represent the faculty -- but I think he may have been in over his head. John really meant well, too, and I think he was doing what he thought was right. I still feel very bad about the way both were treated at that April 18 meeting; I can't believe a group of academic professionals could act as they did. But I knew something terrible was going to happen, because people thought code changes were just going to go through the Tenure Working Group and then to the regents.”

“I never did distrust them. I always respected them; I thought they were trying to do the best they could. I felt bad that they had to suffer like that. One possible problem that led to some faculty distrusting them was that they didn't obtain a

consensus from the other faculty. Maybe they thought they were doing what the faculty wanted. Carl tried to get a consensus, but I remember at one FCC meeting Mike Steffes walked out on him. That was after the letter to the Post. I thought that was kind of strange. I don't think Carl realized how serious it was. I think he tried to get a consensus. In retrospect, he didn't obtain it. I think he meant to; maybe he thought he had."

11. "There are normal times and crisis times. Processes that may seem perfectly all right in normal times are not in crisis times and people have to line up. To put it simply, with whatever words you want to use -- and I don't know what the right word is, whether they were too sympathetic to the administration, co-opted by the administration, whatever it is -- at that point, they were doing the bidding of the administration. And that was not in the interests of the faculty. That's what it really came down to."

At one meeting of the regents, earlier on, at Keffeler's committee, "it was Carl Adams who brought up the issue, 'we need layoff powers.' I remember that very vividly, because I thought, to put it mildly, this is not what a faculty leader should be saying. He was saying it right to Jean Keffeler, who was the one who was really pushing it. I thought 'what's going on here? That we've gotten this, and all of a sudden our so-called faculty leader comes in with a really. . . .' That made me a little suspicious."

"But in general, I think that's the case with both John and Carl. They were serving, for whatever reasons, the interests of the administration. Which, at that time, were also closely tied to the regents. They were cooperating, and that's what the ad hoc committee was going to do: it was going to bring in a code that would have satisfied the Board. It would not have satisfied the faculty. They were supporting it, so where did that leave us? We had to repudiate them."

"And did so, but not them personally. And that arose. Not John Adams, because he wasn't in an official position. But Carl was chair of the FCC, and it arose and we decided not to do it."

12. One has to realize that "both Adamses had been chairs of the Consultative Committee. Carl was, and John had been." One of the former members of FCC once said, 'yes, I got elected. I don't want to tell you how deep my constituency is.' The elections, by and large, to the Consultative Committee are very shallow indeed. It is not looked upon generally by the faculty as an extraordinarily responsible or important job, one which people worry about or concern themselves. It's nice if somebody will do it. It's perhaps going to give some advice on things, but what they do is not going to be determinative of

much of anything. So these people, while they were the chief elected officers of this faculty, they were chief elected officers of this faculty which at that time did not give a damn. So they didn't have a big following to begin with. They didn't have to fall very far to fall from grace. The whole faculty didn't give a damn."

13. "I think John contributed to it. It turns out that John was not very good at facilitating those forums. In his heart of hearts, I think he was just putting forward those ideas, but he was coming across as advocating them."

"Carl, to this day, I think is one of the best people in understanding a management situation of anybody I know. So it's ironic that he's the person who got targeted -- and when you think about it, he's such a supporter of the Senate. He was always making the point that "these are the powers of the Senate, these are not administrative powers."

"It may be that it wasn't Carl and John. It may be that the Gang of 19 or union advocates needed to construct a villain and then destroy it to forward another sort of movement. It could have been anybody. I do think there were key people who really didn't like Carl. Roberta Humphreys, Judy Garrard, maybe Mike Steffes, really just plain didn't like him and thought he was not a good leader. Those people also disliked Hasselmo. It was the combination of events. And Carl made some missteps. I don't think he communicated enough what was going on to the faculty. In retrospect, as the leader of the faculty, he should have been doing things. But we never had in the past! So I can kind of see where he didn't jump up and down. Even now we do the newsletter, but it's nothing compared to the massive emails that were coming from everybody else. So our little quiet way of communicating never rose above the furor. Think about the Daily, how you'd see Roberta doing this and Michael quoted doing that. Carl just didn't call up the Daily and give them his side of the story. He wasn't that kind of leader. In retrospect, that was probably a mistake."

John Adams described his own perception of his role. "I've felt for a long time, because I've known Nils for a long time, that the number of professors around who are interested in the kinds of issues that the President and the Board have to be interested in, by virtue of their responsibilities, is pretty small. It's for years been my concern [since 1970 or so]; it's that sense that colors my approach or flavors my approach to how to worry about these issues, without much regard for myself or without much regard for personal or emotional issues that seem to occupy center stage for some people."

"For instance, some people simply will not move on an agenda because Joe is going to get hurt -- so they just won't do

it. Even if they believe that's the right thing to do, they're worried about Joe. And there are some people who won't do something because someone will be mad at them if they do."

"That doesn't bother me; I don't like it when people are mad at me, but it doesn't bother me in any kind of emotional sense. I don't get a lump in my throat or I don't break out into a sweat or my heart doesn't race. I just listen to them as they swear at me or yell at me or write me nasty notes."

"All during this thing, I was getting email from people, every day I would get maybe 2-3 letters from people who were really [upset]. I would write a nice note in reply and copy Carl. Carl would say 'John, how can you do that?' I said 'do what?' He said 'how can you be so nice to those people who are such []?' I said 'they're upset, it's legitimate what they have to say. The fact that they're angry, and they're expressing their anger at me, goes with the job. It doesn't bother me. I write them back, answer their questions, explain what you're doing, and thank them for writing. What else can you do?' Carl had trouble with that. It bugged him a lot when people would get mad at him."

"I just did what I thought I ought to do. Even when we were in those forums, for instance, and people were yelling and hollering at me, I just listen and answer the question and take the next question. Rather than get drawn into any kind of fistfight or shouting match; that doesn't accomplish anything."

"I don't feel at all defensive about what happened or what I and the other leaders did. I was glad that we had good people in the key positions who did not take any of this personally when we were accused of malfeasance and misfeasance."

Adams also wrote⁶⁷ that he was "quite aware of the fact that some of what was done and not done met with disapproval. When there's trouble, the persons perceived to be in charge are the ones who become targets. It goes with the job. Fortunately I have very thick skin, and although, like everyone else, one likes to be well thought of, it is sometimes necessary to say and do things that are unpopular, even though one believes they are right. . . . I was never very emotional about the whole thing, although I realize that many of our colleagues were very scared. I don't if my lack of fear was naïve or well-grounded, but I take some comfort in looking back and seeing the things that were accomplished. . . . People who knew me before, during, and after 'the troubles' seem to have a pretty balanced view of things and gave me the benefit of the doubt or else they supported me.

* * *

Shively took a more benign view of the evolving positions that people took. He pointed out,

⁶⁷In a note to the author.

first, about John and Carl Adams, that “neither of them is one to hide his position under fudge.” He recalled that some time earlier, before he became provost, he did some special work for the President. One effort involved campus round-table discussions, under the sponsorship of the Pew Foundation, one of which was devoted to tenure. Out of that discussion came a small white paper from a group that included, among others, himself, Berscheid, Bognanno, and Sara Evans; they advocated, *inter alia*, unit-based tenure. Shively said that “in fact, there’s a lot in that [white paper that] was a lot different from how the faculty ended up taking their positions on tenure. . . . It shows how things evolve. We were wrong on this one thing, where we said that tenure should reside in the units, not in the institution. That turned out to be a big key issue, and yet all the faculty who were there thought that at the time.”

“I think John and Carl Adams were coming from that school of thought, and got outflanked. But they’d taken very public positions before that happened. In other words, things evolved, but they had taken very public positions early in the evolution, and they were there. I was arguing, by the end of this, that we should not have tenure residing in the units. And I had become convinced that we should not. It was partly a response to ‘how much cost in faculty morale are you willing to pay for the importance of given change?’” This was the question that Richard Chait would later raise.

Shively said that “one other thing that influenced me was a human resources guy from 3M. At one of those public forums the regents had, he said no industry would want [unit-based tenure], because when you do this, people develop their loyalties to the unit rather than the whole. There was a real evolution, and John and Carl were stuck with the fact, by the nature of the process, they’d had to take their positions very early in that evolution, they were very public positions, and they couldn’t really adjust very much. I think that’s part of what happened, because all of us were evolving as we went.”

“Nils was also stuck in somewhat the same way, because his positions were also very public. So as he was evolving, people would pull up something he had done a year before and throw it in his face. I think some people got caught in that way, in ways that were not even fair to them. Because faculty leadership were evolving themselves, as they went.”

Shively recalled events of Fall, 1995, and the role of Senior Vice President E. F. (Jim) Infante, as he contemplated this matter. “Certainly, Jim was the key shaper of central administration’s positions on tenure throughout this. He was the one who was working very closely with the regents. The reason we had that white paper, the Pew session, is that I was working with Nils to set up some discussions; Jim said it was very important to have one on tenure because the regents are getting very interested in it. So it was Jim’s idea that I set up that Pew discussion session, even that long ago. We

explicitly invited Jean Keffeler to that meeting, because we thought it was important for her to hear from some faculty what they thought about tenure. Way back then.”

“It was certainly clear that Nils’s positions were evolving. All of ours were. But I don’t think he was taking a firm position on this, at that point. I think he had been working very hard, for three or four years, to get the regents to not lock in on this. That’s really clear. One purpose of the Pew session was to help in that effort.”

Fischer observed, apropos the April 18 meeting, that “our board [the Foundation Board of Trustees] knew that something profound and potentially disturbing was going on when earlier the faculty, at an earlier stage, removed John Adams and Carl Adams as their leaders of this effort, thinking that they were too close to the President, who was too close to the regents -- this ‘threatening force.’ Once that happened, there was reason to be concerned about how the process was going.”

Chapter Six

The Faculty Complete Their Work (They Think)

The aftermath of the Faculty Senate meeting played itself out in a number of ways and places.

On April 19 a faculty member emailed to a moribund faculty discussion group to inquire if the Star-Tribune article was correct in saying the regents could make changes to the tenure code with or without faculty assent; it appeared that Section 19 of the code prescribed the amendment process, requiring Faculty Senate action.

Feeney replied. He pointed out the regents make the final decision. The amendments can come from any source, and included the drafts submitted to Faculty Affairs and the Tenure Subcommittee from the Gang of 4; those drafts were solicited, "not forced upon us," and the process had not violated the regulations, although the process was not initiated by the faculty. The Senate committees and the Faculty Senate provide advice and recommendation only, and the regents could adopt amendments that the Senate had not endorsed. People were erroneously concerned that discussion at the April 18 Faculty Senate meeting would constitute consultation, so the meeting was adjourned; the intent had been to provide drafts from the lawyers (which had an admitted administrative bias) for discussion only, with subsequent action by the committees.

Feeney surmised the regents could drop the entire existing code, although it would harm faculty morale and probably provoke lawsuits. He expressed concern that "the same mistrust that seems to exist between administration and the faculty has permeated the relationship between the faculty and its Senate structure. . . . It seems we are now assuming the worst in each other (faculty) which will not make this distasteful, but necessary, process go any easier."

Feeney emailed to Faculty Affairs, Tenure Subcommittee, and Judicial Committee members about the April 18 meeting and said it revealed the faculty's "depth of feeling." He said the Judicial Committee would have its own chance to modify proposals but that the "fast track" of the process may be a "prelude to a disaster" at the Faculty Senate meetings in May. He noted again that the code revisions were proposed by the Gang of 4, two of whom were not faculty, which generated faculty criticism, and commented that there was great resistance to the suggested revisions.

The next day, Fred Morrison wrote to Faculty Affairs telling them that "based on the 'straw vote' results that were conveyed to me by Dan Feeney, the sentiments that were expressed at yesterday's Faculty Senate meeting," and other comments, he had prepared information about the various proposals for its consideration; he also sent possible text revisions. He noted that some of the

proposals might need to be dropped entirely and others revised considerably.

Also the day after the Senate meeting, Rick Purple sent an email to FCC. He wrote that “following yesterday’s expression of sentiment by the faculty, I hope you begin to get the message with respect to credibility.” He said their “intent was to effect positive change” and that FCC should serve as the faculty representatives and respond to faculty concerns. If it does not, there will be anarchy, and “power to persuade will go to, relatively speaking, ‘rump’ groups of somewhat benign senior faculty, or more dangerously, to a union, or some other power brokers who know how to manipulate the media and faculty opinion.” He preferred that FCC resume its leadership role. Purple also emphasized the role of CSC Index, how their presence will prolong “the extreme distrust of Administration” and regents; he suggested FCC invite “a few of those slick, smug” consultants, but noted they would probably ignore FCC or “try to blow you away with a power plan, like threatened litigation.”

Associate Vice President Dan Farber wrote to Feeney after the Senate meeting to say that “I wasn’t crazy about the motion since it seemed unnecessarily insulting to John and Carl, but maybe it will help clear the air. The main thing is that the process will continue to move forward. As far as I was concerned, the task force ceased to function when the proposals moved forward to the Tenure Subcommittee anyway.” This was a view widely shared by those involved in the process, but clearly not shared by members of the Faculty Senate. Farber concluded that “hopefully, we can now focus on substance without having to constantly address concerns about the process.”

Feeney wrote to a large number of his committee colleagues on the 19th as well, but addressed his comments to Farber. “Hopefully, some of the things I said regarding the ‘resolution’ at the Senate Meeting in some small way made everyone feel a little better. I supported a motion to get things into the SENATE COMMITTEES so that the political rhetoric would diminish about process. I did not support the negative nature of the comments toward John, Carl, or the Tenure Working Group in the resolution, but it seems the two were inseparable. It seems everyone is on edge, but with the consultants running over the faculty in the AHC, there is little wonder. I think it is time for the Senior Vice President’s Office to look into that situation. It is a time bomb ready to blow. I hope Frank Cerra can bring some sense of trust and faculty buy-in back into the AHC. I hope I can call on you, John and the other members of the old ‘Tenure Working Group’ for some insight from time to time. I will discuss this with [Faculty Affairs] to get some insight about when they think that would be appropriate.” Feeney thanked Farber for his help.

Meantime, FCC chair Carl Adams wrote to FCC and Faculty Senators and began by saying that the April 18 Senate meeting “communicated forcefully the Senators’ substantial distrust of the

tenure review process” and that “while future steps in the process may be virtually the same as those envisioned all along, if the essential trust of the faculty is increased by the Senate’s action, then that action serves us all.” He said he would notify Hasselmo that the Tenure Working Group was disbanded and that he would ask FCC to designate another FCC member to stay abreast of governance tenure work and to represent FCC views on tenure. He explained the use of the joint administration-faculty working group and recalled that he had insisted to the President early that the process must be led by the faculty (and the President had agreed), but concluded that “it is clear now that legitimate faculty fear and distrust of the Administration and a lack of knowledge of the Board of Regents’ views regarding tenure makes that approach untenable.” The four lawyers were to have been viewed simply as staff for the committees, but “hindsight makes it clear that the faculty’s distrust of the Administration makes such staff input unacceptable.” The “premature” release of the proposals, in response to the March 14 tenure forum, was probably also unwise, despite Dempsey’s qualifications in her cover memo. Adams’s letter was also emailed to the Gang of 19 by one of the faculty senator recipients.

Adams wrote to Hasselmo, who wrote back later and agreed with Adams that the Tenure Working Group should be disbanded. He expressed regret that the process did not work and commented that “misunderstandings and distrust seem to be rampant.” The review was proceeding as intended and there “was never any question” but that proposals would go to the Senate; he wrote that “it is absolutely essential that we uphold the faculty’s prerogative in this area.” Hasselmo said he hoped communication would be open, and the faculty should take into account his and regental views. He wanted to avoid future misunderstandings and said there would be no further administrative initiatives unless requested by faculty leaders. He urged that the tenure review “be settled as soon as possible rather than allowed to fester.”

Hasselmo also issued a statement the same day as Adams’ letter about the tenure review; he reaffirmed the major points he had made to the Faculty Senate on April 18. He began by defending academic freedom and saying that tenure was essential to protect it. He repeated that review of tenure and “revisions necessary” were essential to defend it. He maintained that “the jury is still out” on whether the University could make choices itself, and warned that failure to do so would invite imposition of change. He reiterated that no one was trying to destroy tenure, and said imputation of such motives “does not serve reasoned debate.” He affirmed again that “the administration wanted faculty governance to drive the tenure-change agenda,” but acknowledged that “the review itself is Board-sponsored,” and that the regents in turn were “responding to external pressures.” He then

recited his position on the central elements of the debate.⁶⁸ He concluded by saying the regents were committed to a strong tenure system but that they wanted changes to improve it.

Former FCC chair Richard Purple distributed to the full faculty via the UFA a statement on academic freedom. He drew an analogy between McCarthyism and re-engineering. He repeated the charge that CSC Index was “working behind closed doors to produce tightly guarded and scripted scenarios,” and said that “only by breaking the power of the faculty by weakening fatally or ending tenure protection, can these people institute a corporate type system that will operate from the top down to ensure great, new efficiencies.” He argued that re-engineering had enlisted the legislature as an ally in the fight against tenure, and that the regents and administration and some faculty supported them. Purple wrote that “I have witnessed good faculty members willing to write about this threat, but only if they are promised anonymity for fear of the reprisals.” They included “costly, nuisance lawsuits by the CSC Index group in their dark, corporate suits, black wing tip shoes and demeanor nasty enough to frighten off faculty and to bully Regents.” He urged that the faculty challenge the process or risk becoming like California in the 1950s when it enforced loyalty oaths.

On April 26, Farber emailed to Purple to inquire “about your recent commentary. I fully understand your views of Brody, his consultants, and the reengineering process. But I am not completely clear about how those views relate to the proposals about tenure by the infamous ‘gang of four’ lawyers which were sent to the Tenure Subcommittee for consideration. (Of course, whatever emerges from the Senate committees is likely to look much different anyway.) My scholarship on constitutional law touches on very controversial subjects like abortion and affirmative action, so I certainly have as much reason as anyone to be concerned about academic freedom. If there are specific portions of the proposal which you view as opening the door to ideological reprisals against faculty or other violations of academic freedom, I think those issues should be squarely addressed.”

Purple wrote back to assure Farber that he was not included in the group Purple was condemning. He pointed to a faculty colleague as an example of “internal supporters for the CSC Index driven re-engineering: authoritarian to the core, and relatively amoral as well. I was not referring to what you described as ‘the gang of four’ lawyers. I would probably include Brody’s

⁶⁸They were that tenure of current faculty would be unchanged, and tenure would be institutional; to change the latter would “be an enormous obstacle to change.” Hasselmo identified other items of importance: no layoffs without institutional financial emergency, the need to decide on the “sustainable size of the faculty in each major area,” “department heads may assign tasks to faculty,” “reassignments and retraining may be necessary in the case of program change,” identification of which positions will be eligible for tenure, permit longer probationary periods by college, “reaffirm that tenure is tied exclusively to base salary and not to other income sources,” have more efficient judicial processes, and establish a “meaningful post-tenure review process.”

lawyer, for he is part of the CSC Index Group's planning team, and I am sure what he wanted inserted probably pertained to separating tenure decisions at the Academic Health Center from the rest of the process, giving control to the Provost with no recourse for grievance. . . . You and Fred [Morrison] I would count as loyal, scholarly academicians. Paranoia in the Health Sciences is now a disease, however, and even usually calm rational people here have to struggle against it."

The Tenure Subcommittee met, with Feeney and Morrison in attendance, and discussed the tenure situation vis-a-vis the AHC with Provost Frank Cerra. Cerra "said that he will not allow corporate styles of management to overcome the unique academic environment." The subcommittee also took up tenure amendments, and Feeney told them that "based on the discussions between FCC and Regents Reagan and Keffeler, the faculty are at risk of losing control of how the Code is reconstructed." They again dealt with the timetable (and the possible need to defer action on controversial items until fall) as well as the responsibility of Faculty Affairs to restore trust in governance.

Feeney later explained what he meant by "losing control." "My approach to this all the way along was that if we didn't do something, somebody else would. There were some discussions at that meeting, and I was extremely frustrated. Fred called me at home that night, because Fred was exploding, too, over the discussions in the Tenure/[Faculty Affairs] meeting. [They were along the lines of] 'let's not do anything, this is all a reaction, we don't need to do anything.' The other thing that was happening is that somebody would say 'we need to focus on post-tenure review.' And then it was like a filibuster. We were getting absolutely nowhere. [It was his view that] 'we're not focusing on the issues, we're not doing what we're supposed to, and if we continue like this, we will lose control of the process.' Because the legislature will do something, or the Board will do something. The meeting was an unmitigated disaster."

"The evening after the meeting, I got a fax from Fred Morrison. I got back to Fred, and he was boiling inside, just like I was. Our feeling was 'you guys can stand around and watch Rome burn, but it will burn if we don't do something about it. If we don't have a positive, forward-thinking, constructive approach, and if we don't have it by the end of this academic year, we're going to look like morons.' That was it."

"There was a letter from me to [Faculty Affairs]; the title was 'our situation' or something like that. I told him [Morrison] what I was going to do, and he came up with the same thing; he wrote a scenario, too. He understood where I was coming from; he was so frustrated, he sat down and wrote stuff. And I blew up. My point was, there were people on [Faculty Affairs] who I don't think appreciated the fact that if we didn't come up with some kind of a proposal, the whole faculty are

going to look like idiots and we're going to get to the end of the academic year with the union faction, the 'I don't want to do anything' faction, the 'we should have done something' faction, and the group that says we better do something."

"I think there were any number of things that could have come in and controlled that process. The regents being one. Potentially, the union could have come in and done some things -- that was when the union was in its formative stages, well before UFA and AAUP got together. Nobody knew what the union's ideas were. Could they have come in and done some things? I think they could have. My biggest fear was that faculty governance would lose credibility. I think we were damn near on the verge of it."

"Because at the next meeting, we started thrashing through issues, and in two or three meetings, with a couple of peripheral meetings of the Tenure Subcommittee, that stuff was pretty well hashed out and ready for the Senate. We were jamming stuff down the Senate's throat by the second week in May. We knew that if we didn't deliver -- that's when I really started feeling the pressure. If we don't deliver here, we're really going to look stupid."

"Could the Gang of 19 have done anything? Maybe, but I was not worried about what they might do, because you're not dealing with irrational people there. I doubt they would have constituted themselves as a tenure drafting group."

"My concern was outside forces: Board of Regents, legislature, politicians. That was when we had Becky Kelso, with all her cheap rhetoric in the media. Everybody was a Monday morning quarterback; they all knew how to solve the University's problems. None of them had a clue, but they all knew, in their own minds. It was all political. So are we now going to have a politically-determined tenure code? If we hadn't reacted the way we did, I think that would have happened."

The day after the Senate meeting, a member of the AHC faculty emailed to colleagues to inquire if a newspaper article that morning were correct in its assertion that "'the Board of Regents could make any changes it wants (to the University of Minnesota Tenure Code), with or without faculty concurrence' (my addition in parentheses)." It appeared, he said, that the tenure code "defines the procedure whereby Amendments can be made to the Tenure Code," and that that specific procedure must be followed."

There were a number of exchanges among Gang of 19 members over the next several days.

The day after the Senate meeting, Wells commented in an email to the Gang of 19 that she was "very concerned that the administration has not gotten the message, (led perhaps by Mary Dempsey with her opening remarks that essentially stated that the resolution had changed nothing)." She also reported that she had received a message from Bognanno saying he wanted to meet with her

about the Senate meeting; she asked for advice. Wells also said that “I briefly talked to Hasselmo after the Senate meeting. He stated that he was unaware of the fact that 4 lawyers had drafted the original tenure code revisions. Does anyone believe this?”

One member of the Gang of 19 wrote back to Wells and told her to talk to Berscheid and Fennell Evans before meeting with Bognanno. “I don’t trust him. I suspect he was behind the Hasselmo speech on tenure yesterday and he clearly is out to protect Hasselmo. He can be slippery.”

On April 21, one of Campbell’s colleagues in Physics wrote to inquire about what happened after the April 18 Senate meeting was adjourned. He said he was told by Carol Wells “that after the official Senate meeting Thursday, there was an unofficial continuation and Mary Dempsey got up and said nothing had changed and the timetable was still in force, with the Senate voting on the revisions in June.” Did this contradict the resolution that had been passed?

Campbell wrote back, and to Humphreys, including a copy of the message he had received. He told his colleague that Wells “described Mary’s statements correctly. However Mary interpreted the motion to be criticism of her. She feels that she has made it clear that nothing dangerous will emerge from her subcommittee, and by Section 19 her subcommittee is open to input from anybody. Her only real problem is that she appears not to recognize the danger of an ongoing dialogue with the Regents. She and I had a bit of an argument during the forum after the meeting on this very point. I must sit down with her and make sure that she understands where we are coming from.”

Campbell also said that “the three key people now are Feeney, Fogelman and Dempsey” plus whomever FCC appointed as lead person on tenure (probably Feeney, although Campbell would prefer that it be Humphreys or one of two others). Campbell worried that Dempsey and Feeney were a little “naive” in dealing with the regents, and said he would “argue that there must be a small committee to be liaison with the Regents and administration. Their primary purpose would be to control information flow to the Regents and administration while gathering intelligence about what the [regents and administration] are likely to do. My recommendations would be that Roberta, Fred Morrison, Fogelman, Dempsey and Feeney be that group.”

On April 19 Brody sent an email to all AHC faculty about assisting with design of a new compensation system. “We believe a more flexible program would permit more appropriate compensation.” The memo said they wished to recognize both quality and quantity, avoid a formulaic approach, balance “equity and reliability . . . and individuality” and that it “must be compatible with the current efforts to create opportunities for new approaches to research and teaching.” He asked for participation from faculty from each AHC college to assist in developing an inventory of faculty work and “estimates of actual and desired workloads.” There would be a series

of meetings with faculty to develop recommendations.

Brody attached a “statement of purpose” of the “human resources, compensation and incentives design team, AHC reengineering project.” Among the several reasons for change were that “there is too little accountability for results for faculty, staff and administrators alike, performance evaluation tends to focus on research productivity and minimize the value of teaching and service” and raises that were too small, because they were linked to state appropriations.

This memo prompted a response from Regents’ Professor John Chipman, who wrote to the Gang of 19 that “the memo from Brody contains a lot of soothing language but I think the crucial item is to downplay research as a criterion for advancement. As I think we all know, research is the only objective criterion available. A ‘good teacher’ is usually, by definition, someone who cannot do good research. A good administrator is someone who can judge quality without going through all the mechanistic averaging of points that Brody’s procedure suggests (despite its disclaimer). The only way to solve the problem of appropriate salaries, etc., is to have administrators who themselves are scholars and understand what a university is all about.”

Wells emailed to the Gang of 19 on April 22 that she had received a message from a colleague, whose name she would not include because of concerns about the security of her email list. “The colleague wrote: John Adams called the Physics & Astronomy Head a couple of weeks ago and asked him what was wrong with his Dept why there were so many ‘rabble rousers.’ I think it was meant mostly for Campbell, Walsh, and Humphreys.”

Campbell emailed back to Wells (and the Gang of 19) that he had heard the same from Marshak (who was at the time head of Physics and Astronomy). He also reported that “several days later I asked Carl about John’s call (haven’t talked to John about it) and he said he didn’t know what John had in mind, but he had heard that all of physics and about half of mathematics had signed union cards. I told him that I was sure that not all of physics has signed.” Campbell added that he assumed Marquit was among the “rabble rousers,” but said that while Marquit belonged to UFA, he was not in a leadership position in either UFA or the school of Physics and Astronomy.

The Gang of 19 worked on their strategy with the press, as evidenced by a series of email exchanges in late April. Campbell told his colleagues on April 22 that he had received a voice mail message from a Star-Tribune reporter, Greg Pinney, who was “writing a story on how the faculty action came together in a successful way, and particularly how the group of 19 signers got together and what other groups we dealt with.” Campbell thought “it might be a good idea to have our story straight” and inquired what it is that might be said. “Those of you who attended one of the previous meetings between Carl Adams and college senators might want to tell him about the anger detected

there.” Campbell said he did not know how the Gang of 19 began, and wondered if the UFA should be mentioned.

Humphreys responded that the origin of the Gang of 19 was that “ad hoc groups of faculty talking to each other finally got together. It is all quite informal. Anger among the faculty expressed at several meetings is what prompted us to decide something had to be done to channel that anger in some kind of action.” She said that “the events at the Regents meeting led me to think the faculty voice had to be heard. Because neither the regents nor the admin. were hearing it.”

Another of the Gang of 19 suggested Campbell wait until the meeting the next day (April 23) before talking to the reporter. Yet another urged that “it is important to get our message to the outside community” and favored talking with the reporter. But he cautioned that they “not speak with twelve different voices” and suggested Hamilton or Humphreys as the spokesperson.

The same day, Walsh reported to the Gang of 19 that he had spoken with the reporter, who had asked him “how many of what I have now started calling the ‘group of 19’ have signed UFA cards.” Walsh did not have the number; “Pinney said he guessed 2-3 and I said I bet he was right. I volunteered the fact that we have talked to you and that we supported the Thursday resolution and we think that having groups with different objectives was fine. Also that it seems to me that your group has a range of opinions from people who are sympathetic to us to people who are in principle against the collective bargaining idea, and that that is fine with us as well.”

Hamilton reported to the Gang of 19 that he had also received a call from the reporter. He said that he would say that the Gang of 19 had talked with UFA “but that we have not joined with them, and I agree with Tom Walsh that it is a good idea for groups with different outlooks to talk. My sense is that no matter what you say, he will interpret as he sees fit.”

Purple also chimed in. “I think honesty is the best policy with respect to what happened. With respect to what we are up to now, however, I would be more cautious. I think most of us would like to see the FCC revitalize itself and get us out of the present necessary mode of ‘rump governance.’ Since what happened was pretty plain, it would probably make much sense to spread the praise around considerably outside the ‘Gang of 19.’ We happened, more or less by accident and chance connections, to get in on the action more directly than many of our colleagues, but we also got a tremendous amount of advice and information from those colleagues which really directed our approach. None of us were looking for glory or ego-inflation, but rather were commonly reacting to a very deep seated concern about a real threat to academic freedom. Once in a great while when formal collegial governance mechanisms falter, in a faculty like the one we have at this University today, the faculty will essentially stand up, come together across disciplines and try to set things right.”

Campbell finally ended up talking with the reporter, after the email exchanges. There was little conversation about the formation of the Gang of 19, but “he remarked at one point that he didn’t see how the members of that group were endangered by this action. I explained how it endangers some specifically through the issue of partial separation of salary from tenure, but all of us generally because of the potential profound effect upon our ability to retain and hire high quality faculty. I emphasized the flaw in the lawyer group, which he said he hadn’t understood until today. I emphasized the role of the Tenure Working Group, how it was appointed, and how it hadn’t met as a single committee since fall quarter, but how the presentations to the regents has been in their names, and how that presentation has been in advance of presentations to the appropriate senate committees.”

The next day, one of the members of UFA also informed the Gang of 19 about a conversation with the reporter. “He was extremely hostile. I noted that I did not know much, was simply invited to attend one meeting where I sat quietly -- I did not mention any names. He wanted to know whether Erwin Marquit’s e-mail was behind the Berkeley senate resolution and I said I couldn’t say -- this was a national issue of concern to faculty everywhere. Then I spoke about UFA clearly stating that UFA and the Group of 19, as he called it, were separate. From now on, though I think I won’t answer my phone either.”

Wells emailed to the Gang of 19 on April 23 also to inquire about a piece in the Daily about the Progressive Student Organization (a long-time perceived-as-radical student group), which had adopted a resolution including the language “‘be it resolved that the University repair the damage done by U2000 by ensuring the continued existence of tenure.’” Should they contact the group, she asked? Campbell replied “from what I know of PSO in earlier times, I would say no, no, no!” Garrard and Hamilton agreed, although not with such vigor.

Wells also emailed to the Gang of 19 about re-engineering on the same day. She reported on a conversation with a colleague in liberal arts, and “learned some things that have led me to speculate on other things.” She said that “re-engineering is likely not BEGINNING at the AHC, but is being instituted ALL ACROSS the campus at this time. . . . Here is a basic tactic: Abolish all job descriptions and make everyone apply for a fewer number of jobs (thus eliminating employees), with the new job descriptions posted at lower salaries. . . . The result is typical. The remaining employees make less money and work harder.” Wells said that “I believe THEY would like to do this same procedure with faculty, but tenure and faculty governance stand in the way.” “The re-engineering people have been on campus for at least 1.5 years, and likely longer. The philosophy is being embedded across the campus in ‘waves of change’ at this time. Perhaps, the reason this is so frightening is that we (our society) is being overrun by a white collar mafia -- this is all about money

and power, the basic tenets of the mafia. With the powerful dons in charge, many things will be accomplished through intimidation and favors (graft).”

Campbell wrote to the Gang of 19 to say that Wells’s message was “alarming but believable” and pointed to a Daily article that reported on events in a program at the University.

Campbell went on to say that “I think it is time to begin to bring more people into our academic freedom support group” [Gang of 19]. He suggested bringing in people of stature, including retired regents’ professors, who “have nothing to lose personally by what is going on, and so should be above reproach. (ALL of us who are currently employed by the U have much to lose.)” He commented, apropos one of his own departmental colleagues, that “I am afraid that the liability of the School of Physics and Astronomy is already dangerously high, with Roberta, Allen Goldman, Tom Walsh, Erwin Marquit and myself all quite visible in these groups.” (Berscheid agreed the group should be expanded, and herself suggested additional faculty.) There was at one point consensus that Fogelman and one other faculty member would be asked to join the Group. Humphreys later suggested that for Fogelman to join would compromise his position as chair of the Judicial Committee, but there was agreement that he should be kept abreast of the activities of the group.

Campbell also echoed earlier concerns of the group when he commented that “we now have serious questions about the chairs of three of the four important committees (Tenure, [Faculty Affairs] and FCC), and all of these three seem willing to operate unilaterally.” He added that information from Berscheid “about possible moles is equally alarming.”

Campbell also referred to a suggestion that they should work on the legislature. “That is important,” he wrote, “but at the same time we should be looking into the possibility that CSC has lobbyists at work, and/or have significant contributions to key legislators’ campaigns” and they find this information out. Campbell identified legislators who might be helpful.

He then reported in more detail on his conversation with the newspaper reporter. “I emphasized the flaw in the lawyer group, which he said he hadn’t understood until yesterday; he seemed appalled, particularly with Farber’s position and with the outside attorney. I emphasized the role of the Tenure Working Group, how it was appointed, and how the committee hadn’t met as a single committee since fall quarter (I told him to check it out with Matt or Paul), but how the presentations to the Regents has been in the committee’s name, and how those presentation has been in advance of presentations to the appropriate senate committees.”

The reporter had “tried to draw me into criticism of the Regents. This came up partly because of the question of the timing of our motion. He seemed to be aware of the concern that the

proposed tenure revisions not be presented on the floor because of the possibility that it would constitute the required consultation. I confirmed that this was a concern, but also told him that there is another opinion (Morrison's) which argues that clearly worded proposals should be acted upon with a negative or positive vote so that the faculty's recommendations are very clear. Nevertheless he sees this as an issue of trust (or lack of) in the Regents. I told him that I didn't see the Regents as of a single mind on this subject, and reminded him of the last meeting of Keffeler's committee where Neel and Hogan responded with such concern. But I also noted that there is indeed an issue of trust, and that the [General College] action illustrates that."

One of the more politically-active members of the Gang of 19 responded to Campbell's email message about the legislators. He agreed generally with the names Campbell had suggested, and also advised that "we should look to the reporters for MPR [Minnesota Public Radio] and NewsNight as possible contacts to get press coverage. I know some of them and could contact them on particular issues. The same is true for some of the TV news people. I know most of the top TV reporters and can approach them on particular issues."

Berscheid emailed to the Gang of 19 on April 23 as well, and told them she had also spoken with the newspaper reporter. She said she had "emphasized that we did think our motion was a 'moderate' response to the widespread anger, frustration, and confusion; more moderate, for example, than a vote of no confidence in certain administrators or the Board of Regents which may well have passed." She also "tried to emphasize that we do not understand why, if they are responding to economic problems, the Board is targeting the 'revenue-generating' engine of the University, the faculty, who account for only 11% of the University's personnel"; "moreover, this portion of University personnel is underpaid, has been subjected to turmoil and change for the past decade, etc., and so many were ready to fly the coop even before the Regents added the tenure insult to long-standing injury." She also provided him a variety of facts and figures on salaries and expenditures on consultants, "but who knows what he'll write."

Berscheid also related that the reporter had been interested in how the national news sources found out about the debate, and "he was blaming poor Prof. Marquit again. I told him that both he and I knew that Washington Post reporters don't spend their evenings cruising all 165 U of Minnesota web sites -- bars, maybe, but not web sites; they didn't just 'happen' upon that letter of Nils." Berscheid related that she thought "that someone in the Regents Office put them on to it, hoping for support from the Post in the Regents' attack on tenure (which is what they got, but they also got us a lot of bad publicity)." There were other possibilities that Berscheid enumerated, including Brody or CSC Index, "but it wasn't Prof. Marquit, you can bet."

Finally, Berscheid told her colleagues that she had learned from a reliable source that “Keffeler appears to be backing off a bit; even has been heard to say recently that a business structure can’t be imposed on a university.” She surmised that the Senate resolution may have had an impact.

Campbell wrote an almost apologetic email to Berscheid, Fennell Evans, Hamilton, and Humphreys at midnight April 23/24 about the organization of the Gang of 19. “You may have noticed that I sent out a note asking about a possible meeting on Saturday. I was even bold enough to suggest the beginnings of an agenda. I consider the four of you as the leadership (not in the Adams’ sense) of this group of concerned faculty. I should have checked with you before sending out that message. I apologize. I am absolutely not interested in performing a leadership function in this group! I tried that once, and it had a profound and unwelcome impact on me personally; that was the source of my reluctance to be out in front at the Senate meeting.” He did so, however, because he was the only senator in the group.

Campbell opined that “this group sometimes seems like a group of leaders looking for followers, rather typical of activist faculty members. I am volunteering to be a follower. While I agree with Roberta that no one should be formally identified as the chair of the group, I would urge the four of you act as a coordinating group which calls meetings and sets a preliminary agenda, and that you designate one of yourselves to run each meeting, so that we can better focus on issues and make decisions and plans for action.” He said that if one of them was not willing to take the lead, then they should not meet, but the four of them should decide about a next meeting.

Hamilton emailed back the next morning. “Don’t feel badly about not notifying me. As I see it we are a federation with no leadership and should respond as necessary to the demands. We may need leadership in the future, but for now things are going well without it.”

A member of the Gang of 19 emailed on April 24 to draw attention to two items. First, he pointed to the John Adams Kiosk article “to see where John Adams stands!! Faculty layoffs, temporary or permanent demotion in rank and/or salary, the 3 R’s of Index + Retraining, Revitalization, Reassignment of faculty together with early retirement or disciplinary action!!!” He said he hoped the Tenure Working Group had, per Carl Adams, been disbanded, and suggested the item be widely distributed in CLA, “where his support seems to be, in order to reveal his true intentions to limit tenure and academic freedom.”

The second item came from the FCC minutes of April 18. “IT WAS NOTED BY ANOTHER COMMITTEE MEMBER THAT NOT EVERYTHING DRAFTED WAS SENT OUT.” Dempsey had apparently withheld some, saying “‘you don’t want to see what else they’ve written.’ This statement was made in the discussion with Med. Sch. senators on April 17. I would

predict she is sitting on this due to its even greater 'incendiary nature' than the circulated revisions." He suggested obtaining the additional material as a possible "key to driving the 'Brody Influence' away from the AHC and the University in general, if the university community can see what was proposed by the Washington lawyer and/or the 'Gang of four.' I have a hunch some of the denial of tenure as we know it, characterized by the statements by John Adams in Kiosk were related to the "missing" sections of the circulated. Another danger of not knowing what is said in the missing sections is that the Dempsey committee proceeding on their own course may consider the "complete" revision of the code, not just the incomplete revision that has been circulated to date, and spring that as a surprise at a Senate meeting."

Wells emailed to the Gang of 19 again on April 24 to report on a meeting she had had with Fogelman (he the chair of, and she a member of, the Judicial Committee). Fogelman had told Dempsey after the April 18 Senate meeting that "the Judicial Committee will write the tenure code revisions, rather than the way she had suggested." Originally, the Judicial Committee was to review a proposal from the other two committees; "Fogelman says that is unacceptable. The Judicial Committee will write the amendments because they have the most expertise to do so, including our own legal counsel in addition to lawyers (at least 2 that I know of) as committee members. Fogelman is right. I was at a meeting where we drafted 2 amendments (affecting the Judicial Officer) that Morrison said were pretty good." Wells added an interesting aside that speaks of the role Morrison had long played on the campus: "According to Fogelman, other attorneys are just as good as Morrison, and he does not know why it has been sort of understood that Morrison must approve all changes." Wells reported that Dempsey did not agree with this process, but that "Fogelman told her that it will happen and that the worst case scenario is that she will bring her document to the Senate floor and the [Judicial Committee] will then introduce its alternative document."

Wells reported comments from Fogelman (that he reiterated over a year later). He told Wells that "if there is no document in June, he is afraid the Regents will act over the Summer anyway, using the original amendments as a basis. I agree with Fogelman. The Judicial Committee is very strong. . . . By the way, Fogelman is not anxious to spend the spring writing a Tenure Code, but he feels he has no choice." In Fogelman's view, "the real flaw in the previous process was the April 11 meeting of the Regents where the original amendments were presented and discussed before the Board of Regents BEFORE they had passed through the appropriate committees. In a way, the Regents have tainted the process."

Reportedly, Hasselmo was discussing resigning his office; Wells said she had told Fogelman that "I thought it was the opinion of most of this group that that would be a bad idea right now

because the alternative could be worse.”

Wells also urged that Senate minutes be changed to reflect the fact that the session following adjournment was a forum, not a meeting, because that could later become important. She noted the comment on the item in the FCC minutes reporting that Dempsey had not released all of the proposals from the Gang of 4, and wrote that “if this is true, we should ask for the release of this information because it is a public document, and it might help us see what the administration really has/had in mind for all of us.”

Walsh informed the Gang of 19 on April 24 about how email security could be obtained. He explained how “a malicious administrator can indeed get your mail, or only selected mail with certain words in it. I cannot imagine the U having anyone on its payroll who would do such a thing, but it is possible.”

On the same day, Walsh also emailed to his colleagues about a Minnesota statute he had discovered, and inquired if anyone knew of it. The statute provided that the regents (and the board of the Minnesota state universities) “may immediately layoff employees, without notice, if the respective board has declared a financial emergency.” The statute defined what constituted a “financial emergency” and provided that “the board of regents of the University of Minnesota shall balance layoffs of faculty, other employees, and administrators.”

One of the Gang of 19 members emailed in response that “perhaps discussion with Regent Reagan and two others on Thursday where they will discuss assurances to faculty should be directed toward question of whether they would ‘declare trusteeship.’”

Berscheid also responded. “The light bulb just flashed on. You may not remember that I became alarmed when in one of my conversations with Mike Bognanno, in which I was once again nagging him for clarification on whether the Regents could act on the tenure code without sending a specific revision back to the Senate for consideration, he said, ‘Oh, I see, you’re worried that the Regents will declare trusteeship and act.’ That was the first I had heard the phrase ‘declare trusteeship’ from him or anyone else. I suspect the administration and the Regents know all about this bill and it is their ace in the hole; they probably asked that it be passed.”

Garrard contacted Cerra about the legislation on May 2, and reported to the Gang of 19 what he had said and what she had learned. She wrote to Cerra in alarm. “Why wasn’t the faculty told about this law? This would appear to be the ‘back door’ that the Regents/Administration can use to lay off faculty if the Tenure Revision does not go the way the Regents/Administration want. I won’t put you on the spot by asking if you knew about this, but many of us suspect that Brody and others had a hand in getting this language into the Bill. This, again, is evidence of why faculty do not trust

the Administration. You need to first get Brody and the Index people out of here, and then go about developing trust among the faculty in order to get on with re-organizing the AHC. Please let me know if I can help.” The bill had been adopted in April, 1995.

Cerra responded in surprise. “You keep giving me new information. I am totally unaware of this bill or where and how it came from. I am quite upset about this.” Cerra said he would find out about it, and disavowed any connection with it. He asked Garrard for a copy, and asked if “this is an intrusion on Regental/University autonomy?”

Bob Morris wrote to Garrard that he believed the statute “doubly unconstitutional” in that it violated the University’s constitutional autonomy and violated federal constitutional provisions which bar “states from enacting any law which impairs contractual obligations. Our contracts include the tenure code.”

Garrard concluded that “we should NOT raise this issue in the Senate today. Roberta and I have talked, and we agree that it’s old and we’re not sure what psychological effect this will have on faculty who are about to discuss the tenure revisions. We need more thought on this. Anyway, Tom has sent it out, so faculty should know about it.”

Humphreys emailed to the Gang of 19 on April 24 with the subject entry “Better read this!” She forwarded the email from the AHC faculty member asking about the regents’ authority to discard the tenure code, and a response from Feeney.

Feeney reprinted Section 19 of the tenure code, which provided that the regents could amend the code, that “proposed amendments from any source will be submitted to the Faculty Senate for its advice and recommendation before final action by the Board of Regents. The Faculty Senate will solicit the recommendations of the Faculty Affairs Committee, the Judicial Committee and the Tenure (Sub)Committee, before giving its advice and recommendation.” Feeney’s interpretation was that the buck stops with the Board, anyone can suggest amendments (including the Gang of 4, which “draft was solicited, not forced upon us. Therefore, the process about which a number of people were so upset was not a violation of regulations. Quite simply, the Chair of the Tenure Subcommittee (Dempsey), the Chair of [Faculty Affairs] (Feeney) and the Chair of the now-disbanded Tenure Working Group (J. Adams) thought that issues could be addressed from both the legal and administrative sides with one draft. A draft to which all committees of the Senate and the Senate itself could react before redrafting and recommendation of final language to the Senate and eventually a recommendation to the Board of Regents. Nobody said this Tenure Code Review or the pressure for revision was initiated by the faculty or the Faculty Senate!”

Feeney emphasized that the Senate and its committees “provide ADVICE AND

RECOMMENDATION only. Theoretically, amendments could be proposed by the Board of Regents (if they don't like what we send them), these could be considered by the Faculty Senate and its committees, rejected by a vote of the Faculty Senate (we would have provided the "advice and recommendation" described in Section 19), and still be adopted by the Board of Regents without violation of 'the process.'" Feeney advised that "I think we had better realize the extent of our authority in this process" and that "people over-reacted to concerns that any discussion by the Senate constituted the necessary 'advice and recommendation.'" However, the April 18 Senate was adjourned to eliminate any concerns by the participants. He characterized that meeting as intended to be for "information and internal reaction (to [Faculty Affairs] and to the Tenure Subcommittee only) on the draft with the admitted bias toward administrative wishes including some from the lawyer for the AHC. It seemed logical (but apparently not popular) to allow the faculty senators to see what would be the worst case scenario and then the Tenure Subcommittee and the Faculty Affairs Committee would modify, add, or delete parts of these drafts including the option to throw out the whole thing! Using the lawyer draft with the known administrative bias served to get at the issues that are out there rather than wasting time drafting changes that would never be approved once recommended by the committees and the Faculty Senate. This 'what don't you like about the draft' exercise would not have constituted a recommendation to the Board of Regents unless formal action was taken to forward something to them. The May Faculty Senate Meetings are for action."

Feeney then speculated that "I presume there is the possibility that the Board of Regents could just 'dump' the entire Tenure Code as it exists now. I am not a lawyer, but I believe that scenario is at least possible, although not likely because of the effect on faculty morale and the flurry of lawsuits." He suggested the question be raised with Morrison.

Feeney went on to say that "I have concerns that the same mistrust that seems to exist between administration and the faculty has permeated the relationship between the faculty and its Senate structure (including the representatives serving in various Senate capacities). It seems we are now assuming the worst in each other (faculty) which will not make this distasteful, but necessary, process go any easier."

One faculty member who saw Feeney's memo wrote that it "seems to underscore the need for faculty representation via collective bargaining, rather than to argue against it."

Regent Keffeler wrote to Carl Adams on April 24, responding to the minutes of the April 18 FCC meeting.⁶⁹ She wrote that she was "concerned and dismayed by the divisive and hyperbolic turn

⁶⁹As noted previously, many in the University receive copies of FCC minutes, including the members of the Board of Regents.

that the review of tenure” had taken, and set out her thoughts in advance of a meeting with FCC. She agreed that “we need to reverse the current trajectory” of the process, which could mean suspending it. She set out some points on which she sought agreement -- that the regents, administration, and faculty have different roles, that the University’s most “powerful asset” was the faculty, that together they should “assess the present situation . . . and place the review of tenure in its proper context.” She asked if tenure was required to maintain a leading university, if there were barriers arising from fiscal constraints, if there are areas where strength needed to be increased in order to achieve the vision, if administrative systems support the mission, and if policies, including tenure were needed to meet goals and fulfill the University’s responsibilities. She called for “rigor and objectivity” and “work and discipline” that required information to help the discussion, including hiring trends, tenure policies, systems information, and so on. She urged setting aside consideration of the legislature’s contingent AHC appropriation (“our pace and direction should not be determined by the carrot or stick of a \$9 million appropriation” on a \$1.8 billion budget), and called for a schedule allowing good information and working together. Keffeler copied the Faculty Senate, regents, FCC, and others.

Humphreys distributed it to the Gang of 19. Purple reported that “this letter was in our hands quickly, and there was a general consensus of the Gang of 19 that in addition to the jargon, diplomatic scolding, etc., it represented someone who viewed the University as a Corporation and herself as a CEO smoothing out some unruly employees; i.e., it showed a remarkable lack of sensitivity towards the concept of ‘collegial governance.’”

The day after Keffeler’s letter to Adams, FCC met with Regents Bleyhl, Keffeler, Reagan, and Spence, on April 25. Reagan told FCC that if the faculty proposals were insufficient, the regents would not act but would return them to faculty for further consideration; Keffeler agreed. FCC discussed this point at some length with them. The regents would have to see the document to decide if it needed more work. Reagan said the general idea is the need for flexibility, and that the problems of AHC were not driving the tenure discussion; rather it was the result of a combination of factors. Keffeler said the regents and faculty must examine financial and other information and assumptions and reach agreement. Fred Morrison said the existing code was not fully used, but the faculty sensed that layoffs were what was wanted. He told them that the faculty, like the regents, are named in the charter, and are also officers of the University, not “day labor.” The need to identify the problems before the solutions was discussed. Keffeler repeated the sentiments of her letter, that there was a need for information and a discussion of academic freedom. The schedule was again a concern to FCC. The faculty said there needed to be communication between regents and faculty. One FCC

member told the regents that the major problem was CSC Index and “one of the best things you could do would be to terminate the relationship.”

Following discussion with the regents, FCC considered CSC Index (it was “poisoning the entire faculty-administration relationship” and the situation was about to explode) and argued over what action to take. FCC representatives (Bland, Feeney, and Humphreys) were asked to attend a meeting with Cerra and the AHC faculty, and if the Index contract were not terminated, FCC would meet with Cerra. A visitor to the meeting said the problem also was with the people who hired consultants: Brody held a meeting (although Cerra was now AHC provost) and asked the deans to resign if they could not get faculty support for re-engineering.

In light of the April 18 Faculty Senate vote, FCC designated the three committee chairs (Dempsey, Feeney, and Fogelman) to speak on tenure, with Feeney as the lead spokesperson and legal counsel to be Morrison.

At this same meeting, FCC then discussed the comments of the regents; opinions were divided on the usefulness of the exchanges: some thought them helpful, others that nothing new had been said. Carl Adams said the University is not a pure hierarchy; under the Senate constitution, Senate authority went directly to the regents, through the President as chair of the Senate, but not through the administration. The regents were also under enormous political pressure, he maintained; local corporate CEOs and the Governor had the University on their agenda; some think the inmates were running the prison. FCC members spoke of the need to educate the regents so they could speak for and defend the University.

The issue of FCC member names on the Gang of 19 April 18 Faculty Senate resolution arose and the question of what someone could say as an FCC member. One FCC member said it had been surprising to see the names of two Committee members on the motion presented to the Faculty Senate on April 18. One can ask when it is appropriate to use one’s position on the Committee; it would be helpful to have a discussion about this, so that clarification of common rules could be established. One Committee member said, “if I were told that as a member of this Committee I could no longer speak, I would have to resign from the Committee.” Another objected that that was not what is being said; FCC had been quite clear earlier on how Carl Adams should represent the Committee, and there should be expectations or guidelines for members of the Committee as well. The discussion differentiated between the chair, where one is a representative position, and FCC members. One FCC member argued that saying things as an FCC member could also be construed as representative.

Vic Bloomfield wrote to his FCC colleagues the day after the meeting they had with the four regents. He said there were “two fundamental issues which we should try to discuss with

them,” which were the “importance and rationale for tenure” and “the connection of tenure to future fiscal problems.” He suggested that “we should try to arrange at least two fairly lengthy, quite informal meetings (the best sort of place, from my point of view, would be sitting around someone’s kitchen table) where we can discuss these issues in depth and detail.”

Immediately after the event, Walsh provided to the Gang of 19 a “30 second diagnosis” of the FCC meeting with Keffeler and Reagan on April 25. “Keffeler really is smart. The administration is out of the loop on the tenure issue and probably the AHC reengineering. Keffeler and Reagan want to control contacts with the faculty, and probably want most of the other Regents out of the loop as well. They must worry about Board panic; I bet a lot of lobbying is going on behind the scenes. They have a scheme to keep the faculty at a distance in the president selection. Everyone expects CSC Index to be fired tomorrow, effective June. I do not think that this is the last we will hear about their plans. And I think a postmortem on CSC Index would disclose interesting things, possibly involving Regents. Their real problem is that this is now a duo act with no net.”

One observer said that Bland was annoyed from the previous FCC meeting and announced she intends to present a motion to the effect that FCC members shouldn’t speak out against the FCC or do things to damage its image. “Even Carl Adams, who isn’t very sensitive to such matters, saw the difference between himself speaking as Chair of FCC and individual members speaking for themselves. Russ Hobbie took immediate offense to the very idea.” This, it was said, is how FCC intended to censure those who had supported the April 18 resolution from the Gang of 19. “The person supporting her in this is Feeney.”

The email comment about Bland’s proposed resolution provoked a response from Garrard. “Isn’t this tantamount to censorship? Is she really proposing that academic freedom be denied on the FCC? Sounds a lot like Brody’s preachings, if you ask me. I cannot believe that people would vote to censor the voices of our faculty representatives!”

Purple wrote to two colleagues, responding as well to the message. “If you are up to some parliamentary proceedings, one way is to let her [Bland] make her motion, then counter . . . by rising to a point of order (which does not need recognition by the chair), stating that her motion is out of order because it is lacking in decorum in attempting to censure free speech, and that the maker of the motion should be asked to a) withdraw her motion and b) apologize to the membership of FCC. Carl would have to rule on your point of order before proceeding. He should find for you, but if he doesn’t, immediately appeal the decision of the chair. If two thirds support the appeal, she is in breach of decorum. If she then refuses to apologize, a motion is then in order citing her for a lack of

decorum. Regardless of how the votes and rulings go, absolutely insist on a point of personal privilege that the official minutes be complete and identify the speakers and the voting in reporting this issue over a breach of decorum so that your faculty constituents can be made aware of what is afoot in the FCC. . . . Stress that accountability is a must on this issue, and that without it, you intend to bring this issue to the Floor of the Faculty Senate at its next meeting.”

Feeney had emailed to Bland two days before the FCC meeting about the contretemps over FCC members’ speech. They had discussed the subject (i.e., “FCC members using the committee for credibility and taking the FCC Chair to task for expressing opinions or being present as a representative [e.g. with Hasselmo during the Najarian verdict press conference]”), and he wrote to her to indicate he believed “I think we should say something in a generic form. . . . We must all be careful about what we say and with which group we are aligned vs. what the group might say. We must be careful to be clear that what we say represents our individual opinion vs. that of the group (based on consultation and consensus). I don’t know what should happen next. What may be the best is to draft a resolution which states just that and introduce it generically. The guilty parties will know to whom it is addressed. Using the generic approach (reference the criticism of Carl Adams and the recent resolution as examples), it seems logical ‘to be sure that our group differentiate their individual opinions from those offered as duly appointed and counseled representatives of the group.’”

Humphreys also reported on the April 25 FCC meeting. She wrote that the faculty could “not count on the regents for anything. They are entirely political animals. There may be some effort by faculty to educate the regents in the near future. I think our efforts at ‘public’ education will be more effective given their political natures. Strong voices were heard on the subject of CSC Index. I think the regents heard the message.”

She noted that a committee of three FCC members, including her (to her surprise), Bland, and Feeney, had been designated to attend the AHC meeting the next day and “report back to FCC on the future of Index and its activities. FCC seems to be in a mood to take some action with perhaps a resolution to the admin. and the regents. Bland & Feeney seem to be opposed to at least their style of operations now.”

Purple wrote to the Gang of 19 after Walsh, to report on events in the AHC. He told them that Cerra had met with the department heads of the Medical School, and included a brief summary of the meeting. He drew their attention to one item (4), which he said was “particularly noteworthy, given Tom’s 30 second analysis of the FCC. I think Keffeler and Reagan may be in trouble. When she has to start her letter to the FCC by restating her titles, you are looking at someone who is in doubt about her power base and trying to shore it up with ego assertions.”

The meeting summary was positive. “With Cerra moving in, things are starting to settle down. The meeting went very well. There was absolutely no talk of anyone submitting their resignations and not a word on the meeting this weekend where the deans were supposedly told to do so. I think that may have been a last ditch, ‘lame duck,’ failed power play by Brody and the CSC Index. After reporting on various financial issues and salaries, Purple’s item (4) was that “someone asked him [Cerra] about whether the money going to ‘consultants’ couldn’t be put to better purpose. He first said yes, and then gave another short speech. While looking directly at me (I cannot for the life of me understand why), he said obviously we were most concerned about the question of CSC Index, and his answer was that ‘they have given us some value for their consultations up until now, but that definitely would have to stop, and in his estimation the stop line was rapidly approaching.’ The faculty and the school in his opinion, needed to take ownership of our management redesign processes. (I translate this to mean that he is still walking a fine line, but as soon as he establishes his power base, those SOB’s are going to be booted out of here as soon as he can do it -- see below on whether we can use their promised money).” Purple concluded that “I think sanity is beginning to return and that the faculty of the Health Sciences may once again have an advocate who is likely, given time, to prove more formidable to the central administration than they have seen since the days of Lyle French,⁷⁰ if Frank can capture and maintain the trust of his faculty.”

On April 26 one member of the Gang of 19 emailed about the FCC meeting. “I heard that Keffeler, at the FCC meeting yesterday and elsewhere, is advocating extending the tenure review process until next fall. Some persons who called me after the meeting said she sounded ‘conciliatory.’ Don’t believe it. Keffeler is a master of the zig and zag, tacking with the wind toward her goal. Her goal is to get this extended long enough that it will be under consideration at the time the legislature is back in session and she can get the yahoos there to put pressure on the University and support her aims. I think it essential that the Senate finish up this tenure business in May and get it off the Regents’ table as soon as possible. The word is that Reagan thinks the same thing -- wants it over as he’s suspecting (and correctly, I believe) that Keffeler is setting him up. Also have heard from numerous sources that the Regents are in disarray and fighting among themselves. This Board is taking heat and they don’t like it, so have to keep the pressure on them somehow.”

“I don’t know what we can do to facilitate getting the tenure business off the table with acceptable revisions, but I don’t believe Keffeler is on our side. By the way, [the Alumni Association] are important friends. They have been feeling great heat for their support of the closing of GC. Anything we can do to support the AA is important.”

⁷⁰First vice president for the health sciences.

“One last, and discouraging, note. Apparently the Business Council (whoever they are) met and are supporting Keffeler’s efforts on tenure. I was told that we can’t look to business for help. This does not square entirely with other reports. We need to get the business community on our side and have to think about how to do that. Many business people [are] involved in the Foundation.”

The day after the meeting on the 25th of Faculty Affairs and the Tenure Subcommittee, Feeney emailed to his committee members to express his dismay. He wrote that the faculty views on tenure revision fell into about 10 categories and concluded that “the faculty don’t trust the information we’ve been given, haven’t been convinced of the problem or its severity as presented, can’t agree on how to approach discussion or on a time line for it, feel the process has been compromised to where it is currently ineffective, [and] won’t be contaminated or influenced by politics, public perceptions, or threats.” He commented that the three committees “have inherited an issue nobody likes, have been ordered to have a plan in place and have items ready for ever-present ‘docket deadlines,’ and have been charged to fix things in two months or lose credibility. Quite frankly, I think we’re dead in the water!” They could lend credence to CSC Index charges that governance is ineffective or “we can betray our faculty colleagues and end up being shot down like John and Carl Adams” and they could not meet the expectations that had been set. He said Faculty Affairs could not forward language until it reached agreement on it, which it had not done, or it would be subject to severe criticism. He then laid out alternatives for the committee to consider in proceeding.

On April 25, Humphreys circulated to the Gang of 19 an email she had sent earlier to Shively about the replacement for Infante. “Rumors are already flying about his replacement. Given the events of the last few months, especially the past couple of weeks, it is very important that the person in this position have the trust and confidence of the faculty.” She hoped Shively’s views would have an influence on the choice, and said “I am going to suggest to you that Marvin Marshak be the acting VP for Academic Affairs. Marvin was one of two finalists for Provost of AS&E⁷¹ and has survived recent search processes. He will have the confidence of the faculty. That is desperately needed now.”

On April 26 Hamilton sent out an email to a group of 10 other faculty inviting them to join the meeting of the Gang of 19 the next day. The group consisted of senior faculty who had been active in governance. He told them that “as you may know, a group of us have been meeting periodically to discuss various aspects of the tenure review process, academic freedom and university governance. One result of our deliberations was the resolution on the process of tenure review that

⁷¹Which, of course, Shively knew, since he -- Shively -- was one of the other finalists, and was selected.

was overwhelmingly endorsed by the Faculty Senate. We feel that there are still a number of issues that need to be addressed and positions to be develop in order to help the University though these troubled times.”

Murthy emailed to the Gang of 19 after their Saturday, April 27 meeting and commented on both it and the Keffeler letter. He described the letter as “fairly vacuous” and said it “does not in any way address the questions I had in my letter to Regent Reagan, nor does it provide any substantive data bearing on any of the issues at hand.” He commented that their “meeting was very inspiring, but I worry about the time we have to resolve the crisis, if we can resolve it at all.” He asked if anyone knew “anything about the opinions of the other Regents. Has anyone talked to them? If the majority of them do not go along, may be a simple resolution before the Committee of the Whole and a vote might do. Maybe I am being naive, and all the regents do think alike on this issue.”

Campbell responded to Murthy; he said Murthy was not naive and should send his suggestion to the entire Gang of 19. He offered his own analysis of the Board. Campbell maintained that “the meeting of Keffeler’s committee two weeks ago was remarkable, and it revealed probable division within the Regents. In particular, Hogan and Neel spoke very clearly about their concerns about the damage being done by the controversy and publicity surrounding the tenure code. Hogan telegraphed some of his concerns even before Fogelman made his electric statement. After Fogelman’s statement, Neel said, with some passion, that his worst nightmare about this was being realized. Hogan (or Neel) spoke about the very negative tone of the changes, and asked whether the focus shouldn’t be on doing things which help the faculty.”

“Some people feel that Hogan is the most promising Regent, and certainly very intelligent. He may know more about higher education than anyone except possibly Sahlstrom.⁷² I should add that Sahlstrom has also spoken about concerns [with regard to] the present situation.”

“Some of the scenarios concerning Jim’s [Senior Vice President Infante’s] ‘resignation’ might indicate that Keffeler is in the minority, or even isolated. I have it on very good authority that, at the last Regents’ meeting, Keffeler tried to marshal the unhappiness into a vote to fire Hasselmo. The fact that she failed indicates something about the limit of her current power.”

Campbell continued. “Concerning progress of the group of concerned faculty, I have become increasingly distressed by the nature of the effort. We all know horror stories, and pass them around by e-mail. But we need to organize our membership and our (waning?) energy toward some specific goals. I agree with Carol’s concerns that the bad things are moving too fast for us. I tried last

⁷² Regent Stanley Sahlstrom, former chancellor of the University’s campus at Crookston and a former faculty member.

week to get one of core group (Fennell, David, Roberta and Ellen) to take responsibility for drawing up an agenda chairing the meeting to assure that the maximum is accomplished. As Tom Walsh says, we now need some generals who will organize the effort and give the marching orders. In effect that is what I was urging the group of four to do. But I failed. I now think that a few of us need to decide upon the generals and draft them (with the support of everyone else). I also think we need to enlist retired faculty of very high standing to provide guidance, leadership, and perhaps the few hours per day of work that several of us have been doing but can't afford to continue to do."

"Your advice on this matter would be very much appreciated. And, again, I think you should pursue your idea about petitioning the Regents. But I am not one of the university's wise people. I hope you would talk to people like Ellen and Dick [Regents' Professor Richard Goldstein] and a few others who you know best to test such an idea. Moreover, in the end it may be that this motion should come from a group which differs significantly from the those who signed the motion. Some of us are now viewed as rabble rousers (how does it feel to be one of the rabble that we are rousing?)."

Murthy emailed back; he said Campbell was too modest. "I agree that the thing we need in the group is a little more organization with respect to actions. We can spend a hell of a time talking amongst ourselves being angry about what atrocities are being contemplated by whom in this re-engineering attempt, in the little cloister of 435 Physics. [We] need to get out with action plans and Roberta was trying valiantly to do this. We should focus on this, because the time is short. I am new to your group, but my hopes are similar to the group's: contain and control any further damage to the U."

Murthy suggested several possible actions, and invited Campbell to share them with the Gang of 19. "1. Mobilize the rest of the regents, at least until we know they may not be with us." He said he knew three well, and perhaps could get to others. "The strategy here is to see if we can put these discussions on tenure into a more thoughtful, open and deliberative process." 2. Use a financial analysis of the University prepared by Fennell Evans, which Murthy described as "remarkable. With a little rewrite and condensing, it would be an outstanding vehicle to reach out both to the external and internal community (the faculty)." "3. If I don't get formal response from Regent Reagan to my letter, I am willing to send that letter to the Daily as an 'open letter to the regents' requesting straight forward answers to some simple questions. 4. On a personal level, I am working on a piece with regard to who has 'shaped' the University in the past, who is 'shaping it' now, and what has been the record. The record of both the Regents and the Administration is dismal on this point. This comes out of my personal anger about statements by the Regents about shaping the university for the future. Anyway, I am simply willing to do whatever I can, and I need guidance from the group."

There was an AHC town meeting on April 26. Wells noted it in an email to colleagues and posed questions she wished to ask. What would CSC Index do between now and the end of June, if that is when it is leaving; how would this be different from the original contract with them; what is the plan for the groups set up and “where else is CSC operating on campus at this time?”; “we have been operating with many rumors. It is rumored that the resignation of all AHC deans was recently requested. Is there truth to this rumor?”

Humphreys added some questions of her own she wanted answered (attending as one of three representatives from FCC), although said she would not speak because she was not in the AHC. Would the “the plans and policies they have advocated or put in place still be acted upon or followed?” and “will there now be a return to the usual academic system of consultation with administrators and faculty committees?” She said she would also ask for a committee of senior faculty “to recommend a plan for re-organizing the AHC and make recommendations for solving the financial problems that that preserves the academic and research missions of the member schools of the AHC and the University.”

On April 29, Humphreys sent to the Gang of 19 an email she had sent to Provost Cerra with her personal observations on the AHC town meeting. “The process of re-organizing the AHC using an outside consultant (CSC Index Group) that was obviously unfamiliar with the traditions of an academic/university environment has clearly been an extremely divisive mistake.”

“The hostile environment that has been created in the AHC is now spreading and infecting the whole University. Unfortunately the goals and tactics of the Index Group consultants have even contaminated the review of the University’s tenure code. This should never have been allowed to happen. I hope you will take these wider consequences into consideration in your plans for the AHC and future relations with the Index Group.”

“I know many colleagues in the AHC and most agree that some re-structuring is needed, but it should be done through the accepted channels of faculty and administrative consultation.” She urged that existing departments and colleges not be dissolved, as Index had recommended. It would be better for administrators to invest resources to accomplish interaction, rather than try to force it.

Cerra responded on the 30th. He emailed to Humphreys that “I would concur that we have plenty of internal talent and need to reduce our reliance on outside consultants ASAP. I am impressed with the offers to help the AHC that our coming in from other schools and individuals of the University community. I do plan to take them up on the offers for help.”

April 29: Hasselmo and the regents received a letter from the president, Rutgers AAUP, with a resolution protesting the regents’ attack on tenure and to “stand firm against all who would render our institutions . . . vulnerable to pressure for ideological conformity.”

Between the end of April and the Faculty Senate meeting in May, there were a variety of communications sent about on tenure. One event of note was the reinvigoration of the Twin Cities AAUP chapter.

At the end of the month AAUP General Secretary Mary Burgan wrote to several faculty members about her earlier visit to the campus. She noted that she had had a number of updates since her visit early in the month, including the April Faculty Senate action. She described the AHC re-engineering documents as “extremely troubling” and said that the most important thing was for the faculty to unite. If they did so, the AAUP would be willing to help. She expressed doubt that all faculty signing union cards were committed to the cause, seeing it as a gesture rather than a belief in unionization, and recalled that the Minnesota faculty and the AAUP had gone through this process in the 1970s, with the result that no union was selected. She assured them that the AAUP would work with the faculty whether or not it chose unionization.

Burgan also provided copies of an April 30 AAUP update on tenure at Minnesota, which reviewed the situation. It said the regents initiated the tenure review, and the administration “seems to have at once temporized and offered a relatively drastic set of recommendations (its proposals for radical change have been disclaimed in response to national publicity).” The report described the action of the Faculty Senate, and said the two items of concern were the regents’ time line and the reorganization of the AHC, as well as specific issues of tenure. There has been a lapse in faculty government at the University, it said, and trust, “long taken for granted, has now been cast into serious doubt.” The release also reported that the AAUP chapter at Rutgers had also taken action on Minnesota.

In addition, Burgan wrote to each of the regents. She recounted her visit to the campus and expressed support for the Faculty Senate action. She asked that the regents suspend their schedule to permit the needed review by the faculty. She also said the AAUP would work with the faculty she met, and urged that shared governance be respected.

Early in May, an email went out to the faculty urging them to join the AAUP (the Minnesota chapter had been moribund for a number of years). They wrote that “some months ago a few of us began to discuss these issues [tenure and re-engineering]” to identify moderate approaches “that would leave intact the academic vitality of the University.” The letter was signed by an expanded Gang of 19, including a number of the regents’ professors and other faculty leaders.

One of the Regents’ Professors, Daniel Joseph, wrote to Regent Keffeler (and copied all regents) on April 30. He commented that his age and position made the tenure debate unimportant to him personally, and that he rarely became involved in such issues, but had concluded he must write

because “of all the possible issues where the University of Minnesota might want to lead, the most destructive one would be the revision of the tenure code.” He agreed the University had problems, but that tenure changes were not the remedy. He reported being disturbed by what he had been hearing from colleagues, and then explained why tenure was important for long-term thinking and how a university is not like a corporation that must respond to the market.

On April 30, Feeney wrote to the senior officers and Regents’ Executive Director Steven Bosacker, Reagan, and Keffeler, and sent copies to FCC and the other committees. He noted that tenure review was under way, but “a question that is continually asked is ‘why are we doing this?’” He noted that Faculty Affairs had learned about the financial status of the AHC, but he said “questions remained. . . . What are the precipitating factors driving a major Tenure Code revision? How will revision of the existing Tenure Code solve the problems facing the U-MN, particularly in light of the ‘rumored’ limited budget impact tenured faculty salaries have on the overall institutional budget? In the face of being repeatedly questioned about these issues both within [Faculty Affairs] as well by the faculty-at-large, it seemed prudent to ask directly,” and to ask those who had authority to ask. “To facilitate discussions within [Faculty Affairs] and the Tenure Subcommittee, I would appreciate an explanation of the issues forcing the Tenure Code revision and justification for how revisions will solve the apparent problems.”

In addition, Feeney told them, Faculty Affairs “has been bombarded with questions and comments about the ‘Index’ consulting group. Their actions have been described as stifling, threatening, and manipulative based on verbal and e-mail input. The level of anxiety among faculty within the AHC is alarming, particularly considering this is supposed to be a productive process having the goal of preparing this U-MN Unit for the current and future environments. The concerns have gone beyond the AHC with the feeling that ‘first them, everybody else next’! The discovery of the long-rumored operating principles such as ‘weakening (or eliminating) tenure’ and ‘eliminating or gagging faculty governance’ to create the necessary ‘flexibility’ have raised serious concerns.”

Feeney said that “we respectfully request your assessment of and opinion on this unfortunate situation. . . . Our goal is to be both responsive and timely on the issues facing our institution. However, reservations exist about what will be accomplished by weakening the current Tenure Code, when the influence of tenure is placed in perspective with all other issues and costs facing the University of Minnesota and higher education in general. Some of our members believe it is possible to recommend action this Spring on several of the clearer and less controversial tenure-related issues. However, action on those of a more controversial nature will come only if the substantial doubts as to their importance and their likely consequences can be removed and/or explained, respectively.

Favorable action by the Faculty Senate on any proposal to modify the Tenure Code is possible only if the responsible committees can provide a rationale for the changes and be convinced with reasonable certainty that the changes will accomplish what they are expected to do. To those ends we seek your help.” (Wells forwarded Feeney’s letter to the Gang of 19 and commented that “it appears that faculty may be starting to act like faculty (to borrow a phrase from Roberta).”

Garrard reported to the Gang of 19 on April 29 on several items. 1. She knew the author of the article in Business Week about how CSC Index had manipulated the best seller list, and would try to get something more written on the University. 2. One of her colleagues would try to get, through the legislature, a copy of the CSC Index contract. 3. “Apparently budget projections developed by [the University] are being examined by the legislative staff in light of the legislation passed last year regarding declaring a trusteeship if the U of M projections meet specific criteria.” Morrison, who had only heard of the legislation a few days earlier, was studying it and developing his own financial projections. She agreed with Berscheid that “this may be the Regents’ (or one or two Regents’) back door in case the revision of the Tenure Code does not go the way they want.” 4. Morrison agreed with the view of many of the Gang of 19 that “the acceptable revisions of the Tenure Code ought to be sent on up and passed by the Faculty Senate this spring,” although the Faculty Affairs committee “apparently has dug in its heels and the majority feel that nothing should go up until this fall.” Morrison suggested that Faculty Affairs committee members be contacted; Garrard concluded that it “looks like our work is cut out for us.”

On April 29 Carol Wells emailed to the Gang of 19 with a revision of a potential editorial for the Star-Tribune (“The New University of Minnesota”), with changes suggested by several who had read an earlier version. She said that “the strategy is to e-mail it to the Strib, give them 1-2 days at the most, and then send it to the Daily just to keep the process moving -- time is short.” She reported that Fennell Evans had “asked that the term ‘academic freedom’ be downplayed because it sounds too high and mighty, and the public does not understand it.” Well agreed, and invited comments.

Wells’s piece, entitled “The New University of Minnesota - Farewell to Academic Freedom,” was distributed by UFA email. She cited Keffeler and Hasselmo as saying they needed the authority to “‘shape’“ the University, and shaping would resemble re-engineering in the AHC, “where the CSC Index consulting firm is being paid \$2.5 million to implement a vision for the future.” Wells quoted Index chairman James Champy’s book and the process, leading to a “top-down hierarchy” and administration-driven research focus groups. Research would be assigned, as would teaching and service; academic freedom must be eliminated so the CEO can direct the faculty. The departure of the strongest faculty will be unimportant, because those who remain will accept

authority, and a union will “not be challenged because CEOs prefer to interact with collective bargaining units rather than tenure codes.” She quoted business leaders as saying that re-engineering was a passing fad but that CSC Index was looking for a new market in higher education, with Minnesota as its first major client. Wells maintained that the CSC Index approach was analogous to the Vietnam war approach of burning a village in order to save it, and that it would take generations to rebuild the University after it had “been reduced to rubble” by the consultants.

Campbell complimented Wells on her draft article, and made observations about how research proceeds. He said that her article seemed to imply “that the usefulness of (basic?) research is accidental. I am sure you would agree that, however unexpected the consequences of the quest for new knowledge may be, it becomes useful because it is recognized as useful, most often by people who are knowledgeable enough to see the future of some development.” He said that he and one of his colleagues “should consider putting together a piece based upon the economic consequences of ‘curiosity driven research’ in engineering, mathematics and physical sciences at the University of Minnesota.”

“I would claim that you can only stumble on a gem if you are in the vicinity of it, and then you must recognize that it is a gem. So much of what is going on right now is so short-sighted. As one of my colleagues likes to note, we are in danger of eating our seed-corn. We are falling into the same trap that has harmed the private sector, where the work done today must see its impact in the next quarter or it is considered a failure.”

Campbell warned that “I am a little worried that our group is losing sight of the impact that re-engineering will have on the education of Minnesota’s students. After all, those in the legislature, general public and even in industry are often opposed to tenure and research because they are both perceived to be incompatible with good teaching.” He said there would be problems as long as the legislature and public focused on faculty teaching loads, which do not appear to constitute much work.

“I can assure you that members of the group are indebted to you for your hard work and your talents as a writer.” Campbell repeated his earlier concerns. “I also share with you a high level of anxiety that we are going too slow. Again I feel that someone (or several people) should take charge or we are in danger of preaching only to the converted and not channeling our energy and anger effectively.” He had tried to do so “unsuccessfully to get the gang of four (Fennell, David, Ellen and Roberta) to plan an agenda and take charge of the meetings. Roberta did manage to get some assignments passed around, but it was a struggle for her to keep the group’s attention. Perhaps you have some ideas along this line.”

Humphreys emailed to the Gang of 19 on Tuesday the 30th with a summary of their discussion the previous Saturday about “things we can do to educate and inform our public about the importance of the University and its faculty to the state. We are now in the position of defending and explaining ourselves, something our administration has failed to do for a long time.” The work was divided into internal and external, and would go through the summer. The internal work included discussions between regents’ professors and distinguished senior professors and the regents (and possibly coordination with FCC on this effort). External efforts included newspaper pieces (opinion, financial, CSC Index, academic freedom) and contacting national newspapers and TV and radio stations. They also discussed expanding the group, and identified people to be contacted.

Regents’ Professor John Chipman sent an email on April 30 to the Gang of 19 reporting and commenting on various things. One item was that he had learned that another regents’ professor (Daniel Joseph, who had not been involved in the Gang of 19 or events generally) had written to Keffeler expressing his concern and “pointing out the analogies between academic freedom and judicial independence and asking whether the Regents would favor the ability to fire judges who made unpopular decisions.”

Chipman also reacted to the various emails he had read. He addressed the use of terms in the tenure code. “When I first read the tenure code before deciding to come to Minnesota (in 1955!) I well remember the part dealing with ‘financial exigency.’ This is a much more precise term than ‘emergency,’” he wrote, and asked if the term had been changed. He said “the regents would look ridiculous if they declared a state of financial exigency” after disapproving the recommendation to close General College. He concluded that “if the term ‘exigency’ in the tenure code (which is a reasonably precise term) has been replaced by ‘emergency’ (which could mean almost anything), I wonder when this was done and how the change was allowed to go through.”

Chipman also objected to Fennell Evans’s suggestion that academic freedom be downplayed in Carol Wells’s article. “Isn’t that what tenure is for? If the people of this state don’t understand the reasons for and benefits of academic freedom, then it’s high time they were educated. And if they still reject the idea, we might as well all pack our bags and go.”

Regents’ staff Kim Isenberg provided to Keffeler and Spence on May 1 a summary of a conference call with Chait. It “began with a discussion on outcomes and rebuilding trust. Chait did not originally read the proposal to do ‘shuttle diplomacy’ but did suggest that he could add balance as the outsider by producing a scale of possible changes to the tenure code.” Chait “felt the faculty’s proposals are ‘moderate’ recommendations.” Chait offered advice on data and information collection, which he would help analyze, and also said he would assist in certifying to the legislature that

sufficient changes had been made to allow release of the appropriation to the AHC.

On May 1 Carl Adams wrote to the regents to inform them that the Tenure Working Group had been disbanded and that Professors Dempsey, Feeney, and Fogelman had been designated to lead tenure discussions, and that in response to his request to FCC, Feeney had been selected as lead spokesperson.

Feeney emailed to Faculty Affairs again, on May 1, and said the committee had to act on the Tenure Subcommittee proposals or risk being seen as stonewalling, inviting regents' and possible legislative action. He said he would set time limits for debate on each item, and asked committee members to consider five different resolutions for each one (recommend Senate adoption, make no recommendation, refuse to forward an item, etc.).

The same day, a member of Faculty Affairs emailed back to Feeney to lay out thoughts on the disposition of various groups of proposals. In some cases, she felt there was a need for more information from departments and deans with respect to changes that were perhaps being driven by the AHC problems. "We don't have nearly enough information on the impact of these changes, and if it will go beyond AHC, we need to talk to others." With respect to Fred Morrison's question on how to treat items which were not favorably received, she argued that "we should report these negatively, since the amendments have been shown to the Senators. . . . I don't think we have to present them for a vote, recommending defeat, but we need to talk about them in our report as not moving forward to the Senate. . . . Whatever we do I think we need to have a persuasive written report, that can be shared with the Regents as well as the Senate, that discusses in detail why we are not supporting the language that is being ditched (since the Regents know what was there originally as well), and why we are not moving forward on some of the language as yet."

"If we are postponing anything . . . I think we need (politically) to say we will report back on those to the Senate in the fall. Without that, I suspect the Regents are much more likely to act on their own. . . . Hope all this helps. I don't envy you -- this is an incredibly complex and dangerous can of worms, and I don't know how we come out of it having done something reasonable, maintaining credibility with the faculty, and helping to forestall truly damaging action by the Board of Regents."

On May 2, Berscheid emailed to the Gang of 19, disclosing she had spoken with a number of them about plans, and wanted to be sure all agreed. "I have assumed that, re: tenure, because we were authors of the resolution which in effect told the Regents and the administration to allow the Senate committees to do their job and to keep their meddling fingers to themselves until they did so and until the Faculty Senate voted on their proposals, we would simply monitor the situation."

"(In this regard, Keffeler's request to meet with the chairs of the three relevant committees, if

they grant it, will spread the distrust and suspicion to these committees and their work and likely tarnish the names of more good faculty.) Actions to remove CSC Index from the Health Sciences I see as independent of the overall tenure revision process (but surely would help further an acceptable outcome).”

“I also assumed that as soon as the Faculty Senate acts, saying ‘this’ is acceptable but ‘that’ is not, we would mobilize. Our objective would be to produce ‘7 good Regents’⁷³ (Bob Morris’ term) who would accept the Senate’s recommendations and, most importantly, cut off the matter there by making it clear to Keffeler that the Board considers the examination and revision of the tenure code finished. Bringing back the ‘hard stuff’ (i.e., proposals that abrogate academic freedom) would be deadly. Our best chance is to take advantage of Reagan’s desire to get rid of this as soon as possible.”

“Important in the production of 7 Regents would probably be the Regents’ Professors, rallies, phone calls to individual Regents, and anything else we could think of.”

“If the matter blows up before then (e.g., if they do not respond to Feeney’s request for information and he resigns for that or any other reason), or if we can’t find 7 votes, then we probably should consider a campus-wide petition to the Governor and the Legislature asking that the place be put in ‘receivership’ and that they ‘do something’ about the Board of Regents. Constitutionally, they probably can’t do anything formally, but, informally, each and every Regent is a political animal responsive to political pressure.”

Wells responded to Berscheid’s comments. “I agree with Ellen’s game plan sent out yesterday” but suggested a few additions. She pointed out that “when our group started meeting, we had a number of goals. One goal was to get the tenure revisions back on track. Another goal was to prevent this nightmare from happening again here in the near future, and to prevent this nightmare from happening at other major universities in the country. I realize this sounds vague, but at the time, we had difficulty articulating what exactly was happening, but we knew it was wrong, and we knew it violated the tenets of academic freedom.” Wells proposed a Faculty Senate resolution “supporting the maintenance of traditional pillars of academia,” which meant preventing “a corporate take-over of our university by making it difficult for a ‘CEO type’ to dissolve departments and schools, which seems to make it easier for an almighty CEO to direct and redirect faculty efforts at a whim, . . . to maintain our university as a COMPLETE collection of scholars, including artists, writers, philosophers, historians, social scientists, etc.” Wells expressed concern about a request from Hasselmo to develop “themes” “to take to the legislature to request state appropriations for the next biennium,” which included such things as “education for work, economic development, technology

⁷³The University’s Board of Regents has 12 members, so a majority would be 7.

and information technology transfer.”

Wells also suggested putting together “a comprehensible package of material describing what has happened here and to send this package to major universities across the country. Possibly include in this packet suggested resolutions to be introduced into their Faculty Senates -- resolutions targeted at making it difficult for the corporate mentality to become infused into academia.”

Wells concluded her message to the Gang of 19 with a plea for advice: “I JUST GOT A CALL FROM BRODY’S OFFICE. HE WANTS TO SEE ME -- ONE ON ONE. I WILL SEE HIM AT 2:00 PM TODAY. I AM SCARED! ANY ADVICE WOULD BE APPRECIATED -- QUICKLY!” (caps in original).

Berscheid responded to Wells and copied the Gang of 19. She recalled, with respect to “themes,” that she and three other regents’ professors and two deans had “served on what was called the ‘Profile/Signature Committee’ formed by Nils this past fall. The Regents (them again) have been nagging him to develop a ‘signature’ or profile of the University. . . . He also wanted this profile, or ‘themes,’ to guide the restructuring of the University (what programs and departments to feed and which to let die). We strongly resisted the idea of coming up with themes. . . . We simply said in our report that our profile was of a major urban land-grant research university and that the ‘major’ and ‘research’ part of the profile had become blurred in recent years and that, thus, the top priority of the University had to be the attraction and retention of top faculty. . . . Nils was not happy that we had not provided ‘themes.’”

“I mention this because the idea of ‘themes,’ it seems to me, allows administrators and Regents to exert control over choice of faculty research activities. We get enough of that from the feds and others who supply funding, but at least they have expert peer review. I don’t want Nils or Infante or anyone on the Board of Regents deciding ‘themes,’ and don’t think we should encourage this. But they do badly want it. Being a quality University isn’t enough of a theme to them.” Berscheid concluded by offering to lend Wells her German shepherd to take to the meeting with Brody.

Wells later wrote to her colleagues relating the content of the discussion she (and Roberta Humphreys, who had come along as a witness) had had in the meeting with Brody. She reported that she had been “invited to this meeting as a result of my article distributed on e-mail and as a result of my comments at the Faculty Senate. Brody questioned why I did not speak out sooner. I mentioned that (1) we were not made aware of the drastic revisions in tenure until the end of March; and (2) that after Brody presented his new AHC structure at an AHC Town Hall meeting, he stated that he would entertain questions, but that the presented structure was ‘not negotiable.’ (Brody typically let these

types of comments roll off, and we would go on to another topic.)” She said that it had not been confrontational, and “my overall impression is that Brody felt that the U of MN is in such complete disarray that it required a drastic fix, and that since we do not accept the ‘fix’ offered by CSC Index, that the AHC is doomed to enter into a ‘death spiral.’ . . . Whenever Roberta or I would say something that made sense to us (e.g., point out that we were not opposed to change, point out how change might be better implemented by a different PROCESS other than a ‘slash and burn’ process, or point out how we would welcome certain overdue changes), Brody would skip back to his themes of how unmanageable the University of Minnesota was, and how only a drastic solution would save it from the ‘death spiral.’ Along this line, we explained that one alternative was to carefully identify the problem areas and solve those problems without destroying everything, including destruction of the #1 departments. Brody’s impression is that there are few, if any good departments, either in the AHC or across the University. My impression is that he is not well-informed in this area. Roberta tried to point out some of the top departments across the University, but Brody did not seem too interested. He would constantly revert to the theme that the U of MN was ungovernable due to a faculty governance that did not work, one that took forever to get things done, one that permitted faculty members to refuse to teach, etc. Brody pointed out how no top administrator has ever stayed at the U of MN more than 2 years due to the fact that the place is ungovernable.” She also reported that Brody believed “all research must be generated by teams” and that “Brody is committed to the ‘focus group’ concept of organizing faculty because, in the past, departments have been fiefdoms with department heads refusing to share equipment, or teaching expertise. Thus, all of this must be under central control. We agreed with him, that some department heads were problematic, and that changes were needed. Roberta tried to point out how effective a good department head could be, and that perhaps bad department heads could be replaced with good department heads, but Brody was not interested.”

“My overall impression is that Brody believes the CSC Index philosophy is right for the AHC, although the consultants may have made some tactical errors in presentation. However, he is not ready to get rid of them. . . . I think Brody has given up on us as a group of unmanageable faculty, unwilling to change, and thus headed into a ‘death spiral’ despite his best efforts.”⁷⁴

Humphreys commented that Wells’s summary was “as clear as could be expected from that meeting. What struck me most was how Brody kept repeating himself. He kept coming back to the

⁷⁴One of her colleagues outside the health sciences spoke of Wells with great admiration. “She was literally terrified. I remember one night she was so afraid of Brody and his [consultants] that she slept in the basement with her son. She actually was afraid of bodily harm. She worked harder than anyone. I like her very much, as she was very brave, given her circumstances. She was also terrified when Brody called her in for a little talk. He was some piece of work.”

same points over and over. . . . He seems to be convinced there is only one way to make changes, and that is to destroy everything, even what works.” She also reported that she had been at a meeting of FCC and had told Carl Adams and Fred Morrison about the interaction with Brody; “they both seemed amused. Fred emphasized that Brody has no authority over Carol.”

Purple later commented that “this report makes fascinating reading. The only parallel I can think of are some of the excerpts on Hitler’s conversations in his bunker during the last days of the Third Reich. All charismatic individuals seem to think only they can save the world and the world is doomed if their solutions are rejected.”

Wells emailed to the Gang of 19 on May 2, reporting she had been told that there had been three CSC Index consultants at the University since the previous August and that Index had been paid \$1.4 million thus far.

On May 2 Hasselmo sent an email to all faculty. He wrote that academic freedom is the “bedrock” of faculty work and would be at risk without tenure. He repeated that the faculty and administration must seriously review tenure in order to preserve it. The University had made five years of difficult budgetary choices, and the question was whether it could make its own choices to improve “clarity, credibility, and effectiveness” of tenure, because pressure exists to change it. The essential point was that the debate “is joined WITHIN THE FACULTY GOVERNANCE STRUCTURE” (emphasis in original). He reassured the faculty that no one was trying to end tenure and that the discussion must be faculty-driven even though the review was regent-initiated. The regents were responding to external pressures. He repeated his “core concepts” that revisions should not disturb existing contracts, tenure would be in the institution, there would be no layoffs except for financial exigency, the issue of sustainable faculty size must be addressed, there needs to be clarification that heads and chairs may assign tasks, reassignments and retraining may be necessary if there is program change, categories of faculty appointments need definition, the relationship of tenure to base salary would be reaffirmed, there should be more efficient judicial processes, and there must be meaningful post-tenure review.

FCC met on May 2, prior to the Faculty Senate meeting. Carl Adams commented for the record, apropos the Daily article earlier in the week, that the FCC minutes for October 5, 1995, were quite clear that FCC approved the appointment of the Tenure Working Group, and that it was not appointed without their knowledge. FCC considered the possibility of informal meetings with groups of regents to discuss issues, but not tenure code revisions (FCC members were not prepared to risk another Tenure Working Group); Carl Adams cautioned that the administration needed to be involved and that the regents were uncertain who represented the faculty. The need for educating the regents

was emphasized, and in a setting outside of a public meeting and the glare of the press;⁷⁵ Virginia Gray was asked to try to arrange such meetings with faculty whom she thought appropriate.

Hasselmo joined FCC, and said meetings with regents could be “educational” but not “preachy,” and ought to focus on the place of the research university in society. He emphasized the need to resolve the tenure debate and said the administration was ready to help in any way. Asked about the many letters he was receiving, Hasselmo said he shares some of them with the regents, but the critics attack the University on points on which there is no disagreement. Hasselmo took sharp issue with the national email campaign which claimed that he and the regents wished to end tenure. According to the FCC minutes, Hasselmo remarked as follows: “talk about poisoning the waters; that is about the most counterfactual statement he has ever seen, and has absolutely nothing to do with reality.”

Provost Cerra also met with FCC, and repeated that major changes in the AHC were necessary to respond to the changing health care environment. Cerra spoke in favor of institutional tenure and said departments and colleges would not be eliminated. Feeney’s most recent letter was mentioned; Hasselmo said he did not subscribe to the “operating principles” of CSC Index that Feeney had described. Cerra agreed that the governance system had not been effectively used and that he intended to be more consultative about changes as soon as a provostal FCC could get into operation. He said the faculty must be central to the change process, and that while CSC Index provided useful help in the earlier phases of re-engineering, he was reviewing all consulting contracts and would return “ownership of the process and content to the faculty.” Email from another institution was quoted, to the effect that administrators traveled to Minnesota to “learn how to break tenure.” Cerra responded to queries about alleged unethical behavior on the part of Index in promoting sales of a book by its CEO, James Champy (reported in articles in the New York Times and Wall Street Journal that were widely circulated among AHC faculty); he acknowledged that the incident had occurred, the company had apologized, and the team at Minnesota had no involvement with it. Cerra told FCC that when his transition plan was implemented, CSC Index would no longer be involved in reorganization of the AHC.

At the Faculty Senate meeting on May 2, Feeney outlined the process that would be followed and announced that Fred Morrison would serve as legal counsel for the committees. Code amendments would be presented at the May 16 meeting, and additional Senate meetings would be

⁷⁵FCC meetings are public, and while the Daily or metropolitan newspaper reporters rarely attend, the University staff news reporters almost always do; FCC and other staff are also usually present. While the staff are of course friendly to the University’s interests, meetings with FCC would not be considered informal.

held May 30 and June 6 to try to meet the regents' schedule. Fogelman warned that the Judicial Committee had adopted a statement saying it "may or may not have time to complete a responsible and thoughtful review" in the time allotted. Morrison assured the Senate that tenure would be institutional, research would not be assigned, and base salaries would not be reduced; Dempsey said the committees are not allowing CSC Index to influence their deliberations.

One of the Gang of 19 members emailed to Purple the day after the Senate meeting about the Tenure Working Group. Matt Tirrell [one of the members of the working group] "told me quite informally a couple of months ago that the committee 'only met a couple of times, all before the winter break.' He was very surprised at all of the activity that had been attributed to the committee because he said they had never really done anything. He also said they were never given an explanation for why there had to be drastic changes in the tenure code. Only the usual John Adams statement 'we have to do this before someone else does it to us.' . . . When various people say the committee was continuing to meet, I think they mean John and Dan Farber and Mary Dempsey. . . . Matt did say there were no officially called meetings after Nov." Purple was also cautioned: "If I were you I would not be trying to build a case against John now. There is a sympathy reaction on his behalf now. He and Carl are going around now defending themselves. I think we have bigger problems to deal with and the faculty must be united on this tenure code revision. (I do sense that Carl is changing his style a bit on FCC. He seems to be paying more attention to other peoples' opinions, and is staying away from things where he might be seen as acting unilaterally.)" A concluding comment to Purple was that "the Senate went very well. Mary and even Dan are changing their tune. Fred was good. It took a week or two but our resolution had the effect of breaking some down some kinds of barriers in people's minds."

Re-engineering received another public broadside in early May, this time from a member of the School of Public Health, the Gang of 19, and the AAUP. In "**Remedial courses on re-engineering at the U**" (Minnesota Daily, May 6), Carolyn Williams said re-engineering was destructive and threatened academic freedom and centers of excellence. The structure planned is "costly, top-heavy and impractical," and was brought to AHC by former Provost Brody and CSC Index. She suggested University leaders did not understand the company's "ideology, intentions, or ethics," so offered remedial education courses. "How do you get people to accept such drastic changes? . . . Threats and money are their most effective motivators. Confront resisters one-on-one, making it clear that termination is a consequence of their behavior. Of course, they're having some difficulty . . . because of the current tenure codes that protects faculty's rights to speak out." The administrators in the AHC have been told they will lose their jobs if they oppose re-engineering,

however. She described the re-engineering books as “chilling.”

On May 6, Bob Morris emailed to Dempsey, Feeney, and Fogelman. “I understand that the Regents’ agenda lists you as appearing before Regent Keffeler’s committee of the Regents for a two hour session. This is a matter of great delicacy. It could lead to premature disclosure of proposals not yet fully formulated. It could lead to Regental expectations which might well be later frustrated when they are not realized. And, most importantly, it can weaken your credibility in some quarters if you are responsive and in other quarters if you are not. There is, therefore, a very good chance that your participation in such a public meeting will not only not advance the current process, it will injure it. Some observers of previous meetings, during which Regent Keffeler questioned John Adams, Daniel Farber and Carl Adams, felt that a main purpose of the meetings was to increase the public stature of Regent Keffeler. In any event, it is the wrong time and the wrong place for changes in the tenure code to be discussed. She cannot be restrained from doing so, but you should not be put in the position of being responsive to her [which will damage your credibility with much of the faculty] or being unresponsive to her [which will greatly decrease the stature of your committees’ reports in the eyes of the Regents]. In short, if you can find a sensible way to do it, have the hearing called off.”

Feeney wrote to the President the day after Morris’s message to inquire about the status of their presentation to the regents. He noted that both Faculty Affairs and Judicial had regular meetings at the same time as the regents’ meetings, and they both had “drafts of the ‘proposed’ tenure amendments to present to these groups. In keeping with the process as prescribed, we cannot discuss details of the proposed revisions with anyone until they have gone through [Faculty Affairs] and the Judicial Committee. Therefore, as we discussed, it would not be a particularly productive discussion with the Regents or a Subcommittee thereof. Worse yet, it could create doubts in the recently revised process (Senate Resolution) which seems to have calmed things a little. Please let me know as soon as you can. If we must appear before the Regents, arrangements must be made to move committee meetings around. This could throw a monkey wrench into the already stressed works considering the timelines imposed.”

This exchange of letters provoked even more alarm in the ensuing days, but in the meantime, the Daily reported that “U to pay \$25,000 for tenure advice,” and that the regents had hired Richard Chait from Maryland. The article quoted Regent Spence as saying he was a national tenure expert and that “he will be a really good fit within the University community.”

Ellen Berscheid emailed to the Gang of 19 about Chait on May 9. She cited an article he had written for an Association of Governing Boards publication on the future of tenure. Chait predicted

no significant change in tenure at elite institutions or major research universities, and for any institution to try to make changes would be suicidal in terms of competition for faculty. Berscheid also quoted Chait as saying that there was no evidence tenure had done harm.

She noted one “long shot” prediction Chait made, about a trend toward aligning faculty with market pressures, and one way to do so would be to incorporate such concerns in tenure criteria. Berscheid said that “you can see how this last fits in with the Board’s nagging Nils to develop ‘themes.’ According to Keffeler’s account (at a breakfast meeting with me, Craig Swan, Virginia Gray and Mary Burgan of AAUP) of how she kept upping the ante on the tenure issue, she started simply by asking Infante to tell her the percentages of tenured faculty in various units of the University (the Regents sign off on every appointment and tenure decision, and it’s Keffeler’s subcommittee that owns the rubber stamp).”

“Apparently, Infante failed to provide this information after repeated requests, so, as she put it, she upped the ante, and this continued until we now are where we are. As she represented it, she simply wanted to know how the University was ‘positioned’ for the future. This seemed to me to be a reasonable request, and I was surprised that Infante didn’t have the information at his fingertips -- though I also doubt that would have been the end of it with Keffeler. I am relieved that they hired Chait. At some point, we need to make contact with him -- perhaps invite him to meet with us.

Berscheid also told her colleagues that USC’s “Tierney, who is doing the study for the Pew Foundation, knows Dick Chait, of course. In his phone interview with me it became clear that Tierney thinks the U of M is an ‘object lesson’ in how not to go about examining tenure. He seemed just appalled at our situation, and I had the feeling he thought it was going to get even worse.”

Berscheid also commented that Hasselmo did not believe he could get seven votes for tenure changes until the Senate had acted. Keffeler will say the Senate’s changes are not enough, she reported, and the Gang of 19 will have to “convince 7 Regents, the Governor, and the legislature” that the changes being proposed are significant enough. She said Chait might be helpful in that effort.

Others were less sanguine about him. Carolyn Williams emailed to the Gang of 19 comments about Chait that she and others had received from Mary Burgan at the AAUP. Chait, it was said, was trusted by administrators and regents because he represented their point of view. His opinion that tenure would be retained at research universities views it as a perquisite “rather than an essential safeguard for academic freedom”; his defense of tenure was market values and competition, which “are not academic values”; and his alliance with the American Association of Higher Education “has helped legitimize the various efforts to undo tenure as ‘reasonable’ discussions of a ‘problem.’” The Gang of 19 also received shortly thereafter a positive report about what Chait had

done at the University of Arizona.

Another of the Gang of 19, Shirley Garner in English, passed along email comments from a colleague about Chait, with the subject field entry “Not Good. Not Good at All.” The message said Chait’s point was that “to make the abolition of tenure work, you have to abolish it just about everywhere” except for the elite Ivy Group schools and places like Stanford and Chicago, and that he “hoped to see a sudden, dramatic curtailment of tenure throughout the country. He apparently gets lots of money from anti-tenure forces.” Garner said that since Keffeler wanted to alter or abolish tenure, it was unlikely she would have hired a consultant who did not agree with her.

On May 9, in a letter inviting colleagues to a national conference on “Shared Governance versus Corporate Management” from national AAUP Executive Director Burgan, the opening paragraph read as follows:

A member of the faculty at the University of Minnesota recently visited the AAUP office here in Washington to talk about plans afoot on her campus to “reengineer” the university. She told me that there were sightings of “aliens in Armani suits” who had come to earth in Minneapolis with the mission of bringing a new corporate shape to the structures of governance at “the U.” As she talked, pointing to doctrines of corporate management which mandate change at full speed and at any cost, I realized the corporate model was being imposed in many academic settings. . . . Meanwhile faculty governance has been proceeding at its usual pace.

At the May 9 meeting of the regents’ Faculty, Staff, and Student Affairs Committee, Keffeler reported the Senate had assigned the responsibility to work with the regents and administration on tenure to Feeney, Fogelman, and Dempsey, and that she and Regent Spence met with Feeney and Fogelman to discuss the schedule. She also noted that regents had hired Richard Chait to “develop a model for the kind of information that would be beneficial to the tenure discussions” and invited the faculty to suggest information that should be gathered.⁷⁶ She said that if the regents want additional changes beyond Senate recommendations, they will send proposals to the Senate before acting.

⁷⁶Hiring Chait led to an article in one of the Twin Cities newspapers. “The Peacemaker” (*City Pages*, May 29), reported the hiring of Chait, and said that given his history, he “could bring a modicum of civility and rationality to a process so far marked by fear, anger, and distrust.” It reported he had done so at Arizona State, but a faculty leader there pointed out differences between the two institutions: Arizona had “a supportive administration” and the legislature was not involved; the focus was on instructional improvement, not financial flexibility. “UM President Nils Hasselmo has made no secret of the fact that he wants to rewrite the tenure code largely because he and the regents anticipate a decline in state funding.” But faculty distrust is so great that even hiring Chait provoked criticism, and Carl Adams is quoted as saying the regents would hire someone who agreed with them. The article also reported that Adams was under fire from faculty, some of whom “believe that he secretly sides with the administration on tenure matters.” Hasselmo later commented that this was not

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THE KEFFELER-FEENEY/FOGELMAN CORRESPONDENCE

THE KEFFELER-MORRISON EXCHANGE

On May 2, before the Senate meeting, Feeney and Fogelman had had lunch with Regents Keffeler and Spence, with results that reverberated through the faculty shortly thereafter. Keffeler wrote a letter a few days later, on May 6, to Feeney, Dempsey, and Fogelman summarizing “conversation and preliminary thoughts” from the lunch she and Spence had had with Feeney and Fogelman: the Faculty Senate will act in May and June and send proposals to regents, and she hoped they would be sufficient to assure the legislature that change is occurring and the AHC funds could be released. “We recognize that additional change subsequently may be desirable.” Their consultant, Richard Chait, will help set up a model for “data collection about the profile of the faculty and the tenure process,” and the committees would work with the regents on it. The data would be analyzed over the summer and reviewed in the fall by the regents, administration, and faculty, and additional regentally-proposed tenure changes may be forwarded to Faculty Senate. The regents wanted to examine academic freedom to insure it was safeguarded, and it would be important to develop a “better mutual understanding of the financial outlook” for the University. Keffeler reported that she had asked Fred Morrison and others for help on the latter. She asked them to let her know “if you are concerned about any misunderstandings (or if you have additional suggestions!).”

Fred Morrison wrote to Keffeler following the Senate and FCC meetings about the financial future of University, responding to her request to review University financial matters. Morrison said consultation provided the most appropriate way to deal with issues and that it was important to use established mechanisms because ad hoc arrangements arouse suspicion. He said the Faculty Senate and its committees were the best vehicle for conducting these discussions.

Morrison later recalled these events. “After the May Board meeting, I got a call from Jean Keffeler. There was a phone conversation with Jean, and she had [Associate Vice President for Finance and Operations Richard Pfutzenreuter] and I think Ed Schuh [Dean of the Humphrey Institute of Public Affairs]; it was a four-way conversation. What Jean wanted to do was set up a series of regent-faculty forums on the question of the financial crisis facing the University and solutions to it. Basically, what she was trying to do was end-run the President

his motivation for the tenure review.

on the budget. This was an evening conference call that went on for about an hour and a half.”

“I responded to her the next day, saying I would not do it, that it seemed to me we should progress through the usual consultative processes, and that we would be happy to bring our views to the administration, and with the administration to the Board. I think she wrote back a letter to me saying she was sorry I wasn’t interested in helping her solve this problem.”

“I say that because I think it’s part of the dynamics of the Board. It sort of ties into tenure, but it also ties into the dynamics of the Board. The Board was trying to wrest control of the University into the Board members, and maybe even individual Board members’ hands. This was the same time [Regent] Julie Bleyhl sent out the frequent flier memo [on use of “frequent flier” miles], and there’s a question of whether we have an administration. In Jean’s case, I think it was intentional; in Bleyhl’s, I think she just didn’t know any better.”

Keffeler had written back to Morrison, as he recalled. She agreed that established mechanisms should be used to consult, but said that Morrison had rebuffed her suggestion that faculty could benefit from more information. The faculty had expressed frustration about the lack of information, but she said it was not the job of the regents to educate them. Keffeler said she wanted to make a broad range of information widely available to faculty to share opinions so that all were in a better position to take up issues in their proper venues. She agreed that the Finance and Planning Committee (which was chaired by Morrison) was likely an appropriate place.

On May 8 Feeney and Fogelman wrote a letter jointly to Keffeler about her May 6 letter. “In your letter you identify a number of ‘understandings’ which you say emerged from our discussion last Thursday. We have two main responses to your statement of these ‘understandings.’ First, our conversation covered a wide range of topics, of which the ‘understandings’ you mention reflect only some. For example, we might suggest another ‘understanding’ that the current attack on tenure can seriously damage the University in its ability to attract and retain outstanding faculty, as already evidenced in the exceptionally high number of retention cases this year in CLA -- four times as many as last year. Second, we should all also understand that neither of us can speak for the entire faculty or even the faculty leadership, any more than you or Regent Spence can speak for the entire Board of Regents. In other words, the ‘understandings’ we reached were among the four of us personally rather than as spokespersons for the Faculty Senate and the Board, so these ‘understandings’ should not be referred to elsewhere as representing any sort of understanding between the Faculty Senate and the Board of Regents. In light of the turmoil of the past month, during which as you know the ad hoc committee on Tenure Review was decisively repudiated

by the Faculty Senate, we should all be especially attentive to the sources and limits of our respective authority and responsibilities. We appreciate your invitation to an enjoyable lunch, and we are sure you will understand that in these times we must all exercise particular care and good judgment about statements and attributions that may be open to misinterpretation.”

Fogelman wrote a separate and much sharper message to Keffeler. He recalled her invitation to lunch as a way to “improve communications, dispel mistrust, and get to know each other better as individuals.” This appeared to be a good idea, and “at no time . . . did you indicate or imply that we [he and Feeney] were meeting in our official capacities as chairs of Senate Committees and of a Regents’ committee” to do business -- but that they discovered later there was a long list of “understandings” from it. Fogelman said he concluded “that the luncheon was arranged not to improve communication or dispel mistrust but to further your own agenda of action.” He said he “did not like being used by other people” and that the event had “sown additional seeds of suspicion and discord.”

Dempsey observed, with relief, that “one thing that happened to me, luckily, was when she [Regent Keffeler] and Pat Spence invited me and Dan and Ed to lunch. I had another engagement -- I really did. So I couldn’t go. Those other two were taken advantage of. It was very sad. They thought they were speaking to them off the record and as friends would.”

Bloomfield said he thought the letters from Feeney and Fogelman were an overreaction. He did not think Keffeler’s letter was so presumptuous, but agreed that both Feeney and Fogelman were wary after what had happened to John Adams and Carl Adams. “I think, in fact, that what they were proposing to write to Keffeler and Spence was even worse. I got them to tone it down a little bit. I tried to point out that if you stepped back and read this without knowing the context, you wouldn’t see it as so bad, and that they shouldn’t go overboard. I think those were missed opportunities.”

Feeney provided his perspective on what happened. “There was one aftermath of that; I think there was a telephone discussion with Jean Keffeler because of the letter that had come out. I think I had a conversation with her; my memory is fuzzy. It was ‘call me back with input.’ If you looked at the things in letter, ‘as per our discussions and the conclusions we came to’ -- there weren’t any conclusions that we came to. This was put forward as a ‘let’s get together and discuss where we’re headed.’ I thought that if the Board of Regents past chair and another member of that group asks you to come to lunch and discuss things so maybe you can iron things out, maybe that isn’t altogether bad. It wasn’t like I was going to lunch alone; I knew Ed [Fogelman] was going to be there. I knew Mary [Dempsey] was not. We agreed to go to lunch with the idea that

we were not going to negotiate issues. We told those people upfront that we were not there as designated representatives of the faculty. We could discuss things, we can give you perspective, you can give us things that we'll take back to the faculty, maybe there is perspective you have that might benefit the faculty in their discussions -- open the door of communication. But we were not in any kind of negotiation situation."

"Then when the letter came from Jean about the agreements we had, that was bad news. There was no agreement. I called back and said 'we don't have any agreement.' Then Ed came up with the idea [of the letter]; he saw, more than I did, the potential political ramifications of this thing. As a political scientist, that makes sense. He said that if this were misinterpreted, it could be very damaging. I said there was no past history on his part or my part that they ought to misinterpret it. But he said 'let's write a more forceful one.' I said that since he knew more about politics than I did, he was probably right. I agreed with him, but it was a question of how far we had to push it. You know that he went even one step further and wrote a separate letter. I didn't see that there was any sense in being part of that. I'd already said some things to the Board that probably didn't help anybody's cause."

The day after Feeney and Fogelman wrote to Keffeler, Fogelman followed up with an email to those who received copies of the letter. He wrote that "I have since learned that in fact Regent Keffeler's original letter to you to which we were responding has not as yet been publicly circulated, so that our public response was premature and must seem slightly cryptic to say the least. I regret this misunderstanding, and I ask you please to disregard for the time being our response to a letter which you have not yet received!"

Keffeler wrote back to Fogelman on May 22 about the situation that had arisen following the lunch. "What a disappointing state we have achieved in faculty governance considerations about the tenure code at the University of Minnesota!" She said she was "sorry you are unwilling to continue the process which Regent Spence and I had hoped would establish a better, more immediate and more personable exchange about tenure code concerns." She had not wished secrecy and "the intent was wholly constructive. Although I don't know what caused your reaction, I would have preferred that we could have had an opportunity to understand the misstep" and she could perhaps have apologized for unintended offense. Keffeler went on to say that "it is amazing and discouraging to me that communication in our environment is so difficult and so convoluted, that the channels appear to be narrowing rather than widening, and that the search for goblins appears to engage far more activity than the examination of facts." She told him "it is disturbing to me that, at the same

time certain channels are being closed, other unofficial channels are being sought” through the meetings Gray was trying to set up. Keffeler said “I hope these meetings are successful,” but wondered “who will document these meetings? Who will edit the documentation? Who will be willing to participate? Who will assume the awesome role of interpreting the motivation and judging the character of the convenors?” She closed by noting she would not be at the June regents’ meetings, and said that “perhaps my absence from the ‘sight line’ for the next month or so isn’t such a bad idea. It may allow others of you to look first at one another -- and then at the issues and the facts.”

* * *

Regent Keffeler’s report at the regents’ committee meeting provoked a flurry of emails among Gang of 19 members over the next two days. Chuck Campbell reported he had attended the meeting, and “was alarmed to discover” that a report on summer plans for the tenure discussion was “delivered in private” to Keffeler and Spence, and that she and Spence had met with Feeney and Fogelman to have “an exchange of ideas.” Keffeler told the committee that the faculty were not representing their committees or the Senate, and that she and Spence had not been representing the regents. She summarized the points in her letter to Feeney and Fogelman, which Campbell outlined in his email. He wrote that Keffeler and Spence “feel good about the way things are going” and noted that Keffeler had told the regents’ vice chair, H. Bryan Neel, that they could not conclude the tenure review by July because they needed additional information. “So, Keffeler clearly has a strong grip on the process,” he concluded. He told his colleagues that “we need to get the summer proceedings into the open, and make sure that Keffeler and her friends don’t take advantage of Feeney, Fogelman and Dempsey [who was supposed to have been at the lunch as well, but who could not make it].” He said he was concerned that “Keffeler has re-created the Tenure Working Group, consisting of herself, Spence, Feeney, Fogelman, Dempsey, and an outside consultant” [Chait].

Berscheid responded to Campbell. She wrote that she had assumed the committee chairs would not agree to a private meeting with the regents, and that “if I were a member of a committee in which the chair had a private meeting with a member of the Board of Regents and had reached understandings and agreements without my participation, I would be uneasy. As a faculty member, I am uneasy that Keffeler is co-opting the heart of the Senate tenure revision process; I thought our [April 18 Faculty Senate] resolution made it clear that the Senate committees were to do their work without undue external influence.” She warned that if the committees became tainted, governance was in deep trouble. She urged that faculty trust the chairs and said they needed to see Keffeler’s

letter. Berscheid also opined that Keffeler would not accept the Faculty Senate's recommendations in the spring and would propose drastic changes in the fall. Berscheid was quite prescient.

Berscheid contended that the debate needed to end in the summer. She related that a colleague had told her an institution in the east was getting a lot of applications from Minnesota, and said "if they don't cut it off and they let Keffeler continue her rampage, I'm folding my tent as the University won't recover from too much more of this and it will be a waste of time to try to stop the bleeding."

Carol Wells reported the next day that she had been invited, at the Faculty Affairs meeting the previous day, to join a meeting with Keffeler and faculty. Keffeler was "using" a faculty member to set up these meetings, but that individual "backed away."

Craig Swan also responded (to the Gang of 19) to Campbell's message to the Gang of 19 about the regents' meeting. He had spoken with Fogelman earlier; Fogelman had said he did not feel he had had much choice about responding to a request from a regent to meet. When he discovered the memo from Keffeler, Fogelman "was extremely upset and angry" and responded by saying the memo "completely misrepresented the purpose of the meeting." It appeared that Keffeler's memo was emailed to Fogelman and Feeney, with copies to many others, and Fogelman had responded to the same copy list -- but that in fact Keffeler had not sent the copies. An hour later, Swan emailed to the Gang of 19 the Feeney-Fogelman response to Keffeler as well as Fogelman's own message to her.

Wells then wrote to the Gang of 19 on Saturday the 11th, following a morning meeting of the Judicial Committee, where everyone present (including Dempsey and Morrison) was informed about the letters between Keffeler and Feeney/Fogelman, and all were "aware of Keffeler's attempt to subvert the tenure review process." Fogelman was going to write to the chair, Reagan, to inform him of the events. The Judicial Committee also amended and approved tenure changes, but did not get to the more controversial ones (post-tenure review, programmatic change and faculty reassignment). She said that Morrison had told the Judicial Committee that the revisions would make it difficult to eliminate departments and colleges, because doing so would be inconsistent with the code. She also reported that those present agreed that FCC should do something in response to Keffeler's actions.

Wells later commented that "due to the unrealistically short timetable set by the Regents, the Judicial Committee was forced to meet on a Saturday (an unheard of occurrence). However, everyone felt that the work was vitally important for the future of the University, and the turn-out was excellent. I recall that one Judicial Committee member even missed the Minnesota fishing opener to attend this meeting -- a great sacrifice for many Minnesotans. Later that summer, after we learned that the Regents had hired their own H&H [Hogan & Hartson] attorney to draft their version of the

tenure code, it was clear the Regents simply ignored the tenure code amendments that the faculty had carefully drafted (word by word, meeting after meeting) in the spring.”

Fogelman recalled his reaction to the schedule that had been set as a result of the April 18 Senate meeting, and which was of concern to FCC. “For us, for Dan and Mary and myself, one critical thing was whether this could be done in six weeks. A lot of the faculty said it couldn’t be done; others said it shouldn’t be done. We were put in a hell of a spot: revise the tenure code in six weeks. It took years to write the other one.”

“But I felt, personally, that if we didn’t do it, we’d have ourselves to blame for what the consequence would be. The Board would say ‘they had their chance, they didn’t take it, so what are they complaining about now?’ I felt, no matter what the outcome, we shouldn’t be in that position. It was a heck of a process, I must say, and it’s not the way it should have been done.”

“It was right to say, you shouldn’t really be asked to do this in this period of time. But with that Board, they would take that as an abdication of responsibility by the faculty, and that would give them, as they would see it, authorization to do what they did anyway. They essentially disregarded what we did. But we had done it, we had done it according to the procedures, the way we were supposed to. I think that was very important for the public positions afterwards that everybody could take and defend.”

Roberta Humphreys emailed to FCC chair Carl Adams to ask that the exchanges between Keffeler and Feeney/Fogelman be on the FCC agenda on May 16. Humphreys wrote that “much of the concern is focused on her public statements at the Board of Regents meeting about the understandings that had been reached,” and said it would be harmful for the credibility of the committees to be questioned, and that FCC should write to Regent Reagan to object.

As noted earlier, Regents’ Professor Ellen Berscheid and Professor D. Fennell Evans were to play an interesting role in future events. In what may have been the first public linking of their names, Berscheid and Evans co-authored an editorial on May 12. “**Killing tenure would be foolish. Regent’s plans sure to further damage U**” (Star-Tribune). They argued that the regents’ attempt to change tenure would damage the University and the state’s economy. They reported that faculty have resigned or are seeking other positions and a brain drain is occurring, because the regents view the faculty as a liability. They noted the argument that institutional costs are in personnel, but recited statistics showing faculty salaries were only a small portion of the University budget; they pointed out the amount of research funds faculty raise. They noted the slip in the University’s ranking by the National Research Council from 16th to 21st between 1985 and 1995, and the irony that while the faculties at Berkeley and Wisconsin were supporting the Minnesota faculty, they were also raiding

Minnesota.

Berscheid and Evans wrote that “in the name of economizing, Keffeler and the regents’ personnel sub-committee have lit a match to the already flammable faculty tinderbox” and warned that the regents were engaging in an experiment to learn if the state’s economy could continue to do well in the absence of a major university. They said the regents were “inflicting another crippling blow to a once great university in its long and losing struggle against mediocrity and national oblivion.” They appealed to the alumni, legislators, and regents “who have not formed an opinion” to think about the role of the faculty as the revenue-engine of the University.

Evans later commented that “I really view that editorial we wrote as one of the seminal events, because that was our declaration of war on the Board of Regents.” He and Berscheid reflected on their thinking, beginning with this editorial. “The whole misadventure is the following. If you take each of the events that subsequently happened, and ask what their prior probability was, the chances of many of those things happening the way they did was so small that there seemingly was no way we ever could have ended up, from where we started, in the position we ended up in.” “Except,” Berscheid said, “if you knew how to play billiards. Fennell had told Jim Infante that we were going to go after the regents. Infante just didn’t believe it. He was completely cowed by them; he thought they were invulnerable.”

Evans recalled that he had told Infante “what I thought we ought to do is go after each one of them individually, and tear them apart.” Berscheid said Infante recoiled at the idea; Evans said that Infante responded “‘don’t even think that!’ I said, ‘Jim, I just thought it!’” This all occurred, Berscheid said “when we were writing our op-ed piece. We were very careful about that, too, because we wanted to start tagging Keffeler. We were going to go after them one by one. The first one was Keffeler, to tag her with what was going on. There was no inaccuracy in viewing her as the ringleader. But we mistakenly thought the other Board members were just her passive dupes; it turns out that they were far more involved than we thought.”

Keffeler responded to Berscheid and Evans in a May 18 Star-Tribune opinion piece. She wrote that the tenure code is the most important governance document at University but out of the mainstream and possibly inadequate to protect academic freedom. She held that because the code and the faculty are so important the Board has an obligation to review tenure. She said faculty do not understand the financial constraints on University and that the decline in rankings argues for institutional renewal, not a rigid tenure code. Tenure is not the problem but it must be addressed along with other problems.

Rabinowitz and Walsh emailed to the faculty on May 15 to lament the continued

consideration of one proposal. “It is disturbing that even after the victory of the University Senate in bringing the tenure discussion back into our governing system, instituting a new post tenure review remains actively on the agenda. President Hasselmo’s recent e-mail to the entire faculty gives post tenure review as one of his goals.” They noted the annual reviews of all faculty, and said it was “post tenure review in all but name.” They questioned why change was needed, and maintained that “a full-dress post tenure review in a new form raises disturbing questions. What precisely is the difference between the establishing of a new -- and possibly adversarial -- post tenure review and the effective disestablishing of tenure? The abuses that call for a new process have never to our knowledge been documented. Where is the ‘deadwood’ whose cases are not being handled properly? Why cannot the present tenure code deal with cases of derelict faculty? It seems to be a common notion that post tenure review should take the place of mandatory retirement. However, many faculty only delay retirement for financial reasons. There is no reason why the University cannot deal with this in other and more creative ways than through a new post tenure review process.”

They wrote that “reengineering the University also remains on the table. It is clear that a more business-corporation style in the health sciences will be followed by similar management for us all. Post tenure review will then inevitably become the mechanism for getting rid of any unpopular faculty with less than stellar performance ratings. Administrators will not easily give up restructuring the university to suit themselves. And once we give them a tool they can use to keep us in line, why expect them not to use it? We fear that the present talk of a new form of post tenure review will lead to new rules and an open field for administrative abuse. We encourage you to contact faculty senators and the members of the faculty committees with your views.”

One of the members of Faculty Affairs, after receiving the email from Rabinowitz and Walsh about post-tenure review, asked Feeney if there should be a response. She pointed out that what was being considered was not what they were thinking. “Perhaps it is enough that the actual proposal will become public within a short period of time, but I wondered whether some additional comment from you or Mary would be helpful at this stage.”

Feeney thought not. “I think that a reply to his e-mail rhetoric would merely add credibility to it. In addition, to keep our process ‘clean,’ I don’t want to risk saying anything about items that have not been readied for and distributed to the Senators. I think people are looking for a reason to fault our process again. In the name of getting this process over with and into the hands of the Senators, I prefer to remain quiet unless he addresses me directly. In this situation, I believe less said is best.”

FCC met on May 16, prior to the Senate meeting, and took up the Keffeler/Feeney/Fogelman

exchanges, as Humphreys had requested. They were joined by Fogelman (Feeney was an FCC member because of his position as chair of Faculty Affairs), who noted the statement that Regent Keffeler had made about “understandings” that had been reached. He related the discussion and the ensuing exchanges of messages, and said the events “undermined the tenure review process.” He said this was a matter of concern to FCC, the Senate, and the regents, because “she is making . . . unilateral statements about understandings that were not reached.” He said her letter “jeopardizes the integrity of the committees.” Both Feeney and Fogelman told FCC that they had been clear with Keffeler that they would not talk about tenure issues, but the campus newsletter Brief reported that they had done precisely that, after which, Fogelman said, “he had been dismayed to receive email messages from all over the campus inquiring what he had done.” Fogelman distributed a resolution that he asked FCC to consider adopting. FCC concluded that Feeney and Fogelman had acted properly, and debated the resolution. FCC adopted this statement:

The [FCC] commends efforts to improve informal communication between the faculty and the Board of Regents. The [FCC] very much regrets that Regent Keffeler gave a public report to the Faculty, Staff, and Student Affairs Committee of the Board of Regents, and distributed a letter, BOTH summarizing part of the discussion that had been held at an informal luncheon she had initiated to “improve communication and dispel mistrust.” These give the appearance of an attempt at unwarranted interference in the prescribed process for tenure review. The [FCC] feels that the chairs of its committees acted appropriately, and it joins with the committees of the Senate in reaffirming that the faculty governance system will continue its deliberations and makes no commitment on the outcome until the process is completed by the Faculty Senate.

Adams agreed to report the resolution to the Faculty Senate later in the day.

The letters from Feeney and Fogelman in response to the Keffeler memo, and the FCC statement about the events, had ramifications. During this very time (and discussed at the FCC meeting of May 16), Professor Virginia Gray, on behalf of FCC and following up on the earlier suggestion by Bloomfield for “kitchen table” conversations, invited regents to participate in informal discussions about the broader context of tenure generally, but not about specific tenure code revisions, at her home. FCC subsequently learned -- within a few days -- that the regents would decline to attend any informal discussions at Gray’s home. They were told that Regent Spence took offense at the reaction to Keffeler’s memo following the lunch with Feeney and Fogelman and as a consequence did not wish to participate in such meetings.

The information that FCC had about Regent Spence’s reaction appeared to be accurate. On May 23, Spence prepared a memo to her Board colleagues about the talks proposed by Gray. She noted that she had “been very involved in the tenure issue. We have made good faith attempts to have positive, constructive discussions with the faculty” and the lunch with Feeney and Fogelman

“seemed very congenial and productive.” Afterwards, however, Keffeler “has received a memo from Professor Fogelman requesting that he ‘conduct University business with her only in public meetings, not in informal meetings or through personal phone calls.’” She noted Morrison’s letter of May 17 and its comment that “ad hoc arrangements are viewed with particular suspicion in many quarters.” Spence then reported receipt of the FCC resolution of May 16. She concluded by writing “because of these communications, I believe that it will be most beneficial to the faculty and Regents if we decline to attend the tenure ‘table talk’ sessions to which you have been invited.” She said she would not participate. (A much shorter memo of the same date simply said “in light of this [FCC] resolution and a number of recent communications from faculty involved in the tenure debate, I am writing to encourage you to respectfully decline to attend” the meetings Gray was setting up).

Gray wrote to Spence after FCC learned of the regents’ reaction. She said that “I understand you reservations and respect your decision.” She assured Spence that “the faculty reaction to the lunch itself [with Feeney, Fogelman, and Keffeler] was positive. . . . [Fogelman] told me that he very much enjoyed the lunch and thought it worthwhile. The problem arose only with the issuance of a memo and public discussion afterwards.”

Gray tried to explain to Spence why the faculty had reacted as they did. “When the Faculty Senate voted on April 18 to change the process by which the tenure debate was being conducted in the governance system, it was also expressing grave concern that the discussion process was being ‘tainted’ or affected by too much involvement of the administration and even members of the Board. . . . The concern of the Faculty Senate -- whether correct or not seems to depend on one’s vantage point -- was that the faculty leadership was too involved with the administration and external groups, and the April 18 vote represented a rebuke to some of those leaders. To now have it appear that the chairs of the Judicial and Faculty Affairs committees were having a private lunch with two members of the Board for the purpose of reaching agreements on tenure code amendments was explosive.”

“No matter how innocent” the intent, Gray told Spence, Feeney and Fogelman “were aware that it might appear to the faculty that their definitive vote on April 18 was being ignored and their leaders were off making deals behind the backs” of the committees. The two had no choice but to appear before FCC and make it clear they were not doing so. She noted that before Fogelman had a chance to appear before FCC, “he was bombarded by email messages asking him, in unfriendly terms, what he had done.”

Gray closed by saying the discussions she proposed were not about proposed tenure code changes but rather “to provide a broader conceptual and historic understanding of tenure and academic freedom.” She expressed the hope that she and Spence could work together cooperatively

and productively in the future.

Despite Gray's letter, the other regents followed Spence's lead so the proposed meetings were cancelled. Gray wrote to the Board at the end of May to outline what she had explained to Regent Spence and said FCC still believed that the discussions would be useful. She said that "there has been, and remains, too much misunderstanding and miscommunication between the faculty and the regents" and the conversations could "help to allay concerns on both sides." She concluded that "in the present atmosphere, however, the process of reviewing the tenure code may have become so politicized and fractious that the time is not propitious for such conversations." She expressed the hope they could be rescheduled. They never were.

The Daily picked up on these events, although somewhat after the fact. It reported on May 24 that FCC had wanted informal discussions with the regents. The next day, it carried a longer article on the contretemps over the Feeney/Fogelman/Keffeler/Spence lunch.

"Faculty deny disclosure of informal talk" (Minnesota Daily, May 25). The article reported on the May 16 resolution adopted by FCC concerning the Keffeler-Feeney/Fogelman lunch and memos. "The epicenter of the controversy was Keffeler's report at the May regents' meeting, where she presented information based on her meeting with faculty leaders." Keffeler said it was an attempt to improve communication, and that her letter had been a draft. The article related the events (accurately), and quoted Feeney: "The letter and Keffeler's report made it look like faculty committee leaders were acting in tandem with a couple of regents to enact changes to the code. . . . 'All of a sudden, something that we thought was unofficial became official.' . . . and the already-tense relations between faculty leaders and administration regarding the tenure code grew more strained." Regent Spence was quoted as saying all present at the lunch knew they did not represent their respective groups, and that Keffeler "was asked to draw up a summary of the meeting and send it to all present for review." Spence maintained that Keffeler had to provide a report to the regents, and that report was "harmless." "Keffeler said she tried to set up a teleconference through the regents' office to clear up the misunderstanding, but that Fogelman did not wish to meet." Fogelman declined to talk to the reporter, but Keffeler said "I respect the decision that professor Fogelman made, but for my part, I am more than willing to talk about this matter in whatever venue the faculty feels is appropriate. . . . I am respectful of the process set up to give due consideration for how changes are made."

In later discussion at the FCC meeting of the 16th, Carolyn Williams (not an FCC member) was given the opportunity to comment on an entry in the May 2 FCC minutes concerning CSC Index. Williams provided copies of articles from Business Week, the Boston Globe, and others, refuting the

points that Provost Cerra had made about the unethical behavior of Index and describing Index as having “below-average ratings of overall competency and project management performance.” Williams asked FCC to review the articles to help understand the discontent with Index. Adams said that Cerra should be given a chance to respond as well.

Williams later recalled her irritation at the reaction she received. “I had gone to the FCC meeting, and I took some of the descriptions of the unethical practices of Index. Rather than Carl wanting to investigate it or listening to a faculty member -- and by this time there was ample information coming from AHC faculty that things were not good -- the FCC minutes reflected that he was concerned about giving Cerra a chance to respond. Rather than hearing and acting on what the faculty member reported.”

In early May, the three Senate committees had been meeting to discuss tenure code amendments. Much of the process was superintended by Fred Morrison, and seven amendments were prepared for the Faculty Senate meeting of May 16. Dempsey distributed them all to Faculty Senators in advance of the meeting.

The Faculty Senate met for an hour and a half on May 16 and took up the amendments that had been approved by the three committees. No action was taken, but Senators asked questions and sought clarification on the various proposals. Carl Adams read the FCC resolution on the Feeney/Fogelman incident. The Senate also approved, without debate, a resolution thanking the faculty at the University of California at Berkeley for its support.

The day of the Senate meeting there was an article in the Daily entitled “FCC called ladder to top.” It noted that two FCC members had taken administrative positions this year, and reported that “some faculty members feel the FCC works too closely with the administration, and some committee members see the FCC as a stepping stone to administration.” Gray agreed that the administration is drawn from “a kind of leadership pool . . . [and] the administration needs proof that a person can think on a broader level, and faculty government exposes a lot of University issues and problems.” Walsh “expressed his distrust in FCC members who move on to administration”; he said faculty who do so are not helping the University, they see it as the only way to get a salary increase, and that “the FCC doesn’t seem to know what the faculty is thinking anymore. ‘The FCC is out of touch and not sympathetic to the faculty.’” The article concluded that “problems with faculty trust continue to plague the FCC.”

Later Walsh said that he “felt that the problem was broader than it seemed at first. There is a whole new career path out there, with bigger salaries and a whole new arena. It is in this area of academic manager and pundit. Even failed university presidents can go on to these new careers.

There is just a lot of money and a network supporting them. When I came here, an academic vice president earned about as much as a really successful researcher. Now he or she earns about 1.5 times what that researcher gets. These salary increments are all over, and faculty governance has become a route into this. These people are looking to their own community, and it is not ours. The situation is really bad, and I don't know if we can change it."

Where, Gray later asked, should administrators come from, if not the faculty? The alternatives were worse, she said.

The day after the Senate meeting there were two press articles about the debate going on at Minnesota, one local and one national.

"Re-engineering a crucial goal for U" (Minnesota Daily, May 17, editorial by Vice Provost Leo Furcht of the AHC). Furcht wrote to rebut the editorial by Wells on April 18; he said her statements were "so misinformed one can only wonder if the conclusions reached by Wells represent a self-serving, politically motivated 'spin'" and reflects the faculty approach to "kill the messenger" or "kill the process." Change was essential, he wrote, but many faculty and some administrators refused to recognize it. There must be rigor in evaluating the performance of units, he said, and he described the re-engineering process, in which many faculty participated. They built a large database, conducted many interviews, and conducted a comprehensive approach to find out what they were doing right and wrong. All the documents were edited by faculty, so they were not "Index" documents. The process was "faculty-driven," he maintained, and "many faculty feel fundamental changes in the tenure code are necessary." They must address the "issue of lifetime, full-salary guarantee for tenured faculty" or there will be undesirable consequences. Furcht also wrote that the quote attributed to him by Wells was not correct. He contended that some legislators wanted change in tenure and that re-engineering must continue, and that the faculty who participated "deserve to be recognized for initiating a process" that is the "most comprehensive and aggressive" of any in the U.S. He also said the process was fully described and "faculty-determined" and that some, like Wells, refused to apply scholarly standards to the re-engineering effort.

"A Parlous Time for Tenure: Minnesota professors are furious over plans they say would erode job security" (Chronicle of Higher Education, May 17). The same day as the Furcht editorial, the Chronicle had a front-page picture of Keffeler with the headline "Fears about Tenure at Minnesota" and a long article. It reported that the University "has struggled through weeks of acrimonious debate," that "some professors have accused the administration of using 'hired guns' . . . to railroad the faculty," that "trust has dissolved to a point where many professors simply don't believe the administration's assurances that tenure will be protected." It said faculty opposition

would not make the issue go away and that the regents, who started the review, were supported by legislators who wanted to see layoffs, particularly in the AHC. Administrators were “nervous” about damage to the University’s reputation, and the article reported resolutions from Rutgers and Berkeley supporting the faculty. Hasselmo said tenure must be protected, but it must be credible. Debates about tenure are occurring in many places, but “things have become especially rough” at Minnesota. At a March forum, faculty demanded specific language, and when provided items, critics said most came from the administration. “It didn’t help that the language of the 13 items was drawn up by a group of law professors and lawyers, now known as the ‘Gang of Four.’” The Faculty Senate vote on April 18 was noted, and apropos dissolution of the Tenure Working Group, “critics say it was dominated by administration allies.” Walsh and Carl Adams are cited as disagreeing about how the process had evolved; Feeney is quoted as saying that the 13 proposals were “worst case,” and that “the tactical error was to let the senate look at the worst-case scenario. . . . People went ballistic.” The debate was “muddied by financial troubles” of the AHC and decline in Medical School clinical income, and many of the tenure proposals were to deal with its problems. Re-engineering complicated the process more because faculty were “troubled” by bringing in corporate consultants and Brody “poisoned the waters” by public comments that the AHC troubles were caused by tenure. The article quoted Morrison about why faculty were concerned, and reported that one issue still being discussed was unit-based tenure, because it appealed to some regents. Hasselmo opposed it but Brody favored it. The reporter found that “faculty anger has also been focused on Jean B. Keffeler,” who said she does not want to abolish tenure but wanted “open discussion and academic freedom” but has not heard it. Keffeler said the regents would take up unit-based tenure if the faculty didn’t. She said tenure is only one part of increasing institutional flexibility, and criticized the “sacrosanct” nature of tenure when the University is “invested in the pursuit of ideas.”

Walsh recounted that “I was interviewed by the Chronicle reporter. I started by saying that people told me that the Chronicle is the house organ of university administrators and the bureaucrats and what did she think of that view? She was very insulted and vehemently denied any such thing. Yet when I read the article, it seemed to me that my colleagues had been right.”

In mid-May the chair of the Twin Cities Campus Council of Deans sent a memo to the regents and senior administrators transmitting a 10-point position statement on tenure. They affirmed that tenure was “essential to the character and integrity of the University” and that changes must protect academic freedom and the “integrity of the University” as a source of “uncoerced” information while allowing for removal of non-performing or unethical faculty, that tenure “is a protection for society,” that there needs to be an analysis of the implications of changes (including

competitiveness, productivity, and morale), that consideration should be given to tenure at less than the institutional level, that there should be processes for review of tenured faculty (with emphasis on development and career growth), that tenure standards could vary across campuses and college, that any tenure system requires “constructive participation by faculty, individually and collectively” to work, and the deans should be involved in the debate.

May 21: A memo was sent to Hasselmo from the chair of the Executive Committee of the University Faculty Senate, City University of New York, transmitting a resolution with whereas clauses, then protesting “efforts by the Regents and Administration . . . to undermine tenure by moving decision making to administration and bureaucracy” and urging that the University leadership “abandon an ideological position which threatens rational thought and the pursuit of knowledge.”

Hasselmo responded to this and similar letters by saying that reports on the debate had “generated both informed and misinformed debate. . . . The fact is that the University of Minnesota is not abolishing tenure,” and he emphasized that the University would “have iron-clad protection of academic freedom. This point must be underscored: tenure and academic freedom will always be a protected and prized value” at the University, and that the regents and administration have said so frequently. He said the process of review was in the hands of the faculty (emphasis in original).

On May 23, Regents’ chair Reagan wrote to FCC chair Adams outlining the presidential search process. The search advisory committee would have 3 faculty, out of 11 members; Reagan asked for nomination of 9 faculty, of whom the regents would pick 3.

Walsh and Rabinowitz of UFA circulated a resolution being proposed at the Senate meeting concerning the presidential search. They said the matter was “extremely serious: the choice of the next university president is being politicized.” This proposed process provoked the Gang of 19 to move a resolution of protest at the May 30 University Senate⁷⁷ meeting; the faculty felt strongly that their role in the search was being slighted and minimized, and that the small number of faculty would reflect poorly on the University as it sought a new president. The students felt similarly; the resolution, adopted unanimously, asked the regents to reconsider the composition of the presidential search advisory committee, and to increase the number of faculty and students on it.

Fennell Evans recalled that “at 7:00 in the morning, before the Senate meeting, I decided we needed a resolution on the presidential search. Judy Garrard wrote it, Roberta called everybody and got the signatures lined up, I forget who handled the emailing, and we slapped it on the floor at 2:00

⁷⁷The University Senate consists of both students and faculty. The Faculty Senate, as its name suggests, is comprised only of faculty, and constitutes the faculty subset of the University Senate. All references in this book (whether to the “Senate” or the “Faculty Senate”) are to the Faculty Senate, unless otherwise noted. The tenure issues came before the Faculty Senate, not the University Senate.

in the afternoon. It was an astounding turnaround. Whenever something had to be done, we just did it.”

A week later the Pioneer Press carried a page-one article that referred to the search, entitled **“One perceived slight after another has some U faculty upset at regents.”** The sidebar on the article quoted Ellen Berscheid saying that the limited faculty role in the presidential search is the “toxic cherry on top of the poison sundae” of tenure revisions. The reporter wrote, “Insult after insult. That’s what many University of Minnesota professors believe they are receiving from their own Board of Regents.” The regents “challenged tenure” and may wish more changes than the Faculty Senate approved, they decided to hire consultants rather than talk with the faculty about the changes, and assigned only a small role to the faculty in the presidential search (when in the past the search committees consisted of at least half faculty). One faculty member said the regents were seeking to make the University more like a corporation.

Morrison wrote to Hasselmo on May 23, informing him that 11 motions and 2 interpretations of the tenure code would be sent to the Senate, and that they “should meet all of the goals you articulated in your speech to the Senate on April 18.” Morrison tied each of the amendments to a specific goal the President had enunciated.

FCC met on May 23, joined by Provost Cerra. Much of the discussion with Cerra was about the operation of the AHC, not tenure, but Humphreys raised questions about CSC Index. Cerra promised FCC that it would be gone in about a month, although he said he might continue to use them for specific areas of expertise, and spoke about a partnership between the administration and faculty to deal with questions of education and research. Cerra said changes in tenure were only one part of what the AHC needed, and that it would be essential to obtain changes recognizing the clinical appointments. He assured FCC that while there were some things he would like to see, he could work with anything the Faculty Senate adopted. He also disavowed the secrecy surrounding the CSC Index documents, and said he would withhold no information.

May 23 was a long day for some. After a 3-hour FCC meeting (including discussions with two of the three provosts and the President, mostly about items unrelated to tenure) and then a Faculty Affairs meeting, Feeney emailed Dempsey and Morrison the next day to say that “I hope you both had a ‘tonic’ when you got home last night. However, as aggravating and stressful as this seems, I keep thinking it could be much worse. At least, I think most of the people are trying to think rationally.” Feeney inquired about the need to learn the views of the AHC provost about the proposed tenure amendments. “I’m concerned that a question that will be asked is whether or not the Health Sciences Provost could live with what we have or an interpretation of it. From my standpoint

(lacking political expertise), I would like to know if he can support it. . . . I'd like to be able to tell the Senators, if asked, that Provost Cerra is content with the changes and their interpretation.”

FCC met again before the May 30 Senate meeting and elected Virginia Gray as chair for 1996-97, Victor Bloomfield as vice chair. It also identified nine faculty members, from whom the regents would select three to serve on the presidential search committee. It voted 6-3, after considerable debate, that none of the nine would be from FCC.

The Faculty Senate met on the 30th and approved the seven proposals amending the tenure code that it had seen on the 16th. In addition, it considered four new proposals that had been approved by all three committees: annual reviews of faculty and special reviews when performance is “substantially below the goals and expectations adopted by the faculty of the department” and provision for a reduction in pay (which engendered prolonged discussion); “outreach” was explicitly added to the criteria for obtaining tenure, a preamble was added to explain the necessity of tenure, and definitions were added (the last three engendered little debate).

Also on May 30, Reagan wrote to the other regents informing them that a Star-Tribune reporter was writing a story about the Faculty Senate actions and that he -- Reagan -- had been contacted. He had declined comment and urged other Board members to do the same. He said that “to the degree that each of you has an individual viewpoint about specific aspects of the tenure reform agenda, I encourage you to discuss those concerns. For good reason, Regents Keffeler and Spence have been on-the-record with some of their thoughts regarding tenure reform and have done a fine job of managing this issue on behalf of the Board.” The June regents’ meeting would include a session with Chait; “he will help us in our analysis of the faculty proposals.” Reagan said that “we need to make thoughtful public statements about this issue. Chait will be very helpful. He will present his analysis on the changes proposed by the faculty. He is willing to discuss other reforms not brought forth by the faculty.” Finally, “once the proposals have been presented for review and discussion, it is very important that we go on-the-record as to our point of view about the overall needs of the University regarding tenure changes.”

The day after the Senate meeting, the Star-Tribune carried an article entitled “**‘U’ faculty committees revise tenure proposal to allow some pay cuts.**” The article reported on the proposal to allow a reduction in pay if there is a finding of substandard performance. It said the administration “would have a limited role in determining who is substantially below par,” with the decision resting primarily in the department. This would not respond to the need to reshape the institution or deal with shrinking resources, but Representative Kelso was quoted as saying “it measures up to the intent of the law” (the contingent AHC appropriation) if base salaries can be cut, and she recommended the

regents accept the changes.

Also the day after the Senate meeting, Fred Morrison wrote to a colleague who had emailed with concerns about post-tenure review. “In crafting a post-tenure review plan, we have tried to keep two factors in mind. (1) Serious reviews must be true peer reviews, not reviews by managers. (2) We should not waste a great deal of time conducting reviews of people who are obviously performing at an adequate level. (Frankly, I am quite afraid that, if we decide to do a comprehensive review of everyone every 5 or 7 years, we will end up spending an enormous amount of time obtaining ‘blind reviews’ of people who are clearly performing at or above standard. We would waste a lot of productive time in unproductive reviews.)”

“In short, we decided to use serious peer reviews only in ‘problem cases.’ The issue then was how to identify the “problem cases.” (We are all familiar with ‘problem cases’ in our own departments or nearby -- faculty members who were once full of promise, whose performance has simply collapsed, but who refuse to draw the consequences -- even after several years of zero pay increases.) We thought that the annual merit reviews would be the best solution for identifying those ‘problem cases.’ (Other people suggested low teaching evaluations or absence of scholarly production, but the merit review is one of the few instances in which we try to pull all of the factors together.) There was fear that the annual merit review is conducted by department heads, so that there might be some malice or individual prejudice involved in identifying someone for special review. Hence we put a procedural check in place: in order to serve as a trigger mechanism, the annual review would have to be undertaken both by the department head and by an elected peer review committee. We put a second procedural check in place: the bad annual review would have to happen twice. We then put a third procedural check in place: after the two bad annual reviews by the department head and the two bad annual reviews by the elected faculty merit review committee, the dean must independently review the case to see if special review is needed. Only then does the special review start to take place. This is a real peer review, different from the annual review.”

“The Tenure Committee believes that this is a good solution to a problem that, unfortunately, sometimes occurs. They would like to have Senate action on this item next week -- to get it off of our table. We believe that the Regents may be satisfied with this solution. If so, we could have the whole tenure controversy behind us and resume normal relationships. The controversy has been very damaging to the University as a whole.”

Morrison proved prescient -- even with Senate action. “If we do not act, we run the risk that the Regents will present us with their draft of a solution to this issue, give us a short time to comment, and then adopt their own proposal. That would almost certainly be less favorable to faculty interests

than what is proposed here. I want to urge you and your colleagues to reconsider whether you really want to ask for a postponement, because that may do great damage to us all.”

At the end of May, Keffeler wrote to General Counsel Mark Rotenberg and asked for his help “in locating for my review helpful tenure code language in effect at comparable major universities.” She requested in particular provisions: with respect to protection of academic freedom; “that effectively meet the need for changing institutional priorities, and programmatic elimination or reductions”; for clear post-tenure review standards; and for “establishing a fair, expeditious process governing discipline, termination for cause, and adjustment of grievances.”

At the end of May and first part of June, 1996, the University community was confronted anew with the controversy over re-engineering in the AHC. There were three articles and an op-ed piece that dealt with the subject.

“CSC Index brings strong medicine to health center” (Minnesota Daily, May 30). The eight-page article, first of two, reviewed the reasons for hiring Index, noted that it had been paid \$2.6 million, described re-engineering, and cited faculty concerns about its appropriateness to the academic culture. Brody “said faculty criticism of Index is a smoke screen for ignoring problems the University is facing”; he cited AHC problems. The article examined why Index was hired (Brody knew of it from serving on the Board of MIT). The AHC paid \$300,000 per month to Index, and \$2.6 million during 1996. Spence said regents’ support for re-engineering is strong; the Governor also supports it.

“Concern, rumors mark change process” (Minnesota Daily, May 31). The second article about re-engineering said many did not understand it and that “the process has been secretive or fear it is imposing a corporate structure.” The process is seen to have been more open since Cerra became provost. The article described the process as it had taken place thus far, and the reasons for re-engineering. There is worry that a restructured AHC will have more administrative expenses in a move to a three-part organization, with faculty in focus groups for research. There is also concern about the provost having to approve research for each group. Faculty object to information about restructuring being confidential, and perceived excessive use of the term “customer.”

“Tenure issue remains flashpoint at U of M” (Kiosk, June issue, page 1 [the faculty-staff newspaper; the author of the article regularly attended FCC meetings]). The article began by noting it had highlighted tenure the previous October and predicted it would be an important issue for the year. “Little did we know. Since then the tenure issue has exploded, along with a faculty uprising against the CSC Index consulting group in the [AHC], a group many faculty say has poisoned the tenure review process throughout the University.” It noted the replacement of Brody with Cerra and the

Faculty Senate vote to disband the Tenure Working Group; on the latter, Dempsey said the three committees would have taken over the process anyway, and “it’s just unfortunate that the process generated so much fear and anxiety and lashing out at people.” Fogelman said the faculty were “not obstructionist” and were willing to make reforms.

“More and more this spring, it became apparent how much anger was directed toward Brody and one small group of consultants,” the article reported, and cited the small number who attended the tenure forums -- until the one with AHC faculty.

“Largely because of disagreements about handling of the tenure issue, the [FCC] was more divided this year than at any other time in recent memory,” and two FCC members were among the Gang of 19 who authored the April 18 Senate resolution. “The FCC decided not to fight that motion, but it may have been seen as a repudiation of the leadership of FCC chair Carl Adams and to some extent of working group chair John Adams. At the May 10 regents’ meeting, Carl Adams defended his integrity and was applauded both by regents and audience members.” The article also reported that “unlike in other years, FCC meetings have begun to attract audiences. When the FCC met with four regents on April 25, faculty members in the room applauded physics professor Russ Hobbie’s comment that one severe problem was the role of CSC Index and ‘one of the best things you could do would be to terminate the relationship.’” The AHC faculty warmly welcomed Cerra as provost, but told him that CSC Index must go. The faculty objected to the threat to academic freedom posed by the reorganization and the proposed significant increase in the number of administrators in the AHC.

“University leaders blindly embracing ‘re-engineering.’” (*Pioneer Press*, June 6, guest column by Professor Carolyn Williams, School of Public Health and Gang of 19 member). Williams wrote that re-engineering was on the wane in corporations, but “found a home” at the AHC, brought by Brody “and his multi-million-dollar consultants” with regents’ approval. She described two “courses” and assignments for re-engineering, and quoted books on re-engineering. She cited Champy describing it as “radical experimentalism” and as saying that “we become nervous if we observe no resistance, because that suggests the change being undertaken is incremental at most. Machiavelli . . . recognized this truth in the 15th Century,” and that “the message must be sent out loud and clear there is no choice.” Williams noted that re-engineering advocates admit a 70% failure rate. The required speed and totality of re-engineering explain the “puzzling and disturbing” University events. Williams said that no one had verified CSC Index’s analyses or reviewed the value of spending \$2.59 million on them. She concluded that “it is chilling to read books about Champy’s re-engineering and then go to meetings on campus where faculty, students and staff are instructed to ‘walk the talk’ of re-engineering.”

Provost Cerra responded a month later.

“U of M health center must change to survive” (Pioneer Press, July 11, a guest column by Frank Cerra). Cerra wrote that Carolyn Williams’s column on June 6 “may have given readers the impression that Machiavelli and his amoral consultants have taken over” the AHC, but the reality is different. Cerra explained that changes were needed because of changes in health care delivery, and that in seeking to be the leading health care center “from Chicago to Seattle and beyond,” they were proposing changes that were neither “radical nor experimental.” Cerra said the process was open to faculty and that their participation was essential. He said changes would be implemented with full consultation, and that it was “not controlled by dark outside forces.”

On June 1, Marvin Marshak, chair of the Physics department, was appointed Acting Senior Vice President for Academic Affairs, for one year, following the resignation of E. F. Infante. This appointment was itself not without controversy. As noted earlier, Marshak had also been a finalist for the provost position to which W. Phillips Shively had been appointed in the spring of 1995; Marshak had strongly endorsed Shively’s appointment, after Hasselmo nominated him. Now, it was reported, Hasselmo wanted to nominate Associate Vice President Kvavik to the Senior Vice President position, but the faculty opposed him, in favor of Marshak.

Ellen Berscheid recalled that “Kvavik was perceived to be closely associated with Jim Infante and unfriendly to the faculty on tenure and other issues. . . . The faculty actively lobbied against his appointment, passing a resolution in the University Senate that said the University was “arguably engaged in the most important debate about its structure and future” in its modern history, that “it is of the utmost importance that those who are represented by this Senate have the highest level of confidence in the leadership, knowledge and experience of the interim Senior Vice President for Academic Affairs,” and that the “appointment provides the opportunity to strengthen and re-invigorate the partnership between the faculty, administration and Board of Regents.” The resolution called upon Hasselmo to appoint someone who, among other things, “is highly respected by faculty, students and staff.” Berscheid commented that “this resolution was interpreted by the President, correctly, as a vote of ‘no confidence’ in Kvavik as Academic vice president.”

Humphreys did not specifically recall discussion of Kvavik, but remembered that “there was strong consensus that this acting VP should come from the faculty.” She also thought that the University Senate resolution was prompted “by fear that there were ‘outside the U’ candidates.”

* * *

THE ROLE OF SENIOR VICE PRESIDENT E. F. (JIM) INFANTE

As one of the senior officers of the University, Infante was certainly involved in the events surrounding the tenure debate. But few faculty knew what role he played. Morrison said he did not have a clear idea, and added that "I think that's the way Jim wanted it. It's interesting to me that you say Jim wrote the November 20th letter. I think Jim did a lot of other things that Jim didn't sign or leave fingerprints on."

Gray had a more specific complaint. "I think Jim's failures exacerbated the situation. Jean Keffeler continually complained about the lack of analysis and studies. As far as I can tell, she was absolutely right. When we got over to the House [of Representatives], in February, when this had all started the previous May, even Nils said to me 'I'm embarrassed that we don't have any studies.' That's what Infante's office was supposed to produce. He had several people working for him; why they couldn't produce the analyses, I have no idea."

"We didn't actually have any data until Marshak got in, and Marvin spent a week on the phone and produced some data that the Board believed. But this failure meant that Jean [Keffeler] had this opening; she could continually distrust anything the administration gave her because they were so slow and it wasn't very good when they gave it to her. That set up the situation where it looked like a great idea to go hire a consultant, which is probably what she wanted to do all along. It was hard for a rational, reasonable person to say 'no, we don't need a consultant,' when the administration couldn't produce any information. If Jim had done his job in a timely way, we might have been able to head off the consultant business, which was the chief thing that went wrong in the later part of the process."

"It would have been interesting to see what difference it would have made if Jim had been in the office the second year, rather than Marvin, because I think Marvin was a very important, positive influence. I don't know that I would vilify Jim, but he didn't produce when we needed him to produce."

John Adams also couldn't exactly identify Infante's role. "It's a little hard to say. I felt that most of what he did with respect to me and the Tenure Working Group activity was to be an intermediary, carrying messages from Jean to us. Then, as soon as he had carried the message to us, he would put on his faculty hat and talk with us about the best way to deal with what had to be dealt with. He was like Nils in the sense that he truly believed that he was in the middle. A representative of the faculty and a representative of the administration, of the Board, to the faculty, and felt that was his job, to do both of those things. He would say things like 'Jean thinks X, Y, and Z. What should we do about that?' Then we'd talk about it, and try to

figure out how to provide a shield, while at the same time addressing issues that” were legitimate.

One faculty member commented along the same lines about Infante. “You tell me he wrote the letter of November 20th. The November 20 letter certainly inflamed the situation.” There was a meeting at one point that included Bognanno, it was recalled, and Bognanno “argued that part of the problem was that the regents, and Jean Keffeler in particular, were angry about information the administration had been giving them about tenure, and that was Jim Infante’s responsibility. Don’t blame Nils; that was Jim Infante’s responsibility.” Keffeler maintained all along that the administration stonewalled on providing them information. Bognanno “said that was Jim Infante’s fault. As a faculty member, I’m saying ‘look, don’t you two fight. You two are the administration.’ If the President doesn’t believe the academic vice president is doing the job right, he should fire the person. I was just appalled at that.”

Few of those interviewed, however, felt Infante was a friend of the faculty. In the words of one, “I don’t think I ever heard anybody laud him. I never heard that perspective at all,” and as for the possibility that some thought he may have been an advocate for the faculty, “I never did.”

Ellen Berscheid and Fennell Evans had a more complex view of Infante’s role. Berscheid recalled that “I vilified Jim Infante during the tenure crisis, but now I feel I did him an injustice. He was doing, I now suspect, exactly what Nils Hasselmo wanted him to do, in pushing this business of weakening tenure. The November 20 letter, that Nils now says Jim wrote and he’s sorry he signed, had a hostile tone toward the faculty, and I think that either was Nils wanted or it was congruent enough with his own feelings that he didn’t perceive the hostility.”

Evans view was that Infante “was managing to keep a pretty low key. He didn’t have a lot of visibility. He was probably particularly careful about me, because about a year before that, he called me up on a Friday afternoon, because I had been at a meeting that [Health Sciences Vice President] Anderson had organized when all the Najarian stuff was breaking in the health sciences. Infante was going on about my concerns about the University’s behavior in this (Anderson had gone back and told Nils, and Nils told Jim to call me). Jim said ‘Nils heard you were distressed and were criticizing him.’ I said ‘that’s right, I was criticizing him. And by the way, since we’re on the topic, we sure would like some leadership from the academic vice president of this institution. There are a lot of us who have the feeling that you’re basically trying to keep a low profile, stay out of trouble, so that when Nils gets dumped, you’re going to be made acting president, and then president.’ Which is exactly what I think his plan was. So he was pretty careful about how he talked to me on that topic afterwards.”

Berscheid speculated that Infante quit “because he knew he was dead, he knew it was over for him.” She recalled again that in April “Keffeler told me she couldn’t understand why the faculty, and Fennell and I in particular, were, although not backing Nils, at least were not going after him. I told her ‘because we do not want Jim Infante in there as our president.’ And she said ‘is this what all this is about?’ I said ‘no, it isn’t what it’s all about, but he’s the obvious person for you to choose as an acting president, and we don’t want him.” Keffeler then said negative things about Infante, but, Berscheid said, “you couldn’t believe her. She said ‘oh, we would never choose him’ and she went on and on about how he had not been cooperative, was an organizational disaster, and this, that, and the other thing. But you could never trust her. That was her problem.”

Evans said that “I think the position Jim finally found himself in was that he had no support any place. My guess is that Nils backed away from him for expediency; he probably never had any support from the Board of Regents, and the faculty would have been out to get him with a hatchet. It was just a matter of time until that happened. Plus, that was the last of the retributions from the Shively search, too. When Nils put forward Shively, he put his presidency on the line. His three senior vice presidents did not back him. By that point [a year later], two of them were gone. It was clear that [Senior Vice President for Finance Robert] Erickson and [External Relations Vice President] Mel George and Infante were dead meat, if Bognanno had anything to do about it. So Nils managed to dump two of them pretty rapidly.” Berscheid shared the view that that was what had happened to the two. “I think Erickson knew it was all over after the Arts, Sciences, and Engineering got a provost to protect them. He was operating against Nils, and with Keffeler, to keep the heart of the University open and vulnerable so he and Keffeler could micro-manage it themselves. I suspect Jim was more passive -- hiding under a desk somewhere until the war was over.” In Evans’s words, “they joined the wrong conspiracy, and they lost, and the retribution was death.”

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On June 3, Dempsey sent by email to all faculty the additional amendments to the tenure code. She noted that the provision calling for peer review was revised considerably after the May 30 Faculty Senate meeting.

On the same day, Humphreys emailed to the Gang of 19 on the subject “the future of our informal group.” She cited approvingly comments from Purple and then wrote that “I strongly urge all of us to join the AAUP. We can form the basis for a revitalized AAUP on this campus. One that will be active across the campus, in the Senate and in faculty governance via the existing committee

structure strongly representing faulty interests and working to reclaim this university for its faculty and students. Our rump group can still exist in communication via email and our small group meetings. We can act as individuals, in small groups, and as an activist core of the AAUP keeping each other informed and stepping forward when necessary in a leadership role. We can attach any name to ourselves we want, but I think our public image should be through an existing organization like the AAUP.” Humphreys went on to ask that action be taken that day at their meeting, and predicted that if a “dramatically altered” tenure proposal were to come during the summer, faculty would sign collective bargaining cards, and that a “strong AAUP on this campus with the national backing would be our best hope for a collective bargaining agent that would be supported by the faculty.”

Four days later, action followed word; on behalf of and signed by the Gang of 19, Hamilton sent out an email to the faculty inviting them to join the AAUP. He reported that “some months ago a few of us [i.e., the Gang of 19] began to discuss these issues [tenure, re-engineering, academic freedom] and analyze the problems in some detail to see whether we could suggest rational approaches, not draconian measures, that would leave intact the academic vitality of the University.”

On June 5, the director of the Office of Planning and Analysis wrote to Hasselmo and Infante, reporting faculty attrition 1989-90 to 1994-95; over the six years, 902 faculty left (28%), 688 were hired.

Craig Swan reported to Dempsey, Feeney, and Morrison the day before the June 6 Senate meeting on discussion at an AAUP meeting about post-tenure review. “Among the people at the meeting today, there was no consensus. Some thought that post-tenure review was important in principle, some thought it unnecessary in principle. No one wanted to defend the particular process that is in the draft language. With regard to this last point, my sense is that no one has a sense of the range of alternatives or possibilities and so feels uncomfortable arguing that there is not a better way.” He noted “a sense of annoyance and frustration that talk of possible reductions in pay at this time is only adding to a sense of mean spiritedness” and that with respect to non-performance, “some say that there are few cases while at other times one hears of ‘the case’ in every department. No one knows. We need some more facts.” “You all have my sympathy,” he concluded.

Dempsey also wrote to colleagues the day before the Senate meeting, with draft letters of transmittal for the tenure documents. She said she had assured Bognanno that “everything was under control and arrangements for making beautiful overheads, etc., were underway.” She also reported receiving calls from colleagues who were worried “about passage of the post tenure review amendment on Thursday. Apparently Virginia Gray is concerned and also Ellen Berscheid. They are

wondering if we are prepared to discuss the fact that if we don't pass this -- the Regents will be free to act! I said I thought we were prepared -- but I don't know how well. We should all think about this."

On June 6 the Faculty Senate met for the seventh time during 1995-96, and took up the four tenure amendments it had discussed on May 30. As Dempsey had expected, the post-tenure peer review again generated prolonged debate, but the proposal passed (the vote was not recorded). The other three were adopted with little debate. The Senate also approved an additional amendment defining base salary. It then adopted a resolution: "Resolved, that in accordance with Section 19 of the *Regulations Concerning Faculty Tenure* [the formal title of the tenure code], the Faculty Senate recommends to the Board of Regents the adoption of these amendments to the *Regulations*" and appointed Dempsey, Feeney, Fogelman, and Morrison "as a committee to present the proposed amendments to the President and the Regents."

Following the meeting, Swan emailed Provost Cerra asking that he say publicly the amendments approved by the Faculty Senate were sufficient for him to make the changes necessary in the Medical School. This would allow the regents to tell the state it could release the contingent \$8.6 million. Cerra responded two days later and said he believed the changes were "important, significant, and in some places creative and innovative" and that he believed they met the legislature's conditions.

"U' faculty finishes proposal for tenure code revisions" (Star-Tribune, June 7). The Faculty Senate approved a proposal that included pay cuts for non-performance, but it "is expected to apply to only a tiny fraction of the faculty, and it could happen only under circumstances tightly controlled by the faculty." The regents must decide if that change is enough for "better management"; the changes came from "pressures from regents, legislators and the public, all of whom have questioned the exceptional job security" of tenure. The regents "have been guarded about how much revision they want," which has led faculty to be concerned. An effort to remove the pay cut provision failed in the Faculty Senate 28-74. The initiative for tenure changes came from Brody; Cerra said the Senate changes were sufficient.

After the meeting, the Senate office formally transmitted the tenure amendments to the President, with the understanding that he would either forward them to the regents or return them to the Faculty Senate if he had objections. Dempsey also wrote a letter to Hasselmo, noting the enormous amount of work that had gone into the process, and said they represented "a major, and possibly historical [sic], contribution." She pointed out that there were no provisions for specific units, and that the changes not only met but exceeded the legislative requirements for release of funds

for the AHC.

Dempsey also sent Infante two “Interpretations” of the tenure code (that clarified faculty are free to choose research topics, and to discuss them in class, and that faculty have an obligation to carry out reasonable teaching assignments; the other clarified procedures to be used in reassigning faculty in the case of programmatic change). She asked that they be presented to the regents for action.

Following Senate action, Dan Feeney wrote to Hasselmo to say that the amendments should satisfy the conditions imposed by the legislature on the funds for the AHC. Moreover, “we believe that the extensive debate on the issues should give the Board of Regents the appropriate background for their upcoming deliberations” and he expressed “hope all our administrative colleagues can support the recommended changes.” Feeney also asked Hasselmo to be the “Official Administrative Representative with us when we have to present this to the full Board of Regents on 6/14/96. It is our hope that you and the rest of our current administration will find the revisions sufficiently satisfactory to recommend that the Board of Regents accept them as submitted.” The changes, he wrote, “should improve the recruitment and retention environment in our institution, if this exercise can be completed and put behind us as soon as possible. We understand the publicity surrounding tenure issues and the potential effects on the biennial budget request and the upcoming search for your successor. Therefore, your support for the revisions and your support for the Board to rapidly accept them will facilitate a number of processes including the faculty getting back to regular business.” Feeney thanked Hasselmo for his support, and observed that “at times, it was uncomfortable for all of us. We hope there will be renewed support for the concept of tenure.”

A word from the outcast was heard in early June. On June 10, a faculty member in Math wrote to several colleagues to inquire about the AAUP. He recognized “the merits of the reasons that were given in favor of joining the AAUP, it immediately occurred to me that the local chapter has not been very visible during the debate about the Tenure Code amendments that have recently been discussed. . . . A casual observer might even form the impression that the local chapter has been mostly sitting on the sidelines.” What did the AAUP chapter do, he asked?

John Adams wrote a reply. “During the months while I was chairing the Working Group on Tenure, the members of the AAUP were exceptionally active and visible in monitoring the discussions, raising probing and highly informed questions about the history of academic tenure in colleges and universities in the US, recalling the history of the tenure code at Minnesota, reminding the University community of the history of threats to academic freedom on our campuses, and generally providing wise counsel and steady vigilance on behalf of us all as the areas of tenure code

interpretation and of revision were defined and proposals for modification brought forward, debated, and eventually approved by the Faculty Senate. The fact that many of the most constructive and penetrating voices in the debate over e-mail and on the senate floor were not identified as AAUP members should not detract from the credit that we all owe to these members' participation. Without the energetic leadership of colleagues like Craig Swan, Bob Morris, Bruce Overmier, Rick Purple, David Hamilton, and others the course of this difficult episode might have taken a different and much less satisfactory course. The Minnesota AAUP group is small at present, but it has performed admirably on behalf of us all, and deserves our thanks and our support."

On June 10, Bognanno reported to Hasselmo on Swan's views of a meeting that Bognanno, Marshak, and Swan had had, presumably about changes in the Faculty Senate proposal being sought by the administration. Swan urged "that everyone adopt the George Aiken strategy -- declare victory and get out. Dragging things out by introducing new issues is a recipe for disaster. The most important thing I learned today was that the union group is only 300 cards short. We are playing with matches on a tender dry hillside." Swan said that "most people in the meeting I was in did not see major issues in the clarifications, although we were told that Fred Morrison was not so sanguine. Whatever happens, I would urge that the president not compromise the leadership of these committees by saying they had agreed to X or Y." He urged that interpretations be adopted, and hoped the regents would approve the Senate proposal. "Now is the time to come together on what has been accomplished and move on."

Feeney wrote to Hasselmo the next day. "Much to my dismay, Professor Morrison informed me that there were a number of 'concerns' expressed by the Executive Council about the recent tenure revision proposals from the Faculty Senate. As I'm sure you are aware, this comes at us in a blindsided manner. Apparently, what we thought was administrative accord with the proposed changes is not the case. Having just gone through a stressful series of sessions with the Faculty Senate wherein we tried to meet the administratively-proposed deadlines, I don't think you will find us a receptive audience for 'wordsmithing' or changes that run counter to what the faculty have supported. Also, we tried to address the issues as they were proposed in correspondence from last Fall and based on ongoing conversations with representatives of and members of the Administration. We did what we could within the time allowed. Considering the issues and the depth of feeling about things like post tenure review, clinical/term appointments, and base salaries, I thought we were lucky to get the degree of faculty agreement we got on the proposals."

"If substantive changes are requested, this potentially creates the very problem that we were told should be avoided. Decisions about or changes in the Tenure Code (or its interpretations) during

the summer is an invitation to a loss of faculty governance credibility with our faculty. That suffered enough this year as did trust in the Administration because of various occurrences in the media and the legislature. There were suspicions all along that summer deliberations may be the case with the Regents because of the timelines (e.g. Senate decisions in June, Regents consideration during the summer). Frankly, I thought we had an acceptable package that the administration could support. To avoid compromise of my integrity with the faculty, I will not support substantive changes in the formal wording or in the interpretations until this can be discussed with and approved by the appropriate faculty governance groups. Many of our active faculty are on 9 month appointments. Therefore, decisions that are supposed to be representative of the faculty cannot be made without their participation. That can only occur during the regular academic year which just ended. I don't think you will find the current group of faculty (Dempsey, Fogelman, Morrison, Feeney) involved with moving the tenure revisions through the proposed processes willing to make Summer shortcuts. We have been entrusted by the faculty to handle this process in a predictable manner. The currently involved group were handed this process under less than favorable circumstances by the Faculty Senate in an April resolution."

"You are no doubt aware that delays imposed on moving this to the Regents will complicate all hopes that the tenure issues would be behind us (assuming the Board of Regents finds them acceptable). We were told that it is in the best interest of the institution to have this process completed before the in-depth biennial budget discussions and the upcoming Presidential search got underway. As a member of the faculty group who were given the responsibility of moving this through the faculty governance structures, we took the timeliness of the issues seriously! Arguments to that effect were used repeatedly to keep the process moving through the faculty governance processes. Considering the diversity of the faculty opinions about the need for Tenure Code revisions, I thought we were remarkably lucky in making the June 6th deadline! To have that go down because there is not strong administrative support for the changes will probably set the process back months, if not years!"

"My sense of the current faculty mindset is that, if this tenure revision process fails or deviates from the expected course, collective bargaining may solve many of the problems that a consultative faculty governance system could not solve. This will drastically change the face of the University of Minnesota."

Feeney also suggested that any presentation to the regents in June would be pointless if the administration did not support the proposed language. "If the administrative requests for revision are sufficiently substantive, I maintain that we abort the 6/14/96 presentation to the Regents. . . . There is

no point taking the proposal to the Regents without an appropriate Administrative commitment to the changes. Doing so has the potential of embarrassing all involved. This institution doesn't need any more of that either in front of the public or before the Board of Regents."

Feeney told him that "I had a suspicion that no response to the request to President Hasselmo for support of the proposed changes at the upcoming Regents' meeting was not good news. I also suspected that the hastily-called meeting by Acting Vice President Marshak was not likely to be for a celebration. From the information I have so far, apparently my suspicions were correct. I had hoped the administrative concerns would have surfaced long before we got to this point, particularly in light of the time pressure imposed by both the administration and the Board of Regents."

Hasselmo emailed back to Feeney the same day and said the presentation was on schedule and that he was "grateful to you and your colleagues for the fine work you have done." He said the administration's concerns were "well within the scope of interpretations" [thus not requiring Senate or regental action], and asked Feeney to "help settle the situation down!"

On June 11, a woman walked into the President's Office and fired a pistol into the ceiling. Some believed this had a psychological effect on events.

Later the same day, the President wrote to the regents about the tenure code amendments. He told them that the Executive Council (the senior officers) met on June 7, 10, and 11 to discuss the amendments, and that he and they were "pleased the faculty has provided such thoughtful consideration to reforms needed in the Code" and said they demonstrated the willingness of faculty to lead on tenure changes. He told the regents the changes met the criteria outlined in his April 18 and April 22 memos, and that the faculty, he, and the Executive Council "are in full agreement on the policies underlying these changes." He argued that tenure should remain at the institutional level and there should be no layoffs unless there was a financial emergency (a provision that had been in the tenure code for some time), and said these views were supported unanimously by the Executive Council. He also affirmed unanimous Council support for the procedural changes the faculty recommended, and said that the changes would satisfy the legislature's requirements. He said that Senior Vice President Infante would send the text of the changes, along with his -- Hasselmo's -- proposed modifications (changes in the Interpretations of the code, which required Tenure Subcommittee approval but not that of the Faculty Senate.

This memo got to the newspaper. "**All top 'U' administrators oppose layoffs of tenured professors**" (*Star-Tribune*, June 13). The article reported that the "entire top administration" opposed layoffs. Hasselmo said this at the April 18 Faculty Senate meeting; this "threw the weight of the Executive Council" behind the stance. This meant that "the board, if it wants layoff authority, will

have to fight both the administration and the faculty, which rejected the idea months ago.” The article reported that two regents favor layoffs but others did not respond to inquiries. Regent Kim said “we got treated unfairly by the faculty on this issue”; Regent Spence said she wanted layoff authority when reassignment was not possible. The “labor” regent, Peterson, spoke in favor of the same rules for everyone (i.e., since union employees can be laid off, so should faculty).

These comments provoked Walsh to comment that “it is still mystifying to me just how few people point out that by and large our regents do not have any idea what a university is about. They are for the most part completely unqualified for the job. Any business with such a board would dump them or fail at its mission. Yet we still have most of our board members.”

The Committee of the Whole of the regents met on June 14, with Regent Reagan presiding, and took up tenure. According to the minutes, Reagan “extended appreciation and gratitude to the faculty leadership for their dedication and loyalty to the academy throughout” the tenure review process. He said “the review is not complete” and assured the faculty that the Board “wants to ensure that academic freedom remains and is a cornerstone of the University.” Dempsey, Feeney, Fogelman, and Morrison (the Senate-appointed committee) presented the changes: a definition of categories of faculty appointment in which tenure may be granted and categories where fixed duration contracts are appropriate, such as for faculty doing primarily clinical work; the development of new procedures for review of faculty performance after tenure is granted; the inclusion of outreach as one of the criteria for awarding tenure; and permission for colleges to elect a probationary period longer than the present six-year limit, but no more than nine years. The two Interpretations were also presented.

Fogelman spoke to two questions. First, “if the changes enabled the University to make the programmatic and organizational changes that will be required in an era of shrinking resources.” He said they would, and cited a number of examples of major organizational change under the current code. Second was whether unit-based tenure would weaken the University; Fogelman said it would, because “1) it will reduce the University’s flexibility for making changes; 2) it will not be attractive to prospective faculty; and 3) the trend toward unionization of the faculty will proceed.” Fogelman also pointed out that not one research university faculty in the top thirty is unionized, but warned the Board that if they did not act, or chose to consider more drastic changes to the code, there would likely be a faculty union. (It was reported that the union advocates at this time had 700 of the approximately 1000 signed authorizations it needed to invoke state labor laws to have a union election.)⁷⁸

⁷⁸One of the leading union advocates later recalled that they had perhaps 500-550 cards by early summer, perhaps about 400 from the arts and sciences core, and that there had been a misunderstanding that anyone

Hasselmo also spoke at length in favor of regental approval of the amendments, reiterating the points in his June 11 memo. He said the changes were “thoughtful, responsible, and responsive” to the request for review, promoted University excellence and provided a clear, eloquent statement on the value of tenure.

The regents asked a number of questions, and they adjourned the meeting without taking action, putting off further consideration of tenure to July. Campbell recalled that “the June Board meeting was the love fest. The regents said all the nice things. Jean wasn’t there. We went away thinking ‘it’s taken care of.’ But they didn’t take any action.”

Dempsey later recalled that the members of the Tenure Subcommittee, following the April 18 Faculty Senate meeting, “just thought we’d do our job,” but that they “absolutely” felt rushed. “And of course, Faculty Affairs dropped their whole agenda to work with us. We tried to do it with Faculty Affairs almost simultaneously. Most Tenure Subcommittee members were also members of Faculty Affairs. We did feel rushed, but we thought we were doing a great job. I can still remember, the time the Senate passed everything, feeling so elated. I couldn’t believe it! And then we had to meet with Mike Bognanno, and he was so worried about what the High Tech Council was going to say, and it was such a let-down. Then we worked hard to prepare it for presentation it to the regents, and they essentially ignored it.”

As had become the norm, the tenure discussion at the regents’ meeting was covered by the papers. In “**The changing track of tenure**” (Pioneer Press, June 15), it was reported that Chait told the regents that tenure “is the abortion issue of higher education” but that the faculty made enough revisions to get the “preliminary approval of the regents, the administration and the rest of the faculty.” The only ones not happy were the legislature, the Governor, and Jean Keffeler (who was absent from the meeting the day before). Reagan was said to be “pleased that the faculty seems to have toned down its strident rhetoric” and said he wished to avoid getting into a debate with faculty, and that the regents would “get this done and behind us in the next three or four months.” Chait said the proposed changes are ““down the center of the fairway,”” and that changing tenure would be competitively disadvantageous; it would be better to rely on attrition to shape the institution. He pointed out that few universities reshape through “program discontinuation.” Job security is what most people think of when they think of tenure, Chait said, but a university would have to pay higher

thought 1000 were needed. It was assumed by the state labor board that for the core, about 600 cards were needed; it turned out there were fewer than 1600 eligible voters in the core arts and sciences, so only 480 were needed. Eventually, the union advocates did receive about 1000 cards, after the regents released their tenure proposal in September.

salaries if it were to eliminate tenure.

The Daily headline read “**Regents: Tenure code needs further revision.**” The article reported that additional minor changes were needed before action by the Board in July. Representative Kelso was quoted as saying the changes would meet the legislature’s conditions, but that “it’s very questionable whether the proposal will give the regents more flexibility.” In a separate article in the same issue, “**Board’s decision may beget a faculty union,**” Fogelman is cited as telling the regents that if they make dramatic changes in tenure, the faculty may form a union. He told them that more than 700 faculty had already signed cards for a union, and about 300 more signatures were needed to invoke state labor laws to hold an election. A union ““would come if it were needed,” Fogelman said.” One of the Gang of 19, Hy Berman, said the positive reactions of the regents at the meeting could head off the issue. He cautioned that there were people ready to conduct a drive to get union cards signed.

There was continuing national interest in developments at Minnesota as indicated by the invitation to Craig Swan to address the national AAUP meeting in Washington, D.C. on June 7 about developments at Minnesota.

Mary Burgan of the AAUP circulated on June 12 to AAUP faculty at Minnesota a statement entitled “The Tenure Controversy: A Familiar Scenario.” It started by saying a tenure controversy “starts with a restless Board. One of the regents asks a seemingly casual set of questions about tenure” such as why is it necessary, why grant it when many Ph.D.s are willing to work without it, and so on. The president appoints a task force. This is “about governance as well as tenure,” and the Minnesota version had “one of the most effective national alerts ever”; email publicized the administrative proposals to make tenure changes and the ensuing faculty resistance. It was her sense that the institution would fragment unless faculty “can recapture faculty governance.” Faculty isolation in their disciplines permits a “managerial ideology that values coercive action rather than shared governance.” The Minnesota faculty pointed to re-engineering as an example. “The lock-step implementation of simplistic formulas by credulous academic managers threatens to become the dominant story line in American higher education,” and the AAUP must work to create a different scenario. This article subsequently appeared in the July-August issue of Academe, signed by Burgan.

In his 1995-96 annual report for the Committee on Faculty Affairs, Feeney summarized events from the point of view of his committee. He wrote that “after discussion among the administration and various members of the involved faculty, a so-called ‘worst case scenario’ tenure code was drafted by four attorneys. . . . When this was disclosed for faculty discussion and modification, there was extreme anger and anxiety” which led to the April 18 Faculty Senate vote.

“While in the opinions of the Chair of Faculty Affairs and the Chair of the Tenure Subcommittee, this was not necessary and things had not gotten out of hand, the Senate resolution forced [tenure] to be come an exclusive activity for Faculty Affairs and its Tenure Subcommittee.” “The strong hope that there would be an approved tenure code and general agreement among the administration, the faculty, and the Board of Regents regarding the tenure issue by mid-summer were dashed by the action of the Board of Regents. The 1996-97 academic year is approached with trepidation because of the tenure issue and the concern that faculty are perceived as the problem rather than an appropriate route through which to arrive at the solution. The Faculty Affairs Committee will continue its service and vigilance, but with concern that the seeming disengagement between the Board of Regents and the faculty governance system is a serious hindrance to progress.”

Chapter Seven

The Calm Before the Storm: The Pace Slowed in the Summer

Following the June regents' meeting, there was considerable back and forth, both between the faculty and administration as well as in the press.

Fred Morrison offered this observation on events to come. "You need to make some mention of the rather meager salary distribution at that time. I think that coupled with low salaries, a seeming unwillingness to address that issue, and the history of 2 or 3 times with zero increases, the climate had grown ripe for resistance, especially since the Regents seemed to want to use any revenues for 'new programs,' not to address existing problems." John Adams, without knowing Morrison's view, wrote⁷⁹ that "not getting raises in 2 of 4 years preceding the beginning of 'the troubles' set the stage for expecting further trouble later on, and magnified the sense that there would be layoffs."

Feeney wrote to his Faculty Affairs committee and the Tenure Subcommittee on June 17 about discussions that had been occurring. He explained that "there has been a development with some 'interpretations' of things by administration that were passed by the Faculty Senate on 5/30 and 6/6/96. There was some hope that the Board of Regents might pass everything during their July Meeting. That may be dreaming!!!" He transmitted a message from Fred Morrison about the options, and said that "Mary Dempsey and I have taken the hard line that nothing will be accepted that has not gone back through the committees . . . even though these are 'interpretations' of the language, not formal language changes. . . . I'm hesitant to recommend an interpretation rendered during the summer because the Senate might see it as an 'end-run' which would be bad for the whole idea of Senate Committee credibility. However, on the other hand, it would be best for all if we could get this issue closed before the fall (complete with its biennial budget planning and the initiation of a Presidential search)." Feeney said a meeting would be necessary.

There were three interpretations under consideration (one affirmed the freedom of faculty to choose research and outreach topics but the obligation to accept teaching assignments, with a proviso for challenging them; one created the expectation that normally salary increases would be added to the base; and one provided that the Judicial Committee would appoint a legal officer acceptable to it and to the president).

Morrison wrote that with respect to the first two proposals, "the Tenure Subcommittee could pass both of those, if you get a showing of 'general consensus' that you do so. By 'general

⁷⁹In a note to the author.

consensus,' I mean the following: (a) a letter from Campbell/Murthy, etc., encouraging the Subcommittee to act; (b) possibly an e-mail to all faculty senators (or possibly to all faculty) indicating that minor changes have been suggested and that the Subcommittee would welcome any comments from faculty before making its final judgment.” With respect to the third interpretation the administration wanted, Morrison said it “gives me much more trouble, precisely because we told people that this was what it did NOT mean. (I personally have no problem with the language, but major actors in the Judicial Committee and elsewhere do have trouble. I would be willing to fight this issue -- on the side of the proposed change -- in public, but I am not willing to let it slip by and then to be charged with concealing an action.)” Morrison suggested various alternatives. Feeney added that “I believe Professor Gray is going to call a meeting of Mary Dempsey, Fred Morrison, Ed Fogelman, and me to discuss this situation. Potentially, there may be some administrative involvement. The best case scenario would be some negotiated language that says the same thing we said initially. I would be in favor of trying to see if that can work, but we’ll need to convene [the committees]. Nothing like a little added stress considering vacations, Senate credibility and the Regents’ meeting in early July.”

One Faculty Affairs committee member chimed in on the problems of negotiation about the “interpretations.” He urged “the Tenure Committee to adopt them, possibly with some rewording acceptable to the Judicial Committee. My reason is purely strategic. I believe that a cooperative stance with respect to central administration is our best shot at getting the Regents to accept the new Tenure code without substantial changes. I see the issue of unit-based tenure looming on the horizon, and I would hope to have Hasselmo strongly on our side.”

Within a few days, Fogelman proposed language for the Judicial Committee; Feeney said it appeared to be acceptable and that he would find out if that was so. As a way to deal with the issues during the summer break, Feeney finally emailed to his colleagues outlining the specific changes being proposed and asked them for a vote on whether to accept them. “The hope is that we can find a suitable language that will meet the concerns of the administration while not changing the intent of the Tenure Subcommittee, [Faculty Affairs] and Senate interpretations and intent that were approved in May/June of this year. . . . Approval by the Tenure Subcommittee is pending input from” Faculty Affairs and Judicial. . . . As near as we can determine, the Administration will accept what has been proposed if [the two committees] find no significant fault with it.”

Fred Morrison clarified for the Secretary to the Board of Regents how interpretations and amendments to the code are adopted. Amendments are to go from committees to the Faculty Senate, then to the regents for final action. Interpretations go from the Tenure Subcommittee to the Academic Affairs vice president (with a report to the Faculty Senate for information) and then to the regents for

action.

On June 20, Isenberg provided the regents with a summary of the June 14 discussion with Chait. The topics included the prevalence of tenure; “8 out of 10 faculty are in a college with a tenure system. The distinction in the system doesn’t occur in the draft of the policy rather in the execution of the policy.” Chait said “that the reason universities are ‘excellent’ have more to do with their wealth and longevity.” Chait also said that “better institutions are more selective about who they tenure” and that “Minnesota’s percentage of tenure and tenure-track faculty is much higher than the national average” (81-84% versus 60% nationally). The age of the Minnesota faculty was not a factor. Chait “added that the U of M has no provision for faculty layoff as a result of discontinuing programs. Faculty layoff provisions are rarely used, however, those policies are being used increasingly.”

Isenberg reported that Chait noted a number of pressures leading to reviews of tenure in higher education. The regents discussed with Chait the impact of increasing numbers of part-time and non-tenured faculty. Discussion touched on increasing the number of women and minorities in tenure positions. “Regent Spence stated that she has a desired outcome of increased quality in our institution. She sees our tenure code as an obstacle to the strategic reinvestment that needs to take place in order to achieve that outcome especially when there is no provision for layoffs in the present code or the proposed revisions.” Chait pointed to the turnover rate, changing units to establish “a new or sharper focus,” “different assignments for faculty,” and “change the governance structures (streamline) as most governance structures use considerable amounts of faculty time.”

Chait said that “there is often much public resistance to change” and that the regents should “focus on changes in outcomes rather than changes in policy” and then adjust the policy. He also acknowledged the issue of competitiveness, although “tenure codes alone do not account for competitive advantage or disadvantage,” and none of the proposed changes would make Minnesota uncompetitive. Chait said “the faculty and administration must be able to explain to the Board . . . that the post tenure review process has achieved the desired outcome. There must be an increased vigilance over quality of the faculty and the Board should demand data to substantiate all claims.”

Chait wrote to the regents’ office on June 24 to provide a “template to conduct an annual Tenure Policy Audit.” It would provide the University with “important data about the implementation and impact of tenure policies and practices” and should be provided to and “discussed by the Regents on a fixed, annual schedule.” The Board should receive “overall numbers” but arrange for review by campus or college; generally, however, the regents should “not be concerned with such disaggregated data unless staff determined that the numbers for a particular

location or unit were at significant variance” with the rest of the institution. Chait also suggested data collected to evaluate post-tenure review.

On June 27, Murthy wrote to Chait inviting him to meet with the Executive Committee of the Twin Cities AAUP. He noted that the President had endorsed the Faculty Senate recommendations and expressed hope that the regents would adopt them at their July meeting. Chait wrote back in early July to say he had no trip to Minneapolis planned, but when he did, he would try to meet with the AAUP. He never did.

Mary Burgan of the national AAUP wrote to Murthy on June 28 to say she was glad to hear the local chapter had been renewed and said the faculty had “gone a long way in meeting the present crisis, simply by banding together.” She said the AAUP would help “in every way we can” and invited faculty to attend the conference on shared governance and the corporate model in September. She said that “your experience at Minnesota will be cautionary for many other faculty.”

Virginia Gray circulated, in late June, to all who received FCC minutes an excerpt from an editorial by Elmer L. Andersen, the 87-year-old former governor and former chair of the Board of Regents, probably the most widely-respected and admired member of the Board, someone who was frequently held up by people as a model regent. Andersen wrote as follows. “You don’t just ‘manage’ a university, you nurture it. Management suggests authority, laws in government, orders in corporations, edicts in religion. A true university has a different tradition. . . . It is the fragile fabric that encases the love and transfer of learning. It operates by consensus, not fiat. It is an imperfect human institution but has worked remarkably well. Central to a great university is academic freedom, the right to pursue knowledge and express new perceptions however they may challenge the conventional wisdom. What would be insubordination in a corporation or heresy in a religion is freedom of inquiry and expression; the heart of a university. It requires intense devotion to the pursuit of new knowledge and courage to declare and defend it. It also takes public wisdom and understanding to permit it to exist. To enable some scholars to devote their undivided attention to their studies, research, and teaching, they are assured of their income which also relieves them of economic retribution for their ideas. In modern terms it is tenure, hard won and voted by one’s peers. It is not a license for lassitude, but freedom from insecurity to pursue one’s work with concentration. There can be abuses which a faculty is willing to correct, but no board of regents should seek to impose drastic changes. The faculty is a better arbiter than any board of regents in guiding university policy. . . . Tenure is an important part of the fabric that sponsors fine teaching, research, and the civil pursuit of new truth. Nils Hasselmo, president of the University of Minnesota, is an ideal example of the scholar, administrator.”

“Tenure brings stability to the whole university” (Star-Tribune, July 1, editorial by Donald Browne). Browne, a senior faculty member in Speech-Communication, tried to explain the value of tenure, especially the role it plays in teaching. He quoted a friendly businessman about the tenure debate as saying it sounds “as if inmates are running the asylum.” Browne maintained that the “essence of a university . . . collides with the currently fashionable model: the university as business.”

The President wrote to the regents on July 5 to inform them that the administration and faculty had reached agreement on the three interpretations that had been proposed by the administration “This means that the Faculty Senate, the faculty governance leadership, and the administration are now in full agreement concerning revisions to the tenure code.” He urged the Board to conclude the issue and to accept the recommendations.

Per protocol, Mary Dempsey wrote the same day to Senior Vice President Marvin Marshak (who had replaced E. F. Infante on July 1) to transmit the three interpretations that had been approved by the Tenure Subcommittee on July 3; she asked that the regents approve them at their meeting on July 11.

* * *

HOW DID EVENTS PROCEED AFTER THE FACULTY SENATE ACTION?

Getting to the point of faculty-administration agreement on the Faculty Senate proposal was not altogether easy. The failure of the Board to act in June disappointed and puzzled faculty, but for the most part they could not fathom the problems.

Bloomfield perhaps expressed the view held by many who were observing events. “All I have there is the same speculations that everybody else had. That the Board was severely in disarray, that we assume Keffeler led the charge initially and brought Reagan and Spence along with her, but she could never muster enough votes to carry the day. And neither could the other side. And Reagan ran things with such a heavy hand that people were afraid even to try. More than that, I really can’t say. It seems to me that eventually Keffeler bailed out and left Reagan out there hanging, which annoyed the hell out of him.”

Gray dismissed the early June events as routine. “Were there meetings? Sure. Marvin rode his bike over, we sat in Ed’s office, and we went through the code. They had three picky objections, and we worked out ways to solve those, and Ed said they would be fine with his committee, so it wasn’t a real big deal. It was taken care of in the normal way we do things.”

Feeney recalled some of the events in more detail, with more feeling. "It was the classical process. The letter from the chair of the Tenure Subcommittee conveying what was approved by the Faculty Senate. It was sent to the administration, and the administration put some kind of cover on it and forwarded it to the Board."

"Most of us had the expectation that we met the June 6 deadline, and the week after, or the [regents'] meeting in July, the regents should be able to act on what we thought was a rational code. Faculty handed them post-tenure review. It's a little cumbersome in process, but the process is cumbersome by design, because you don't want it to be easy for a malicious administrator to decide they're going to throw you out on your ear because you disagreed with them."

Feeney said "there was an administrative cabinet meeting after the June 6 Senate meeting. There were concerns expressed about some things. There was a list of things, fifteen long. By the time they got it distilled down, there were two or three things, and those were the things that were introduced with the tenure code as it had come forward. Hasselmo even read them at the regents' meeting."

"I think the administration was taking some things to the nth degree that were in the code. You can take any document and stretch it until it breaks. 'What if this; what if we have some ridiculous occurrence and there's a one in a hundred billion chance it will ever occur. We want that base covered.' That's the kind of stuff that went on."

"Were there some hard feelings over it? Yes, there were a number of us that were very disgusted. I wrote a letter to Nils; it basically said 'this process was hard-fought, we damn near lost the battle a couple of times, don't screw with it. There is nothing in here that is anti-administration or anything else. You've had plenty of administrative input and opportunities for administrative input. Don't do a Monday morning end-run. This process could go up in flames if the administration starts getting in the way.' I was still sensitized by the provisions that were in the November letter. [In my view,] it was 'wait a minute, pal, there's a lot of heat out there, and this whole institution could be in serious trouble if this thing doesn't move forward.'"

Asked how the issues were resolved, Feeney said that "most of the stuff was withdrawn, or we said it was just housekeeping. There were three brief paragraphs brought before Mary, Virginia, Fred, Dan Farber, me, Nils, Mike. My recollection about how that was resolved was [that we said] 'fine, we can't possibly get this back to the Senate. [But] it's not totally irrational. Put it in there as sort of an administrative addendum, and when the code gets looked at later, we can adjust it with Senate discussion and approval. But don't block this damn thing going to the regents now because of a couple of nit-picky things.'"

“There was some suspicion. That was about the time that Marvin took over. I had a very vigorous discussion with Marvin; I may have addressed my letter to Marvin. Marvin called me back, and I kind of went for his throat on the phone. I said ‘we can’t have this kind of end-run crap happening. If we do, then the whole process goes down. There are a lot of things out there, including the political influence of the Board of Regents, of people like Becky Kelso, the legislative sentiment. Why can’t this thing go forward, what looks like a faculty and administratively-supported document?’ As it was, it finally came out that way, and the fire was put out. But it was a problem. I think it was a bigger problem than most people thought.”

Morrison, who was also involved, had recollections parallel to Feeney. “I got this call from a very frantic Mike [Bognanno], that they wanted just a few little changes, about most of the important things, because they didn’t think it could get by [the regents]. There was a meeting, which Marvin and Mike went to, and then there were a lot of subsequent little meetings where we argued about little words. We finally put together the interpretations, that went in at the end of June.”

The decision was to call them “interpretations” of the code, Morrison said. “Which didn’t require a Senate meeting; they required approval by the Tenure Subcommittee. We got together a bare quorum of the Tenure Subcommittee, which swallowed hard and approved them.”

Asked if they were significant, Morrison said “no. By the time we got them talked around there, they were not significant. The ones that Mike wanted were significant. I said ‘no way’ and it was back and forth.” There were a series of meetings and flurried discussions “after the June board meeting. We had a couple of explosions, ‘no, we’re not going to do this.’”

It was these meetings, and attempts to iron out the faculty-administrative disagreements, that explain why the Board took no action in June. “The President didn’t send it [the Faculty Senate proposal] because somebody had told the President that this was unacceptable; there had to be this and this and this. I believe it was [University General Counsel] Rotenberg, because many of the things being tinkered with were Rotenberg’s pet projects. There are a number of issues that have arisen, in the course of this whole thing, that circle around issues that were known only to Rotenberg, to Jim Infante, and to me. One of those other people thought they were so important, they were going to hold up the thing and see if they could slip them through.⁸⁰ Which one sayeth affiant not. It

⁸⁰Morrison maintained that “one of [them] was this stupid issue about whether the legal advisor to the Judicial Committee will be an employee of the General Counsel. That is an issue that is of significance to no one except the General Counsel.”

may have been somebody else.”

Dempsey said the process “was a little heated. Nils met with his Executive Council; they had certain changes they wanted. I remember being at a meeting at the Radisson, when someone called and said you have to come to meet with Marvin Marshak and Mike Bognanno because they want some items changed right away. I remember going over to the Physics building with Fred. We strongly discouraged them from any major changes. The administration finally came with a few watered-down items that we put through as interpretations. Then the administration supported the whole faculty proposal.”

Murthy knew of some of this work behind the scenes. He also commented that “there was a lot of effort made by central administration, through key faculty leaders, not just AAUP, to have the Senate leaders who made the presentations at the July meeting go easy. Go easy in the sense of not being aggressively hostile toward the regents. I believe Bognanno played a major role in that.” The faculty were to keep it toned down. “Once again, the attitude was ‘let’s solve this by discussion and debate.’ That’s why, when they complimented the faculty, I thought ‘it’s a cinch. It is done!’”

Murthy said that “at some point the Academic Affairs office gave Keffeler the retirement data; it was that 17% of the faculty are going to retire in five years and you’ve got ample flexibility. Then the AAUP survey said 20%, the same figure. I think this small group of regents [thought] ‘by God, they knew what was going to happen’ and knew what was best for the University.”

Williams agreed. “I think there was an agenda by this small group of regents, and it really did not matter what the data showed about flexibility. They had decided the tenure code was bad and that they need to change it, they needed something dramatic. I agree with the group that says this was confirmed with the Morris proposal.”

Although these proposals from the Faculty Senate subsequently became the critical reference point for the faculty and administration, Murthy pointed out that even when they were adopted, they did not command unanimous faculty support. “While the Faculty Senate proposals were being presented to the regents, there was, even then, a significant fraction of faculty, largely UFA people, who didn’t like those proposals. In fact, the UFA’s distrust of the Senate was because of the proposals we took to the regents and [which were] warmly acclaimed by the regents in July. They saw it as a sell-out, a cop-out. Lots of people thought even that was dangerous. But I said, since it did come from the Senate and was voted on by the Senate, most faculty would be OK with it.” Williams said that “I actually voted against them. I didn’t think this was a good idea.”

One faculty member said, apropos these exchanges to get

administrative support for the Faculty Senate proposals, that “I had always felt that neither one of them, Bognanno and Marshak, understood the tenure code. Lots of things they would say, or would think was OK, would indicate they just weren’t with it.”

In the words of one faculty member, these events were a “fiasco sort of equivalent to spelling theater with an ‘er’ or an ‘re,’ where the administration wanted some changes that seemed as much symbolic as anything else.”

Some of the faculty leadership met with the President to discuss next steps. Humphreys recalled it. “The Faculty Senate had met, the President had promised to support the Faculty Senate’s tenure revisions. We had an informal meeting with him, Mike [Bognanno] was there, Marvin [Marshak] was there, members of FCC, and the Gang of 19. It was the President asking for unified support from the Gang of 19 and FCC in getting the Senate’s recommendations past the regents. There was a lot of other venting at the meeting as well. I think one of the things many people tried to do was make the President understand how the faculty had felt. Not just this past year, but the previous few years, with all the attacks on the faculty that seemed to be coming out of his administration. I think he kind of got that message at that meeting.”

Humphreys and Campbell reconstructed their understanding of some of the events that took place after the Faculty Senate acted in June, what Campbell described as “this circus in Morrill Hall.”⁸¹ Inasmuch as the story was told jointly, it shall be presented here that way.

Campbell said “the debate was within the Executive Council. As a result, there were items that the President felt had to be changed, and he had to get them through the faculty” before they could be presented to the regents.

The changes were what became the interpretations. Campbell echoed Morrison in recalling that “the one about the Judicial officer was one that was particularly contentious. There evidently was a very strong debate in the Executive Council. It may be that it was just Phil [Shively] and Marvin and Mike who were more concerned about the possible faculty reaction to changes that some were insisting on. Marvin and Mike took on (or were assigned) the responsibility of getting these changes through the faculty. There were several meetings, one of which was a meeting of Marvin with three or four of us from the Gang of 19 people, including Rama.”

As noted earlier, it was Morrison’s view that that the process was to get them to the point where the changes sought by the administration were considered to be “interpretations,” rather than anything that had to go back to the Faculty Senate;

⁸¹As noted earlier, Morrill Hall is where the central administrative officers of the University are housed.

the goal was to reduce them to as minor things as possible. Campbell agreed. "That appeared to be the objective of the faculty involved, and probably some of the people on the Executive Council. The one I remember best, the Judicial hearing officer, was clearly a hang-up with the Executive Council. I had the impression, all through this, that there were certain administrators who had their direct connection with the regents, and some of this was connected to what the regents wanted. Or they had influence on the regents, or vice-versa."

"Marvin was trying to negotiate carefully worded language, with feedback, talking to the different faculty groups. I suppose the most spectacular thing we learned in this process was that when Mike and Marvin were both out of Morrill Hall, there was a great deal of danger that things would go forward, because they weren't there to help to dissuade the President."

"It happened. While Mike and Marvin were going around talking to these faculty groups, Nils signed off on and dispatched from Morrill Hall the changes to the regents."

Humphreys said "more than that, I understand that the letter said he did not support what the Faculty Senate did. The story as I understood it [was] that there had been an Executive Council meeting at which Mike, Marvin, and Phil had managed to convince the President to stand by the faculty, with these interpretations. Then the three of them fanned out to different groups, to be sure they could count on FCC, the committee chairs, and the Gang of 19, to back that position."

Campbell continued. "These interpretations had changed; the wording was not completely acceptable to the faculty. Marvin, Mike, and Phil were trying to find out what was the best they could get through, and then come back to the President."

Then, according to Humphreys, "in the meantime -- we don't know who -- a few people in Morrill Hall got back to Nils, convinced him of whatever their position was -- "

" -- and he sent it off by Federal Express to the Board," Campbell finished. "Mike and Marvin went to the Federal Express office and extracted these, so they didn't actually go. It was that close."

Humphreys said "they had found the tickets; Fed Ex had come and picked up the stuff in individual envelopes. They had to fish the ticket out of the wastebasket. [Marshak] drove down as fast he could to the Federal Express office and stopped [the letters] in the nick of time."

Marshak also recalled the Fed Ex incident. "Mike Bognanno and I met with faculty representatives in 435 Physics. While we were gone, Mark Rotenberg convinced Nils to sign a letter to the Regents. I don't remember exactly what the letter said, but Mike and I thought the letter was not helpful in light of the discussions that we were having with the faculty. Of course, Mark Rotenberg was not part of these discussions and some of

this may have just been a communications mix-up. Anyway, when we found out that the letters had been dropped off at Fed Ex we were concerned and Mike managed to get someone from the President's Office to retrieve the letters by presenting the sender's copies of the air bills at the Fed Ex office."

This happened before the June regents' meeting.

According to Humphreys, "it happened around the time of the shooting in the President's office. Then Mike and Marvin went to work on the President again, and got him convinced: "this is very dangerous, the place will erupt if you do this, the place will explode if you don't support the faculty at this stage," and finally convinced him." Humphreys remembered being told that "there was a meeting the next morning -- it was going on when the shots were fired -- and they adjourned their meeting and went over to [another office in another building] and continued."

Hasselmo had to be dragged away from his office, because he was concerned about the staff. But the senior officers got him out of the building.

Humphreys said that one of her colleagues "told me he thought it was that incident that turned the President around, because after that he stood his ground behind the faculty. I think it psychologically must have affected Nils; up until that time, he was still wavering, whether he was supporting the faculty." She concluded that these events were "really very significant to me. If those people had held sway that day, and he had written a letter not supporting what the Senate did, this place would have blown up. You would have had a union by August."

Marshak recalled the events after the June Senate meeting. "This was when I first started. There was a stall, on the part of the Board. The Senate adopted something, the administration reviewed it, discussed it. From my personal point of view, everything the Senate adopted was fine. But there were people in the administration [who] were not happy with it. So we went back and negotiated; Mike [Bognanno] and I negotiated, with Mary [Dempsey] and Dan [Feeney]. Then we went back to the Executive Council and Nils said, 'OK, is this acceptable? I want you guys to agree to this. And I want every one of you to agree to it.' And we actually went around; Nils said 'I want to hear from each one of you, and I don't want any backtracking and backstabbing on this. I want hear you agree to it, and if you don't agree to it, then say so. And if you agree to it now, then keep your mouth shut afterwards. If you have reservations about it, OK, but don't tell anybody.' And he got that agreement from the Executive Council. After the faculty leadership had agreed to the changes from the Senate action, Nils got the Council to agree."

"Then he took it to the regents, and they stalled. The reason they stalled was because they were out of the corral. They had no intention of agreeing to it. We didn't know that,

because they didn't tell us." Marshak's comment lends credence to those who believe that the faculty's time seeking regental support for the Faculty Senate action was not well spent.

Hasselmo's recollections were not at variance from Marshak's. "The administration was divided on the tenure issue. I did in the end force my views on those members of it who disagreed, and the administration stood firmly behind the Senate's proposal. I hardly need to remind you of the difficulty of taking that stand against the leadership of the board. The dissenters in the administration had different dissenting views. Some of them expressed them publicly, others did not."

Shively described as "hard-fought and momentous" the "discussion within the central administration whether Nils should go with the Faculty Senate recommendations. That was really a very disputed decision in central. The key meeting was that one where the woman came in with gun;" as Humphreys reported, the meeting was then continued in Regents' Professor Richard Goldstein's office, across the street in Mechanical Engineering. "That was the second one" held to determine "what position to take vis-à-vis the Senate positions."

In Shively's view, "the problem was that in fact the Senate recommendations were good policy but bad process, in general. Cluttered process. I think they're bad process. The Senate gave reasonably good things, modest changes; they didn't give on important stuff but they were accommodating on some modest and good changes, but hedged with so many protections and procedures that . . . it was something that people could very reasonably say, 'this was not something Nils should support.' I myself really thought he should support [the Faculty Senate] position, but it was a very tough couple of Executive Council meetings." Shively recalled, as did Hasselmo and Marshak, that Hasselmo went around the table and insisted that "every one of you agrees" and that this was the time to put up or keep quiet. "That was really important. But it was the discussion that led up to that that was critical. And obviously very important to the outcome."

Shively also recalled that, "the argument that I made at that time to a number of faculty leaders was that there was a set of three things that all had to happen in order for us to get out of this whole mess. One was that the faculty had to develop and adopt a set of tenure proposals which did something of substantive improvement in the tenure code. Two was that the President had to support that proposal. And three was that the President had to convince the Board to accept the proposal. I was making this argument before that last Senate meeting."

"It was very clear to me, and remains very clear, that in order to avoid a train wreck, the Faculty Senate had to adopt a constructive proposal, the administration had to support that proposal to the Board, and then the administration had to be

successful in convincing the Board. A number of faculty members thought that was a bargain that was being struck -- that the administration would deliver Board approval of this. It never could be a bargain. But I certainly always acted on that strategy. At the time the administration was trying to decide how the President should respond to the Faculty Senate proposal, I was always operating on that strategy, and I articulated that strategy to my colleagues on the Executive Council. That that was the only way we could avoid a train wreck. In the end, the thing that fell down was the administration convincing the Board. The first two were met. To say that the President supported the thing didn't mean you didn't go back over some details. I think the Senate adopted a substantive reform."

* * *

THE ROLE OF THE GENERAL COUNSEL

Morrison's comments reflected a general concern that a number of faculty expressed about the role that General Counsel Mark Rotenberg was playing in events.

Marshak offered a sympathetic evaluation of Rotenberg's position. "The faculty don't know Mark at all." He noted that Rotenberg's family background and political ties were in labor, "but he has chosen by profession to be a labor lawyer on the side of management. That's one of the conflicts that drives him. He also has this style, which I saw over and over again at Executive Council meetings, in which he winds up, almost like a baseball pitcher. Once he gets wound up, he delivers a fastball. Sometimes the fastball is right on; sometimes the fastball is completely [off the mark]. But he delivers it the same way, whether it's a ball or a strike. I think all of this puts people off."

"Although he's very tied to the labor tradition, he's not tied to the academic tradition. He sees that the work rules here, if you call them that, are very strange, from the labor perspective. Especially from his labor employer perspective. Just like Bill Donohue, it's like the cop on the beat; he doesn't meet the most savory among our colleagues. The ones he meets, there's trouble. Sometimes the faculty member has fallen, and sometimes Mark is called on to defend an administrator who does outrageous things. So the people, on either the faculty side or the administrative side [whom he meets], aren't sterling characters."

Marshak said that Rotenberg was also troubled "with whether his clients were the regents or the President. I one day walked into his office and found him and Donohue sitting there with the canon of professional ethics. I said 'what the hell are you guys doing?' They said 'we're trying to figure out who our clients are.' I said 'if you guys don't know who your clients are, I'm getting out of here!'"

“He was in a very bad situation, and this is all because the regents had gotten out of the corral, and either had been let out or pushed out or went out. None of us look good in that kind of situation. I have more sympathy for Mark than the average faculty member; I just see him as put in an impossible situation. I don’t see him as the great Satan who wants to get rid of academic freedom and abolish tenure and all that. I think he does favor more employer control of working conditions, but I think he does basically understand there has to be some level of academic freedom. He wants to see a stronger differentiation between the academic freedom part of tenure and the economic part of tenure. Of course, there is a tendency to blur those.”

As for the Judicial Committee issues, Marshak said, Rotenberg “feels that the Judicial Committee, dominated by Fred [Morrison], is always sticking it to the administration side. I’m not sure that that’s fair. It’s really weird, because I think the biggest threat to academic freedom around here is not the administration, it’s other faculty members. When I’ve seen academic freedom violated, most of the time -- not all of the time, but most of the time -- it’s being done by other faculty against faculty, particularly in small departments where people go after each other in really vicious ways. I’m not saying the administration is pure of heart, it’s just that there are many fewer administrators, so the number who are rotten is not very many, because there just aren’t very many. Sure, there are pieces of work among the 25 deans, but there are some pieces of work among some of our faculty colleagues, too, and there are more of them. Maybe deans are in more of a position to do mischief, but there’s plenty of mischief being done; in sheer quantity, there’s more faculty-to-faculty than administrator-to-faculty.”

Shively’s views tended in the same direction as Marshak’s; both of them, of course, had worked with Rotenberg while they were central administrators. “I think that Mark Rotenberg is a very honorable straight-shooter. I would be very surprised if he played any role that Nils did not know about and Nils did not approve. Mark explicitly signed on to support the President’s decision to support the faculty tenure proposals with the few changes. And I think he is an utterly honorable person.”

Shively said that Rotenberg’s “clients were the Board of Regents, but he had explicitly agreed to support the President’s position on this. I think that he would have sought and found an honorable way to resolve a conflict that he was put in. I would assume that if he had been asked by the regents to do things which were not consistent with the position he had taken vis-à-vis the President, he would have either gone to the President and ask to be released from that position or he would have recused himself from the regents.”

Shively agreed that the ambiguity of Rotenberg’s position

may have been one reason the regents hired Michaelson. “It’s conceivable. Because they may not have trusted, or Mark may have told them -- this is all just assumption on my part -- but the firm conclusion I have is that Mark is an honorable straight-shooter and that he would not have done things that Nils did not know of and approve.”

* * *

The regents received tenure-related communiqués from two different FCC members in June, 1996. FCC chair-elect Virginia Gray, at the suggestion of one of the regents, sent the Board a three and one-half page memo outlining how tenure was granted. She wrote to clarify misunderstandings and to explain that the process of obtaining tenure as a University faculty member was far more rigorous and demanding than that required for tenure by K-12 teachers and other fields. Gray was responding to the notion, held by at least one Board member, that faculty received tenure in the same way that teachers in K-12 education did, and that if a faculty member was not “bad,” he or she automatically received tenure.

A few days later, FCC member Carole Bland sent a memo to the regents about downsizing and layoffs, reporting the major findings of the research literature, emphasizing that downsizing and layoffs do not decrease budgets by much and do not increase productivity but do result in a short-term increase in stock price; those who remain employed become less valuable employees because of the effect of downsizing on how they approach their jobs; survival and competitiveness require continued investment in faculty and institutional development; and life-long employment ensures a “nimble” organization that can better survive in a changing environment.

On July 9, E. F. Infante (now Special Assistant to the President) wrote to Hasselmo and Senior Vice President Marshak to report on conversations he had agreed to have with Regents Kim and Hogan. Hogan was “relatively satisfied with the material that has been presented by the faculty and the administration” and was concerned only that the post-tenure reviews would become judicial rather than evaluative. Hogan preferred periodic reviews. “Overall, it is my impression that Bill [Hogan] is favorably inclined, and that indeed, he is one of the members of the Board with a more sympathetic approach to the faculty attitude and concerns regarding the present discussions on tenure.”

Infante reported he had spent three hours with Regent Kim, who had three concerns: “layoffs for programmatic reasons” (“she remains concerned”), the location of tenure (after Infante explained the difficulties of reassignments, “she is feeling better about this”), and compensation in the AHC, arising from discussions she had had with Brody. Kim wanted to know if base pay could be re-

negotiated, and she inquired why the Judicial Committee “was only a faculty body, and whether such a body should be appointed partly by the faculty, partly by the administration, and partly by the Board.” Infante’s conclusion was that Kim would urge “that very limited action be taken at the forthcoming July meeting, and that the Board should act only after having had what she called a ‘retreat’ between members of the Board and Professor Chait. From her, I gather that the majority of the Board is still, at this time, unwilling to undertake a definitive approval of the faculty administrative proposal.”

Over the period July 8-10, all 12 regents were scheduled for lengthy (an hour in most cases) telephone conversations with Chait.

“The Trials and Tribulations of Tenure [:] Faculty, administrators, and regents are struggling to revise the University’s tenure code. Can they please everyone?” (Minnesota, July-August [the publication of the Alumni Association]). The article reviewed the evolution of the debate and said it began in the AHC with the decline in patient revenues. Keffeler said those financial problems will spread to the rest of the University; Kelso agreed. Both agree the University must cut costs, including reductions in tenured faculty. Financial emergency can be declared, Morrison said, but other parts of the budget must be examined before terminating tenured faculty; Adams and Morrison point out faculty can be moved and retrained, and the problem is not with the tenure code but with its administration. The percentage of tenured faculty (67%) may be too high; Dean Al Sullivan (Natural Resources) and Keffeler said the processes for removal of non-performing faculty are too cumbersome, so are rarely invoked. Fogelman said getting rid of tenure would ensure only deadwood are left. Berscheid said academic freedom is an issue faculty face every day.

Despite the comments by Representative Kelso about the tenure code revisions meeting the intent of state law, Commissioner of Finance Laura King wrote to regents’ chair Reagan on July 2 to say that the Faculty Senate changes did not meet the requirements of the law and would not be sufficient without major changes. She said that if there were no changes, it was unclear if the funds would be released. Reagan responded on July 9, and said it was “unlikely the [regents] will take action on the . . . amendments . . . on Thursday, July 11.” He said the regents would conduct “an intensive review” of the Faculty Senate proposals. He noted the procedural requirements of the code for consultation, and told King that he did not expect final action until October, inasmuch as the faculty would not be available for consultation on additional amendments until the fall. King’s letter provoked a flurry of correspondence, and newspaper coverage, that ran through the month of July.

Shortly thereafter, Swan wrote to Reagan about Commissioner King’s letter. He noted he had attended all of the hearings, had testified, and spoken with legislators. He said he was “surprised

that the Commissioner would write as she did,” since the legislature had decided the Commissioner should not make the judgment about tenure changes; Swan included and cited the statutory language. He told Reagan that “it seems clear that legislative intent was that it is a responsibility of the Board of Regents, not the Commissioner of Finance, to certify when appropriate changes had been made in personnel policies. You may want to check with legislative leaders . . . directly for their understanding and interpretation of the legislative debate and intention.” He also told Reagan that Provost Cerra believed the changes met the legislative requirements. Swan recalled that he had never received a response to this letter.

Representatives Kelso and Steve Kelley wrote to Board chair Reagan on July 11 to say that the faculty tenure recommendations had three weaknesses the regents could address: there was “no clear link between performance and compensation” and not enough use of bonuses as an incentive; there was not enough “flexibility to respond to evolving programmatic needs”; and the post-tenure review was “so complex and cumbersome it is virtually unworkable.” They said the Board must protect academic freedom but that the revisions they urged would not threaten it nor did they vary from the norm of higher education. They suggested the University would be unable to achieve its goals without tenure reform.

In **“State official urges more ‘U’ tenure code changes”** (Star-Tribune, July 12), the paper reported on Commissioner King’s letter, and quoted her as saying the legislature wanted flexibility in salaries, discipline, and layoffs; “I don’t think you see anything in the proposal today that responds to that.”

The St. Paul paper followed with page-one articles the next day. **“Always involved, Carlson wants more say at U,”** **“Finance commissioner flunks U on tenure proposal,”** and **“Governor may ask Legislature for an increase in authority”** (Pioneer Press, July 12). One of the articles reported on the letters from King and the two legislators, and described the regents as stuck between the legislature and the faculty. The legislature would withhold AHC funding if the regents acquiesce on tenure; the faculty will unionize if the regents bow to the legislature. Fogelman and Dempsey are quoted urging the Board to act on tenure now. Hasselmo said revising tenure was more than changing processes; it “goes to the whole culture of the university. Tenure is the best expression of the underlying values of this university.” The other article noted that the Governor usually wore a sweater with the University’s colors when working, and that he was abruptly rebuffed when he asked the regents to reinstate a terminated regents’ professor (Najarian). The article reported that the Governor might use purse strings to get what he wants (the University is constitutionally autonomous) and wants a say in the selection of regents (who are elected by the legislature).

Representative Kelso and the Senate Majority Leader said the relationship between the Governor and the University was strained and that he wanted more accountability from it.

“State questions U’s wish to alter tenure” (Minnesota Daily, July 12). The report cited the letters from Representatives Kelley and Kelso and Finance Commissioner King asserting the faculty proposals were insufficient. It said the regents would delay tenure revisions and that Keffeler maintained the August retreat in northern Minnesota would not be a good place to discuss tenure because it was too secluded.

The Kelso-Kelley letter prompted Dan Farber to email to Dan Feeney. “It raises three points about the tenure proposal: (1) we need to provide more explicitly for bonuses, (2) ‘not enough programmatic flexibility,’ and (3) post-tenure review is too complex to work. It seems to me that points 1 and 3 are potentially negotiable, although they’re obviously sensitive. The good news about point 2 (unit-based tenure) is that they’re not pushing it very strongly.”

Feeney wrote back to Farber, giving voice to concerns that appeared to be widespread among the faculty, that “it seems in vogue for politicians to get their nose into University business. The Kelso/Kelley letter seems just another addition to the file. I must admit to being aggravated that these individuals seem to think that they 1) understand the situation and 2) have the solutions that experienced faculty couldn’t come up with. Perhaps this is a warning shot from the political arena to the academic arena about what we can expect for the future. I sent a letter of concern to the President with copies to most senior administrators last week about the Regents deciding that tenure is a retreat topic for August. I see this delay as an open invitation for more letters.”

Feeney told Farber that “the faculty are being held hostage by politics. We have a problem created by former Provost Brody in the legislative perception that tenure is bad, that it needs to be changed, and that it alone is the root of all the problems in higher education finance.” In addition, “I believe the faculty feel that there was again a deadline imposed on them only to find out that everyone else is going to take the time they need. This affords an opportunity for those inclined to try to get as much mileage out of this as possible to do so.”

Feeney concluded that “a response by the faculty governance group would give the appearance that the letter was sent expecting a response from us. From my perspective, it was addressed to the Board of Regents and they should handle it. If they come back with some plan wherein tenure decisions are made on the floor of the Minnesota State House of Representatives, then we’ll raise hell. . . . I see our situation as having done what we can in a official faculty governance capacity. If we choose to respond to every letter submitted to the Board . . . , then we will be perceived as puppets of political pressure. At this point, I think the Board of Regents should be the

focal point of any comments we may have, and I'm not sure it is wise to shell them with letters every time we see another opinion letter from a politician. Some may view this as fiddling while Rome burned, but I'd like to avoid an openly adversarial relationship with the Board. Continued needling may make the current uncomfortable situation worse. I am hoping that the Board has the collective wisdom to weigh the input from these outside sources against what came from the faculty and from their hired consultant (Chait)."

"My impression from the Kelso/Kelley letter is that there is a fundamental lack of understanding of what went on during the 1995-96 academic year. . . . It seems they view the Tenure Code as a simple labor contract that should spell out incentives, punishment, consummate flexibility, and outline a simple, top-down, administratively dominated post-tenure review process."

Farber agreed that the governance groups should not formally respond to the letter. "I was only trying to say that I thought their letter might actually reflect some movement in the right direction, to the extent that they seemed to de-emphasize the layoff issue somewhat. Like you, I am very disheartened by our apparent inability to convince elected officials that we have the responsibility and competence to make our own policy decisions."

In mid-July, another member of the House of Representatives, Phyllis Kahn, wrote to Regent Reagan to rebut the three points raised in the Kelso/Kelley letter. She noted her husband was on the faculty and participated in reviews every year, tenure insulates the University from "whims and fads," and post-tenure reviews were tied to salary increases (but are too complicated). She wrote that "it is clear that the signers of the letter . . . have ignored the law [the contingent AHC appropriation] as enacted. . . . There is a clear legislative history that the [Kelso, Kelley, and Commissioner King] demands were rejected. They should not be reinstated by a combination of Legislative arrogance, Gubernatorial fiat, and Regent cowardice." She urged the regents to adopt the Faculty Senate recommendations "and stop the bad news hemorrhaging that may affect faculty hiring and retention well beyond the current year." The Daily reported on Kahn's letter, and described it as "heated."

Regent Reagan wrote back to Representatives Kelso and Kelley and told them the regents would discuss tenure in August and September and act in October. He told them the regents would follow protocol and send to the Faculty Senate "Board comments and alternative recommendations" in August, and that the Board had discussed areas of concern with Chait, faculty, and administrators, and would address them further. The goal of tenure review must be to increase quality.

Another member of the House entered the fray. Representative Kinkel wrote to Commissioner King later in July to express concern about her July 2 letter. "Your letter seems to labor under the mistaken impression that the legislation gives the Department of Finance a qualitative

role in deciding what the tenure code should look like.” The legislation was drafted so changes to the code are decided by the regents, not Finance, and the legislature respected the University’s autonomy in its action. Further, Finance supported the legislation because it did not want to have to judge if tenure changes met the legislative requirements. Kinkel noted the history of the constitutional autonomy of the University, said the regents were the best ones to decide, and that “the current [state] administration has shown an alarming propensity to ignore historical precedent and legal authority in attempting to manage the University from St. Paul. Your letter to the Regents is just one more example of this. It assumes an authority that, as the legislative record indicates, you were not given and were never meant to have.” (Gray said later that she had organized this and other letters.)

Fogelman, Judicial Committee chair, wrote a three-page letter to Representatives Kelley and Kelso, also responding to their letter to Reagan. He also rebutted the charge that there is no link between salary and performance at University (all faculty salary increases are merit-based). He pointed out that there have been significant changes at the University in recent years (including closing a campus) and that tenure was not a bar to flexibility. He agreed that “tenure is indeed an obstacle” to Brody’s re-engineering effort in the AHC, because success of re-engineering would mean “the end of academic freedom” (because it would lead to centralized control over teaching and research). He maintained that re-engineering is “a nostrum whose time has come and gone” except in the AHC; he noted that a leading University consultant on human resources recommended an approach opposite to that of re-engineering. Fogelman wrote that he would welcome suggestions for streamlining disciplinary procedure, but said they were needed very few times. He said his department (Political Science) had no deadwood and that he was more concerned about recruiting distinguished faculty. Changes should be tied to particular goals, and change for its own sake could be disruptive and damaging.

One faculty member recalled that “it was important to make some legislators aware of the Laura King letter, because I thought it overstepped the authority that they had granted her as Commissioner of Finance.” The letters from legislators followed, and “the letters might have been written anyway, but you help a few things along.”

Perhaps symptomatic of the sentiments of some faculty, at least in the AHC, were the comments of one in an email to Humphreys on July 12. “I am pretty discouraged by all that is happening. I am beginning to feel like we have done about all we can do and that it is time for me to get back to ‘minding the store.’ So, I am trying to get back into ‘high gear research’” before resuming teaching in the fall. “Quite frankly, I am beginning to feel like the tenure issue might be

lost, and if so, I do not want to lose everything else (i.e., my research productivity) along with it. Besides I have been so visible that my best protection against the bullets that may fly my way will be my scientific accomplishments.”

The message to Humphreys continued. “I realize that this is the goal of re-engineering -- to make everyone feel like the process is a ‘train out of control,’ and that they must either jump on the train or be tossed aside. I do not want ‘them’ to succeed in this philosophy, but at the same time, I do not think the battle can be fought right now with any hope of significant victory. . . . If the Regents do not support the faculty’s concept of a University, then the University is doomed as a center for open exchange and discovery of knowledge. I am only happy that my career is not just beginning, and that I have been able to do what I do for the last fifteen years.” (The attitude of this faculty member improved somewhat later in the month, with the publication of Berscheid’s opinion piece and the letter from Representative Kahn.)

The Daily reported the views of the union advocates in early summer. In “Leaders debate faculty union,” it reported that the UFA was seeking cards and had 700 of the approximately 1000 it needed. Tom Walsh described the Senate proposals as “‘far-reaching,’” and said that “‘if the regents go beyond those, we would move fairly rapidly’” to get the remaining cards. Walsh said that mismanagement, a large bureaucracy, and a presidential search with only three faculty indicate the problems. Walsh maintained that a union “would help streamline the administration by making it more effective and less bureaucratic.” The article cited a researcher who found that unions create salary compression, reduce competitiveness, and do not increase salaries overall; Walsh said a union was necessary to bolster faculty salaries. Gray said salaries have been competitive with union faculty and that a union would create a bureaucracy, and that faculty must lobby more for faculty.

On July 2 Richard Chait and his associate, Cathy Trower, provided to the regents a twelve and one-half page memo analyzing the Faculty Senate proposals to amend the tenure code. They expressed reservations about some of the proposals and commended others, but were generally quite positive. The summary, using Chait’s phrase noted earlier, said tenure is “academe’s version of the abortion question,” but the issue has not caused “controversy and entrenched battles” at Minnesota (!). They wrote that the conversations have been civil and cordial, to the credit of faculty, administration, and regents, and the proposed amendments were progressive and constructive. With respect to (1) layoffs and program closure and (2) the locus of tenure, the regents should ask what outcomes they seek rather than simply whether to change policy; there had been too little attention to objectives. If a change in current policy on either issue is made, “faculty leaders believe that the goodwill of many peers will evaporate and that a movement to unionization will accelerate.”

Chait's analysis prompted several responses. Jean Keffeler wrote to the other regents a week later (and sent copies to Chait, Gray, and Hasselmo) to outline her reaction to the Senate tenure proposals, with comments on each. She said they were "positive and constructive . . . [and] generally are improvements over present policy." She suggested that most should be adopted at the Board meeting that week. She indicated she wanted to learn more about "the adequacy of our tenure code and related policies and practices for the meaningful protection of academic freedom," and noted that Chait had pointed out that the tenure code language implies that academic freedom could be provided without tenure. She, like Reagan, indicated that the discussion would continue over several months.

One commentator wrote that "my present assessment of Keffeler's position at this point is that she had realized that she was not going to get the whole salami at once. So she thought it was a good deal to take a slice and come back later. Unfortunately for her, the other Board members did not have the political smarts to do this. I think that they began to hold it against her that she was shifting her views. She was just a lot shrewder than the rest of them."

Associate Vice President Farber provided to Hasselmo his analysis of the Chait analysis of the Senate tenure proposals the same day and noted that the summary was almost entirely positive. Farber responded to questions Chait and Trower raised: about multiple lawyers advising different members of the University community (he said the Senate proposal codified existing practice, which has been positive); whether the Judicial Committee needed be involved in dismissal (it does), the discussion of post-tenure review and programmatic change (the University has saved money through unit closure and the administration does not want to change locus of tenure; if the tenure home is to be changed, the change should be in conjunction with identification of a procedure for reorganization and closing units). Hasselmo sent the Farber analysis to the regents.

The day after Farber sent his analysis to the President, Morrison sent a 5-page memo also commenting on the Chait summary to the regents, Hasselmo, and committee chairs. He responded to Keffeler by pointing out that tenured faculty defend the rights of other members of the University community, and can do so because the faculty are tenured. He explained the necessity of an independent hearing officer for the Judicial Committee and said it had been approved by the General Counsel and reflected the best practices of the courts. He described the post-tenure review and removal for cause processes. Morrison concluded by describing tenure as "a social compact between the University and individual faculty members" which leads faculty to give up greater income in return for security to devote themselves to education and research, and that it was a much stronger compact when backed by the regents and the institution, rather than by an organizational unit that could be eliminated; to put tenure in units would "communicate a lack of support to every faculty

member . . . and instill in all of us a sense of insecurity.” Morrison also sent his comments to Chait and Trower.

At the regents’ meeting in July, Reagan expressed pleasure at the direction of the tenure amendments but said the Board had not enough time to review the amendments and the report by Chait, and that after the regents considered them (including at their August retreat), any additional proposals would be sent to the Faculty Senate with the expectation that the Board would act in October. Keffeler supported delaying action and said the regents needed additional information from other universities. Hasselmo again endorsed the Senate proposals.

One faculty member attending the regents’ meeting reported to his colleagues on one of the provostal FCCs. He said the regents complained about a lack of time to consider the issues but did not discuss them at the meeting, they “effusively” thanked the faculty, and said they would discuss tenure at their August retreat (with one regent insisting that faculty leaders be present). Some regents wanted the issue brought to closure, but Keffeler was doubtful about October because there would not be time to gather the needed information. He noted that Hasselmo made a careful statement indicating the administration now fully supported the faculty proposals, but that the statement had little effect.

The Robson [City Pages](#) article summarized events.

By a nearly unanimous vote at their April 18 senate meeting, the faculty scrapped the [Tenure] working group and agreed to put together its own tenure proposal by going through the constitutionally appropriate subcommittees. The real task was hammering out a consensus plan and then getting it passed through the committees in two months so that it would be ready for consideration when the regents met in June. Not only did the faculty committees meet their deadline; they came up with proposed changes in the code that were very Minnesotan in their self-effacement. Under their proposal, the U of M would become one of a minority (albeit a growing one) of universities to engage in post-tenure reviews of faculty performance, and even be given the authority to cut faculty salaries in some instances. The faculty also suggested changes in the code that would lengthen the probationary period before tenure was granted.

The regents accepted these generous proposals with enthusiasm, but it still wasn’t enough for them. They remained determined to gain layoff authority over tenured faculty when a college or department is re-engineered out of existence. They also held out for a more streamlined judicial appeals process to allow for faster discipline of tenured faculty accused of misconduct. So they did not act on the faculty proposal, further straining relations with faculty leaders who had devoted the past two months to getting their plan in on time. At this point, Hasselmo threw his lot in with the faculty, and more or less denied the regents access to the materials in his office.

After the July regents’ meetings, AAUP president Murthy wrote to Keffeler to commend her

on her letter to the regents and Hasselmo about the Faculty Senate proposals; he said that she had “defined the most strategically beneficial approach to dealing with the ongoing discussions of tenure.” He sent similar letters to other Board members; to all he expressed disappointment the Board did not act at its July meeting, even on points where there was no disagreement; had they done so, it would have sent the message that all were working together, rather than being at odds. The failure to act “guaranteed that the University will continue to be in a negative spotlight for several more months to come” and may mean “the faculty might be triggered to unionization.” That would mean “everything will be put on ‘hold’ for awhile” and “we might as well kiss good-bye to any thoughts of flexibility to programmatically shape” the University. Murthy said he had “grave doubts about the wisdom of unionizing” but that it may have to be faced. Delay also invites “unwarranted intrusions” such as those by the Finance Commissioner and Representatives Kelso and Kelley. Murthy also worried about the continued pressures on the regents because of the delay. In a separate email message to colleagues, Murthy wished there had been more frequent contact with the regents, and wondered, had Keffeler’s letter explaining her views on the various Senate recommendations been sent sooner, if the regents might have acted. They had no time, “especially when we got the clues . . . that Reagan had decided only days before to table any action.”

Swan also wrote to Board members about the July meeting; on July 17 he wrote to Hogan and Sahlstrom to note the letters from Finance Commissioner King and Representatives Kelley and Kelso. He said “the letters represent a form of public interference in the internal affairs of the University that is unprecedented,” and called on the Board to reject them.

Also on July 17, Swan reported to the Gang of 19 on events in which he had been involved. First, he, Murthy, and Purple had met that morning with one of the more influential members of the legislature. “While waiting . . . Phyllis Kahn walked by and said she was drafting a letter to Reagan.” Swan reported suggestions from the meeting. One, “cultivate relations with reporters and the papers, including the editorial boards of both papers. I think this is something we need to work on.” Another item was that “the AAUP would try to convene a small meeting of key legislators, regents and faculty to talk about how we bring this issue to closure without further damage. We talked briefly about Regents and legislators to invite”; the legislators were key committee chairs and the regents were Keffeler, Neel, and Reagan. Subsequent conversation with Virginia Gray led him to suggest Spence rather than Neel. He observed that “we need to decided exactly what we will be doing before we start issuing invitations.” The meeting never took place; AAUP decided not to pursue the idea.

Swan also reported Lyn Carlson’s concern that “the U is becoming a political football. I agree with everything Lyn says on this issue but I am concerned that he and we may be in the

minority.”

In addition, he provided data on the percentage of faculty who were tenured at peer institutions. “The list of schools is the [Twin Cities]-AAUP list of top thirty research schools (actually 34 because of ties) plus the rest of the Big Ten.” The data presented did not suggest that Minnesota’s percentage of faculty who were tenured was at variance from the schools on the list.

On July 16, one faculty member involved in the events reported to the Gang of 19 that the tenure issues of concern to the regents, according to Executive Director Bosacker, were the rigor of post-tenure review, the location of tenure and layoffs “(the biggy),” program discontinuation, and the percentage of faculty at Minnesota who had tenure, compared to peers (i.e., is it too high?). Bosacker, it was reported, said the regents did not understand that if hiring slows down, the percentage of faculty who are tenured would increase.

“Among various groups deciding our fate is an informal group that consists of Becky Kelso, Win Wallin, Rick Heydinger and Lyle Wray. Heydinger was the lobbying VP for Ken Keller” who had a position as senior fellow in the College of Education after Keller left. One member of the House of Representatives thought Heydinger was “visionary.” But, it was said, “Heydinger is not our friend.”

FCC met a week after the regents’ meetings and reviewed the status of the tenure discussions. Morrison said “I don’t know where we are”; he described the regents’ meeting as “saccharine,” with many compliments to the faculty but no discussion of the issues until later. The core issues remained base salary, peer review, layoffs and department tenure, although some regents may have realized that flexibility would not be a problem, given the number of faculty vacancies expected over the next few years. Morrison was asked to write a letter responding to Keffeler’s memo on the Chait analysis. Gray (now FCC chair) said she was optimistic events had turned the corner; Bloomfield (FCC vice chair) said FCC needed to be more public about its actions on behalf of the faculty.

Humphreys recounted for FCC a conversation she had had with a former regent, who said that “much of the problem [on tenure] is that most of the current regents just are not well qualified and that many of them simply do not understand what a REAL University is. They need to be educated. . . . He also mentioned that many of them have the corporate model in mind.”

Dempsey recalled that Hasselmo had come out strongly for the Faculty Senate proposals at the Board meeting, but “what he said to us, privately, was ‘I tried to push it through that July, but the regents wouldn’t do it.’ I thought that was very unfortunate.”

As agreed at the July FCC meeting, on July 23 Morrison wrote to the regents about Keffeler’s letter of July 9. He identified the “considerations that led to the adoption” of the faculty

proposals, and said that FCC encouraged him to send the letter but it reflected only his personal views. The tenure regulations are only a part of human resources policy; tenure is also an administrative manual to allow central administrative control over employment decisions. There must be guaranteed base pay or tenure is meaningless, and raises cannot all be soft money. The proposal for a legal officer for the Judicial Committee codified existing practice and expedited proceedings, but the individual must be independent of the General Counsel. Morrison observed that the faculty proposals reduced the number of steps for removal for cause, that annual reviews were preferable to periodic post-tenure reviews, except when triggered by circumstances, the refusal of faculty to accept assigned duties could lead to discipline, and that programmatic change options were provided.

Late in July, AAUP president Murthy emailed to the Gang of 19 to inform them of a conversation he had had with Regent Keffeler. He reported that Keffeler was “tremendously impressed” with the flexibility that would result from faculty turnover, but did not jump at his suggestion that the regents terminate the tenure discussion. He said Keffeler would meet later with the AAUP Executive Committee but she would not be at the August regents’ retreat. Murthy identified three regents who appeared to be supportive of the Faculty Senate proposals, and said the full Board needed to be informed about the flexibility that would come so the argument for tenure review (because of the need for flexibility) would not be valid.

One indication of the attention the debate was receiving is indicated by an article in the Christian Science Monitor entitled “**Minnesota Professors Wage Rebellion in Tenure Dispute: Fight could set tone for cost-cutting moves on campuses nationwide.**” (July 24). The article reported on the unionization effort, faculty views that tenure changes would harm the University and academic freedom, and administrative/regental views that changes would assist in meeting financial constraints. The tenure discussion was occurring across the nation, but “few debates have been as public and prickly as the one at the normally placid University of Minnesota.” The article noted the actions of the Berkeley and Rutgers faculty, the AHC appropriation, and quoted the AAUP general secretary as saying Minnesota would be disadvantaged in hiring faculty if it did not have tenure. Keffeler was quoted favorably about the Faculty Senate proposals.

Again, one observer said that “at this time Keffeler was in full retreat. I think that she saw much earlier than others that the Board was going to fail. But I doubt that her goals had changed. She just saw that the tactics would lead to disaster.”

In mid-summer, the metropolitan papers chimed in with editorials on tenure. (“**Keep talking about need for flexibility,**” Star-Tribune, July 21). The authors said the tenure job guarantee has

been good but also protects an “undeserving few,” and that the faculty proposals made sense but the tenure problem is bigger because of financial pressures. The paper said a layoff provision would better serve the University, and that while the regents should consider the faculty proposals, they “would do well to enlarge the conversation to similarly situated universities, in hopes of jointly developing a new understanding of tenure’s job guarantee” to allay concerns about recruitment. The legislature should not have interfered, but the Governor and legislature have an interest in keeping a strong university and should keep the tenure conversation going.

Gary also wrote to a number of her colleagues (each of whom had been assigned a particular member of the Board to communicate with) in late July to thank them for their lobbying efforts and told them that “all reports indicate that the regents are feeling the pressure from faculty on the tenure issue.” She said the faculty needed to keep lobbying, the goal was to get the Board to adopt the Faculty Senate recommendations at their September meeting “and quit.” She reviewed the issues that were reportedly of concern and information that might be helpful on each one.

A week later, the Pioneer Press carried an opinion piece (D. J. Tice) on tenure. Tice related a Hasselmo story about the faculty at an institution informing a new leader the faculty are the university. Tice said that indicated a “smug sense of superiority” and was one cause of the University’s inability to obtain support for its mission. The Governor has been a critic of the University and Hasselmo, but also supported increased funding and supported having a leading research institution. The tenure debate started in the AHC but “metastasized” to the entire University as a whole. “In a revealing bow to faculty prerogatives,” the regents and administration gave the tenure issue to faculty, who offered modest changes; the faculty may unionize if the regents reject them. The changes provided no authority for laying off tenured faculty for strategic reasons, and “cumbersome, hyper-protective disciplinary procedures are common in the public sector. But few compare with this.” Reagan wanted greater public involvement in the University, including in the presidential selection. There is a conflict about mission, whether the University should be a selective, research university or a more open, populist institution. The mission is in disarray, but the University will be requesting a lot of money; with the disorganized management, the legislature will not support it.

The editorial prompted an email two days later from Gray to her FCC colleagues saying “some of you may have seen the awful editorial page article” by Tice. She told them she had sent a response.

On the same day as the Sunday editorial Berscheid emailed to the Gang of 19 about the day’s Pioneer Press commentary on the tenure debate. She wrote that “every faculty member needs to read

this. It is truly dreadful, but, I believe, accurately reflects our rapidly deteriorating situation, in which a collegial and reasoned approach is likely to be ineffective in preserving tenure and academic freedom. I believe that, at minimum, we need to play for time with a ‘cease and desist’ [order]; things can’t get much worse.” She recalled that others had suggested that “time may give us a more articulate president, better regents, a different governor, and so forth. I might also add that, as the joke goes, the horse may die.” She asked how many more authorization cards were needed.

Berscheid wrote again on July 29th to Humphreys and the Gang of 19 about the functioning of a newspaper. She reported that “Tice has been ‘handling’ the tenure issue for the [Pioneer Press] editorial board for some time” so it would be difficult to remove him from the assignment. But he “obviously doesn’t like the faculty or the U.” She pointed out that the newspaper staff “belong to the Newspaper Guild and they do understand unions, job security, and due process on grievance and layoff. I’ve tried to explain to Tice that tenure is our ‘union contract,’ with one difference being that our probationary period is much longer, . . . that we get no across-the board raises as they do (all merit), and that layoff in the case of financial exigency is different.” She said that Tice “understands unions and employment contracts, as do most people in the state; but, still, he sees tenure as an ‘entitlement.’”

Berscheid commented that there was one sign of hope in the newspaper editorials and a recent television program: “all are worried that if the UofM gets ‘too far ahead’ of other universities on tenure, faculty will leave. It seems to me that this is the only thing they are worried about vis-à-vis the tenure issue, and so it is the theme we should hammer.” She also noted, and would write publicly about soon, that the Star-Tribune recommended that “the Regents collude with other universities on tenure provisions, inviting an anti-trust suit that Chait said (in the AAGB Priorities piece I quoted from some months ago) would make the financial aid anti-trust suit against the Ivy League pale in comparison. But their recommendation is stunning: Can you think of any other employee group in this labor state for which the Strib would suggest that their employers collude to adversely affect their working conditions? It’s immoral. And it’s illegal.” She suggested to one colleague that he might speak with the newspaper’s “ethics” person on this matter.

Berscheid also reported that a friend had recently talked with a former influential regent, who had said, in essence that he was “glad he’s out of it, has ‘washed his hands of the Board,’ which not only doesn’t understand that the faculty are the University, he said, but doesn’t know anything about management.” She suggested other influential people, and former regents, who might become involved, one of whom said he was “sharpening up his spear.” She said that “what we really need, though, is a major CEO to weigh in, again on the theme of retaining and attracting faculty, without

which they can't have their 'superb' research institution."

On July 30, Berscheid followed her own advice; she reported to the Gang of 19 and to Gray that she had spoken with the ethics monitor at the Star-Tribune and had prepared a letter on the subject of collusion among boards of trustees. She asked for comments on the draft.

The same day, she replied to an inquiry from a colleague about what it is she expected to accomplish with the letter or editorial. Berscheid explained that "actually my purposes are oblique. I would like labor groups (and our labor regents) and the legislature to be reminded that: a) we are a group of workers, like any other; b) the tenure code is our employment contract (along with unwritten historical precedent and custom); c) the present faculty gave up other employment opportunities on the basis of the unrevised tenure code contract and its present layoff provisions; d) therefore, unilateral (non mutually agreed-upon) changes in the code will result in litigation; e) the tenure contract is not an "entitlement" (as Tice said) -- it is an earned contract; f) the present contract does include faculty layoff provisions for financial exigency," which the public did not know. She concluded that she wanted "some sympathy for us as workers and to put the scent of litigation in the air."

In early August, on the same day, the two Twin Cities newspapers again carried editorials about tenure, this time both of them by faculty active in the discussions, and responding to the earlier newspaper editorials. **"Tenure tinkers note: 'U' regents already have layoff capability"** (Star-Tribune, August 4), an editorial by Berscheid, sharply criticized the paper for calling for regental collusion on tenure, and cited an article by Chait that there would be no major changes in tenure at research universities because it would harm the one that started it, and that "a change of this magnitude would require a level of collusion among peer institutions that would render petty the federal anti-trust investigation of student financial aid." She expressed doubt the paper would make a similar call for other groups of employees, and said the regents already have layoff authority, if they declare a financial emergency.

Berscheid later wrote that one must "recognize that, initially, [the Star-Tribune's] editorials were not favorable to the faculty and, in fact, one recommended that the Regents get together with the governing boards of "similar institutions" to form a consortium to weaken tenure. I called Gelfand, their media ethics monitor, and pointed out that what they were asking the Regents to do was illegal and against anti-trust laws. Gelfand agreed with me and said he had noticed the same thing about the editorial and wondered why no one had pointed that out. That was when I wrote a 'counterpoint' to their editorial. In any event, after that, the tone of the editorials seemed to change in our favor. It was an unusual event for a newspaper to change positions in mid-stream." Berscheid recalled that she and

a colleague had met with one of the editors of the Pioneer Press after the events, and that the editor “seemed regretful of the position [the editorial writer] took from the beginning, but remarked that it was difficult for a newspaper to change positions once they had taken a stand. This is why I think the [Star-Tribune] ought to get some credit for having the courage to re-think the issue and reverse their course mid-stream.”

In “**U will only be as good as faculty it attracts, retains**” (Pioneer Press, August 4), Virginia Gray and her husband Charles Gray (a faculty member at another university in the Twin Cities) co-authored a response to the Tice editorial. They defended the proposition that faculty are the University, and pointed out the roles of the faculty in teaching, research and service. They noted the long education and apprenticeship required for tenure and the lower salaries compared to medicine and law. They also explained the need for collegiality and peer review, and how universities have survived much longer than all other organizations.

At the end of the month, Walsh and Rabinowitz circulated an email to the faculty with excerpts from the Pioneer Press Tice editorial and expressed alarm at the anti-faculty tone. They said the paper was well connected and “often reflects the views of the Governor and influential legislators.” The hope was to settle the tenure issue; now the proposed faculty changes may be only the “starting point for even more drastic proposals.”

“**Article says 2 authors tried to exploit Times list**” (New York Times, July 28). The article reported on a Business Week story about how associates of CSC Index spent money to inflate sales of a book authored by two of its consultants. The story was circulated in the AHC as an indication of the ethics of CSC Index.

There was a sharp but short-lived uptick in the temperature of the debate when, on July 30, there appeared a memorandum from an “Independent Faculty Coalition,” with anonymous authors. It contained a three-page cover note, a 37-page proposed line-by-line revision of the tenure code, and was circulated to the regents, senior administrators, the newspapers, and state government leaders. Self-described as an independent faculty coalition (but also saying it consisted of “University and community leaders [and non-faculty members]”), it analyzed the Faculty Senate tenure commendations and said they would lead to no change, would continue to insulate unproductive faculty from performance reviews, and would not meet the needs of the majority of productive faculty. It outlined five points the tenure code should embrace (including academic freedom, guaranteed income, protection of employment rights, faculty accountability, and layoffs). The authors said they needed to be anonymous because those who served on the Tenure Working Group “were ruthlessly attacked by other faculty.” They described the Faculty Senate proposals as

insufficient, and that “unfortunately” Hasselmo supported them. They said they also wanted the focus to be on their proposal, not on the authors.

Gray emailed to FCC and began by saying “every day I think everything has been dealt with and I won’t have to bother you for awhile. No such luck! Today’s problem is a broadside from some group called the ‘independent faculty coalition.’” She reported on the document and its distribution and wondered “does anybody know who is in this group? Is it even faculty? What should we do about it?” She said she thought an FCC response should not be made unless others pay attention to the proposal. “Maybe I should write to the regents,” she mused; “I talked to staff who said some were reading it, and some were ignoring it on principle. . . . Needless to say, I think these people are cowards, and their troublemaking should not be tolerated in our democratic governance structure.”

The FCC members who responded agreed with Gray. Bloomfield said he had never heard of the group and urged ignoring them “until they disclose who they are, and probably even then.” He said an op-ed piece might be appropriate if the newspapers decided to report on the proposal. Sara Evans said that “any group that chooses to remain anonymous -- and waits to put forward its agenda until the debate is over -- is cowardly, undemocratic, and probably very small!”

Humphreys also emailed the same day, to the Gang of 19, about the anonymous proposal. She said that Senior Vice President Marshak had “called with what he called very serious information” about a group that “has issued an attack on the Faculty’s revisions to the tenure code”; Marshak had provided her a copy and had labeled it “right wing.” She had reviewed it and said the authors “essentially want to eliminate the guarantees of tenure” and used very corporate language. Humphreys speculated who the authors might have been, and said that they should have no credibility as long as they remain anonymous. Humphreys also transmitted to the Gang of 19 the message from Gray to FCC about the proposal.

The same day, Campbell, a member of the Arts, Sciences, and Engineering provostal FCC, circulated to its members the Humphreys and Gray emails on the anonymous proposal and asked that it be put on the agenda of their next meeting, and that it should support FCC action on it.

Berscheid emailed to a colleague in the AHC about the anonymous proposal, and pointed fingers in a number of directions. She thought that “Brody’s Hogan & Hartson lawyer, and possibly Rotenberg and staff, had a ‘template’ prepared for the revisions they wanted.” She wondered about, and dismissed, the possibility that Carl Adams or John Adams had been involved, but speculated about people in the Medical School “who have also been in Brody’s pocket, for secrecy and anonymity have been their modus operandi all along.” Berscheid suggested that Virginia Gray might ask certain individuals “a direct question: ‘Do you know of any person who was involved in writing

this document?’ I suspect some of these people know and will not lie in response to a direct question from Virginia and risk being branded as a liar later. We do need to know who these people are, as they probably will continue to do their dirty work under cover of darkness.”

She cautioned that it would be “a mistake to respond in any serious way to what I mentally think of as ‘The Cockroach Manifesto’ (cockroaches only coming out at night, being afraid of light).” She urged that it instead “be an object of ridicule and derision and the anonymous people who wrote it regarded as the slime one usually finds hidden under rocks.”

Associate Vice President Dan Farber wrote to the President’s Chief of Staff Mike Bognanno on August 1 about the anonymous proposal. He maintained that the group “was not making a good faith contribution to the discussion” because they waited until the last moment to make their proposal, despite the fact that tenure had been debated in many meetings. No one knows if they are faculty, the proposals “seem addressed solely to non-faculty constituencies,” were not communicated to the faculty themselves, and that the regents established a process for expression of faculty views on tenure that should be respected. Farber also criticized the content of the proposals as “half-baked and dangerous to the university” because they would not allow retention offers, would change responsibility for tenure files in a way that would harm quality, and would not provide fair hearings for faculty. The proposal would also “give the Board unbridled discretion to engage in widespread layoffs” that does not meet management needs, would do grave harm to morale and reputation, reflected “a complete misunderstanding of the University’s financial situation,” and although other universities have rarely-used layoff provisions, none have them “with as little safeguards as this.” He said the regents should take a firm stand “against end-runs by nameless, self-appointed watchdogs.”

“Mystery letter sparks anger” (Minnesota Daily, August 12). The article reported on the anonymous proposal that demands “drastic changes” in tenure. Gray said the document “is disheartening and disrespectful to the governance process” and that “people who subvert democracy by cloaking themselves in anonymity are not behaving in a collegial, professional manner”; she asked why they did not participate earlier and said it was “a cowardly act of desperation.” Walsh of the UFA said the document is “absurd and contradictory,” suggested it might be a joke, and urged the regents to ignore it. The regents did not comment. The article reported many were trying to identify the authors, without success.

Morrison wrote to the Tenure Subcommittee on August 12 about the anonymous proposal. He noted that there is no evidence faculty were involved in the document, and said it was based on a draft of the code after the May 30 Faculty Senate meeting but before the June 6 meeting. He outlined for the subcommittee the changes: administrators would have “unlimited authority to make term

appointments” and decide if or when to put someone on a tenure track; base pay is initially protected, but future raises will be contingent, and the regents are to set salary caps by rank, with all salary in excess of the cap contingent; faculty participation in post-tenure review is eliminated; tenure is in departments; layoffs for programmatic change are permitted, with decisions by the regents and no procedural protections, one-year’s notice, and no faculty consultation; and the Judicial Committee would be significantly altered, with a much larger role for the administration and General Counsel.

Morrison summarized by saying the document “presents the University as a place of employment, in which all significant decisions are made by management . . . faculty are employees . . . with, at best, a one-year notice period. It differs drastically both from the traditional view of the University and from modern business practice.” Instead of the community of scholars, a model towards which business is moving, this document moves toward corporate America of the 1960s. He concluded that “judged by the standards of its cover letter, the Anonymous Proposal is a failure”: it did not protect academic freedom, it did not guarantee income, it did not protect employment rights, it introduced the idea of contingent compensation without standards, but “there is no question, however, that the document would provide greater financial flexibility.”

The regents did not take the proposal up. Later, one newspaper article reported that one regent wanted to take up the anonymous proposal, but that Regent Reagan refused to permit it and had discarded his copy. Morrison affirmed this, but noted that it suggested that at least some regents had read the proposal and considered its points. This closed the episode, but it sent a quick shiver through the faculty.

Two weeks later, one of the Gang of 19 members, David Hamilton (Medical School) emailed the Gang of 19 and said he was unable to identify the authors of the anonymous tenure proposal despite “some fairly deep inquiries.” He noted that somewhere a secretary existed who typed the proposal.

* * *

WHO WROTE THE ANONYMOUS PROPOSAL?

Those involved in these events -- faculty, administrators, and perhaps even regents -- remain curious to this day who wrote the anonymous proposal. Everyone said they did not know.

Morrison said “I have my short list of candidates. If you look at the anonymous proposal, it says at the top ‘faculty.’ But you look further down in it, it says [something different]. I’m not at all sure there are any [faculty] involved in that. And I’m almost 100% certain they are people who held faculty titles but administrative appointments.” Asked if he thought a lawyer

was involved, Morrison said “Yes. The fine detail is such that this was not [from] someone unfamiliar with the day-to-day operations of the tenure process at the University.”

Gray said she had “no idea. I assume it was a Brody henchman. I spent an enormous amount of time trying to figure out who wrote it. When we were down to the step of sending someone around to print shops to identify the type face, I thought ‘this is really a ridiculous use of time,’ so we stopped.”

One faculty member agreed with Gray: “The Brody lawyer.” Another said he had heard “that Rotenberg got somebody to do it. Rotenberg is perceived to have taken a very active role on the side of the regents.”

One of the Gang of 19 members speculated, in an email to colleagues, about who the authors might be. Based on analysis of the provisions of the proposal, several suspects emerged. First, however, “I am not so certain the general counsel’s office is not involved. When the idea of an attorney/advisor for the Judicial Committee” arose, “the General Counsel’s office could not understand why [it] felt so strongly about hiring an independent person. In spite of several discussions with [the chair of the committee at the time], this office did not understand the conflict of interest problem AT ALL. In fact, as I recall, [the chair] had to threaten that [the committee] would resign if the administration insisted on this nonsensical course of action.” Other possibilities included members of the Tenure Working Group “(although I doubt a faculty member would be this cowardly),” “power-hungry Regent(s) [Are any of them really this power-hungry?], and those who wish to deliver our resources at whim to the corporate sector),” “manipulative attorneys in the General Counsel’s Office or Brody’s attorney,” and those who want “to dispense with faculty governance -- e.g., Brody, the Index Group and their supporters).”

Morris did not know who wrote it, but took issue with the idea that it was someone in the General Counsel’s office. “I cannot believe that. The reason I can’t believe that is that no self-respecting lawyer would propose that the Judicial Committee would be dominated by a member of the General Counsel’s staff. Because it’s such a conflict of interest. At the time, the Gang of 19 was very nervous when they saw it. I’ve lost my letter in which I made a certain analysis of it, and I concluded it was a hoax. It had to be a hoax, an elaborate hoax. As Farber points out, it doesn’t do any of the things that its covering letter says it’s supposed to do! ‘There were five things that the Senate proposal doesn’t do, and we submit this in lieu of that.’ And it simply doesn’t do any of those things! That’s some indication that it’s a person who’s rather crazy, and isn’t internally consistent at all. It’s also maybe an indication this wasn’t being thought of seriously at all, it was a pure hoax.”

Humphreys recalled that “we tried to find out. We

thought it would be simple to find out. It's possible that that thing was a trial balloon. Especially when you saw the anonymous proposal, and then you saw the [Morris draft] that Hogan & Hartson finally came out with. This could have been something that came out or was produced by a group of people [close] to the regents; perhaps it was a way of getting something to the regents or getting something to Hogan & Hartson."

Campbell was not sure about this. "The introduction, the statement about the fact that 'we have to be anonymous because of the threats' and so on -- that would be an odd thing to do if it were a trial balloon. Because it alienates a large part of the faculty in the process. It was pretty insulting to the faculty."

In her original message to the Gang of 19, Humphreys had also suggested that "Bill Brody and the remnants of the Index Group" were "very likely" candidates. She noted that the anonymous version of the code had a compensation system "that Brody and his Index lawyer were so fond of." She had also pointed out that "whoever did this had to be familiar with the code and its language as they follow the format used" by the Tenure Subcommittee.

Humphreys also contributed the name of another possible author. "That proposal sounded an awful lot like John Adams. When I read it, I thought 'that's John.'" Adams flatly denied he had written it, and declared that if he had written something, he certainly would have put his name on it.

Speculation abounded. It still does.

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On August 4, Williams reported to the Gang of 19 that "a small group of us, primarily the AAUP executive committee," met with a former newspaper editor and reporter. "Our discussion focused on how the media is portraying the University and the tenure issue, as well as what are our goals concerning the political process (i.e., legislature, governor, regents, etc.) regarding funding of the University." She wrote that to develop an "effective media strategy" that went beyond reacting to negative coverage, they need to decide what they want. "If we really want to address the problems at the university, I believe we need a more specific set of goals to be working towards." Williams set out a tentative list of goals. It included University funding (she noted a graph by Purple that "very clearly indicates the declining commitment of the state to the University"), "aiming towards long-term solutions, not just next year's budget," and putting efforts to improve University funding "into the context of funding for other public education systems in the state" in order to avoid creating enemies (she commented that "if we don't use such a sophisticated, long-term approach, who will? I don't think we have any evidence that Arne Carlson, Becky Kelso, Jean Keffeler, Tom Reagan, or the

Morrill Hall gang, etc., have the capabilities for such planning”). Another major item was “having faculty representation on the Board of Regents. The argument in the past has been that the president represents the faculty. I’d like to work towards having faculty represented more directly, after all, there is a student regent.” Also a concern was regental selection procedures, and criticism of “the actual selection procedures for regents as being too political, and resulting in regents with no experience in higher education. On the same topic, Williams pointed out that “there is no recall process in place.” Finally, she noted that their short-term goal had been to end the tenure debate in the fall.

Williams commented to the Gang of 19/AAUP on August 6 that “it looks like the Pioneer Press is making higher education an election/legislative issue, and is framing it in a way that is likely to be harmful to the university.” She said that “Virginia Gray’s outstanding response to Doug Tice’s attack seemed dwarfed by the opposite page of Sunday’s editorial section” and pointed out what she saw as hostile editorial comment on higher education.

Craig Swan commented on how things were going. “I think people felt it was an uphill battle over the summer. The St. Paul Pioneer Press editorial page was attacking us regularly, and Virginia and [Charles Gray] wrote a wonderful response in the middle of August. I don’t know whether their piece had any direct impact -- how many people read the Pioneer Press? And it didn’t change the editorial page right away.”

On August 13, Swan reported to Virginia Gray and Carolyn Williams on a conversation he had had with Clark Kerr. “The bottom line summary of his advice was to encourage a vigorous and responsible (not self-serving) faculty voice to governing boards.” Apropos events both at Berkeley and Minnesota, “Kerr commented on the weakening of the president, the weakening of the faculty senate and the growing activism of regents. . . . At one point Kerr said that he thought academic freedom was so firmly established that it was a weak reed for the defense of tenure. I disagreed and talked about recent attacks at Minnesota.” Swan related that at California, “the chair and vice-chair of the all-university academic council (similar to FCC) sit as non voting members with the Regents. They have done so since Kerr became president, 40 years after asking to do so in 1920. Kerr’s conclusion was that it is not sufficient to be at the table. Individuals have to be forceful advocates of faculty concerns.” Swan said that “Kerr was critical of faculty who are unwilling to participate in university governance at all levels -- department, college, university. He views service as an important part of the obligations that a person accepts when accepting a faculty position, especially a position with tenure.” Kerr also observed that in the past, regents were all graduates of UC and “felt protective” about the institution, but no longer. “He thought that faculty need to be more active in

contact with regents. These contacts should be used to help educate regents about the work of faculty and how a research university works. Faculty should not use such contacts to advance their own personal interests.”

On August 14, Chuck Campbell notified Berscheid, Fennell Evans, Humphreys, Hamilton, and Swan that he would participate in the “Citizens’ Observer Program” at the Star-Tribune the following week, which would provide an opportunity for faculty views on the tenure debate to be made known to the editors. “What is your advice? What are the sound bites?” he asked, and reported that he would seek to meet with Gray to coordinate the message. He said he would send a similar request for ideas to the Gang of 19 as well as Bognanno, Marshak, Shively, and the liberal arts dean, Bob Holt, but “would particularly value your advice.”

Berscheid emailed back to Campbell and made several suggestions about the points that should be made. One was that “prolonging the tenure ‘discussion’ only will do further damage to the U.” She reported that “those of us attending national conferences this summer (e.g., me) have discovered that the ‘word’ is out on Minnesota as a hostile working environment for faculty which may get even worse. Colleagues are either leaving or positioning themselves to leave. Not only do the regents need to close this off, but they need to do something to attempt to remedy the damage that has been done to the U’s ability to attract and retain faculty.”

A second point, “most importantly, I think the [newspaper] needs to understand that if the regents attempt to change the current tenure contract from tenure in the University to tenure in the unit, they are virtually certain of inviting litigation from the faculty who accepted jobs here, and turned down many other jobs, on the basis of that tenure code.” She recalled a court case that Morris had identified in which a university tried to move to unit-based tenure, and “the courts decided that tenure was backed by the whole university, not just a single segment. The regents can, of course, do anything they want with contracts for new hires.”

She added that Campbell should “emphasize that the University has thrown many millions down the drain in the past few years on litigation. Not only would attempts to drastically change the conditions of our employment contract prompt legal action, but it would bring more adverse national publicity (‘UofM faculty sue regents’).” It would also affect the search for a new president.

She concluded that “I strongly believe that any further attempts to ‘educate’ the public about the purposes of academic freedom and so forth [in] a ‘reasoned’ way will be fruitless. We’ve run out of time. I believe that the only thing they might understand is the bottom line consequence: litigation, lost money, and bad publicity.” Berscheid said that “the faculty has acted in good faith, but for the Faculty Senate to go further would not be in the best long-term interests of the University nor

would it be responsible to the contracts of the faculty the senators represent.” She said that “I will strongly resist one single additional jot of vitiation of that tenure code.”

On August 13, Swan emailed to the Gang of 19 to comment on the newspapers and other items. He congratulated his colleagues on their success in working with the Star-Tribune, and said that “we need to encourage and help them build on their initial success.” He cautioned, that “the quips about ineffective legislative representation as the source of all our troubles are too simple. Even if we now have the support of the [Star-Tribune], there are factors and people that are still working against us.”

In Swan’s view, “our recent problems began with the Keller debacle. A number of the issues identified by the Spencer Commission were very real, as was the recession of 1990-91 with its impact on state revenues. While individual reporters and editorial writers may have been sympathetic to the University, the Star-Tribune was instrumental in creating an environment of mistrust and doubt with its constant attacks on the U. If they now understand the extent of the damage done by forces they helped to unleash, we should work with them and not berate them for earlier sins.”

In early August, Murthy emailed to Keffeler data the AAUP had gathered from faculty about their retirement plans, along with a draft of the letter he proposed sending to the Board. He told Keffeler that the data suggested lack of flexibility would not be a problem, but rather replenishing the faculty would be. Keffeler emailed back to Murthy on August 8 with suggestions about the text of the letter and raised additional concerns that she said other regents would raise. One was that the statistics were University-wide, and asked if the Board should “be equally concerned with turnover at the more discrete levels of functional competence” (if turnover were not in departments where change were needed). Second, “even if we don’t have a problem today, why shouldn’t the code be changed prospectively so that we protect our future flexibility.” Third, if University-wide tenure is needed to protect academic freedom, what protection does tenure provide that is not provided by the First Amendment and “through judicial and grievance processes”?

Later, Murthy wrote to Regent Reagan to transmit the results of the AAUP survey of University faculty on their retirement plans. He noted that the tenure debate had focused on the need for flexibility; the poll results (from about 1/3 of the faculty) indicated that 37% of faculty planned on retiring in the next ten years. Murthy said the fact that 84% of the faculty were tenured was not important without considering projected retirements. He urged the regents to consider this information seriously, that opportunities to “reshape” the institution would arise, and tenure would not be an obstacle to doing so. Murthy sent the letter to the senior administrators, the other regents, and faculty leaders, and also sent it to the Gang of 19.

Chapter Eight
The August Regents' Retreat and the
Events Leading up to the September Regents' Meeting in Morris

On August 5, Reagan notified his regental colleagues of a retreat scheduled for August 18 and 19 in northern Minnesota; Chait would join them. Sunday would be devoted to tenure; Monday would be spent “on the Board’s vision for the University. This will be our chance to have an in-depth dialogue with one another about the vision and strategies the Board has adopted for the University over the past few years, and our expectations about the outcomes we want to achieve.”

In lieu of attending their retreat in northern Minnesota, Feeney wrote to the regents on August 14 and recalled the timing of events of the previous academic year; he pointed out that the Senate met the schedule set by the Board but that the momentum “has not been sustained by the Board.” The University was suffering harm from the fallout, faculty morale is poor and faculty are caught “in a crossfire.” They saw salary erosion and a focus by the regents on unit tenure and a need for layoffs at a time when there will be great flexibility with pending retirements. Brody “tainted” legislative views with his statement that the faculty were the problem, there has been political interference with the rider on the AHC appropriation, and the news media have put the faculty on the defensive. Feeney described what faculty need to be productive, said that faculty should be a partner with the administration and regents, and that the collective wisdom of the faculty will address the problems, which is reflected in the Faculty Senate revisions.

FCC met in closed session in mid-August and discussed the anonymous proposal, tenure code amendments, the upcoming regents’ retreat and possible regental action with respect to the tenure code. Gray reported that she, Fogelman, and Morrison would attend the retreat. During the meeting, she was informed that the regents had retained the law firm of Hogan & Hartson (which would be represented primarily by attorney Martin Michaelson) to advise them on tenure, a decision the regents were said to have made without consulting or notifying the administration. FCC members were startled and upset.

Humphreys emailed to the Gang of 19 on the 16th that “the law firm of Hogan & Hartson is on the scene again.” She reported the information that had been provided at the FCC meeting, and recalled that it was Hogan & Hartson that had provided the attorney for the Gang of 4. She said that “this is bad news for the faculty. If nothing else it means the Regents do not intend to simply adopt the Senate’s revised tenure code. It may mean they are looking for major changes; my guess is tenure in the unit and provisions for layoffs.” She also forwarded a note from Walsh about using the web to

learn about the Hogan & Hartson firm.

Hamilton followed Humphreys' email with a message of his own that "I guess the events during the past few days have stunned us all into silence. . . . My reading is that it doesn't look good and it could get worse." He urged that they get together the following Monday "to interpret what has happened and to plot for the future." He also pointed out that "there was a small blurb in the Chronicle [of Higher Education] this week that said in part that faculty in the North Dakota system have voted to allow themselves to be fired if they have three poor reviews. It didn't say what poor means, who does the reviews or who interprets them. It also said that they voted to allow tenure to be granted solely for teaching. I suspect there are a number of people in Minnesota and in the legislature who want these here. Maybe we ought to look into the North Dakota situation." He concluded by saying that "the issue of public relations raises its head again. We have not done well in this arena."

In the view of one onlooker, concerning the events following the Faculty Senate action in June, "the Faculty Senate has some blame because it moved too slowly. If I had been president of the University at the time of this issue, I would have met with the University Senate or the FCC and said 'look, the regents don't understand this tenure issue. They're playing with fire and they don't know it. They don't dislike the faculty.' Which is true. The regents actually have high respect for the faculty, although you wouldn't find a faculty member who would believe that today. But it's true. And on a personal level, the regents are afraid of the faculty. As a general rule. I don't think the regents appreciate the extent to which the faculty do and should run the University. The regents get training in governance, and how the University operates, but they don't get much training in the faculty role at the University, and that would be a major recommendation the faculty should make."

"A president should have moved to pre-empt the issue by having the faculty quickly modify tenure in some ways that would have been more acceptable to the Board. The faculty was too slow, quite frankly; the faculty should have moved more quickly to assume responsibility. The faculty can't say 'we're going to spend three years studying this.' You can't do that. Under those circumstances, they should have moved more quickly. I know it's alien to the faculty culture, but that would have headed this off."

"In any event, the regents weren't satisfied, and their relationship with Nils was so bad that they went to Mark Rotenberg and asked him to hire an outside expert. This was madness, but they didn't trust the administration. The General Counsel works for the Board of Regents; the ultimate client of the General Counsel is the Board of Regents. If they said 'hire an outside

expert,' he had no choice but to do so. So he did so." [He hired Martin Michaelson.]

"This expert [Michaelson] was very disappointing. I don't know when these things were brought to the regents, but I do know that the day that the faculty was about ready to vote to start the unionization process, a week after Morris, Hasselmo asked someone to contact Reagan and Neel and get them to understand that the faculty was about to unionize and get them to back down from their position. I was reading the papers; this was madness."

Walsh later recalled that "everybody has forgotten, but UFA had discovered the involvement of Hogan and Hartson in both the reengineering process and the work of the Tenure Drafting Group and had alerted the other ad hoc faculty groups. The work of this firm later became a major issue in the tenure fight, after the regents' August retreat."

Campbell noted that Michaelson "was also the counsel to Harvard. The trail on the world wide web on [Michaelson] has more to do with advising organizations on how to protect themselves when they are being downsized, how to protect themselves legally. In other words, how do you get rid of people without getting sued. I think that's where his real expertise may lie."

"If you read the tenure code that came out -- it was 'how to get rid of people.' That's what the tenure code was about. It was 'how do we fire people?'" Humphreys concluded.

That the regents had hired Hogan & Hartson prompted wonder about how much the administration knew what was happening. Some surmised that the senior officers were uninformed about what the Board was doing.

Marshak observed that "[Regents' Executive Director] Bosacker presumably knew what was going on. Rotenberg? He knew at some level; I don't think he knew everything. I think Steve [Bosacker] knew everything. I think they didn't tell Mark [Rotenberg] everything; they didn't actually trust him that much. I've heard that from several regents; they weren't sure whether to trust him. They trusted Steve and Kim, but that was basically it. They weren't sure they trusted Mark. If they had trusted Mark, after all, they wouldn't have needed Martin [Michaelson of Hogan & Hartson]. They could have dealt with Chait, and Mark. Why'd they need Marty? The only reason was that they didn't trust Mark, either. And that's because Mark isn't quite the devil that the faculty think he is. Even Mark had some reservations about what was going on. I think the only person in Morrill Hall who was with the Board was Steve. He had to be."

"Mike [Bognanno] tried to keep the channels open with Steve. At first I thought that channel was useful. Then I learned, by experience, that its usefulness was limited. It wasn't as good a channel as I hoped. When I first started in June, there was a lot of talk about the way to deal with the Board was to get deans and provosts and whatever to call Board members. In my view, that never

worked very well.”

“But I believed this for a couple of months, until I learned from the Morris experience that this was not the way to do things. And the preferred way to do things, at least for me, was to take on Tom and Pat, straight on, and just go at them and tell them what I thought. And yell if necessary. But at least I would know where I was. I might not get that far, but at least I would know where I was. All these other things were punching marshmallows; you had no idea what you had accomplished.”

Just prior to the August regents’ retreat, Dan Feeney emailed to Virginia Gray and Fred Morrison. He told them of his letter to the Board, but told Gray she could use it as she wished. “I hope the time spent with the Regents is productive, but I’m not optimistic watching how things have unfolded since the June Regents’ meeting. He reported learning that Hogan and Hartson had been retained, and suggested that “maybe it was that group in collusion with the General Counsel’s Office and one of our more top-down provosts who authored the IFA draft [the anonymous proposal] of the Tenure Code???. I mentioned in my letter to the Regents that some of the phrases in that draft had a familiar ring and seemed to be the equivalent of a minority report from within the Administration.” He told Gray and Morrison that he hoped he hadn’t “burned too many bridges” but that they should “feel free to cast me as an outlaw if it serves the faculty’s best interest. I said some things that needed to be said so that the Board would know how some of us feel. They seem to be responding like weeds in the wind, bending to the most recent and forthright pressure. I thought I’d apply a little of my own. Hope it doesn’t backfire, but it would be hard to imagine things getting more crazy.”

Keffeler sent an email to Bosacker on August 8, following a conversation with Hogan & Hartson attorney Martin Michaelson, expressing concern about the scope of his work, and said she was “amused and mildly irritated that he seems to think I am the one who thinks we should have a full blown public discussion and resolution of these matters at the retreat. The balance weighs in favor of amusement since I am not in the business of a popularity contest with Washington lawyers.”

The regents held their retreat in August; on the 18th, they discussed tenure. Morrison reported later to FCC (in October) that he offered to confer with Hogan & Hartson lawyer on language; “he indicated he did not wish to consult.”

Virginia Gray reported on August 19 to her colleagues on FCC her impressions of the regents’ retreat. “Chait led the discussion, announced that several issues were settled, and that 4 remained on the table -- program discontinuance/locus of tenure; post-tenure review, base salary guarantee, [especially] for clinical faculty, [and the] role of Judicial [Committee] and their counsel. Most of the discussion was on item 1, but nothing was settled, more of a back and forth, lot of questions of the consultant and of the Hogan and Hartson lawyer, Marshak talked a lot, very strongly

behind the faculty proposal, and we chipped in from time to time.”

“Overall, we thought it was a good discussion, the regents finally ‘engaged the issue,’ as they say. The lawyer actually played a helpful role, contrary to my fears, in that he was very knowledgeable about higher ed and how the courts have dealt with various cases, he told them why good employers don’t do some things -- they spend too much money defending their losing position in court. While I wouldn’t say he was ‘pro faculty,’ he often arrives at the same position as we do because it makes good business sense. So he may guide them away from some of the worst ideas. But he is there to write language whenever they finally decide what they are proposing.”

“My sense is that on the latter 3 issues, there will be some new language that we can compromise on. The sticking point is likely to remain the locus of tenure -- they have all of the data supporting flexibility but they are still talking about how to downsize, and needing more flexibility. I don’t know if that gap can be bridged.”

“On another note, one regent wanted to talk in detail about the anonymous letter and its revisions; Regent Reagan ruled this out of order, said he threw his copy in the wastebasket where it belonged, and he wasn’t going to allow any discussion of it!!”

* * *

THE AUGUST REGENTS’ RETREAT

Regents’ Professor Gorham commented on the retreat: asked what happened, he wrote “nothing! I was there, and the regents and their H&H lawyers carefully avoided any truly substantive proposals. It was a total waste of my (and others’) time. Nothing new was discussed.”

Morrison later recounted his view of events. Regent Keffeler was in attendance, unexpectedly; two other Board members were absent. They set aside two hours for a tenure discussion; Chait had a conversation with them (with regents asking questions of him as well as administrators and the faculty present). Chait outlined the areas where there were differences between the faculty and regents. Two items consumed most of the time: post-tenure review and attrition. It was Morrison’s view that the Hogan & Hartson attorney, Martin Michaelson, was being defensive of the faculty in the discussion with the regents; he maintained that full due process had to be provided, for example, because it made more sense than litigating everything. Michaelson was representing his clients, the regents, but was taking reasonable positions and trying to keep things under control.

On post-tenure review, Chait said the regents must decide what they want. The Faculty Senate had developed a mechanism that was tougher than what he had seen, because it

had enforcement mechanisms as well as a review, but it was basically a human resources model intended to help faculty improve. Chait said the regents needed to decide how they wanted to measure success in post-tenure reviews, whether it should be by an improvement in quality or by the number of faculty body bags that resulted from the reviews. Morrison said the majority of the regents appeared to want quality improvements, but Keffeler commented that in any organization at any time, there are 1/2% or 1% or 3% of employees who should be fired.⁸²

On attrition, Marshak had charts and presented information, and said turnover was enough to allow institutional change. Some members of the Board were sharp about this, and said that there would be turnover but not where it was needed, and that attrition was not the way to right-size the institution quickly.

There had not been much direction provided by the regents in the discussion, Morrison thought, and it was left that the regents would come back with their version of the tenure code at their September meeting, with action expected in October.

Morrison said the faculty walked away from the meeting reasonably optimistic, believing that there were problems and issues to discuss, but that most of the regents seemed reasonable. Outside the building, he ran into Michaelson and Chait in the parking lot, and suggested to Michaelson that he -- Michaelson -- had not received much guidance for writing the regents' draft tenure code. Michaelson told Morrison he already had his directions. Morrison told Michaelson that if Michaelson wished for a review of draft language for sensitive issues or any problems, he would be glad to help; Michaelson responded that that would not be permitted. At that point, Morrison said, he became quite disturbed (and only because of this accidental conversation in the parking lot), and sensed that the whole retreat was a sham, and that the instructions had already been provided.

There were only two weeks between the retreat and Labor Day. After the retreat, Michaelson went back to Washington, D.C., and presumably with other attorneys in the firm, had telephone conversations with the regents and wrote a draft that represented the regents' views. Morrison said it was his impression that the regents' Executive Director and the General Counsel knew what was going on, but that Hasselmo and Marshak were completely shut out of the process.

In a sense, Morrison said, the view that "nothing happened" at the retreat is correct. There was a lot of

⁸²Although it is not clear how many faculty were aware of the body bag analogy, those who knew about it were worried that Regent Keffeler appeared to be taken with it.

discussion, but no closure and no direction. It is clear the September proposal released at Morris was the regents,' but there were never any public directions to prepare it in the manner it was; the directions were private. There were regents who, as late as the morning of September 5, had not read the proposal. Hogan & Hartson prepared the document at the direction of some of the regents.

Dempsey commented, about the inactivity of the summer and the retreat, that "we knew there was trouble. They didn't do anything for two meetings, and some of us had met with Chait. He wasn't exactly forthcoming. He was sort of supportive of the faculty, but he didn't tell us what he was telling the regents. I felt uncomfortable, because I didn't know if he was saying one thing to us and something else to them. I thought something strange was going on. Then they had the retreat." Dempsey did not attend, but knew that "that was when Jean Keffeler made the remark about body bags."

Dempsey also knew that Morrison had talked to Michaelson after the retreat. "We were certain things were very wrong."

Gray thought along the same lines as Morrison. "I didn't think the retreat seemed so bad. Chait tried to get them to discuss, for example, on post-tenure review, were they trying to have a remedial system or a punishing system? They had never discussed that, so they didn't know. He was trying to get them to discuss that."

"Even Michaelson didn't seem so bad. I can't remember the issue, but at one point they asked something, and he said 'well, you legally could do that, but a good employer wouldn't do that, for the following reasons.' It seemed like he was approaching it as a 'best employment practices,' which is what you want a lawyer to [explain] -- why you are buying trouble for yourself if you do this. There was discussion of 'do you really want to make the faculty unhappy by getting rid of system tenure and having all this reassignment stuff? If you don't really intend to use it? Other systems don't use it, even though they have it, so why do you want it?' It was that kind of discussion."

"Then other things went on behind the scenes. But the meeting itself wasn't so awful."

Marshak recalled the beginning of his tenure in office, up through the retreat. "When I started, I didn't realize what kind of mess we were in. It seemed strange to me from the beginning, 'it' being the relationship between Nils and the regents. I didn't understand how fractured that was. He really didn't know what they were doing -- this is in July and August. They went out by themselves and hired Chait. We -- that included Nils and Mike and I, because we became the three key people in the administration -- had not a clue as to what they were doing. I thought it was strange that I didn't have a clue,

but I just attributed that to my inexperience. Over the weeks, I realized that Nils didn't have a clue, either, nor did Mike, although Mike maybe had more of a clue than anybody. We didn't know, until we saw the draft before Labor Day weekend, and the regents' meeting was the following Thursday."

"Even at the retreat in August, where Chait appeared, it didn't look as bad. There were some Senate people there, too. It didn't look as bad as it turned out. It really must have gone downhill in the last two weeks of August. Then the bombshell came when we got that draft."

The two metropolitan newspapers covered the regents' retreat.

"U regents considering changes to tenure code" (Pioneer Press, August 19). The article reported on the retreat, and that the regents, "apparently responding to political pressure, on Sunday seemed poised to at least consider making some controversial changes in the university tenure code that will be unpopular with the faculty." They discussed unit-based tenure, allowing termination with program closure. The Board was more favorable about the possibility than earlier, "but that was before Gov. Arne Carlson and legislators . . . entered the fray. Carlson and Kelso, meeting regularly with a 'lunch bunch' of opinion leaders who are concerned about the university, have let it be known that they want to see more drastic changes in the tenure code than the faculty has proposed." Faculty views on the need for tenure were reviewed; Regent Spence said it could be the right time for change, so the University "can bring in new people who understand that if the regents decide to close a department, they may be out of a job." Chait told the regents they needed to decide if "having the ability to close departments and fire tenured professors is worth the cost of antagonizing the faculty."

"Regents might be willing to loosen 'U' tenure code" (Star-Tribune, August 20). Five regents indicated they would be "willing to loosen the faculty tenure code to allow layoffs of tenured professors under certain circumstances," but the support came "in various forms and various degrees," so achieving a majority of seven might be difficult. Those in favor were regents Keffeler, Spence, Neel, Peterson, and Kim, with possible support from three more (Phillips, the student, Larson, and Reagan), and that only Bleyhl and Sahlstrom opposed it; most, however, do not make their positions known in public meetings. Reagan expected to have proposals from the attorney by the September meeting, and "there is little question what the comment [of the Senate] will be," inasmuch as the faculty, with administration support, opposed it because of fears about impact on faculty recruitment. Those fears were "dampened by consultant Richard Chait," who told the regents other major universities could lay off faculty because of programmatic

change and that he doubted young scholars “worry about layoff provisions when weighing offers.” Chait also noted that universities seldom use such provisions, and that it might not be worth the struggle to get it in the code if the regents did not “know when or if they will use it.” Spence said layoffs should only be used after reassignment failed; Sahlstrom worried about recruitment; Bleyhl agreed and accepted the data on faculty attrition as sufficient for flexibility. Neel and Keffeler said the vacancies might not occur in the right places; Kim emphasized flexibility.

Purple offered an analysis of the situation as it stood in late summer. “The Board originally went for Brody; they pulled a re-engineering tactic on June 6 [when they took no action on the Faculty Senate recommendations]. They said ‘thank you, we really appreciate it, everything is hunky-dory, at the end of the summer we’ll come back to you.’ That’s what you do in re-engineering: you keep your friends close, you keep your enemies closer. You thank them, you smile, and when you’re ready to unload, you do it. They were being advised by Michaelson and Hogan & Hartson. That’s CSC’s major firm.”

“That was classic re-engineering. Those of us who had been through it knew what was coming all summer long. The fact that they had gone silent, leaving you to wonder. That’s what you’re supposed to do when you re-engineer. You leave your opponents confused and muddled, so they can’t react until your assault is up and ready to go. Unfortunately, we’d seen it before, and were ready for it. The card drive had reached a certain level, and stopped; all it needed was a little impetus, and off it went. We were organized by that time. The AAUP wasn’t, but the union was. The AAUP were also members of the UFA, were helping them organize it, because we knew the AAUP couldn’t get ready by then. We’d already agreed, before then, that there was going to be a merger.”

The article in the Pioneer Press about the regents’ retreat elicited comment from Williams. She said “it does not look good.” It appeared that regents “are now more open than 2 months ago to unit-based tenure, bowing to pressure from [Governor] Arne Carlson and legislators like Kelso. Apparently, Carlson and Kelso are part of a ‘lunch bunch’ who are meeting regularly to discuss the university’s fate.” She noted that Marshak had made the argument that retirements would cause a great deal of faculty turnover, but that Regent Spence had “suggested that since so many faculty are leaving any way, this might be the right time to change the tenure code (i.e., they could bring in new people who understand that if the regents decide to close a department, they’d know that they might be out of a job!).”

* * *

Hamilton wrote to his AAUP/Gang of 19 colleagues on August 19 and suggested that they have a meeting “to discuss all that has happened.” He said that “we need to meet as a group before we extend our horizons, although I would be in favor of including Virginia Gray.” Williams wrote back to note that she had called him “about how to better integrate the committee of 19 with the AAUP executive committee.”

The faculty thought it would be helpful to have data on closing a unit without changing the tenure code -- something that had happened at the University when it had closed its campus at Waseca several years earlier. Williams pointed out in another email on August 20 that “the regents and other politicians are harping on the notion that not being able to fire tenured faculty undermines their ability to downsize as needed by closing departments” and urged that data on closing Waseca be obtained. Two days later she received it from Bognanno. There had been 33 tenured and 16 probationary faculty; of them, all probationary faculty left, 13 tenured faculty took voluntary termination and 20 were ultimately reassigned. Of those reassigned, Bognanno reported, “all departments report a sentiment that the reassignments are working well and are very productive.”

Another member of the Gang of 19, on August 20, noted for colleagues the articles that had appeared in the Star-Tribune. After quoting what seemed to be ominous statements, “I agree with David [Hamilton] that a meeting is needed. After all the faculty’s efforts last spring, is it possible that the Regents can now draft totally different tenure code amendments, bring them to the Senate in the Fall, have the Senate reject them, but the Regents merely respond by saying that they have omnipotent, dictatorial power and we (the faculty) do not? If this is really possible, then it appears very likely that it will happen. There must be something we can do.”

About the time of these articles, one faculty member commented that “I do not know how close Hasselmo and [Arne] Carlson ever were, but there is no relationship at the moment. Brody, on the other hand, is very close to the Governor and Becky Kelso.”

On August 21 Reagan wrote to his Board colleagues to report that he had turned down an invitation to discuss tenure, “as we are at a critical point in our deliberations. I urge you to do the same.” He recalled that he had said at the retreat that “we must work hard to assure that the Board brings the best proposal possible to the table” in September, and suggested that withholding comment until then would be best.

On August 22, Wells emailed to her Medical School colleague about a memo she had read, and commented that “I was particularly intrigued by the question of how H&H [Hogan & Hartson] can write a code without a Regents’ meeting. This situation . . . [makes] me very uneasy. I feel like we are surrounded by deception. The problem is that we are Minnesotans from clean-cut middle

America; we not only have a difficult time understanding deception, we have a difficult time acknowledging that it is occurring. I have even thought that the reason the Regents rushed the faculty through the paces of writing a code without time for adequate reflection was due to the fact that it did not matter what the faculty wrote. The Regents only wanted something to fulfill a step in the process, but they had an agenda preplanned. Why else would the Regents have initiated a request for tenure code revisions without even hinting at what they had in mind?"

On August 24, Walsh reported to UFA colleagues with "an update on recent events at and after the regents retreat. Much of this I have from members of the AAUP group with good contacts in the administration. At the retreat, the regents announced that they were going to draft their own tenure code changes and gave the job to a Hogan & Hartson lawyer. It sounds as if they have been communicating with this lawyer already outside the public eye. There have been 'conversations over months and at the retreat.' They hope to have a draft for their September 5-6 meeting, with action at their October 10-11 meeting. At that time they will 'consider feedback from the faculty.'" Walsh said that four items were being considered ("program or unit based tenure; layoffs; post tenure review; provision for reduction in base salary") and speculated that "the antifaculty regents probably have seven or eight votes. All the evidence is that they have been heavily lobbied by a group around the governor." Walsh also reported that "the regents will not be giving Hasselmo a copy of the tenure changes until they are ready to make it public. The only practical reason for this is to keep it out of the hands of faculty. (The insult to Hasselmo is secondary.) The revisions may well be far more radical than anything we have seen so far."

These events meant that it was a good situation for obtaining the remainder of the cards they needed to petition the BMS for a cease and desist order, Walsh said, and also related that he would be attending an AAUP meeting on the 26th to represent UFA. "My impression may be distorted by the AAUP group members I talk to, but it sounds as if they think that there will be a union. A number of them are talking about either starting their own card drive or joining ours. We will see if that is a consensus."

Walsh's message reached some of the AAUP officers; one of the UFA supporters wrote to Williams to say that "with Regents apparently planning on writing OUR tenure code for us, it might be worth re-thinking signing cards to secure a 'cease and desist.' Just think about it." Williams commented to her AAUP colleagues, earlier in the day before the AAUP meeting, that "I think it interesting how the group of 19 is described as the AAUP and how AAUP is now perceived as supporting a union drive when the AAUP executive committee hasn't yet met to discuss this. We should have an interesting meeting at 4 today. I hope that the group of 19 can stay together as an

effective coalition that includes input from the UFA and AAUP AND OTHERS. I believe it would be very problematic if the faculty splinters at this point, for our problems are at many levels, which will require multiple solutions.”

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THE CAMPBELL EMAILS AND A BIT MORE

The emails from and to Chuck Campbell that follow support Shively’s recollection that “another member of Nils’s cabinet and I kept in closer contact with the faculty insurgents than other members of central administration. We served a role in doing that. Good roles in both directions. He explained that “was very explicit. It wasn’t just talk; it was strategizing. Other than this, I didn’t do that much in the tenure business. Within central, I was not formally that much a part of the process, because I was a provost. I wasn’t a system-wide officer.”

On August 19, Campbell sent an email message with the subject “the legislature and the regents and other news.” The message is worth repeating, with only minor editing. Campbell wrote “I was told by one of our friends in Morrill Hall (not Marvin) that Kelso, Kelley, et al, have decided there is not much to be gained by removing the protections of tenure, and the regents are aware of that change. These legislators are evidently now focusing on how to improve the regent selection process. That may be good. I was also told that [Representative] Lyndon Carlson wrote a strongly worded letter to the regents critical of their handling of this situation.”

“The assessment of our friends in central is that there are four regents on our side, four against, and four swing votes. My count is 3, 5 and 4, respectively. My own guess is that the bad regents don’t think they yet have the votes, and are stretching things out with new consultants and attempts to redraft the tenure code in order to buy time and convince the regents who are on the fence. And Reagan might be influenced by the change in wind from the legislature, if the wind is really changing.”

“Our friends in Morrill Hall are trying hard not to appear panicked by the Hogan & Hartson reappearance. They say that some of the regents who want to make changes in the faculty proposal feel they need help putting their changes into the proper format. (Please remember that I am just the messenger here. I made sure that our friends understand that bringing H&H in for even this purpose is a tremendous insult to the faculty.) In any case, we will certainly understand a lot more by Monday night, so such speculation is next to useless.”

Campbell then commented on faculty retention, and reported that in a conversation with CLA Dean Holt, he learned that Holt had to deal with 16 retention cases, of which 13 were

retained and “2 very important faculty were lost in spite of strong retention efforts.” According to Holt, “the present situation appeared to be a serious concern of all” of the recruited faculty, “showing up as variations of the question ‘Will I be able to pursue my research interests at the University in the future.’” Campbell related that he knew personally of five faculty being recruited by Michigan, and “are being told by senior faculty here that they should accept.”

“Our friends in central note that there are many reasons for people to leave here, not just the present oppressive, demoralizing atmosphere. But they acknowledge that the latter may tip the balance in a significant number of cases.” The central administrators were also concerned that the CLA success might mitigate the argument of the impact of the tenure debate. Campbell urged that “we continue to alert our friends in central to retention cases, and especially to losses and to statistics indicating an increase in recruiting.” It appeared that “the retention cases in CLA were up significantly from last year.”

Campbell reported on Hogan & Hartson. “I surfed the web on H&H. It is a huge firm, with several offices in the US and a number in other parts of the world [and more information]. But I find no pattern of positions which would, for example, identify the firm with a predominant political view.”

On August 22, Campbell reported to the Gang of 19 on the event at the newspapers, and was moderately optimistic that the faculty views, and the complexity of the issues, might receive better coverage and understanding. He then commented on the regents’ retreat, and reported he had spoken with faculty who had attended. He reported that Fogelman was particularly upset by “the poor reporting by Pinney [the Star-Tribune reporter].” Most of the faculty, he said, were “disappointed in Chait and more favorably impressed with the H&H attorney.”

He said that Marshak “says the situation [with regard to] tenure is precarious. He says he is working hard on it and has some ideas, but he was not ready to share them with me nor was he terribly optimistic about succeeding (50/50). The question of how the H&H attorney gets the information to write the code without the regents officially meeting is an intriguing one, as is whether their notion of consultation with the faculty satisfies the letter of the present tenure code.” Campbell said he had spoken with the regents’ office staff about “what constitutes an official meeting of the board” (probably four regents), “what are the notification requirements, and are any official meetings planned before the September meeting.” No such meetings were planned, he said, and the public relations arm of the University, University Relations, is responsible for notification.

Campbell said he also asked if “there was a legal responsibility for minutes to be kept and made available when

the regents meet. (Why are there no minutes of their monthly breakfast meetings, and are there minutes of the retreat? Is it only necessary to report actions? If yes, then I think the AAUP should assign people to take minutes at every meeting of the regents, at least until the situation improves.)”

Campbell told his colleagues that “it is hard for me to envision the regents considering a faculty proposal and their own proposal and then voting between them at a meeting. In other words, it seems to me that the faculty senate’s hard work has been wasted. We will learn in September and, as Virginia says, still have time to sign union authorizations before their final action in October. But, it is possible that the UFA wheels will turn too slowly to get enough cards signed to obtain a cease and desist order in time. Some scenarios should be run very carefully.” Campbell suggested three: because it was so unlikely the regents would act positively, faculty should sign cards now; wait to see if Senior Vice President Marshak’s efforts have any result; “if legal, mount an underground effort to collect a reserve of cards with the understanding that they will be put into play upon short notice”; if UFA could not get the 30% required, the AAUP might begin to collect cards, and merger talks would begin immediately.” Campbell noted that he would be leaving on sabbatical soon, “but I will sign a card before I leave and leave it with someone to use when it is needed.”

On August 23, Campbell wrote to Bognanno and Marshak: “Marvin and Mike (w/bcc to six friends): It is hard not to conclude that we have lost. I have very reluctantly come to the conclusion that the faculty should take steps to unionize, not as a threat, but as an attempt to hold on to some measure of authority (or power if you like) in dealing with the regents to protect faculty rights and moderate the increased rate of decline in the U that is now inevitable. It is not clear that there is a consensus in our group on unionization as the way to minimize the damages, but I have seen no other scenario which has a chance to work on the time scale that the regents have set (save one, outlined at the end), and even this scenario is problematic; we might have waited too long.”

“Some of us are meeting on Monday to discuss the situation, but I can tell you that the mood is grim.”

“The only other possibility is for Nils to resign in the face of the regents’ outrageous handling of the tenure code revisions. It is simply not credible that H&H will come in with the regents’ revisions based solely on the regents’ public comments and their one-on-one discussions with the attorney. If the attorney has successfully extracted a consensus from this, then the regents in effect have taken action as a body by using numerous one-on-one discussions, thus violating the spirit of the open meeting law and indulging in a conspiracy to keep their consensus and resulting action from the light of day. That should not happen without an appropriate protest from Nils, and

the only thing strong enough would be to resign. If he resigns and makes his unhappiness about this public, then perhaps the regents will be thrown off their game long enough for something more reasonable to develop—perhaps a change of power within the regents to favor the more moderate views of regents like Hogan and perhaps Neel. And Nils would go out as something of a hero/martyr in the eyes of the faculty. I will draft a letter to Nils over the weekend concerning this. Of course I would be happy to hear your advice in the meantime.”

Campbell signed the email “Sadly, Chuck.”

Marshak emailed back to Campbell the next day. “I think you are conceding too much too soon. The ‘bad guys’ have not won the battle; they have no more votes than they had two weeks ago. The Regents are still very split and there are still three or four swing votes.”

On August 26, Campbell emailed to the Gang of 19, again with copies to Marshak and Bognanno, whom he clearly regarded as “friends,” about the regents’ plans. He said he had learned from Bosacker, the executive director, that the regents intended to act on a revised tenure code in October. “He says they will probably have in front of them only one document—their draft—and will not be considering the faculty submission in parallel, though he expects their draft to include “much” of the faculty language. It is within their rules for the document to be changed substantially between the September review and the October action without delaying the action to a later meeting.”

Perhaps more importantly to the faculty, Campbell confirmed that Hogan & Hartson “is writing the regents’ version of the code based upon conversations over the months and at the retreat, including ‘numerous one on one’ conversations. This is expected to represent a consensus. No written instructions or votes directing the drafting have been taken.” The regents would not have an open forum, contrary to past practice. “The faculty senate will be sent a copy of the regents’ draft as soon as it is available (probably after an iteration with the regents). He spoke with Reagan about this this morning. But there is no guarantee that it will actually be ready before the regents’ meeting, even as part of the docket.”

Campbell emailed to Shively on August 26. He sent along the two earlier messages to Bognanno and Marshak, along with the response from Marshak. He told Shively that “the letter to Nils that I mention in the second message is not intended to be a group effort, and, as I mentioned to you, will be changed significantly before it is sent to the same group for review; I will send you a copy of that draft if I actually get to that stage.” He told Shively that “a moment ago I spoke with the someone in the regents’ office asking to look at the contracts with Chait and with Hogan & Hartson, and the minutes of meetings where those contracts were authorized or approved; they promised to

get back to me. I plan to call the H&H attorney and Chait to ask a few questions similar to the ones I asked Bosacker, probably later today. I will keep you, Marvin and Mike posted if anything interesting results from any of this.”

Campbell then spoke of organizational difficulties. “Rama [Murthy] has urged Marvin [Marshak] to attend the meeting of the Gang of 19+ this afternoon. Marvin did not mention this to me, so he is probably not coming. Some of us think it would be a mistake for him to appear at this time; he seems to be irritated with some of us (judging from his threat to resign along with you and Mike).”

On August 26 there was a meeting of the Gang of 19, which Morrison also attended. The meeting was divided, according to Campbell. Morrison explained what happened at the regents’ retreat, “but the division seemed to be between the AAUP leadership (Rama and Carolyn) vs others, on how to proceed. I vaguely remember some unhappiness and AAUP not moving fast enough, maybe with the survey, and a sense within the Gang of 19 that the new AAUP leadership seemed to be wanting to call the shots. Thus there was some criticism, feelings were hurt, and some repair work had to be done. My impression now was that it was over a misunderstanding, but reflected tension and frustration on the part of most people there over what seemed to be a failing cause.”

“I believe that a very few of us had a second meeting later in the day to discuss some sensitive possible strategy. At that meeting, in the astronomy reading room, were, I think, Ellen, Fennell, Roberta, Fred, perhaps Tom, myself, and maybe others. One part of the sensitive strategy was what to do with the information we were gathering about possible improper Regent proceedings (closed meetings).”

Campbell emailed to Fennell Evans that evening that “you probably heard that it got worse after you left. The session at 3:00 was so much better. We should move forward with the smaller group.”

Wells emailed to Campbell and Humphreys the next morning, and conveyed her worry about the meeting. “I did not sleep well last night. I was very disturbed by the divided tone of the meeting. Perhaps our best move now is to stall for time so we can get the entire faculty well-informed when they return in the Fall. Perhaps Marvin is working along this line,” she said, but she noted that Section 19 of the tenure code provided that new amendments must go to the Faculty Senate, which must seek the advice of its three committees, so that it would be impossible for the regents to vote in October—unless they “convince everyone that their amendments are merely modifications of the original amendments submitted last June. However, I am certain the Regents amendments will be so substantially different from the original amendments that this may not be an easy sell. We clearly could use legal advice.”

Humphreys wrote back to Wells and Campbell that she didn't agree. "My guess is if the Senate [and committees] delay, the regents will just go ahead and do what they want anyway. The regents have ignored everything the Senate has passed and they have treated the faculty with contempt. I expect them to continue."

The next day, August 28, Campbell replied to Wells, with copies to Berscheid, Fennell Evans, Humphreys, Hamilton, and Morrison. "Yesterday was a disaster. It was clear [from] Fred's remarks yesterday that the regents are all but ignoring both the faculty and the administration. By 'all but' I mean that they did let the senate go through its procedures earlier this year (the working group notwithstanding), presumably because they wish to follow the technical requirements when it isn't too inconvenient. I suspect that they will consider anything that the senate does after the regents meeting next week to satisfy the technical requirements, including dragging our feet, or failing to make a quorum. Technically the words in Section 19 [of the tenure code] only require that it be submitted to the senate for its advice and recommendation. [Section 19] says nothing about how long the regents have to wait for a reply, or even whether they need to formally consider the senate's advice and recommendations. Indeed, it appears to me that the regents' draft will ignore several of the senate clauses, and thus they will have rejected those provisions by inaction."

"In short, they are proceeding on their own, and nothing we or the administration do will stop them, or even slow them down, short of a cease and desist order. Our only hope is to get that cease and desist order in enough time before the October meeting, and hope that the regents don't become sufficiently alarmed to move their October meeting to an earlier date (the scheduled Senate meeting in October might prevent that, unless they consider the actions of the senate's September meeting to be adequate according to their interpretation of [Section 19], which may be an argument for having the September senate meeting only be a meeting for someone to present the regents' code—no actions permitted, including turning the regents' code down).

In the meantime, Campbell had also written to Marshak and Shively about a letter to Hasselmo. "After chatting with the two of you and a few close friends, I have decided not to send the letter to Nils that I described to you on the phone. While I still think that Nils should demand the resignations of the chairs of the regents and their faculty/staff/student affairs committees (and resign himself if they refuse), all of this done very publicly, I don't see that my advice in that direction is particularly useful. If the situation is as grim as it appears to me, then I am confident that Nils and the two of you will take appropriate action." (Shively responded "let's cross our fingers.")

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On August 28, Wells emailed to Walsh with a timetable of events “that assumes the worst, i.e., assumes the Regents plan to vote on their new tenure code on October 10th.” The timetable called for distributing, before the regents’ meeting in Morris, a fact sheet prepared by Dempsey on summer events and an open letter with commentary “designed to explain to the faculty why a ‘cease and desist order’ is urgently needed.” On October 10, the regents meet “to consider the H&H code, but the ‘cease and desist order’ is there and the H&H code cannot be considered.” “WE HAVE GAINED THE TIME NEEDED TO DEAL WITH THE REGENTS ON A MORE EVEN KEEL.” She also suggested a rally outside the main administration building. The same day, Wells distributed the proposed timetable to a few other colleagues for comment.

Humphreys liked Wells’ timetable, and added that “I think we also need to get a few people to attend the Regents meeting in Morris. FCC and AAUP will probably have a few people there, but I would like an assessment from some people who are less inclined to compromise. It is now obvious we are past that.” She added that “I like the idea of a rally . . . but we shouldn’t have a rally unless we can assure a few hundred people.”

Campbell recalled, apropos the regents’ activities prior to the September meeting, that “we actually thought at one time that the regents were handling this illegally -- and they may well have been -- that one possibility was that they could be taken to court over handling it the way they were. Having secret meetings or communications. In fact, my impression -- I think I was told fairly explicitly -- it was just a couple of regents and Bosacker who were doing all the communication with the attorneys, and they were responsible for whatever communications went to the other regents. It’s quite clear, we know from what people told us who were at the meeting in Morris, that probably most of the regents didn’t see that document until the night before the meeting. Hogan, who wasn’t at that meeting, apparently didn’t see it at all. He was on the telephone without having seen it. So they may not have been meeting in groups of more than two or three.”

“I also found out what the rules were. I’ve documented all that, in part because we thought we might have to take some action. Ellen had some contact with an attorney, the guy in the state who is sort of a press watchdog.”

Law professor Bob Morris commented that “what I’m interested in is, how did Michaelson author the Morris document? And what was behind him doing it? There’s a problem. The open meeting law really cuts down the ability of the regents to consult with one another. One wonders how Michaelson knows what his client wants, because they don’t know that. There is a way out of

that; you can do seriatim consulting if you don't get more than three together. Except there's a case in Minnesota that says if you're doing that, with the idea that there is planning in lieu of getting together, that is de facto a closed meeting, and it's illegal. So if they were doing that, they were violating the open meeting law. Something like that must have been happening. Even so, one wonders."

"Michaelson was an anti-trust attorney with Hogan & Hartson for many years. When the general counsel at Harvard decided to stop paying high prices on a case by case basis for Harvard University to downtown Boston law firms, and build up his office, they brought him [Michaelson] in as associate general counsel. After a number of years, he left that and went back to Hogan & Hartson and established his education branch, on the basis of what he had learned at Harvard."

"The one thing that you don't learn in a general counsel's office is anything about faculty culture. You're not part of the faculty. As I looked at the document, it seemed to me that Michaelson was likely to be guilty of malpractice. You had to believe that the document would be very incendiary. It would cause all sorts of flak." It is not that Michaelson would start out to write an inflammatory document, but "the one he wrote was incendiary. It's not malpractice to write an incendiary document if your client says 'I want it like that!' But when they tell you that, your duty to your client is to tell them 'you're buying a lot of trouble.' I would advise 'it might not be worth the candle for you to do it this way.' That's the kind of advice a person knowledgeable in this matter would be required to give."

Morris also related an anecdote about the draft itself. He recalled that Morrison had told him of the conversation with Michaelson in the parking lot, at the August retreat. Morrison, according to Morris, said to "Michaelson, at the retreat, 'you want a union?' He said 'what are you going to do about the Yeshiva case?' The Yeshiva case held that faculty are managerial. And Fred said, 'it's under the National Labor Relations Act. It doesn't apply here.' This is the guy who's head of the education department of Hogan & Hartson. Fred is right, I think, in thinking that counsel such as this only think in terms of litigation, and not in terms of even administration of an educational institution. This is also true of Rotenberg. They don't get any feeling for the culture of the University, particularly the culture of the faculty; all they plan to do is to avoid or win litigation. That explains a lot of the clauses that were in the Morris document."

"The only body of educational law they are familiar with is the body of law about when a dispute has erupted. They don't have any experience with the body of regulations that make the place run smoothly." Morris's views in this respect coincide with those of Marvin Marshak.

On August 27, Berscheid emailed to several of her colleagues about the survey that the

AAUP had conducted. She had learned that the results had been ready for some time, but nothing had been done with them. She noted that the survey had been conducted in the spring, before the regents had declined to act on the Faculty Senate proposal and before they had hired Hogan & Hartson. She said that the results (according to her husband, who was in the newspaper business) would make a great story, but that they in any event had “a moral obligation to distribute the results to the faculty, a promise we made when we sent out the questionnaire; ‘burying’ these data is NOT an option.” Berscheid asked Fennell Evans to talk to Murthy about releasing the data, the timing of the release (before or after the regents’ meeting in Morris), and the “spin” that should be put on them.

A sample of the data from the questionnaire follows.

“4. Would you recommend to a colleague that he or she accept an offer to join the faculty of the University of Minnesota?”

	% Total Sample (n = 1,036)	% Twin Cities (n = 893)	% InSTITUTE Technology (n = 149)
Recommend w/o Reservation	9.9	9.5	16.8
Recommend with Reservations	55.5	55.7	51.0
Advise Against with Reservations	22.9	22.8	23.5
Definitely Advise Against	11.7	12.0	8.7”

Those who prepared the data commented that “although the modal response is to recommend with reservations, note two things: fully 1 in 3 faculty who responded would advise against coming, and the percentage of faculty who would recommend without reservation is very small.”

5. How confident are you that the University of Minnesota will be one among the major public research universities in the 21st century?”

	% Total Sample (n = 1,044)	% Twin Cities (n = 901)	% InSTITUTE Technology (n = 149)
Extremely Confident (5)	3.0	2.6	2.0
Moderately Confident (4)	19.6	18.3	19.5
Neither (3)	20.2	19.6	18.8
Not Very Confident (2)	38.2	40.0	40.9
Not at all Confident (1)	19.0	19.5	18.8
Mean	2.49	2.44	2.45

“6. Please evaluate below the quality of the leadership that the current Board of Regents has provided the University of Minnesota over the past few years.

		% Total Sample (n = 1,021)	% Twin Cities (n = 882)	% Institute Technology (n = 148)
Excellent	(5)	0.5	0.3	0.0
Good	(4)	4.4	3.6	0.7
Adequate	(3)	18.7	16.8	7.4
Poor	(2)	42.7	43.3	41.9
Very Poor	(1)	33.7	35.9	50.0

Humphreys and Hamilton, after seeing the data, urged that they be released before the regents' meeting in Morris.

At the end of August, Williams wrote to Berscheid, Campbell, Fennell Evans, and Hamilton asking them to “to be the small working group” on how to use the remaining data from the AAUP survey (regarding faculty views of the governance of the University). She said that “we did not have a crystal ball in June and July, and Craig and Rama devoted enormous time to the diplomacy strategy with the regents and legislators. They’re still doing that work and are very good at it. Even at this stage it is probably beneficial to have some informal lines of communication with the Regents, and certainly the legislators. On his own, Rama directed the analyses and wrote a solid letter to Reagan about flexibility when we believed that information might guide this Board.” She said that “Rama and Craig have opened up the AAUP group to you to do this.” Williams also wrote that “I strongly believe that we need to keep this faculty coalition together by recognizing individual’s strengths and interests -- diverse skills and strategies are necessary. I hope there will not be a unilateral use of these data for I believe that with a little expenditure of energy we can come to agreement and keep the coalition functioning.”

On August 31 Berscheid raised questions with respect to the agenda of a meeting of the Gang of 19. She noted that it was unclear when the Board would take up tenure at its Morris meeting, and they should not meet until the Board had done so. She also inquired if the Gang of 19 was staying separate from those now involved with the AAUP; she said that there was a need for everyone, including the FCC chair Virginia Gray, to disseminate information. She commented that “I am not sanguine about the FCC taking leadership, but perhaps I’ll be pleasantly surprised.”

On August 31, Williams forwarded to the AAUP/Gang of 19 an email from Jack Nightingale of the national AAUP. She reported that “Tom Walsh and I have been communicating, and the local AAUP has enlisted the assistance of staff and attorneys at the national office to provide information that we can use for our strategic planning.” Nightingale had written to provide a preliminary analysis

of Minnesota collective bargaining law; he wrote that “I have found that . . . ‘following receipt of a petition, the commissioner may issue an order prohibiting negotiations and maintaining the status quo, in part or in whole, of the employees’ terms and conditions of employment.’” The AAUP labor attorney was of the view that “this language would not stop the [tenure review] process, per se” and they would contact the BMS about it.

Also on August 31, Williams suggested there would need to be a meeting “quickly after the Regents’ meeting to develop and implement our plans.” She suggested a draft agenda that included reports from the regents and administration, and from UFA, preparation of possible censure motions for the Senate, and possible protect options (including “mass resignations from faculty governance committees if regents/lawyers’ tenure code is implemented).”

At the end of August Mary Dempsey sent an email to all faculty reporting on the regents’ retreat. She told them the Board had taken no action during the summer, but had “hired the same lawyers who advised former Provost Brody on tenure issues (and who participated in the proposals you saw in March) to prepare a new draft for their consideration.” At their retreat, the regents and consultants had identified where they had differences with the Faculty Senate proposal: “the Regents’ desire to have power to terminate tenured faculty in cases of programmatic change; their desire to eliminate the guarantee of salary with tenure, permitting salary reductions; their concern that the post-tenure review procedures are too cumbersome, and a wish to provide more flexibility in this regard; and a general concern with Judicial Committee procedures.” Dempsey wrote that the proposal would not be released until the September Board meeting, and that faculty reaction would be expected in the month afterwards, with final regental action expected in October. As a consequence, she told them, the Faculty Senate would meet September 26 and October 3.

Also at the end of the month, Reagan received a letter from Representative Lyn Carlson (Chair of the House Education Committee and one of the more important and powerful legislators); Carlson wrote that he understood the regents were not taking tenure lightly and that he approved the theme of commitment to educational quality. He noted a link between program quality and faculty recruitment and “hope any action by the Regents will acknowledge the importance of faculty governance issues.” He also said he understood the wish for flexibility, and pointed to upcoming faculty turnover as an opportunity for change and flexibility without needing to alter tenure which might put the University at a “competitive disadvantage.”

On August 30, Bosacker sent to the regents and Hasselmo a “confidential draft” of a revised tenure proposal. Bosacker reported that it was based on discussions at Board meetings, “reactions to faculty letters and meeting minutes, your conversations with Dr. Richard Chait, the discussion at the

August retreat, written communications from Board members, telephone survey conversations with Kim Isenberg, individual regent communications with the consultants, and detailed analysis of all written materials and data.” A two page summary indicated where the Board accepted the Faculty Senate proposals and where it “is suggesting the need for further review and comment.” This and the immediately succeeding events were going on without the knowledge of the faculty, except for veiled hints from Marshak and Bognanno.

The summary enumerated the code sections and regental suggestions: “Suggest greater flexibility with respect to faculty compensation, while maintaining expectation that base salary will not be decreased, absent exceptional circumstances”; “suggest amendments to Code to allow greater flexibility in imposing discipline when adequate cause exists”; “Suggest amendments to Code to require report to Regents on basis for proposed programmatic change and to allow more flexibility with respect to faculty appointments affected by such change, including termination of appointments if reassignment and retraining is impractical”; “suggest that provisions” concerning the Judicial Committee be included, and that “Judicial Committee procedures are subject to review and approval of Regents”; suggest simplifying present step of process “in the case of unrequested leave,” and “suggest that Regents retain discretion to hear appeals”; and “Suggest simplifying president step of process” in appeals to the Judicial Committee.

Campbell emailed to colleagues (Hamilton, Wells, Murthy, Berscheid, Fennell Evans, Humphreys, Williams, and Swan) on September 2 and wrote that “the most discouraging news is that, judging from Fennell’s account of his conversation with Mike [Bognanno], he (Mike) seems despondent about what he read in the ‘mephisto manifesto,’” and was worried about faculty flight if it were adopted. Campbell said that “at least one regent did not see” the draft at the time it was provided to Hasselmo -- and even that version was not the first from Hogan & Hartson. The earlier one had been changed because the “regents” could not agree on it. As for the document provided to Hasselmo and senior officers, Campbell said that Marshak had not read enough to reach a conclusion, but Marshak did urge that “the faculty should be contacting others who can bring pressure on the regents.” (Campbell had confirmed the accuracy of Marshak’s sentiments with Marshak before sending this message out.) Without having the document, Campbell noted, the suggestion was difficult to act on, and as matters stood they would not see it until Thursday (three days later).

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THE HASSELMO LETTER TO THE BOARD

In a letter dated September 3, Hasselmo wrote to Regent

Reagan (with copies to the other regents). The letter was later released publicly. It is worth quoting at length, for it is probably unusual for a president to take such a strong stand in opposition to a governing board. The opening paragraph read as follows:

As President of the University of Minnesota, I appreciate the opportunity to review the August 30 draft of [the tenure regulations prepared by Hogan & Hartson for the Board]. I am thankful for the opportunity to react because I believe that, without question, the University will be poorly served by the tenure policy and procedures it envisions, and putting it forward may badly rupture relations between the faculty and the Board.

Hasselmo pointed out that “some time ago, your consultant, Professor Richard Chait, emphasized the importance of forming a consensus regarding the University’s goals and thereafter to revise the tenure regulations in ways which will move us toward these goals.” Hasselmo held that the goals had been set: “that the University of Minnesota be a great, land-grant, research university in the league of other first-class public and private universities.” He wrote that “the competition for academic leadership is, if anything, more severe today than in years’ past. The Faculty Senate’s revisions of the Tenure Regulations, as modified by the Administration, preserve the University’s long-held philosophy and practice of faculty consultation, participative decision-making, and peer review while changing the Tenure Regulations in ways that will permit the University” to achieve its goals.

Hasselmo told the Board (again) that the faculty’s proposals put the University “in the mainstream of comparable institutions with respect to such provisions as the management of programmatic change. The revisions ensure that we can meet the ever present need to change delivery structures to change our programmatic contours, and do so with full faculty participation and support. Further, the revisions preserve the University’s ability to successfully compete for first-class faculty -- to remain on the frontiers of knowledge.”

He argued that “the new draft of the Tenure Regulations, as the attached memorandum from Dan Farber indicates, would substantially weaken tenure at the University of Minnesota, and move us far to the right of the mainstream of comparable universities.” Hasselmo pointed to features of the regents’ proposal that “exposes tenured faculty to the specter of termination with any change in the University’s academic programs; seriously limits any meaningful guarantee in base pay; threatens to cut the base pay of some faculty, when the draft goes into effect; establishes a post-tenure review policy that limits peer involvement; broadens and permits great

subjectivity in discharging or suspending tenured faculty, while introducing new, but lesser forms of discipline without redress before the Judicial Committee; and severely weakens the role of the Judicial Committee as a guardian of academic freedom.”

Hasselmo used strong language to tell the Board that “the University of Minnesota neither needs nor deserves the Tenure Regulations proposed in the draft. With this draft, tenure at Minnesota will be weakened -- appearing to rest on little more than a notion of ‘at will’ employment. Further, the University will not be able to successfully compete in the academic market place, at a time when we face many retirements and will need to recruit significant numbers of new faculty. A high price will also be paid in terms of the faculty’s willingness to participate in programmatic change. Still further, the faculty will predictably be shocked and dismayed with this draft, and they will be further surprised because it contains several ideas that appear now for the first time. For example, at no prior point has anyone suggested that (1) an individual faculty member’s base pay could be cut by direct action of the Board or through an administrative action without prior hearing, or (2) that faculty could be laid off as a result of a programmatic restructuring (as opposed to the closing of a department or college.) The proposed draft will harm the University. It will also rupture cooperative relationships with the faculty for the foreseeable future, and perhaps change University governance as we know it. In these difficult times, some may believe this to be a desirable change. My own view is that the result will be serious, unnecessary, and lasting damage to our University.”

He cautioned the regents that “more than simply the issue of tenure is at stake. I, therefore, recommend that the draft revisions not be considered in their present form. I recommend that the Board of Regents endorse the Faculty Senate’s modified revisions.”

*** * ***

Hasselmo attached to his letter a four-page analysis prepared by Associate Vice President Farber. Farber made a number of points that Hasselmo had drawn on for his own letter, and began by saying that the “proposal substantially reduces or eliminates tenure guarantees” and “expands the Board’s role in the daily administration of the University’s human resources policy.” On programmatic change, restrictions on the power to make changes were vague, terms were not defined, and reassignment or retraining of faculty is subject to the University’s judgment if it is practicable; he noted that this was a much weaker guarantee than provided by other Big Ten schools. On base pay, it would only be “expected” that salaries would not be reduced, unless the regents found compelling reasons (which were not defined) to do so; this would permit reductions on an individual basis, and

faculty recourse was unclear, and some faculty would see pay cuts when the proposal was implemented if any part of salary were special awards, clinical income, or administrative service. This is a reduction Provost Cerra did not want because current salaries were too low. On post-tenure review, colleges must have peer review policies but provides for no faculty role, and there is no limit to salary reductions (the Senate limited it to 25% cumulatively); the only recourse is a grievance, not to the Judicial Committee. On the grounds for discharge, the proposal provided that “it is necessary to take disciplinary action when commonly held standards of conduct are violated” if there is adequate cause, including an individual’s “attitude of cooperation with others.” On the Judicial Committee, it would “lose control over its own proceedings,” its decisions would “receive less deference,” and “administrators will gain the power to punish faculty members severely without any prior right to a review of the decision.” Even in academic freedom cases, the faculty cannot appeal to the Judicial Committee, and when it could occur, base pay could have been reduced to zero without appeal.

* * *

A FOREWARNING

On the morning of September 3 -- the Tuesday after Labor Day -- there was a meeting of faculty leaders (including Gray, Swan, Murthy, Evans, Berscheid, Campbell, Hamilton, Bloomfield, Fogelman, Feeny, and Morrison) with the President, Chief of Staff Bognanno, and Academic Affairs Senior Vice President Marshak.

Hasselmo recalled discussing release of the AAUP survey results, the “status of the discussions with the regents concerning their desires, . . . concern [was] expressed that the ‘discussion’ was not headed in a good direction and that I was opposing some new proposals.” He said the draft code to be taken up by the regents [about which more very shortly] was not revealed.

Faculty recollections were nearly identical. Gray recalled that she had been at a professional meeting over Labor Day weekend. “I got back and called Nils on Labor Day, and that’s when I found out they had written this horrible thing. ‘I can’t show you how horrible it is, but trust me, it’s horrible and you’re not going to like it,’ he said. Then we had this meeting, and that’s what he told everybody.”

Morrison’s recollection was similar. He recalled that “Hasselmo indicated to faculty leaders his concern about the upcoming regents’ meeting, but was unwilling to provide a copy of their proposal, because of instructions he had received from the Board.” He said “it was a sort of ‘well, I can’t release this to you now but it is not very good news and I think we have to think about how to deal with this as it comes down the line and

I'm going to send this letter to the regents and I hope things don't get out of hand and I want you to know that I'm not supporting this.' The issue came up about the AAUP survey, and getting it out, which had been sort of bubbling in the last week. Nils tried to dissuade them from doing that, but the sense was on their part, at that point, not to back down. I tried afterwards to talk them out of putting it out, and talk them into postponing it, but they wanted to go ahead. The numbers were astounding."

Bloomfield agreed with this characterization. Hasselmo "didn't tell us what was in the proposed code, but he recognized the impact it would have. He told us he was concerned about it and was trying very hard to persuade the regents not to make it public. I think he said he had drafted a letter he said he would make public if they did. The gauntlet was about to be thrown."

One comment attributed to Senior Vice President Marshak was that "if they put that on the table, faculty have no choice but to unionize." Marshak later said he had not been of the view, at the time of the Morris meeting, that "the faculty had no choice but to unionize," but he did believe "that filing for unionization and getting the status quo orders was an essential tactic that would slow things down and allow time to try various approaches."

Campbell remembered that "it was a grim meeting. Nils's intent in that meeting seemed to be to get faculty leaders to back the administration's point of view on this (opposition to the regents' draft), but I really think Nils also didn't want the union movement to go forward. I think that was part of what he was concerned about."

"We discussed some things about communications with the regents and who learned what when. Previous to that meeting, I had been told that if Nils did not actually see this draft code before it went to the regents, he would resign. So he did see it in advance, probably before most of the regents."

Humphreys said she was told that "the weekend before the regents met, some regents had gotten a copy of the code. Hasselmo had heard that it existed, he had asked for a copy, and they refused to give it to him. He apparently was then threatening to resign if he was not allowed to see it until they brought it to the floor at the regents meeting. They only gave him a copy with his promise that no faculty member would see it. He was allowed to show it only to [two or three senior administrators]. He was given a copy on the condition that he not show it to any faculty members. So the regents were conspiring!"

Both Campbell and Humphreys agreed that Hasselmo had kept his word about not showing copies of the draft to any faculty members. "All we were told was [that it was] 'extremely right wing,' and [had] 'no due process.' It must have been Reagan or Bosacker who was controlling it."

* * *

What happened over Labor Day weekend? One set of speculations was that over Labor Day weekend there were meetings at Eastcliff that included faculty, at which time they went over what became the Morris tenure document from the regents. No faculty member involved in these events was at such meetings, they say, but one of them related that “I heard from another source that there were meetings, pretty continuously, over the weekend to decide what to do. I was not involved and I understand no one from faculty governance was involved. I think it was just Nils, and Mike, and Marvin, and Dan Farber, and perhaps the provosts, but there were no faculty, no regents, and no one from the counsel’s office. [Associate Vice President Farber] said that they had been told not to release it, but that it was ‘really bad.’”

Later in the day on September 3, FCC members were notified that there would be a meeting on the evening of September 5, at Fred Morrison’s home, to discuss any tenure proposals the regents may have taken up.

To go back slightly, Campbell had offered his support (to Murthy, Berscheid, Fennell Evans, Hamilton, Williams, and Swan) for Humphrey’s view about the survey results that they should be released before the regents’ meeting the following Thursday. This would have “the positive and/or negative effects of pressuring and criticizing the regents the day before their meeting. On balance, it is probably better to have it out the day before than the day after, though our enemies will call it whining in either case, and our friends will acknowledge that the survey was done well in advance of the regents’ meeting in either case. And either choice will be criticized by some members of the faculty.” Campbell also suggested that “the full 19/AAUP” should meet on September 5, after the regents had discussed and taken action on their draft on Thursday morning.

The preparation of the data on faculty opinions of University governance received attention in the early days of September. Williams wrote to a small group (including Fennell Evans, Campbell, Berscheid, Humphreys) to ask for help in organizing the release. Murthy had prepared an AAUP statement, but how to get the data and commentary into the newspapers was an issue that had to be dealt with. One Twin Cities paper required exclusivity, so two separate pieces would probably be required.

One approach considered was a series of faculty statements about the data and the tenure debate, although ultimately they were not used. They were as follows.

Murthy: “We in the AAUP take a dim view of this undermining of tenure and its assurance that our scholarly activities will not be unduly influenced by politics, particularly when there has been

no clear articulation by the Regents of what is going to be gained, and little consideration of what is being lost. Clearly, there has been a breakdown of collegiality, communication, and informed discussions among the Regents and faculty.”

Campbell: “The faculty’s pessimism about the future of the university as a major research institution has significant implications for the educational, economic, health, and cultural well-being of the citizens of the state.”

Williams: “Despite the limitations in any short survey, it is quite dramatic when 80% of almost 1,000 university faculty agree on anything. We hope that the majority of the Board of Regents will decide to work with the faculty, instead of against us, in rebuilding confidence that the university will remain a major player on the national stage in academic research -- we all owe it to Minnesota to put any personal disagreements aside.”

“The university faculty have many challenges ahead of it in the next year. We will be converting the institution’s entire curriculum from a quarter system to semesters, we need to continue teaching our classes, advising our students, writing our grants (that brought over \$250 million dollars into the state last year), and recruiting and retaining talented faculty, as well as an new president. The Regents have to put an end to the turmoil on campus so those important activities can move forward.”

Humphreys: “Before they go about destroying the university’s academic credibility and its reputation as a leading research university in this country, there should a plan indicating where the Regents think they’re headed. That’s what’s troubled me about this process all along -- what are the Regents’ motives? What are they hoping to accomplish in all this?”

Stephen Gudeman (AAUP Executive Committee): “The Regents, drawing on what they take to be corporate management models, claim that flexibility means having the ability to fire faculty. They do not seem to understand that faculty commitment to research and course development, that building departments, programs, and projects, and that hiring and mentoring new faculty are long-term ‘investments.’ But the Regents, focusing on short-term financial stresses, while abjuring responsibility for helping to alleviate the fiscal problems, have chosen to attack the governance and tenure structure of the university as a solution.”

“The Regents’ attack on the tenure system is especially unpalatable because the commitment to shared governance, public discussion, and open procedures has now collapsed at the University. The process undermines the values and agreements by which all universities are guided. If the Regents’ subversion of our shared values is allowed to proceed, it will have dangerous implications for the academic world.”

One member of the UFA urged, on September 3, that the faculty be provided copies of the

AAUP survey results on faculty attitudes on governance -- so they didn't read about the results in the newspapers before they saw them. Williams responded that they had to stick with the timetable they had established, in order not to jeopardize the newspaper articles. Swan agreed, and reported that "Virginia Gray is unwilling to let us use FCC access to the general e-mail list on the grounds that if she lets us, she would have to let everyone. While I wish she saw the issue a different way, I can't argue with her." (This led to a discussion in FCC, which in turn led to the development of a protocol on how the Senate office would use the all-faculty email list.)

Williams wrote to a few of her colleagues on September 4 to report that efforts had been made to arrange TV coverage of the release of the AAUP data. She also commented that "if the Regents put the lawyers' tenure code on the docket, then Nils is planning to hold a press conference immediately and make his letter to the Board public (according to yesterday's 4:30 meeting). Therefore, our AAUP television coverage should be postponed until Friday so as not to preempt Nils. Also, it would be good to hear tonight if the administration has a clue yet what the regents will do, to help in our planning." Williams wanted people to listen to the telephone hookup with the regents' meeting as well as volunteers for TV interviews.

The survey results were not released without some rancor between faculty members. According to Fennell Evans, the AAUP "almost screwed up the survey we'd done." Berscheid and Evans wrote the survey and two junior faculty in Berscheid's department analyzed the results, Evans recalled, but he had arranged for it to be released under the auspices of the AAUP. "This is an example of using an organization as a front. I wouldn't go so far as to say we were unscrupulous in how we used things, but we certainly didn't stick with any gang longer than it made any sense."

But then the AAUP "wanted to write all kinds of press releases," Evans said. "Over that previous weekend, I remember a meeting" at which one AAUP member "presented all these great things they'd written, with all kinds of glib statements about the AAUP and quotes on the significance of this stuff. You don't need that. You don't tell the press what conclusions they're supposed to reach. You give them the stuff and you let them draw their own conclusions. I really backed them into a corner, and was absolutely nasty about getting rid of all that extraneous garbage."

Berscheid said, "we had given the survey results to both papers, with an embargo. They had agreed to that. We said we wanted it released the next morning [Thursday, September 5], because the regents were meeting at Morris." However, Murthy "told Keffeler about it the night before, although he had promised he would stop leaking to Keffeler. We told Murthy 'why do you think we got an embargo? It was hard getting the papers to agree to an embargo.'" Moreover, Evans said, "it was tricky negotiating with both of the papers to get them to agree that they both would run it, and both at

the same time.” Although the AAUP had done very little on the survey, Berscheid recalled, “we had put a lot of time into it and it was frustrating that Rama blunted its impact on the regents.”

Swan reported to the Gang of 19 on September 2 that he had met the previous week with an influential legislator who was concerned about events. The legislator “was interested in contacting Regents to express his concern about how inappropriate action could damage the university. He was very impressed with what he knew of data on likely future flexibility. It was unrealistic to expect that he would be able to talk with all Regents. We talked about where he might concentrate his efforts and focused on a strategy of talking with Regents who we expected might not have preconceived ideas and might still be uncertain about how far the Board should go.” He also felt that “he needed to contact Tom Reagan.” Swan apparently did not realize that Carlson had written to Reagan the week before.

Swan also said that he had spoken with Hasselmo about the AAUP survey; Hasselmo “was concerned that we not inadvertently alienate those members of the Board who are on the fence and could end up supporting us.”

Swan reported to the Gang of 19 on September 3 about the letter from Carlson; he had learned that “the letter he sent to Tom Reagan . . . was sent to every member of the Board of Regents and copied to Hasselmo. In the letter Carlson reviewed the data on faculty retirements and went on to say “Turnover of this magnitude presents the University with an outstanding and challenging opportunity to make structural and personnel changes without modifying the tenure code in a way that would put itself at a competitive disadvantage with other top ranked universities.”

One of the concerns of the faculty, peripheral to the tenure debate but indirectly critical, was the national ranking of the University. Swan at one point analyzed the data and reported them to Fennell Evans, and then circulated them to the Gang of 19 on September 3. “The source for [former President] Ken Keller’s reference to Minnesota as ranked 16th among major research universities was the 1982 NRC evaluation of graduate programs. It comes from an article by Daniel Webster, ‘America’s Highest Ranked Graduate Programs, 1925 - 1982,’ Change, May/June 1983, pp. 14 - 24.”

“Webster also reviewed earlier evaluations. For the postwar period that shows the following for Minnesota

1959 12

1966 12

1970 16

1982 16 * tied with Texas”

Swan noted that he had used Webster’s methods when the 1995 NRC rankings came out, and

“the work that is closest to Webster’s shows Minnesota having slipped to a ranking of 21. I do not feel there is any question about the slippage, but some ways of doing things show a bit more than 21, others a bit less. Since I did my work last fall, Webster has published a new article that ranks schools by the average quality of ranked programs for schools with at least 15 programs. (Change, May/June 1996, David Webster and Tad Skinner). This ranking shows Minnesota ranked 23rd.”

An undated draft letter from Senior Vice President Marshak to the regents was clearly written after the Morris draft was prepared but before it was made public. In it, Marshak proposed to say that “it is important to eliminate any misconception that the draft tenure proposal by the Hogan [& Hartson] law firm can be put forward as a step in negotiations with the faculty. If the proposal, or anything similar, goes public, I am morally certain that there will be no further discussions between the faculty and Regents regarding tenure.” He wrote that “the faculty will be shocked and dismayed that such a far-reaching proposal has surfaced for the first time after many months of discussion.” The faculty leadership “will be particularly stunned to see new approaches placed on the table for the first time.” He noted the “long tradition of cooperative relations between the faculty and the Regents”; this proposal would end it. It would result in “serious, lasting damage to our institution. I have grave doubt about the ability of the Administration to work effectively with the faculty on any issues in the aftermath of such an event.” More than tenure was at stake; “I cannot overstate the depth of my concern about the potential repercussions of this proposal.”

Murthy sent to all faculty on September 3 a copy of his August 6 letter to the regents transmitting the results of the AAUP survey of faculty intentions with respect to retirement. He reported that he had had no response from them.

On Wednesday of Labor Day week, Gerald Fischer (President of the University of Minnesota Foundation) wrote to Reagan and reported that Regent Kim had asked if the Foundation had a view on tenure revisions. In general, Fischer wrote, the trustees and donors believe tenure should be modified so it did not protect “low-performing” faculty but not changed so it would affect faculty recruitment. He said the regents should endorse Hasselmo’s recommendation; “donor confidence . . . is shaken whenever there appears to be a breach between regents and University administration.” He urged that consensus be reached by non-public means.

Williams sent an email on September 4 to the Gang of 19 about plans for the media and political figures. She noted that she had been in contact with a friendly political leader who had agreed to call several regents. This person, purposely unidentified in the email, also suggested a call to (federal) Representative James Oberstar, for whom Reagan had worked, to ask Oberstar to call Reagan, and a call to Donna Shalala, Health and Human Services Secretary, who was at a political

fund-raiser at Keffeler's home and who had views about academic health centers, to ask her to call Keffeler.

Williams also reported that the political leader had said the faculty had to reach the public through the media; Williams inquired about the possibility of getting faculty on television stations who would convey the same message and of identifying faculty for interviews. She also reported that Hasselmo or Marshak had planned a press release for the following day if the Board released the Morris proposal, and surmised they knew about the AAUP survey results about the Board; if so, they needed to avoid "dueling news conferences."

Hamilton alerted the Gang of 19 on September 4 that they would meet the following day to discuss strategy, and reported that "the Regents are releasing the tenure document after 4:30pm today and are sending it to senators via campus mail (!!??)." He and Campbell would bring copies to the meeting.

AAUP president Murthy distributed to all faculty on September 5 a press release with the results of the AAUP faculty survey. The release pointed out the flexibility that would come with the retirement plans of many faculty, and that the answers to other questions showed "a lack of confidence" in regental leadership and concern about the ability of the University to retain its position as a major research institution. The release cited Murthy as noting that the survey came at the end of a "difficult year" (the survey was conducted at the end of May), so faculty concerns should not be a surprise. Williams of Public Health expressed concern about recruitment of outstanding faculty. The AAUP supported the Faculty Senate tenure recommendations.

The two newspapers carried headline articles on the survey; in St. Paul, it was on the metro section; in the Star-Tribune, it was page one.

"Survey finds U professors pessimistic: Their biggest worries: leadership, the future" (Pioneer Press, September 5). The article reported on the AAUP survey results, including the data. The faculty "are gravely pessimistic about the future of the university and the leadership of the board of regents. . . . 79 percent of the professors said the regents over the past few years have been doing a poor or very poor job." Faculty say the regents "blame the faculty" for financial difficulties and want to change tenure so they can fire faculty more easily, an approach that will harm retention and recruitment. Hasselmo "appears to be siding with the faculty in its fight with the regents and reportedly is opposed to additional changes, which were written by lawyers hired by the board." The article said the regents "backed off their initial enthusiasm" for the Faculty Senate proposals in the face of gubernatorial and legislative opposition. The survey "prompted an emergency meeting between Hasselmo and faculty leaders" (the September 3 meeting), at which "Hasselmo reportedly

pleaded with faculty leaders not to release the survey. The professors declined and released it to reporters.” Fennell Evans said mismanagement was worse in recent years, and the result is worry about the future. The faculty are pessimistic, and the University would not be able to hire “good people.” Reagan said he was not surprised by the results, given the changes at the University the regents are attempting.

“‘U’ faculty survey indicates doubts of regents’ leadership” (Star-Tribune, September 5).

The article also reported the AAUP survey results, and said faculty linked poor leadership to a concern “that the university is on the road to becoming a second-rate research institution.” The results came the day before “the board is expected to announce a controversial set of proposals to revise tenure . . . developed by a private law firm at the regents’ request.” Hasselmo “told several faculty members that the proposals are extreme and unacceptable. He reportedly urged the regents not to release the proposals today and said that if they did, he would make public a letter objecting to them.” Marshak said the survey was unscientific, but explained that shrinking public funding will make it difficult to recruit new faculty as retirements occur, and said the question is not the regents at Minnesota but the problem of not investing in education across the country. Humphreys and Evans are quoted as calling for the regents to be protecting the University.

The Pioneer Press contained an editorial critical of the faculty views. The AAUP survey results should not be a surprise and they “reflect faculty resentment over mounting pressure for belt-tightening change . . . that may diminish traditional faculty protections and prerogatives.” While “some faculty concerns are legitimate,” and the University must not be made uncompetitive, the regents were not responsible for all the problems. The release of the results (which were not scientific, which one would expect) did not help.

Williams reported to the AAUP/Gang of 19 that the AAUP data made the front page of the Star-Tribune and the front page of the second section of the Pioneer Press. “This is the result of collaboration between the gang of 19 and the AAUP.” Williams commended one UFA member, who “gave up her Labor Day weekend, as did a lot of us, to analyze the results and put them in Tables for the newspapers” and that she should be pleased, because the data were “highlighted prominently.” Williams said that “no one in the articles refutes the basic message that the faculty are pessimistic and unhappy about the Board of Regents’ leadership. It’s kind of sad that the Chair of the Board reported not being surprised by the low ratings of the Board, since ‘our board is trying . . . to get this university to be turned around.’ How can they not know that they need the faculty on board if they have any hope of succeeding with whatever their grand plans are?” Williams was also pleased that “Nils’ commitment made to the faculty that he would release his letter to the press, if the Board put the

lawyer's code on the docket, was highlighted" in the newspaper. She also commented that some should explain to Marshak that "a survey is not unscientific simply because responses came from volunteers & that we didn't include a sample of nonrespondents."

This, then, was the setting as the Board made public its own tenure proposals.

Chapter Nine

The Storm: The Regents Act and the Faculty React

What occurred between the faculty and the Board of Regents was a civil war. And in the absence of any external force, the Board of Regents would have won because they are a sovereign body and they can do almost anything they desire independent of right, wrong, or immediate consequences. From this perspective there is a parallel in reading Winston Churchill's six-volume history of WWII, in which he details all of the chronology and delineates all of the battles. One comes away the view that we won because we were virtuous and we were right. If you subsequently read the Enigma Code, and examine WWII from this perspective, you conclude that we won because we were smart and overcame overwhelming odds.

The decisive factor in surviving the blitz attack by the Board of Regents on the faculty, the University, and ultimately the State involved gaining allies in the business community, the U of MN Foundation and alumni, press, public and ultimately the legislators to defeat the Broad of Regents. For me and many of my colleagues, the challenge became how to mobilize our collective intelligence, devise a robust strategy, and thereby deploy our meager resources to force the Broad of Regents to surrender. Had we not prevailed, the University of Minnesota would not have ceased to exist, but it would have ceased to matter.

-- D. Fennell Evans

The regents met at the Morris⁸³ campus on Thursday-Friday, September 5-6. At the Faculty, Staff, and Student Affairs Committee, Regents Keffeler and Spence noted the articles about the AAUP survey; Keffeler wanted to meet with the AAUP while Spence expressed the hope that the faculty's negative perceptions did not become a "self-fulfilling prophecy."

Gray and Fogelman had breakfast with Keffeler and Reagan on Thursday morning in Morris. Gray recalled that they "begged them not to release the document because it would have such a negative impact (given what we had heard about its contents)." She also recalled that "the night before, Marshak had been trying to get them to pull the document." Gray also pointed out that the meeting came the morning the regents had read the headlines in the paper about the lack of faculty confidence in the Board.

Fogelman recalled the breakfast as well. "Virginia and I met, the morning of that meeting at which the thing was presented, with Reagan, Keffeler, and Pat Spence. We had what I thought was a very good conversation, although afterwards I understand that Reagan wasn't very happy with it. It was a frank exchange, and I thought he was saying the Board was ready to compromise on some of these things, to get agreement. Virginia and I left that meeting -- it went on for about an hour -- with a sense that we might be making some headway here." They told the regents "what provisions were

really unacceptable, and it had to do with layoff powers, primarily. I think [Reagan] even said ‘maybe if we take the layoff provision off the table, can we get agreement?’ We weren’t in a position to commit people, but we were saying that would be a very constructive position. We were saying we were ready to advocate with the faculty.”

“But then, in the afternoon, came this bombshell, which contained not only layoff powers but all those other provisions which were really red flags in front of bulls all over the place. That morning meeting was just smoke.” Fogelman said they had warned the regents the faculty would unionize, but Reagan dismissed this possibility.

Fogelman later said that he thought Reagan may regard “us as employees of the organization. When I or others deal with Reagan, we deal on the basis of equality, as far as I’m concerned. He’s chair of the Board, I’m chair of the Department of Political Science; I talk to him as I would talk to anybody on the basis of a kind of equal relationship. I do not think he regards the faculty that way.” Gray’s recollection was similar. “We thought it was a civil meeting but he [Regent Reagan] came out mad at us, telling the other regents that it was a bad meeting. Of course, they had just seen the [Star-Tribune] w/ the survey about how bad the regents were, so they were plenty [angry] at the faculty that morning. Of course, other faculty did that, not us, but they don’t make fine distinctions about faculty.”

With respect to the Morris breakfast meeting, Fogelman said, “we came away thinking we had made some progress. I understand that he later criticized us; we were upstarts or whatever. It was clear that what we regarded as frank exchanges -- no one was heated or anything -- was plain speaking. I said the faculty may very well unionize if you push; we were speaking frankly but not heatedly in any way. He thought that was inappropriate. That led me to think that he doesn’t see this relationship as a relationship of equals. That gets in the way; he didn’t want to deal with us at various points, not directly with the faculty; it all had to go through the administration. There came a point where it might have been helpful to just sit down and talk; he never wanted to do that.”

Murthy later recalled exchanges in which he had been involved prior to the meeting. “Until that morning [September 5], I’d been talking to Keffeler. She promised me at 11:00 the night before that she would withdraw the document. She was in a car driving from Colorado. I spent half an hour or so on the telephone with her, from the car. When she got to Morris, she called again. That’s when I told her, somewhat frustrated, that “where I come from, you listen to people older than you. I’m older than you and I ask that you to pull it off.” But she called me back, saying she would try to withdraw it from seeing the daylight. That is what Nils wanted. Nils called me one night and told me

⁸³In far western Minnesota, about four hours from the Twin Cities.

‘the code is so horrible, I can’t even tell you. What can you do to get it withdrawn?’”

Murthy remembered that Hasselmo “called me twice or three times, saying how bad this thing was and how ashamed he was for the University. He was really upset. I thought I had leverage with Keffeler, because we were talking all along, and she said she would take it off. So I called Nils and said ‘she’s going to pull it off.’ Then at 12:00, same night, she calls me back from Morris, and says it can’t be done. She talked to [Regents] Spence and Reagan. She promised me she would withdraw it, then she didn’t. So Nils had to go face the music. There was nothing that could be done. We honestly thought we could do something by talking with the regents, get them to back off. But they didn’t.”

“All through the six days, Nils and I had three or four conversations, all to the same extent. He said ‘anything you can [do], Rama, that would be great.’ I kept informing him of my talks with Keffeler. I don’t think I informed Keffeler of my talks with Nils. But there was nothing much to report. I thought I was making progress in the negotiations to withdraw it, and I finally told him on the morning of the meetings ‘Nils, I have failed.’”

“I talked to several other regents; they said they didn’t know what was going on. Most of them hadn’t seen the document themselves. Regents had not seen it! The Morris code was entirely seen by all the regents only when it appeared in Morris. Some of the regents didn’t even know that the regents had hired consultants. At least one regent told me they didn’t know a consultant was involved until they had that [August] retreat. Basically what [happened] is that a small group in the regents’ body took it upon themselves to push it. At any one time you could maybe talk one of them out of it, but [not all of them].”

Murthy said “the thing that came to me as a surprise was that I thought Keffeler was the prime mover in pushing this thing. So most of my efforts went to dealing with her. I sent her data and all kinds of things telling her ‘you have a lot of flexibility.’ What I didn’t realize was that the other two were coming at it for altogether different reasons. I don’t know if Reagan and Spence knew much about flexibility or management or anything like that. They came at it because it was fashionable at the time, both in the legislature and public domain and the press, of presenting it as a badly managed institution. And here was Keffeler, wanting to change the management structures, and in that, one of the main things was to look at the tenure issue because of flexibility. To my mind, instead of one enemy, I was confronted with two more! That surprised me quite a bit, how vehement Reagan and Spence were. I’ve talked to Spence once; I talked to Reagan a couple of times. Reagan was a difficult man. They said we are doing this to improve the University; we are an unmanageable bunch, paid for life, that kind of stuff. The dynamics of the Board were that there were three or four

people active, pursuing an agenda, another two or three passive but knowing what might be in the wings, and the rest of them unaware of what was going on.”

Marshak also recalled events around the Morris meeting. “Fitz [Associate Vice President Richard Pfitzenreuter, the University’s chief financial officer] and I made a try at keeping the Hogan & Hartson draft out of the public and not having it put on the table. At one point, we had agreement from some regents. There aren’t many faculty who would think that Fitz actually was in this, but Fitz was involved in this. Fitz and I, and particularly Fitz, made a try, and we got a couple of regents to agree, but the forces were too great; we just couldn’t. There was a tentative agreement not to put it out, but it couldn’t hold. [The agreement] was made in the bar at the hotel. But we couldn’t hold it. There were too many people who were going after each other, and my hold wasn’t strong enough.”

“We knew what would happen. We knew exactly what would happen. And we told them exactly what would happen. Fitz told them what would happen. He told them it was bad, that it would play badly in St. Paul, and they would all get burned for it.”

Gray recalled hearing from Marshak the night before the meeting. He “called me . . . to tell me that Tom [Reagan] had agreed to pull the document. But the next morning when Ed and I had breakfast with Tom, the document seemed very much alive. Don’t know what happened over night. Ed and I begged Tom and Jean not to release the document at the regents’ meeting w/o the faculty leadership seeing it first.”

At the Committee of the Whole meeting on Thursday morning, Reagan presented the 44-page proposed tenure code revisions for review, and said the Board had an obligation to conduct its own review and not “simply to rubberstamp the Faculty Senate proposal.” (The document subsequently became known as “the Morris proposal,” because of the location of the regents’ meeting at the Morris campus.) Martin Michaelson of Hogan & Hartson was present; Chait joined the meeting by telephone. According to the minutes, Michaelson told the regents they had been instructed to “1) be fair; 2) afford due process; 3) respect academic freedom and tenure; 4) cut red tape; 5) remove any strait jackets that impede progress and impose rigidity; and 6) if it ain’t broke, don’t fix it.”

Board members asked a series of questions; Michaelson and Chait responded. Chait: no university guarantees salaries, and reductions in time of emergency are common. Few reduce salaries as a result of post-tenure review; the Faculty Senate proposal is stronger than most in this regard. Michaelson: a “compelling” reason for salary reduction is a high standard; the “rule of reason and practical experience” determine how it is applied. Michaelson: the University’s tenure code “is one of the most stringent of any in terms of protecting base salary” but not many institutions actually cut

salaries; the proposal would put the University “in the mainstream of the practice and rules.” Michaelson: ““compelling reasons”” would permit the regents to reduce an individual faculty member’s salary, but there are guarantees it would not be done in violation of academic freedom. Keffeler said the proposal would allow the Board to “decrease base compensation in very extraordinary circumstances and would give the Board authority to do that at a unit level . . . however, the provisions are not designed to allow an individual targeting of salary reduction.” Michaelson: the Faculty Senate peer review system was “thoughtful but complex” and the regents sought a simpler one, requiring colleges to have a process “consistent with the guidelines respecting academic freedom.” Michaelson: the programmatic change provisions call for 60 days notice prior to program discontinuation, with explanation of educational and other reasons, and provision of reassignment or retraining “if practicable,” and if not, the faculty could be terminated.

Keffeler said the proposal was in line with other institutional codes and AAUP principles; she asked why regents would want the authority if they rarely use it but “the cost of achieving it creates a flashpoint of institutional unease.” Michaelson said it was necessary for legal reasons. Chait drew an analogy with casualty insurance and said the price is high if the cost of the premium is the goodwill of the faculty. Keffeler said “the purpose now is to get the issues and possibilities before the University community in order to learn from the faculty perspective what the implications of the suggestions will be on recruiting, retention, and academic freedom.”

Fred Morrison later reported (to FCC, on October 3) on the meeting. He said the Hogan & Hartson lawyer made a presentation of the proposal for an hour and a half, no others were allowed to speak, there were only a few questions from regents, and that copies of the proposal were not available. Faculty obtained them at 4:30 p.m., when it was released in Minneapolis.

(One person involved in events later related that “I have also heard (but cannot confirm, since I didn’t see the ‘original’ Hogan and Hartson draft) that it was ‘toughened’ between Wednesday and Thursday of the Morris meeting, with the addition of some of the discipline paragraphs. As a consequence it had to be retyped and that was the reason that they couldn’t hand out anything at Morris. (The disk was down here in the Twin Cities and the revisions had to be made here.)”

Dempsey also recalled it. “I went with Fred to the September regents’ meeting at Morris; we drove up together. We could only sit there like lumps, because the regents wouldn’t allow any discussion.” As for the meeting, “it was horrible. The regents sat around in a semi-circle up on the stage, and Michaelson had his back to us. They called in Chait by telephone. Michaelson kept saying ‘this is what you wanted, this is what you wanted, this is what you wanted.’ Of course, we couldn’t say anything.” Dempsey said she and Morrison did not have a copy of the proposal, and that the

regents “looked to me like most of them hadn’t read the draft. They didn’t look like they had studied it, except for Jean Keffeler.”

Fogelman’s memory of Morris was similar. “That was a very peculiar meeting. The Board was sitting up on the stage, arrayed in semi-circle. Michaelson was there, presenting this code, and Chait was available by telephone. [Michaelson] said this was his sense of what the Board wanted, based on his conversations with individual members of the Board.”

“The whole conversation then -- and there was a big audience of interested people -- was really his responding to questions. A number of them were from Jean Keffeler, very leading questions, again showing that she was really dominating the proceedings throughout. Why the Board, for instance, needed this layoff authority, even if it wasn’t going to be exercised, and things of that sort. The whole discussion was between Michaelson and the members of the Board. There was no participation -- none -- from the audience. Or the administration. I don’t think Nils said anything.”

Gerry Fischer recalled the meeting as well. “I thought Professor Chait, in that meeting, made one of the most important statements about the implications of tenure reform, when he said something along the lines of ‘it’s admirable that regents want to seek change, but tenure is like an insurance policy, and if cost of the premium is the loss of the confidence of the faculty in the leadership of the University and the loss of a good working relationship with the faculty, then that may be a premium that’s too expensive to pay.’ I thought that he had put his finger exactly on where we were in the dynamic between the Board and the faculty and the unfortunate way the process had unfolded to that point.”

Even Fischer, somewhat removed from the faculty, wasn’t persuaded the Morris proposal was acceptable. “I was also interested, in that exchange, to hear Michaelson characterize the changes that were being put forth, beyond the faculty proposals, as being ‘middle of the fairway.’ I’m a fair newcomer to higher education, but seriously involved and engaged in what’s going on, and I found that a somewhat surprising characterization.”

The following week, Reagan formally transmitted the proposed revisions to the President and members of the Faculty Senate and said “the Board looks forward to receiving your ‘advice and recommendation’” on them before the regents acted in October. He expressed the “hope that the Faculty Senate will review and respond to these possible revisions in the constructive spirit in which they are offered. Clearly, of overriding significance is our shared commitment to maintaining and supporting excellence at the University.” Reagan appended a 6-page statement from the Board.

The statement thanked the Faculty Senate, noted that many of its recommendations had been incorporated, and formally asked the Senate to take up the proposals. It said they “do not necessarily

reflect a consensus or majority view” of the Board. The regents were committed to excellence; fairness, due process, and academic freedom must not be sacrificed “for mere efficiency.” But the University, it said, must also meet the challenges to higher education. The statement outlined additional revisions in

- (1) compensation (allowing reductions in the case of substandard performance, for disciplinary reasons imposed either by an administrator or the Judicial Committee, for an institutional financial emergency, or if the Board had ““compelling reasons”“ for reducing salaries, but the latter would not include reducing individual salaries; base salaries were distinguished; and there would be no University guarantee of no reductions),
- (2) peer review (the Senate proposal was too cumbersome, so each college is to develop a process subject to administrative approval),
- (3) discipline (it has been too difficult to impose sanctions even when all agree behavior violates “accepted standards of conduct,” so the proposal is for “adequate cause” as the standard, which is endorsed by the AAUP and used elsewhere, with a provision that it may not be imposed in academic freedom cases),
- (4) programmatic change (calling for 60 days notice of program change, with explanation of how it accords with University plans and how it affects faculty appointments, and calling for retraining and reassignment “if practicable” but allowing for termination with severance pay and other benefits, and
- (5) Judicial Committee procedures (which are too complex, so the regents would approve its rules to ensure fairness, a legal officer approved by the committee and administration would preside at hearings, the President would be independent of the committee, and temporary suspensions would be permitted when administrators find “clear evidence that the faculty member is likely to cause serious harm or injury or for other compelling reason,” but there would be no loss of pay.)

By the time the statement was distributed, of course, faculty reaction was already known. In the judgment of some faculty, it later became evident that Hogan & Hartson had been hired to rewrite the tenure code along lines about which they were privately instructed by the regents (through interviews with individual regents, perhaps in order to get around the state’s open meeting law). The draft revision subsequently proposed by the Board was never discussed publicly before its release, a fact the newspapers as well as the faculty were to note repeatedly. Moreover, in the opinion of the faculty who were at the meeting, the oral presentation to the Board was quite different from the provisions of the text, and the most objectionable provisions were downplayed or misrepresented.

The clause in the Morris document that immediately captured the attention of the faculty (as well as those outside the University) was that discipline could be imposed on faculty who did not have a “proper attitude of industry and cooperation.” (Ed Fogelman quickly dubbed this the “Chairman Mao” provision, and buttons carrying the phrase followed by a question mark were soon sprouting on faculty lapels.)

As scheduled, FCC met Thursday evening at Morrison’s home, with a reporter present for part of the meeting. Morrison described the regents’ proposal as “a direct attack on the tenure of every faculty member at the University” and said it would have a severe impact; “there is no point in being quiet about that.” The document had only been released three hours earlier and would be placed on the web and mailed to Faculty Senators. Morrison reported that the presentation of the proposal to the regents by their lawyer polished the rough edges and did not talk about the real issues. He said that Hasselmo interjected during regental discussion to oppose the proposals but was ignored by a majority of the regents, and the President had sent a letter to the regents urging they not issue proposals; when they did so, he then released his very critical letter.

Morrison reviewed with FCC the major changes proposed in the draft. FCC members discussed it with great dismay; comments were that the proposal removed the faculty as partners in the University and made them subservient, the document reflected the “corporatizing of academia,” that while the presentation to the Board made it sound like the proposal was within the mainstream and the emphasis was on not reducing University competitiveness, no tenure code of any major university would be as unprotective of faculty rights as this one and the proposal was not within the mainstream of research university tenure codes. Much of the language of the proposal is “trust me,” but the trust levels are extremely low and this document will not rebuild them.

Marshak commented on the role of Michaelson. “In early October I had an hour-long conversation with [Michaelson], in which he assured me, and cited this and this and this, about his liberal credentials, and that he was a great supporter of academic freedom, that he was a supporter of tenure, of affirmative action, of every liberal cause that could be imagined. This was a month after the Morris draft. I think, from external evidence that I’ve seen, that Marty was probably being genuine. I think he is regarded in general as a friend of faculty. And even Chait, although I wouldn’t say Chait is quite as liberal as Michaelson.”

“The best read I can get is that these guys didn’t pay attention. Either it was the usual East Coast myopia -- this place is in the Midwest, it can’t be that important, and it’s not going to bite us. Marty was off in Russia. They just didn’t pay attention.”

“The Michigan State language, the attitude language, was stupid. Even Rotenberg told me

that this was stupid. It didn't get anything. It had no legal meaning. It had no effect. No substantive effect. All it was was inflammatory. It just offended people. They copied it from the Michigan State code, but they didn't copy the whole thing. It wasn't operative language, it was only prefatory language [in the MSU code]. The operative language was actually not that objectionable. They slightly changed it; they made it operative instead of prefatory. On the other hand, it's contrary to public policy and law in this state. You can't write a contract which is contrary to the law and public policy, so it could never actually have any effect. So the whole thing was just ridiculous."

"Sure, you can say their clients, the regents, insisted on this, but why did they feed it to them? Either you have to say they didn't pay attention or their clients got away from them. Or some combination of the two. I think those are the most likely explanations. I would guess that both of them rue the day they ever heard of the University of Minnesota."

"Their clients, who was instructing them? Presumably the three were Keffeler, Reagan, and Spence. In the summer, I'm not sure who the dominant one was; presumably Keffeler, although I don't know that."

These events moved the tenure debate to page one of both newspapers.⁸⁴

"'U' tenure at critical point" (Star-Tribune, September 6). The article said the regents' proposal was "drawing stiff resistance" from the faculty. It was released over Hasselmo's objection, in a letter originally kept secret, and quoted the letter's comment that the proposal would "harm the university [and] . . . rupture cooperative relationships with the faculty for the foreseeable future." It quoted Morrison's comment to FCC that the proposal was an "attack on tenure rights of every faculty member at the University" and that the proposal undermined the guarantees to faculty "to protect their research, teaching and academic freedom." Morrison said the regents "would not pursue layoff authority unless they intended to make substantial numbers of layoffs in the future." The article said the proposal appeared to have "substantial support" among the regents because "it was drawn up by attorneys who interviewed the regents individually." Tenure Subcommittee chair Dempsey described the proposal as "an insult." Both Morrison and Dempsey predicted the unionization effort would pick up speed. Fogelman described the provision allowing discipline "'when commonly held standards of conduct' are violated" as "'the Chairman Mao provision.'" The AAUP survey "did not sit well with some regents"; the article said Keffeler was "probably the regent most vilified in private faculty

⁸⁴To fully understand the extent of the furor, one needs to know that the newspaper headlines in these and some of the succeeding articles was in very large font, of a size one would imagine the announcement of the outcome of a United States presidential election. This probably reflects the fact that the main campus of the University is in the Twin Cities, it is a very large campus, and it is the only research university in the state.

conversations” but that she was not offended by the survey and wanted “to address faculty concerns.”

“Tenure overhaul divides U” (Pioneer Press, September 6). The article said the regents rebuffed Hasselmo again and “considered weakening the faculty tenure code by making changes that go far beyond what Hasselmo wants.” The proposal would “give the regents unprecedented power to cut pay and lay off and discipline faculty members. A tenured faculty member could even be disciplined for not having the proper ‘attitude and cooperation with others’”[sic]. The article described the Hasselmo letter opposing the proposal as “passionate” and quoted from it. The faculty at the regents’ meeting “sat in stony silence” while lawyer Michaelson reviewed changes with Board. Afterwards the faculty “were restrained in their comments, but clearly furious”; the Dempsey comment that “it’s an insult to the faculty” was included. Keffeler said the regents need layoff authority even if they do not use it, and Michaelson agreed; “without this, you’ve got a mess,” and that without layoff authority, restructuring could result in “years of litigation, hellish problems with tenured faculty and severe consequences if you are unprepared for it.” Michaelson told the regents the changes “were in the middle of the fairway” but Hasselmo said they would weaken tenure and hurt faculty recruitment.⁸⁵

On Friday morning, September 6, committee chairs Dempsey, Gray, Feeney, Fogelman, and Morrison sent an email to all faculty: “Our attempt to reach a compromise on revision of the Tenure Regulations has failed.” It said the regents accepted the Senate proposal where the faculty made compromises, rejected faculty concerns, and that the new proposal goes far beyond any previous administration proposal. The regents asked for faculty review, “within a month,” of the “most substantial changes in tenure policy that have been put forward here in over 50 years.” They reported that the proposal was forwarded over Hasselmo’s “strenuous opposition,” and “given the manner in which the proposal was prepared, the extremely limited opportunity for faculty consultation on the draft, and their unwillingness to discuss with us the merits of various proposals,” it must be assumed the Board will act on it.

In their email, the five chairs summarized the major points for the faculty: the proposal

⁸⁵And in the midst of this, no one was permitted to forget that other nemesis of the faculty. “‘Radical reengineering’ will be a disaster for ‘U’: It’s a widely discredited business fad” (Star-Tribune, September 6, editorial by three faculty, Amin Amershi, Robert Sonkowsky, and Tom Walsh). They attacked reengineering as something that had lost credibility and that would “dissipate the intellectual assets” of the University. The plan ignored the most important asset, the faculty. They cited a number of business publications criticizing Total Quality Management, to which re-engineering was a response. Shortly thereafter, business analyses concluded re-engineering did not work, either. The three bemoaned the fact that it nonetheless had support from the administration at the University. They said it had resulted in the waste of a lot of money on consultants.

eliminated tenure protection in the case of program change (without defining program, so individual specializations could be targeted), eliminated the guarantee of base pay and permitted reductions of salary of individual faculty, post-tenure review would be mostly punitive, the discipline section said faculty may be punished if they do not “maintain . . . a proper attitude of industry and cooperation” and created a new category of “lesser sanctions,” access to the Judicial Committee is cut off, including in possible academic freedom cases. The proposal included language from other tenure codes, but without established practices that may limit their exercise, and “seeks to impose radical changes in the relations of faculty, administration, and Regents.” “Given the controversy that has been generated, we must assume that the Board intends to exercise fully the powers they are creating by these changes.” They urged the faculty to “take these proposals seriously and act accordingly.”

(One faculty member wrote back to the five committee chairs the same day. “Thank you all for your analysis of the Regents’ tenure proposals, and your time and effort in this whole (unfortunate) process. You mentioned in your message that we should ‘take these proposals seriously and act accordingly.’ Besides beginning my search for a new job, are there any specific suggestions you have about what else we should do at this point? It seems apparent that the Regents have no real interest in what we have to say. Thanks again.” He signed his name to the email, followed by “(newly tenured, as if it means anything!) Associate Professor.”)

The same day, Associate Vice President Farber distributed to the faculty his analysis of the proposal, the one he had earlier provided to Hasselmo.

FCC chair Gray emailed to all faculty on the 6th as well. She urged them to “pay very serious attention” to the tenure proposal and to the analysis emailed earlier in day from the committee chairs. She reported that faculty and the administration tried “to head off the proposals but to no avail.” They were hopeful even Thursday that the proposal would not be released. It reflected a “very different model of university governance,” one that is “top-down, hierarchical” rather than a “collegial, shared governance model.” Gray reported on the FCC meeting the previous evening and said they were “pulling out all the stops” to counter the proposal: the committees will meet to consider the proposal, they are trying for positive media attention, increasing lobbying, and working with other faculty groups and administrators. The FCC “goal is to get the regents to withdraw their proposal” and take up the Faculty Senate recommendations. She told the faculty they could contact the Regents’ Office or a regent as well as explain the faculty position to external groups.

The FCC member from the Morris campus, Mike Korth, emailed his FCC colleagues after the close of the regents’ meetings on the 6th. He reported that “Marshak informed me last evening that he is working hard to garner the votes of six Regents in order to defeat the proposed tenure

revisions. He believes he has three votes already and knows three others that are amenable to further discussion. He is trying to figure out how to bring these latter three Regents together with representatives of the faculty who could ‘negotiate’ on behalf of the faculty -- but of course, no one is given that authority and that makes such negotiations problematic. (Virginia and Fred were suggested as coming closest to fitting that role.) It is not clear where he will go from here. He seems to think time is very short with the October deadline.”

Korth also reported that “Regent Reagan is really steamed over the AAUP survey’s criticism of the Board. He mentioned it at the final meeting this morning and launched into a speech about how much the Board has accomplished over the past couple of years. I do think the Regents deserve much credit for their tremendous work on behalf of the University and would like to suggest that we look for opportunities to acknowledge that work even as we vehemently disagree with their proposed tenure revisions.”

FCC also issued a press release, authored primarily Vic Bloomfield, FCC vice chair, in email consultation with FCC members. It warned that if the Morris revisions were approved, they would “destroy the University as a major research institution.” The statement noted the economic value of the University to the state and the need to attract top faculty in order for it to continue to have that value. The regents’ proposal “undermines the commonly accepted principles of academic freedom. If adopted, it will quickly and inevitably destroy our reputation, our competitive position, and our ability to serve the citizens of Minnesota.” FCC took sharp issue with the claims of Chait and Michaelson, saying the language is “drastically outside the norms of Big 10” and other institutional peers. It declared that the proposals “allow for virtually unlimited administrative arbitrariness in layoffs and salary reductions.” The statement identified the value of academic freedom, in protecting faculty from vindictive actions or pressures, said the University would not have those protections, and maintained that “no sensible faculty member would choose to come to the University of Minnesota when its policies are so out of step with the rest of the nation’s leading universities. Many of our best faculty will choose to leave. And those who stay will hunker down, avoiding controversy and resisting necessary institutional change.” While not doubting the regents’ good intentions for advancing the excellence of the University, FCC “implore” the Board to withdraw the proposal.

Walsh and Rabinowitz emailed to UFA members on September 6 and wrote that the faculty were “facing a crisis,” and that tenure would end at Minnesota after the regents act on October 10. The only way to stop regental action is to obtain a “cease and desist order” from the Bureau of Mediation Services (BMS) (the state agency that administers labor laws), and regardless of their views on a union, faculty can sign the forms and decide later if they want a union. They emailed

another copy of the authorization form. Walsh also later emailed instructions on how to obtain a copy of the proposal, and drew attention to the message from the committee chairs.

Rama Murthy emailed to his AAUP colleagues on September 6 as well. He said “the turn of events . . . bring[s] us to a perilous situation with regard to tenure and academic freedom at this University. It is the measured opinion of many that a compromise with the Regents is not possible at this stage. This puts the question of unionization on this campus into an urgent perspective. Mary Burgan at the national AAUP told us a few days ago that they can support the concept with all the power of the headquarters office, but the bargaining agent will have to be the AAUP.” If so, the national would provide support. Murthy asked if they would endorse an AAUP union, and said it would be among the topics of conversation at the meeting later in the day.

Carolyn Williams followed up on Murthy’s email with her own, because she could not attend the meeting. She said that “we have to recognize that this is mostly an emotional, and not intellectual decision point today. I don’t believe we have the time for the careful study that we all prefer. People high in the administration are pleading that cards be signed. I will clearly be on the side of the faculty, in spite of the considerable personal doubts I have about unionization. If the sentiment in today’s meeting is to push for the cards, then that’s where I stand. We’ll figure out the consequences later.”

As Murthy had noted, a meeting of the Gang of 19/AAUP was scheduled for late Friday afternoon September 6; FCC members and senior administrators were invited. The meeting included the three Twin Cities campus provosts (including, of course, Shively from the Arts and Sciences and Cerra from the Academic Health Center), Senior Vice President Marvin Marshak, and representatives from the three faculty leadership groups (FCC, UFA, the Gang of 19).⁸⁶ Fennell Evans served as chair; the group discussed strategies for dealing with the regents’ tenure proposal, the need to sign collective bargaining authorization cards, and selected one person from each faculty group for a meeting to be held the next morning.

Gray reported again on Monday (September 9) to her FCC colleagues on what had occurred. “Things are moving very fast, I seem to be in constant meetings and/or phone conversations. What has happened since Thursday night:

-- on Friday late afternoon, there was a meeting of the 3 provosts and all the various faculty

⁸⁶ It is a considerable understatement to observe that it was unusual for four of the top five academic officers of the University to meet with faculty leaders to identify strategies to thwart the actions of the institution’s governing board. In most organizations, of course, such a meeting would be considered gross insubordination. There was, however, never any threat to fire the provosts or the senior vice president, as far as I know.

groups -- FCC, rump group [Gang of 19], AAUP, union, regents' profs, etc. Various other political strategies were discussed, along the lines of what we had discussed on Thurs night, the idea of a binding negotiation between 3 faculty and 3 regents was advocated (I indicated that FCC was dubious about the merits of the idea), signing union cards was pushed, etc. One person from each faculty group was selected to meet on Sat morning with the provosts to flesh out the idea of binding negotiation.

-- Sat morning meeting consisted of 3 provosts, Mike [Bognanno], Marvin [Marshak], faculty representing those groups listed above plus Ed Fogelman, whom Fennell and I had invited. By Sat morning the idea of binding negotiations was dead, and there was a new idea -- asking the regents to pull their proposal off the table, enacting the faculty proposal, and deferring any more discussion until a later date after new president is selected. This would have to be done this week before union cards are in but would show the regents are trying to cooperate with the faculty so perhaps everyone could calm down and faculty would feel less interested in signing cards. Everyone agreed to try this idea, various people were delegated to call regents over the weekend. I don't know at this point if regents will do this; the regents I spoke to didn't jump at the idea. But we are working on this at the moment.

-- various political actions designed to pressure the regents: these are too numerous to list here but a few come to mind: Vic was on TV on Friday night, there were columns Sun and Mon, various other stories are being placed, the deans are being organized, Nils is writing an op ed piece, the provosts are writing a piece and calling a press conference, Marvin is calling around the Big Ten to see how many schools have these various provisions, the AAUP has been consulted and will issue a statement probably tomorrow, etc., etc., etc."

Gray also reported that Hasselmo wished to meet with FCC the following day, so a meeting would be scheduled.

As Shively recalled, the three provosts "urged the faculty to work with Nils, told the faculty Nils supported them. What was very important was that the three provosts were together in taking that position with the faculty." The provosts were there as guests at the meetings, as was Senior Vice President Marshak, but "we reached some conclusions about making common cause."

Shively remembered little about the meeting the following morning that followed from the Friday afternoon event, and said "the only memory I have clearly out of that meeting -- we met in my office -- was Tom Walsh, on the way out of the meeting, telling me that I should stay out of all this. That it would do me in. I told him that this was too important for me to stay out of. It was such a curious conversation, because I had not realized Tom thought particularly well of me anyway. That

struck me so vividly.”

“I can’t remember what the issues were, or what we decided, except we did develop a common strategy of whatever sort it was, on whatever the issues were. The three provosts and those faculty groups. I think there was an ambivalence on the part of the union. But they didn’t disagree with the common strategy; they sort of went along with it, with the proviso that they might not stay with it.”

“I remember that it was extremely important, we felt, and some of the faculty thought it was extremely important, to have all three provosts there. And we were at great pains to do so. Not that I had any doubts that we’d have all three provosts. I thought some of the faculty had doubts we had all three provosts.” Shively said that among the three provosts, “there was never any wavering. The three of us differed on emphasis. One of the things that made the provost system work well was that the three provosts, on almost all issues, found that we made common cause. It was really quite startling. That was certainly true on the tenure issue. Although, as I say, we came to it with different perspectives, but we talked through things.”

Walsh maintained that “the [Morris] draft was the last time someone sat on a powder keg and detonated it. This was the big one. The regents were so contemptuous of the faculty, it was unbelievable. All those faculty committee chairs who thought they were engaged in a rational discussion with the Board -- they looked like fools. You have to sympathize with them, it must have hurt. In the aftermath, around September 5 or so, you could see the news media beginning to shift ground. They realized that UFA would get the cards and that a Status Quo Order was coming. My view is that up until September 5 or so, the news managers and editorial staffs were also contemptuous of the faculty. They thought that there would be a fuss but that the University faculty would be brought to heel, straightened out. After the 5th or 6th they began to realize just how big the tenure fight was becoming. I credit them with good sense in shifting ground. They could have supported the Board to the end, but they did not.”

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WERE THE FACULTY NAIVE TO HAVE WORKED WITH THE ADMINISTRATION AND BOARD?

Regents’ Professor Eville Gorham tended to agree with Walsh, he said. “I think the regents stiffed the faculty and the Senate pretty well throughout.” But he also agreed that initially the faculty leaders had to try to work with the administration and the regents. “There’s no doubt about it. They were perhaps a little late in being disillusioned.”

Morrison did not agree with Walsh. “I don’t think we

were naive. I think that things progressed, during April, May, and June. If things had progressed otherwise in April, May, and June, they might have gone forward in a more orderly way. But this is not just the tenure discussions; it was Nils and the budget, General College, all sorts of other things, in which there wasn't any interest on the part of the Board in having things go forward in an orderly way. We were increasingly seeing that, month to month. But we had been requested to have something there, and we turned it in. We asked to have a discussion of it, and they thanked us kindly for bringing it and sent us on our way."

Morrison said "it was the July meeting that I left with the sense that something was seriously wrong. Nils had been saying, as early as the June meeting, that he was hoping he could get it through and he was hoping he could get it through quickly. I think he sensed the deteriorating relationship between himself and the Board, between the Board and the faculty, and wanted it to go through quickly."

Fogelman was more restrained. "I think, in retrospect, you have to say that [the regents] were on their own track. Bringing in these outside consultants, Chait and the Hogan & Hartson lawyer Michaelson, shows that they were operating on a completely independent track. And the code that was brought in at Morris, drawn up presumably by Michaelson and his people, was a completely different document. There were provisions in there that had never been seen at Minnesota before. I don't think they were responding to our document in the way that we, perhaps somewhat naively, expected them to do. They took the document, and then brought in their own people to draft an alternative document. That alternative, as Nils warned them, contained provisions that were absolutely anathema and that it was going to be a disaster. He told them that, and he was right."

John Adams, like Morrison, didn't agree with Walsh. "I was very much with those guys with respect to the need to worry about all this stuff. Stonewalling was not going to be helpful. I think that if, at that time, we had just stonewalled and said 'we're not going to deal with this,' that would have been a terrible lapse of leadership on our part. We were there, on the spot, being asked to help."

"If there had been a different group there, if this had happened two years earlier, there might have been a very different outcome. Then what do you do? Then they have to do it anyway, without your help. That would have been even worse."

As for the proposition that rational discussion about tenure was subsequently demonstrated to have been in vain by the Morris proposal, Adams said "you might look at it that way, but I believe that the fact that from the time the President wrote the letter until the June Senate meeting, seven months

later, more and more people became aware of the issues that had to be dealt with. Although the lines were drawn with respect to the union-no union [matter], I think those tactics on the part of the union and others, to stall the debate, were legitimate things to do. But they were along side of expanding realization that there are issues here that have to be dealt with, and the real issue is not whether there are issues there. The question became, what are we going to do about the issues that are there.”

Adams said that “the fact that, early on, certain things were pointed to as topics to be confronted had an important effect in ultimately shaping the form in which change came about. It wasn’t exactly what was anticipated, but the topics that were eventually dealt with, in one way or another, by the Senate and then ultimately by the regents, were the same topics. I talked with Mary [Dempsey] in early summer; I said ‘I think it’s kind of funny that what ultimately got endorsed by the Board wasn’t very different from what we were talking about in the fall of 1995.’ She laughed, and said the same thought crossed her mind. You go down the list, seven or so issues; each was ultimately addressed, chewed on, discussed with respect to other things, and a proposal came forward.”

As for the proposition that the changes did not come easily, Adams exclaimed “so what?! Why is the fact that we didn’t get there easily even an expectation, when something as important as the tenure code is going to be adjusted? Nobody expects it’s going to be easy, especially if the changes are significant.”

Gray also thought action was required. “I think they [the regents] did intend to take them [the Faculty Senate proposals] up. I think what happened was, in an organizational sense, they hired consultants, they paid them big bucks, so they had to get some product, and then they had to use the product. The only person who had ideas was Jean Keffeler, she was pushing them, and the rest of the Board was all over the map. I don’t think they consciously said ‘the faculty stuff is crap and we really want to hurt them, so let’s go hire a consultant.’ I think they just edged into this. There was a power vacuum, and she suggested a consultant, then they got another consultant, and then pretty soon they had this horrible document. I don’t think on any one day you could have taken a vote, where seven of the regents would have said ‘let’s adopt this horrible document.’ You probably could have gotten Jean and a couple of other votes. But [given] the fact that they produced the horrible document, we had to assume it could be enacted. So we did.”

Shively thought that originally the Board was going to take seriously the Faculty Senate proposal, but “on the other hand, the Morris business was very surprising to me.” Shively, himself, only heard about the draft, and did not see a copy before the meeting in Morris. “I knew of it when the President

did, but I didn't see the proposal until the meeting in Morris. Because Nils had only been able to get a copy from the Board by promising that only he and Marvin would see it. And of course, he honored that promise. I had a general sense that it was very bad, but I didn't know any of the particulars until I sat there in front of the Morris meeting, hearing it read."

Shively recalled that "some of us, all through that weekend and right up to the morning of the Morris meeting, were trying to get some arrangement made by which that would not come out. There were all sorts of things going on. Some at cross-purposes to each other."

"Even once it was out, I went up one Board member -- one I thought likely to be amenable -- and said 'you folks just don't realize what this does.' I was actually quite prescient. I said 'within one week of your acting on this, you're going to be closed down with a union vote.' And it was exactly a week. I made this urgent plea, and the Board member said to me 'Phil, do you have a doctor down there in the Twin Cities who could prescribe a tranquilizer [for you]?' I just don't think they understood."

Shively recalled that he had also heard that at least some members of the Board had not seen the proposal before the Morris meeting. But another problem was that "by then, the central administrators didn't have enough credibility with the Board -- I think that was the worst thing that came out of GC, the hurting of the confidence of the Board in the central administration. Which meant that it was harder for us to help them understand what the outcome would be of doing this."

The administration, however, was clearly concerned about the impact of the release of the document. Shively remembered that "the night of that first day of the Morris meetings, we had a sort of rump meeting of central administration, and decided one of us had to go back to the [Twin Cities] campus, in case things really went crazy back on campus. I drove back that night. Hadn't been planning to, but I drove back because I had reasonably good lines into the faculty. As it turned out, there was nothing for me to do."

Gray made another observation about this outcome. "I think Jean Keffeler and the Hogan & Hartson attorney really drove everything; the other regents really had no ideas. Jean brought Kim along with her, and she brought Spence along with her. [With Reagan,] that meant she had four people, and the others were not a group. Although we certainly had our supporters, they weren't going to get organized to counter Jean, to have a counter-proposal."

"The secret one-on-one process that Hogan & Hartson used really served Jean's purpose. It meant that she and Martin Michaelson could work out, from their perspective, this ideal radical plan, and then he could talk one-on-one with each Board member and say 'what do you think?' Since they didn't have

any preformed ideas, they could be molded. It's not like you were having a discussion, where the whole group would hear that Julie Bleyhl was worried from a labor perspective or somebody else was worried from another perspective, and they could all start worrying together. You didn't have any of that. From Jean's perspective, it was really an ideal structure, that affected the dynamics of the group."

Gray opined that the state's open meeting law hindered the faculty's purposes. "I'm not a big fan of the open-meeting law. They couldn't really have a discussion. Even at [the retreat], it wasn't a discussion."

This was a point upon which at least one experienced observer of University affairs agreed with Gray. "A background for all of the fights, including Eastcliff and all the messes, is the open meeting law. If the regents could get together more often and talk their minds out, these things wouldn't happen. The open meeting law has done a great deal of damage. The regents don't know each other and the president can't speak frankly to them. It doesn't work.

"It also created a perfect situation for someone like Jean to operate. She could say she was speaking for the Board, and she'd never talk to them. And if she can only talk to them one-on-one, she could misrepresent things. I think the faculty should take a lead in trying to get modifications made to the open-meeting law as regards the University in discussing personnel matters and other kinds of problems. They do it for legal matters. There should be a broader definition of what personnel means. Evaluating the president is part of it. There should be situations where they can get together."

Carol Wells, in an email largely on other subjects, reported to colleagues in early November, 1996, about a speech that Wallin had given. Wells said that Wallin maintained that "the main impediment to getting good candidates is not the situation at the University, but the Minnesota Open Meeting Law; once the candidate pool gets down to 3 or so, the interviews become public and this fact is scaring off many good candidates."

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On the day after the regents released their tenure proposal, Walsh inquired of colleagues if he should distribute by email the entire code to all faculty, even though it was quite long. Berscheid urged him to do so. She suggested that the text "be followed by a brief paragraph saying that the Regents are poised to act to approve the revisions at their October 10 meeting, that to obtain a 'cease and desist' order to prevent their action to erase the present tenure code and legalize our new employment contract" authorization cards were needed almost immediately, and that regardless of

opinions about collective bargaining, “we need an injunction to give us time to discuss and become informed about these issues.” Berscheid also wondered to Walsh if it might also be worth saying that ‘after reading the Regents’ proposed revisions, several highly placed members of the administration, of the FCC, and of the Regents’ Professors group have said privately that it is imperative that the UofM faculty obtain a cease and desist order.’”

Williams reported on September 6 that she had heard a piece on public radio; “unfortunately, Chait & Michaelson provided wonderful sound bites during the meeting that were broadcast. One was the comment that if the regents didn’t have a tenure provision allowing lay-offs they would be in deep trouble if they tried to close a program.” Williams urged that “WE MUST respond with the example of Waseca where they were NOT tied up for years in litigation. . . . The message must get out that we are very experienced with shifting resources, closing programs, even whole campuses -- the regents’ goals can be met with good will & not their current efforts that will destroy the institution. The regents are relying on outsiders and not listening to faculty or administrators.”

She also noted that “Hasselmo followed through with his Tuesday promise of releasing the letter. Even better was a terrific editorial by Tom Walsh & colleagues blasting reengineering.” She said the group “should be attacking reengineering” and that they needed “to get [an] investigative reporter interested. I agree with Roberta that this is the Index tenure code.” Williams said that one of their colleagues “should launch his plan today and arrange faculty television interviews. The message -- short explanations of why the faculty are so concerned -- damage to our reputation nationally, regents refusing to communicate with us -- reliance on east coast lawyers, not even Minnesota-grown or university knowledgeable! We can accomplish their goals without destroying the institution. Loud statements that faculty upset is not about job protection. The faculty senate recommendation was a compromise with regents -- and now they’ve brought outside lawyers.”

Williams concluded by saying that she would “call Mary Burgan . . . maybe she’d be willing to refute Chait and the lawyer’s saying they’re following AAUP guidelines.”

Williams followed up with the public radio reporter. She reported to the AAUP/Gang of 19 that she told him “the lawyer’s or Chait’s opinion that the regents needed lay-off power in order to govern responsibly simply wasn’t true” and that she had given him all the numbers for the Waseca campus closing. The reporter had asked why the regents were doing what they were; Williams said “there are some self-proclaimed management experts, who knew nothing about academia or even the intricacies of running large multi-national companies (more consistent with what the U is), and they were following out-moded business fads like reengineering, based on their experiences with small business.” She said she had given him Burgan’s number, and that “a lot of us were sickened by the

lawyer's & Chait's constant reference to AAUP.”

Williams reported from an AAUP conference in Michigan to Campbell on September 7. She said that Burgan and James Perley (national AAUP president) were “more than interested in helping us in any way that they can. In fact, this issue has been of great concern to them and now they have a concrete case (unfortunately US) to respond to.” She had also learned that there would be a report issued, and a speech at the National Press Club, “that will add fuel to the regents’ argument. The highly visible panel (made up of politicians & CEOs) concludes that faculty are the problem in higher education, and what is needed is better management!” She said she would obtain from the AAUP their response to the new tenure code, “ask them to comment on whether the base salary adjustments are so ‘middle of the road’” as Michaelson maintained, and try to get a tape of the regents’ Morris meeting to the AAUP “(they can better react to Chait and Michaelson’s comments, which effectively made the AAUP the most respected authority).”

Murthy and Williams commented on Chait, the Morris document, and the AAUP. Williams and Murthy had both listened to the Morris meeting at a broadcast site on the Twin Cities campus and both recalled the analogy that had been used. Williams said that “what I thought was fascinating with the regents’ meeting [was that] both Chait and Michaelson were saying the regents’ proposed tenure code was consistent with AAUP principles.” “Right down the fairway,” Murthy pointed out.

In Williams’ judgment, “what was so terrific about them saying that is that that gave AAUP the authority on the tenure issue, so that we were then able to go to the national organization. Michaelson’s comments gave credibility to any opinion given by the AAUP national office.”

Murthy said he would have contacted the AAUP anyway, “but if he’s saying this is down the fairway of the AAUP guidelines, I thought [that since] we received a document from them, [we can ask the AAUP]. [It was] certainly not down the fairway; not even on the golf course!”

The University’s tenure wars were the subject of numerous news articles over the next several days.

“‘U’ faculty looks to block regents” (Star-Tribune, September 7). The article reported that the union movement was speeding up “as angry . . . faculty members tried use labor law to block” the regents’ tenure proposal. Faculty “arriving for work Friday found [Morrison’s] analysis of the regents’ proposal waiting in their email,” in which he described it as “radical.” The union authorizations were coming fast, and the usual faculty reluctance to unionize was supplanted by faculty anger. The number of authorizations required was not certain, because state law (enacted after a unionization effort 15 years earlier) provided that the Law School and the Health Sciences (the AHC) could opt out of the Twin Cities campus bargaining unit (which they had done), but they again

had the choice of opting in. The article reported the Medical School was thought more likely to do so because of re-engineering. Once the required authorizations have been submitted to the BMS (30% of the members of the proposed bargaining unit), a “maintenance of the status quo” (cease and desist) order would be issued, which could bar any further discussion of tenure pending the outcome of the union election. The article reported that at the meeting in Morris, Reagan had defended regental leadership in several areas, was quoted as saying “there’s a lot of universities that haven’t had the guts to look at tenure,” and that the next president may need to be able to lay off faculty and should be provided a tenure code that would not need to be changed soon. Keffeler, “who has led the effort to allow layoffs and pay cuts,” wanted faculty at the next meeting of her regents’ committee to “keep communication open.”

“Furious professors flood U phone lines [;] Regents: Tenure changes put U in mainstream” (Pioneer Press, September 7). The article reported faculty calls to Hasselmo’s office began at 6:00 a.m. Friday (September 6) and that Reagan “stood his ground and defended the regents’ work.” He said the regents needed power to layoff tenured faculty and that “tough tenure changes will not gain the university a tenure-busting reputation that hurts recruitment”; “let me tell you, a lot of universities haven’t had the guts to look at the tenure thing. . . . But making these changes will lead the university where we want to go. I commend the courage of the board.” Reagan and Spence said the changes would be “in the mainstream” but Farber and Hasselmo say not. Hasselmo said he “has been ‘personally vilified’ by academics who blame him for the proposed tenure changes.” Reagan said the changes were for the good of the University. The regents also voted to continue their contracts with Chait and with Hogan & Hartson.

“Regents don’t make grade with faculty” (Pioneer Press, business editor column). The author wrote that maintaining a university “is a complex and sensitive” activity that has been made “unnecessarily difficult when the faculty flunks its board of directors.” He said the AAUP survey results were “a scorching indictment” of the regents, and that while one could dismiss them as faculty “whining” because of tenure proposals to increase flexibility, “there is a danger here of making the tenure system the kicking post for managerial and structural problems that exist elsewhere within the university.” He noted the small percentage of the budget that faculty salaries constituted, the projected retirements, and questioned the wisdom of having the University lead the effort at tenure changes. There are also other concerns about regental leadership. The author noted the decline in the University’s NRC rankings and argued the economic importance of the University to the state.

“Regents move boldly for tenure flexibility” (Pioneer Press, September 9, newspaper editorial). The editorial described the regents’ tenure proposal as a “surprisingly bold declaration of

independence and of their determination to bring strategic change” to the University, especially the layoff provision, said it would “continue inspiring bitter condemnation from many faculty members,” and that the proposal “deserves a warmer reception from the larger Minnesota community.” To retain excellence, choices will have to be made, and layoffs will be required. The policy parallels that of other institutions, even if they are not used very much. The regents must recruit an outstanding new president, and a good tenure code will appeal to the best candidates. “Political leaders have expressed grave doubts that the U is willing and able to change,” but adopting a new tenure policy would lead to better state financial support.

“Let’s count the losers in regents power game [;] Toying with tenure, board has given ‘U’ professors reason for bad attitudes” (Star-Tribune, September 9, Doug Growe’s column). Growe said the University “has the toughest board of regents in the land. That’s right, we’re No. 1 when it comes to having regents with muscle, swagger, machismo, and stubbornness.” He called them the “little gang of 12” and made many other stinging comments about the regents.

On September 8, Walsh and Rabinowitz emailed to the faculty a copy of the memo from the five committee chairs saying they had failed. They said that “the new code was developed by the regents together with their consultant Richard Chait and also Martin Michaelson of the Washington, DC firm of Hogan & Hartson. As best we can tell, the code was worked out between June and the release date of September 5. We are not aware of anyone outside this group who knew of the provisions before release.” They prophesied that this code would be “the prototype of tenure revisions which other university governing boards will attempt to impose in coming years. It is therefore of national interest.”

Faculty members also wrote directly to the Board. Summaries of three such letters follow.

Law Professor Suzanna Sherry wrote to the regents on September 6 expressing support for unit tenure, salary cuts for inadequate performance, and other changes the regents wanted, but adopting them now would “irreparably damage the University.” The question now is not “whether or how” to change tenure but rather whether “the faculty should be involved in the governance of the University.” She said that to allow the faculty to debate for a year and then propose “radical changes” opposed by the faculty and administration “antagonizes the faculty.” Worse, the changes were unnecessary because the regents and administration could use the existing code to get rid of “non-performing faculty.” She said the faculty were not opposed to change, but to the regents’ micromanaging and ignoring faculty.

On September 8, Roger Fosdick in Aerospace Engineering and Mechanics department wrote a 7-page letter to the regents asking “with considerable despair” that they “reconsider their position on

the tenure system.”

So did another faculty member and former dean of the College of Biological Sciences, P. T. Magee, to report about recruiting for an endowed chair and candidate for a prestigious investigator award; they were delighted when they got an outstanding candidate, but that individual had asked for a copy of the proposed tenure revisions. If the changes were made, they would harm University programs and faculty morale, and institutes that make such awards would “look askance at a University which cannot persuade its nominees for their Investigatorships to remain on its faculty.” This is a “clear-cut demonstration of the pernicious effects of” the proposed tenure changes; he urged the Board to adopt the Faculty Senate recommendations.

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CAMPBELL’S INVESTIGATIONS

On September 9, Professor Chuck Campbell sent a lengthy message to Berscheid, Fennell Evans, Humphreys, Hamilton, and Morrison detailing his investigations of the preceding two weeks. Although this is long, it is worth citing because it illustrates the concerns of the faculty and the lengths they were prepared to go to learn what they could. Campbell reported as follows.

“I have reviewed the minutes of the meetings of the Board of Regents and its committees for their meetings from May, 1995 through June, 1996 [July was not available, none were taken at the August retreat] . . . and have electronically copied all of the minutes referring to tenure and related matters, including references to the Hogan & Hartson Law Firm and the attorneys Michaelson and Routh who work for that firm and have consulted with the Board of Regents and, earlier, Provost Brody of the Academic Health Center.”

“In all of these minutes, I found no reference to the attorneys or their firm. Evidently it is not necessary to approve contracts less than \$250,000 during public meetings.”

“Nearly every month there are closed meetings involving personnel issues or attorney-client privilege. This is noteworthy because the attorneys were operating on retainers, not a specific contract. Even more noteworthy is that, when they applied for a contract, in answer to a RFP, to consult for the regents on the tenure code, they included a statement as follows: ‘Finally, because almost any revision of the Tenure Code is likely to entail some degree of legal risk, and possibly litigation risk, we recommend that a considerable part of the analysis be held within attorney-client privilege. We also recommend that part of our communication with the Board be oral, to foster responsiveness to Board members’ questions and concerns about the topic, and to promote cost efficiency. In our

experience, memoranda tend sometimes to be a less desirable way to convey information usefully than an oral briefing.’ (Martin Michaelson to Steven Bosacker, April 8, 1996) Their proposal was not accepted; the only other proposal, by Chait, was accepted.”

“During the week of August 19, (toward the middle of the week) just after the Regents’ retreat from which we learned about the involvement of the attorneys in the drafting of the tenure code for the regents, I called the regents’ office to find out about the arrangements involving the attorneys, the process by which the regents and the attorneys communicate, and the schedule for proceeding with the tenure proposals. I was told by [regents’ staff] to check with U Relations about formal announcements, and to check with Bill Donahue in the U Counsel’s office about legal requirements, including open meeting requirements.” Regents’ Executive Director Bosacker was to call Campbell to discuss some of his questions.

Campbell said he had followed up with Donohue “and asked him about the contract with the attorneys. He informed me that the attorneys were operating under a previous retainer with the U Counsel’s office. He said he would find a copy of it and I should check back in a few days. When I spoke to him next, on August 27, he told me that they started their present work in July based upon an oral agreement with the regents. He said that they were presently obtaining a new retainer to cover that work, and that it would be available Friday (Aug 30).”

“I went to Donahue’s office on Friday, Aug 30, at approximately 1:00 p.m. At that time they gave me the April proposal, but his secretary had trouble finding the retainer letter. At that time I asked for a copy of the earlier retainer letter. Later that afternoon I picked up the new retainer agreement, which had a fax banner on the second page ‘Aug. 30, 1996 12:24 PM Hogan & Hartson DC2 No. 132 P. 2/29.’ (I just now noticed the P. 2/29; I was given just 4 pages.)”

“Concerning open meeting requirements, Mr. Donahue told me that the regents exceed the requirements of the Minnesota statute, limiting their unofficial meetings to no more than three regents at a time.”

“During the same time period I had conversations with Mr. Bosacker, and with Mr. Steven Routh, the other attorney from Hogan and Hartson.”

“I asked Bosacker about the nature of the communications between the attorneys and the regents in regard to the tenure code drafting. Mr. Bosacker told me that all the communications are oral, and that they are one-on-one discussions. I asked him whether the regents had met to discuss the code (other than the discussions held at the monthly regents meetings). He said they had not. I asked what the regents would discuss at their September meeting. He said that they would have a draft tenure code written by the

attorneys, and that he expected it to represent the consensus of the regents. I asked again about how the regents would communicate sufficiently to enable the attorney to extract a consensus. He patiently explained to me that boards such as this, when they must conduct business in public, must be able to reach consensus on issues through numerous one-on-one conversations, and in this case the attorney also has a number of one-on-one conversations. I asked again whether there were written instructions to the attorney or written communications between the attorney and the regents on this matter, and he said there were none.”

“Mr. Bosacker also told me that it was the regents’ hope that the draft tenure code would be available to the University Senate before the regents’ meeting, but it was possible that it would not be available until during the regents’ meeting (as it turned out to be the case, though it was delivered to Hasselmo on Friday, Aug 30, the day that the retainer letter was signed.)”

“In the meantime, in the latter part of the week of August 19, I called Hogan & Hartson and asked to speak with Mr. Michaelson. I was told that he was on vacation, and when I explained that I wanted to ask about the tenure code revision, she referred me to Mr. Routh (who wasn’t available but called me back later). Mr. Routh told me that Mr. Michaelson was in Russia and would not return until September 3. I asked about the status of the tenure code, and he said that he should really get to work on it so that it was ready when Marty returned. (This seemed odd to me at the time, since the regents’ meeting was scheduled for September 4-5. The situation became clearer after discussions with Fred Morrison on Monday, August 26, as described below.). I asked him some of the same questions that I asked Bosacker. Specifically Routh told me that all communications with the regents had been oral, and that the telephone conversations were mostly with the regents’ staff (I believe he mentioned Bosacker). He said that the staff seemed to be on top of the situation, and that the chair of the regents appeared to be very much in charge.”

“On Monday August 26, several faculty members met to discuss the situation, including what was learned at the regents retreat and thereafter. Fred Morrison . . . attended the first day of the retreat and described the public discussions of the tenure code.” Campbell related Morrison’s story about the parking lot discussion with Michaelson. It appears the draft was already prepared, which “seems to me to be consistent with the fact that the draft code was available several days before Michaelson was scheduled to return from Russia, and at variance with the conversation I had with Routh. (It should be noted that the attorneys, while under the original retainer to Brody, had already participated in drafting part of the proposed revisions [the Gang of 4] as part of the process set out by the ‘Tenure Working Group,’ “Most -- nearly all -- faculty senators were

unaware of this highly irregular process until March or April 1996, though it apparently began in October or November 1995. The Faculty Senate overwhelmingly rejected this process at its April 1996 meeting.)”

“It may be of interest that, on Tuesday Sep 3, in a meeting with several faculty members (including myself), President Hasselmo, Vice President Marshak, and Mike Bognanno (the president’s chief of staff), Bognanno stated that the regents’ draft code was probably developed by the attorneys in consultation with a minority of the board of regents, and that the ‘Board has not yet had a conference call on the recommendations’ (my notes of that meeting). Later in the meeting he said that the regents were probably ‘consulting with Isenberg and Bosacker in small groups by phone’ (my notes of that meeting). While this appeared to be speculation on the part of Bognanno, it was stated in a matter-of-fact way that suggested to me that he was aware that this is common practice.”

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As he had promised to do if the Board took up the Morris proposal, on Monday the 9th, after the regents’ meeting, Hasselmo sent an email to all faculty transmitting his September 3 letter to Reagan about the draft of regents’ tenure proposal and including the Farber analysis.

On Sunday evening September 8, Campbell emailed to Fennell Evans (in Evans’s capacity as chair of the Arts, Sciences, and Engineering Faculty Consultative Committee) to send a draft memo that the ASE FCC might send to the ASE faculty about the tenure situation. The draft memo was to ASE FCC members explaining why the message should be sent. Campbell noted the “crisis situation” and reported that “four of us who were reachable were called to a meeting with Shively on Friday to discuss strategy. All four of us appeared to agree that the only action that has a reasonable chance for success is to obtain a cease-and-desist order to block the regents’ action. Phil [Shively] seemed to prefer another way, but he acknowledged that any other action must go on in parallel with the card collection.”

“One member of the administration told me last Tuesday that, if the regents put the document on the table that he had seen, the only choice for the faculty is to collect the cards. Hasselmo and Marshak told the regents that the document should not be presented, and instead should be shredded. Of course the document was placed on the table on Thursday morning. While they and the provosts are working hard on a couple of regents whom they consider swing votes, they acknowledged late Friday afternoon and on Saturday morning that the probability of success is quite small, and said that they could not ask the faculty to delay the card signing. (The three provosts are writing an op-ed

piece against the regents' action.)”⁸⁷

Campbell warned that “there is a significant possibility that the regents will meet and suspend the rules to pass their version of the tenure code. While that would surely be challenged as illegal labor practice, the outcome of such a suit cannot be pre-determined, and an injunction would not be automatic, in contrast to the cease and desist order that we would obtain automatically if enough cards were signed (30%). There is some suspicion that the regents may meet (perhaps by conference call) as early as Wednesday [September 11].”

“The bottom line is that, as one analyzes scenarios, the only safe option is to get enough cards signed by mid-week. Since many 9-month faculty are not yet back in town, it is urgent that we take action to maximize the response from those who are here.” He asked his colleagues for approval to draft a statement for the committee to send.

Campbell moved quickly. He circulated to the Gang of 19 and other colleagues a draft memo to the faculty and asked them for permission to append their name to it. Most of those contacted agreed to sign it; it was then distributed on Monday the 9th.

The email message was signed by sixteen senior Arts, Sciences, and Engineering faculty (including Berscheid, Campbell, Fennell Evans, Humphreys, Murthy, FCC members Bloomfield, Hobbie, Sara Evans, and two other regents' professors) and was sent to all faculty urging them to sign union authorization forms to “stop implementation of the draconian ‘tenure’ code” from the regents. They wrote that the only way to stop the regents was for 30% of the faculty to turn in cards to stop changes in employment, and that faculty could decide later if they supported a union. They said the regents' proposal “exceeds all of our most pessimistic expectations,” that it was written by Martin Michaelson of Hogan & Hartson, and noted the connection with the AHC and re-engineering. They said that “we are in a crisis of unprecedented danger to the heart of academic freedom and the future of our university” and that the “top-down management system . . . embodies naked threats to the most basic rights of the members of the academy.” They reviewed other analyses of the proposal and the union election process, and described the regents as “at the vanguard” of boards in this area, and that the faculty must be in the vanguard in resisting them. They urged the faculty must join “in the battle to save academic freedom and the University of Minnesota as we know it.”

Williams kept the AAUP/Gang of 19 apprised of press events; on September 9 she reported there would be a story on Minnesota Public Radio the next day (the reporter had interviewed Burgan), and that the national AAUP would issue a press release on the Minnesota situation (although it also had to contend with the report calling for strengthening the presidency).

⁸⁷The piece was never written, at the request of Hasselmo.

She followed up the same day with a message to her AAUP colleagues to report that “we have been working closely with the national AAUP on media releases and issues about collective bargaining intensively over the weekend and all day today. . . . In order for our AAUP chapter to participate officially in any actions regarding collective bargaining, members of the chapter must endorse it.” She forwarded Murthy’s appeal to the Twin Cities campus membership, and asked for their votes.

Murthy wrote that “many of you will have seen the Regents’ document on proposed tenure revisions. I have studied it closely along with several members of the AAUP Executive Committee, and we all have concluded that it seriously abridges AAUP principles on academic freedom of inquiry and of tenure. We do not think that the document even provides an acceptable starting point for discussion and negotiation, and that the Regents actions must be halted.” With a vote coming at the October Board meeting, “the only way to stop this process is to seek a cease-and-desist order” from the BMS; he assured his colleagues that “a cease and desist order, while keeping the present tenure code in place, sets in process a faculty vote on collective bargaining and on choice of bargaining agent. It does not itself compel unionization.” He pointed out that a majority of the AAUP chapter members must ratify a collective bargaining campaign, and that “several faculty members have contacted me to say that if the faculty wishes to unionize, their interests would be best served by the AAUP which has long experience and a record of working for academic freedom and tenure.” The vote was affirmative.

Williams reported again on September 10 about her communications with the national AAUP. She said that [AAUP staff member] Nightingale had recently spoken with the BMS, and said that “the ‘cease and desist’ scenario is not a given, although a possibility. To say to faculty that signing an authorization card will prevent the Board from implementing revisions to the tenure code is an overstatement.” Nightingale also told Williams that he learned the BMS “has received a lot of phone calls about these issues. Included among his callers were staffers from the Governor’s office and the University Labor Relations Department.” Williams suggested they be cautious in the messages they send to the faculty, and that Nightingale’s report “also shows the high interest by the politicians in what’s happening on campus. We may be entering a long legal battle, against people who have deep pockets.” Williams wrote that “I hope many of you heard the hour-long program on [Minnesota Public Radio] at 9 a.m. Mary Burgan was outstanding, but even better was the representative from the Association of Governing Boards of Universities and Colleges. . . . his comments clearly showed that our regents are far outside the mainstream. . . . It would be good to send that program to our administration and legislators. If people at the national level are speaking

out publicly about our regents, maybe our administration would be willing to speak out more vocally?"

Campbell responded to the information from Nightingale in an email to Walsh. "I am VERY concerned about the AAUP/Washington reading of the cease-and-desist order. I will personally be strung up if it turns out that we can't get such an order in return for 30%. If there really is a significant question about that, our claims to the contrary might even be a reason to challenge the cards that might have been signed under a misrepresentation. Somebody must get a clear legal opinion on this and send it out to the faculty. I hope that you are involved, since I am not sure AAUP/central isn't simply trying to block UFA, which would be really dumb." Campbell also observed that "Nightingale's information that the governor's office and legislators are calling about the [cease and desist order] suggests that there may be political pressure at work here. Is BMS run by [Minnesota Governor Arne] Carlson?"

Tuesday, September 10 saw much other activity, and the multitude of directions in which events moved defeat any attempt to impose order on them; herewith a seriatim listing.

- Probably most important, 25 current and emeritus regents' professors sent an email to all faculty and said the regents' proposal, drafted by Hogan & Hartson, would harm the University and allow the Board to terminate faculty "for reasons such failure to 'maintain . . . a proper attitude of industry and cooperation within and without the University community.'" They said the regents were responding to problems that were not defined and they would welcome such discussion, but that tenure would likely play only a small part in the solutions. They concluded that faculty must consider collective action and urged them to sign union authorization forms to prevent the regents from acting and to allow time for dialogue.
- At his request, FCC (along with Dempsey and Fogelman) met with Hasselmo early in the morning. They discussed options, such as adopting the Faculty Senate proposed changes in the tenure code, with no further changes or discussion (which the Regents seemed unwilling and unlikely to accept); adopting the Faculty Senate changes on an interim basis, and dealing with the outstanding issues later, after the new president is appointed and settled in office; and identification of faculty and Regents who could negotiate changes in the tenure code. FCC said the last option was not feasible, but the second was. FCC members also pointed out that the probability of a "cease and desist" order was quite high, and discussions would then stop. Gray was asked to arrange a meeting with the regents for a general discussion (the "kitchen table" discussions), but not of tenure amendments, and FCC supported a Hasselmo proposal to the regents to adopt the Senate recommendations and to delay further discussions

until the new president was appointed.

- Fred Morrison sent a 26-page memo to Faculty Affairs, the Tenure Subcommittee, the Judicial Committee, FCC, and the Faculty Senate with a section-by-section analysis of the regents' tenure proposal. He maintained that "the proposal was put to us by the Regents as a single package, so we must provide them with a response to their proposal as a whole." Examples of Morrison's analysis follow, and it is this fine-grained measuring of the proposals that may have educated many faculty about the Morris proposal and the regents' apparent intentions.

- On base salary, "the language is changed from 'shall not be decreased' to 'it is expected that . . .' The University Attorney's office has regularly argued that such a vague and general statement does not create a legal obligation; they would certainly do so here. . . . There is an exception for 'reasons found to be compelling' by the Regents or their delegate. Note that this would not require 'compelling reasons,' but rather only requires an assertion by the Regents or their delegates that they 'find' the reasons compelling. This is a standard drafting technique that makes any action taken unreviewable (by an arbitrator or court), so long as the Regents or their delegate include a sentence in their decision indicating that they have 'found' compelling reasons. This change effectively eliminates any enforceable claim to base salary."
- On discipline, "faculty members are required to 'maintain . . . a proper attitude of industry and cooperation.' With all due respect, this seems more reminiscent of elementary school teachers' contracts of the 1920s than of the standards for a great University. The language seems designed to suppress controversy or dissent. Its tone suggests that it may have been copied from some antiquated and unused provisions of an old set of regulations from some other University."
- On discipline, "the changes . . . seem to cut against one another. The 1985 version [of the tenure code] made professional misconduct outside of the University punishable . . . because it would reflect on professional competence inside the University, but left other personal misconduct outside of the academic community . . . to be dealt with by civil authorities. The drafters (and the Senate) at that time felt that the University should not inject itself into the personal misconduct of faculty members outside of the institution, unless they directly affected the professional

qualifications of the professor. The Regents' draft appears to reverse both these points. It limits actionable unprofessional conduct to that in the faculty member's employment, while extending coverage . . . to personal conduct anywhere in the world. This is absurd."

- On programmatic change, "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 the reassignment or retraining would be 'impracticable,' but rather 'in the University's judgment' it would be impracticable. The University could meet that claim simply by reciting an assertion of impracticability in its letter of dismissal, and thus avoid any review. . . . 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!"
- Murthy received a 5-page letter from the AAUP national office responding to a request for analysis of the regents' tenure proposal. Associate Secretary Robert Kreiser wrote that the document diverged "in some cases significantly" from the 1940 AAUP principles. The letter set forth, section by section, comments on the proposal. He said he agreed with Hasselmo's September 3 letter that the proposal "will harm the university."
- Feeney wrote to Faculty Affairs, the Tenure Subcommittee, and FCC and began by saying "it appears we have been told where we stand by the regents." He circulated his critical August letter to the Regents, and said the committees will meet to take up the Board proposal.
- Walsh and Rabinowitz sent an email appeal to UFA for help with the drive to get signed union authorization cards, noting drop-off places. They said that if they did not stop the regents, "we will be faced with what is probably the most punitive code in the nation at the end of the second full week of classes."
- Humphreys emailed to the Gang of 19, FCC, and the committee chairs to report on a TV appearance ("NewsNight Minnesota") opposite Representative Kelso the previous evening. She said Kelso had the last word and her comments were "outright lies." She said Kelso had received the regents' proposal but it was "obvious she had not read it." Kelso said not to take the language about "proper attitude" seriously, was enthusiastic about downsizing, and claimed that the Faculty Senate proposal "had not been produced in good faith" and "that both she and regents recognized that."

Humphreys later amplified on the experience. “It was very revealing, some of the stuff she said. Afterwards, we talked in the hall. She obviously had a copy, had been given a copy, of the Hogan & Hartson code. Probably very early on. It was only a few days after the regents meeting. She had a copy of it; she thought the faculty reaction was dumb and stupid, everyone knows that this statement about proper attitude doesn’t mean anything. Her comments were very filtered. Whenever I tried to confront her with factual stuff, she backed down.”

Wells watched the program and sent an email to Humphreys about it. She told Humphreys “You were great! Kelso was slick.” She noticed that Kelso had said that “the Regents’ attack on tenure was needed, not to eliminate incompetent faculty, but to downsize the University. What is this secret Master Plan for downsizing the University?” She asked, rhetorically, which “departments will be eliminated or downsized? Who will decide (has decided?) which subjects will be eliminated and no longer taught? Who has decided what research areas are to be emphasized while others are downsized?” And she wondered if the faculty would be the last to know of the plan.

- The AHC faculty consultative committee notified faculty it was sponsoring a “town meeting” for AHC faculty to discuss with Provost Cerra the tenure proposal and that there would be a law school representative present to respond to questions. There would also be a meeting afterwards, not sponsored by the AHC FCC, to discuss union options.
- The national AAUP issued a press release “Faculty at the University of Minnesota Reject Board Revisions to Tenure Code; AAUP Finds Proposed Revisions Threat to Academic Freedom.” The release reported united faculty opposition to the tenure proposal and on the AAUP letter finding the proposal at variance with AAUP standards.

Among the major problems are procedures for reducing faculty salaries by unilateral administrative action. “Should the administration . . . have the ability to act selectively to reduce a faculty member’s salary, without needing to establish cause under safeguards of academic due process, a significant underpinning for principles of academic freedom and tenure at that institution would be lacking,” the AAUP’s letter states. The proposed revisions would permit termination of faculty appointments for program changes without requiring any advance consultation with the faculty. These and other recommendations reflect a dramatic departure from past practices at the University of Minnesota and at major research universities elsewhere.”

The letter itemized the proposals, and cited Hasselmo’s opposition to the proposal (and quoted from his September 3 letter to Reagan). Murthy said the faculty

attempted to meet the regents' concerns, and could "not believe that some members of the board have so lightly dismissed our concerns."

National AAUP General Secretary Mary Burgan visited the troubled campus in March and met with faculty leaders and with four members of the board. According to Burgan, problems specific to the Academic Health Center have been expanded into a wholesale review of tenure across the university. She notes that a feature that unites both the revision of the Tenure Code and the reorganization of the Health Center is a reliance on consultants "who have no appreciation of the common practices of academic culture. Faculty fear the loss of the tradition of shared governance under the management philosophy advocated by people who are not aware of the central importance of academic freedom and tenure."

-- Mary Dempsey wrote to Dan Feeney after the FCC meeting with the President. "I can't believe things could get this bad! . . . They [FCC and Hasselmo] developed a possible plan to stop the Regents from adopting their revisions -- i.e., ask that they accept the one we gave them in June and offer to consider other amendments in a year or more. I doubt this will work -- but it is worth a try. In the meantime, as you know, we are going ahead with a subcommittee meeting to review the Regents' revisions. We are requesting that they send a representative to answer questions that Fred has prepared. He has also prepared a detailed analysis of their proposed revisions -- but thinks it best not to release that until just before our meeting."

Feeney responded that "we should consider putting together a piece from [Faculty Affairs]/Tenure Committees for release to whomever (possibly an open letter to the Board of Regents). This should be based on the discussions that take place in our 9/18 & 9/20 meetings. To maintain credibility as a faculty governance groups, we need to say something, but it should come from our duly constituted groups (not us as individuals)." He also told her that "we need to have specified times on our agendas for how long the regents' spokesperson can have the floor. I suggest no more than 15 minutes. A succinct explanation should be possible during that time."

-- Rick Purple also wrote to Dan Feeney on the 10th, about hearing from a representative of the regents at a Faculty Affairs meeting. He said he had "divided feelings" because "the Regents spent the summer making soothing sounds while secretly concocting the document they surprised the administration and faculty with" in Morris. Purple described that as a re-engineering tactic; "these people are playing by corporate hardball rules, not by the open and free debate we use. It is entirely possible that the real aim of a Regents' representative will

be to get a feel for whether the faculty is sufficiently angry to force them to speed up their time-table by calling an emergency meeting and adopting their document.” Purple also maintained that there were plenty of analyses of the regents’ proposal (from Morrison, Farber, and the AAUP), and that committee members could read, so did not need to hear from a regents’ representative. He added that “given the discrepancies between the oral presentation to the Board and the actual language of the revisions, there has already been enough mis-information.”

Feeney wrote back three days later. “I’m concerned that the Faculty Affairs and the Tenure Committees must conduct most of their business in the open. Part of that is confronting our adversary in a forum not governed by their rules. Last year, I think the Senate was taught a lesson in that there are politically active groups (which are quite constructive, incidentally) that will hold us responsible for our actions. They are appropriately vigilant and keep us on our toes. They, as well as the interested faculty in general, expect us to operate in the open and get directly at the issues. While the open approach can, on occasion, interfere with the formulation of strategy, at least our colleagues trust us.”

Feeney agreed with Purple’s description of the proposal as typical of re-engineering. He then said that while the labors of the committees were to consist “of expressing frank and factual opinions,” speculation abounded. “I happen to think that many of the regents’ arguments about the need for the severe provisions are based on speculation as well (and these haven’t been articulated which I see our role is to ask that question). I believe our conversations in [Faculty Affairs] (either among ourselves or with representatives of the regents or the administration) should be open and blunt and our minutes should reflect it. For example, I intend to make the comment that I’m not sure of the motivation for selected regents to be pushing the lay-off and salary cut issues so strongly. One could speculate that they know something that we don’t (e.g. some pending fiscal crisis). One could speculate that this will be a gift (a recruiting tool) for the strongly top-down new president they want to hire. One could speculate that the political pressure from the uninformed public and politically-motivated legislators (thanks to former Provost Brody crying to the legislature that ‘tenure is the problem’) is so great that the Board must make some gesture to show they are in control. One could speculate that this is a ruthless way to play out a vendetta between selected regents and President Hasselmo in his last months. One could also speculate that the reasons are personal. Individual regents seen as responsible for ‘breaking’ tenure at a major

research university may foster their marketability as management consultants, future Board officers, and budding/re-emerging politicians. I don't think we have to play dirty pool, but we need to express what we hear from our faculty colleagues. If it is viewed as an attack on either the Board or selected members, so be it! We didn't start this fight, they did. It seems apparent that the regents are less concerned (if at all) about faculty opinion on these issues. We'll see how they respond when the credibility of their arguments or even their personal credibility is questioned (should we happen focus on that). Based on what I've seen so far, we have little to lose if we stick to the factual issues, but bring the regents' motivations into focus. I agree that they have hidden behind the shield of consultants and lawyers in a re-engineering-like posture, but we know what their agenda is. I prefer not to operate in that fashion."

Feeney urged Purple to say in the meetings what he had written. "The regents and the public need to know how we feel. I also see this whole charade as a test of faculty governance. How we act during the next few weeks could determine how a final vote on specific representation goes. . . . I appreciate your concern about using time for the representative of the regents to address the Faculty Affairs Committee. We can limit the time he/she uses by controlling the agenda. However, we need to have some kind of face to face with regents' representatives in an open forum such as a Faculty Affairs meeting. They need to be put on the spot and we can't do that in the formal setting of a regents meeting. Who knows, maybe we'll find a crack in the coalition or at least stimulate discussion among them, if one or two of their own are put in the hot seat!"

Purple emailed back to Feeney, and told him not to over-value his -- Purple's -- wisdom; "I seem to be on the losing end of many issues!" He told Feeney that Walsh was filing the cards that day (the 13th) for the Twin Cities minus the AHC and the Law School.

Purple accepted Feeney's stand that meetings should be open, but cautioned that the committee "should be aware that in the past groups with secret agendas use open meetings for political ends and public relations rather than for open governance. I also am of the firm belief that the Regents with power [Reagan and Keffeler] want to clear the decks for a CEO-type president and feel that to attract an outstanding individual CEO they will have to provide him/her with a corporate style structure of governance. The governor has often stated the same thing. Of all the questions one might throw at them, I think that one would be the most direct."

Purple suggested, however, that another way to proceed would be to "make them

aware of the political pressures the Board would be subjected to if they pass their draft.” He pointed out that tenure and academic freedom have provided the institutions a barrier behind which they could stand when pressure was brought to bear. With the regents’ proposed code, “all that now will stand between the faculty and the public will be the Regents. The Regents will then be subjected to political pressures of every conceivable interest group wanting to push their restrictive agenda: the religious right, anti-vivisectionists, anti- and pro-gay rights, anti-welfare, anti-abortionists and pro-lifers, and the list goes on. Regents meetings may become so bogged down in these political matters that ordinary conduct of business will be strangled. Academic Freedom and Tenure -- for you cannot separate the two -- is actually the public’s guarantee that their children will be exposed to many of the controversial issues of a dynamic culture, but that their children will not be coerced into any point of view they do not choose freely. The Regents and Regents alone will have that responsibility if they enact their draft.”

The next day (September 11) was similar.

- **“Freedom of inquiry at ‘U’ threatened by regents’ tenure formula”** (Star-Tribune, editorial by Professor David Lykken (Psychology). Lykken said he had been at the University for 50 years and described tenure as the “essential guardian of that freedom of inquiry.” The expensive consultants had no “knowledge or experience” of universities. Lykken said Reagan “brags that ‘a lot of universities haven’t had the guts to look at tenure,’” but the regents should “base their decisions on reason and a respect for a university’s unique functions and traditions rather than on guts. This is not a game of chicken.” Lykken suggested that instead of layoffs of faculty, “what we really need is a mechanism to lay off some regents.”
- John French, a prominent alumni leader and donor to the University, wrote to Reagan and Hasselmo. French said he was concerned over the tenure debate, and said the language about “proper attitude of industry and cooperation . . . sounds ominous. Who decides what is a proper attitude, or how much industry is enough industry, or when cooperation is or is not appropriate. . . ?” A salary cut could amount to termination, and programmatic change provisions must be accompanied by protections so that it “does not become a device for getting rid of people whose only vice is that [they] do not fit in the current main stream”; the University cannot afford to “put John Berrymans of academia at risk.” The regents “need to understand clearly the potentially grave consequences of their actions. Significant change in a venerable institution must be made only on a specific showing of an obvious need.”

- Murthy emailed to all faculty reporting on the letter from the national AAUP finding that the regents' proposal deviated from AAUP academic freedom standards, that it was "not in mainstream of practices" at other institutions as claimed by the regents' lawyer. He said the only recourse was to obtain a cease and desist order and that faculty must "stay united"; he urged them to sign union authorization cards.
- Regent Keffeler wrote to the regents' professors expressing disappointment at their recommendation to sign union cards. She said she wished to advance a "constructive dialogue" among regents, faculty, and administration, and said her thinking had been "diluted and misrepresented" through third-party communications. She agreed that tenure revisions would be only a "partial solution" to institutional problems and that she would prefer to postpone October Board action if a dialogue could occur. Keffeler included several pieces of her earlier correspondence on tenure, and suggested that there were recurring themes: the tenure code "is not the problem" but must be examined; "academic freedom must be protected"; "the faculty are most important resource of University"; there must be dialogue, requiring more shared information, between the faculty and regents about the future"; the experiences of other universities and the AAUP would be important; there was a need for good data and a strategic plan. There was "room for common ground," she wrote, and said she had not yet decided her own views on several issues and that she was committed to working with the faculty leadership.

The letter from Jean Keffeler to the regents' professors prompted a message from FCC member Carole Bland to her colleagues. "It seems she provides an opening for postponing consideration of the Regents' proposal." Bland observed that Keffeler had also suggested "that the faculty provide information that would inform decisions about changes in the tenure code. She, of course, also says she is interested in a dialogue with the faculty. In response to her memo, I suggest that FCC, as the legitimate representatives of the faculty, submit with [Faculty Affairs]/Tenure Subcommittee, a formal and PUBLIC request that the Regents postpone their consideration of the Regents' tenure proposal in October." That would permit a dialogue, information gathering, and allow time to consider the information. "However, before we will do anything, we ask that the proposal be removed from vote from the docket and not placed back on for several months as public evidence that the information gathered will be considered and that the Regents are willing to consider alternatives to their proposal." FCC did not act on the suggestion.

Said one observer, "some took a somewhat different view of the Keffeler letter

noting that she included a memo from herself to selected other Regents suggesting that the Regents hire their own public relations experts and asking why should faculty be entitled to financial information about the University before the Regents could declare a financial emergency.”

On September 11 Isenberg faxed a note to Keffeler and Spence that there would be a conference call, including representatives from Padilla-Speer-Beardsley, a public relations firm.

Also on September 11, Bosacker and Isenberg faxed a memo to “all regents” updating them on the tenure discussion. Earlier in the week, they had had a conference call with Reagan, Spence, and Keffeler on “how we proceed. It was decided that we immediately explore paths of communication with the faculty and administration to achieve the Board’s desire for productive feedback on their proposed revisions.” One suggestion, which all endorsed, was a meeting of five faculty, three regents, and Marshak; it was being arranged for Friday the 13th. “In addition, we are securing assistance in the areas of labor law counsel and public relations advice, to best support the Board and benefit the University during this difficult deliberation.” Gray had informed them that enough authorization cards had been signed to obtain the cease and desist order. They reported that “Regent Reagan remains committed, along with other regents, to striking a tone of constructive discussion for the coming weeks” and that “for the time being, Regents Reagan, Keffeler and Spence are sharing the responsibility of speaking on behalf of the Chair.” They promised to keep Board members informed, and enclosed a copy of the AAUP letter analyzing the Morris proposal.

On September 12, Keffeler emailed from vacation to Bosacker, Chait, Isenberg, Michaelson, and Routh that she was “very pleased” at their work, and posed a lengthy list of questions about the document she had received. She said that “I have been extremely concerned that as we modify the tenure policy of the regents, we be vigilant in our protection of academic freedom,” and asked for an understanding of how “‘principles of academic freedom as established by academic tradition and the constitution and laws of the United States and the state of Minnesota’ . . . extend beyond the protections of law.”

She observed, apropos the Hogan & Hartson document, that “while it is important that the regents themselves understand and approve any amendments to our tenure policy, the understanding and support of the general public and legislative leaders for the position we eventually take is also important.” She expressed concern that there was nothing public explaining why the changes were being sought or what they would accomplish for the University, and that such a document should accompany any policy that would be released. “The public debate will congeal on the suggestions that are advanced this week, not on the outcomes that are finally voted next month. (Unfortunately,

since the president and his administration, including the public relations staff, do not support action by the regents beyond those recommended by the Faculty Senate, we cannot realistically expect their vigorous assistance in these matters.)”

Keffeler asked where the suggested policy, and existing policy, vary from AAUP guidelines. She also raised questions about the lack of changes in the code with respect to reallocation, and asked after the possibility of considering anticipated revenue shortfalls in order to increase “pro-active and adaptive capacity,” because “the entire section on fiscal emergency appears predicated on the existence of a known/existing circumstance dramatically reducing revenue.”

After raising an addition set of specific questions, Keffeler commented that “there are several areas where I think the board should be particularly attentive to faculty advice. To that end, I’d like to suggest that we request the faculty, when they proffer formal advice and consultation, to specifically address” the “impact on academic freedom . . . on recruitment and retention [and] . . . on diversity goals,” each “within the context of AAUP guidelines and benchmark university comparisons.”

Robson wrote about this quest for information.

What Keffeler in particular was after was some kind of comparative data that would indicate where the University stood in relation to its peers on tenure issues. To that end, the board hired its own consultant, Dr. Richard Chait of the University of Maryland, a nationally recognized authority on tenure codes. But according to Chait’s chief assistant, Kathy Trower, who worked alongside Chait in Minnesota on behalf of the regents, what the board wanted -- apples-to-apples comparisons of tenure issues among universities -- was much more complex than it might seem. Tenure codes are idiosyncratic; while the basic principles and goals may be the same, the context is different. Each institution structures and phrases its codes in a manner meant to resolve the specific disputes over academic freedom and bureaucratic control that have arisen on that campus. Second, what’s written in a code often isn’t the same as what is practiced as policy. The harsher aspects of a written tenure code are almost never implemented because most boards of regents intuitively realize that it makes no political or educational sense to pick a fight with your faculty: The less enlightened will resent it and plot against you; the best and the brightest will often simply go somewhere else.

For some reason, the regents at the U of M did not grasp these simple facts. The chain of events that was allowed to occur between the time when the faculty submitted its tenure proposal in June and the regents unveiled theirs in September seems in retrospect to be equal parts ignorance and arrogance. Chait reported that he was happy to interpret the faculty’s proposal for tenure and provide other guidance on the issue, but that he did not feel comfortable writing a legal document like a proposed tenure code. The regents then turned to the University’s general counsel, Mark Rotenberg. But out of loyalty to Hasselmo, Rotenberg chose not to get involved with writing the regents’ tenure proposal. Of all people, Rotenberg turned to Martin Michaelson from Hogan & Hartson, the lawyer whose involvement in the AHC re-engineering process and Hasselmo’s working group already made him something of an iconic foe of the faculty on tenure issues. At a regents’ retreat in

August, Michaelson solicited the individual views of all the board members present (everyone but Keffeler and Wendell Anderson), researched some of the tenure codes of comparable universities, and sought to reconcile the two, in some cases by incorporating the language of other codes.

Given the importance of the regents' proposed tenure changes, the document received remarkably little prior scrutiny or oversight. Chait, the consultant who seemed to have earned the trust of the regents, said at the August retreat that references in the code to layoff authority would be considered an inflammatory subject by the faculty. Yet the layoff language made it into Michaelson's document; some of the regents say they never even saw a copy of their own proposed tenure code until just hours before it was made public. One of the people who did see it a day or two in advance was Hasselmo, who implored the regents not to release such a divisive document. Based on what she gleaned of the plan from Hasselmo, Virginia Gray of the faculty consultative committee told the regents the morning of the Morris meeting that the faculty would almost certainly unionize if they went through with their proposal.

(On September 24, Bosacker wrote to the University's Director of Purchasing to inform her that the regents had decided, after their September 5 meeting, to "contract with a public relations firm to assist in our analysis and dissemination pertaining to the discussion of revisions in the University's tenure code." Because help was "needed *immediately*," he reported that he had interviewed two firms and selected a local one, Padilla-Speer-Beardsley. He noted that the Board had been considering "establishing a retainer with a public relations firm," and assured her that if it did so, it would use a competitive process. He concluded by saying that "I appreciate your flexibility with this urgent situation.")

The newspapers again gave prominent (page one) coverage to events.

"Faculty elite condemn tenure plan" (Star-Tribune, September 12). The article reported on the regents' professors' letter opposing the regents' proposal and urging faculty to sign union cards to prevent consideration of the proposal; it reported that 16 of the 20 current regents' professors signed (one held an administrative position and could not; the other three were traveling and could not be reached), as did 8 emeritus faculty [there were actually nine]. It described the letter contents, and quoted Spence, "'this is definitely a highly respected group, and we would all welcome their comments.'" The reporter said the regents' professors were known as "a conservative group of accomplished academics who don't often make their concerns public," but quoted one (Gorham) as saying "'we feel the regents are being radical. . . . This is an all-out assault on tenure'" and that the regents want the authority to lay off faculty but won't say what they intend. The article quoted Berscheid, apropos Spence's comment on wanting to communicate with the faculty, as saying that the regents "'have betrayed us on everything we've tried to do with them. . . . No one trusts these regents.'"

“U’s most honored profs urge faculty to unionize” (Pioneer Press, September 12). The reporter wrote that “acting like mother bears protecting their cubs,” the regents’ professors urged the faculty to unionize. The letter “cranks up the volume on an already raging campus debate, the likes of which faculty members say they have never seen. Because President Hasselmo has sided so completely with the faculty on this issue, relations between the regents and the president have never been so strained.” The three Twin Cities provosts also wanted to send a pro-faculty letter, but Hasselmo stopped them after talking to the regents. The article reported that tenure was being discussed on television and radio, gained national attention, and led to an AAUP press release. Berscheid said faculty would be “afraid to work on anything new,” and faculty say the “brain drain continues.” Representative Kelso said state dollars are few but the University seeks more money; she called for more flexibility and said she would “give the regents a badge of courage for dealing with this.” She also said it “would be a shame” if the faculty stopped the tenure decision by obtaining a cease and desist order.

Perhaps the first indication of a turning of public opinion against the regents was a newspaper editorial. **“U’ and tenure: Regents should withdraw proposal”** (Star-Tribune, September 12, newspaper editorial). The editorial said a “train wreck over tenure” was coming and that “wise heads on both sides had better slam on the brakes.” If not, the state economy would be hurt. Nothing justified weakening tenure now, and being a “pioneer on tenure now will spend more prestige and resources than this university can afford” and even raising the question of layoffs has made the University “a whipping boy in academic circles nationwide.” The best faculty will leave, others will be “scared away,” and faculty goodwill and cooperation on change will be replaced by resistance to change. The regents should withdraw the proposal on layoffs and “must erase from their minds any hint of a notion that layoffs could result if faculty members fail to show ‘a proper attitude of industry and cooperation.’” The regents should act quickly because unionization efforts were increasing, and a cease and desist order could mean the issue would be left open longer, “corroding the university’s good name.” The faculty and regents should cooperate on examining tenure and perhaps the Governor could appoint a distinguished panel to assist.

William Shepherd (former Vice President, Academic Affairs) wrote to the regents on September 12 and noted his lifelong association with the University as a student, faculty member, administrator, and fund-raiser, and that “Shepherd Laboratories” was named after him. He expressed “grave concern” about the tenure revisions and said tenure was designed to protect faculty “against improper attacks from all sources.” Faculties must judge the qualifications and performance of faculty, and have been “dedicated to their missions.” They have demonstrated their loyalty to the

University, and gave \$11 million in the last capital campaign; the faculty deserve “loyalty and respect” from the regents and people of the state. The regents’ actions have brought that “loyalty and trust into question” and “shocked and dismayed” the faculty. The Senate proposal could have been the basis for discussion, but the Board’s rejection of the document and exclusion of faculty from presidential search was “so inconsistent with the norm for this relationship as to encourage” a union. No top institution is unionized, and if a union comes because of the debate, it will be difficult to get the best faculty. He expressed the hope the Board would “reconsider its recent actions and reopen a meaningful dialogue” with faculty.

On September 12, Campbell sent a farewell email to his colleagues, noting that he was leaving for Europe for a year for a sabbatical. He asked “will there be a U Mn when I return? Will I recognize it? Will the Regents fire me while I am gone, given the bad attitude I have displayed?” He said also that “I have been very impressed with and grateful for the hard work” of the Gang of 19. “As happens, a period of crisis brings together a disparate group of people, many of whom form close friendships. I very much hope that, when the battle is over, those of us who remain will continue that friendship.”

That same day, Hamilton told the Gang of 19 that the AAUP would be holding a retreat on September 16, and that it had been suggested the Gang of 19 members attend. The retreat agenda, which would include national office representation, was described in the invitation to the campus faculty thus: “In light of the many recent and rapid alterations to the governance structure of the University, our purpose is to bring together a range of experienced faculty, such as yourself, in order to determine goals and an action plan for the TC-AAUP for the coming year. We mean to develop positive and feasible plans that will benefit the entire faculty.” Part of those plans would include “the role of the AAUP in collective action on the Twin Cities campus.”

Williams wrote to a her colleagues (including Walsh, Rabinowitz, and Morrison) on the 12th and 13th to invite them to a breakfast meeting, on September 16 before an AAUP retreat, with Nightingale and Shaw from the national AAUP. “This meeting is for faculty members most active and/or knowledgeable about collective bargaining. I thought it would be helpful for a small group to get together to determine what are the main legal questions, and if there are answers, with regards to collective bargaining, so that we are better prepared to lead a discussion with the larger group at the retreat.”

Following the retreat, Hamilton emailed to colleagues to report that “at the AAUP retreat today it was decided that it was necessary to have some open forums for the AHC in the very near future to explain the issues of collective bargaining, the ‘status quo’ order and what it means, etc. I

promised to act as coordinator and am now doing so by setting up a strategy meeting out of which will come an action plan with which we will proceed quickly.”

Hamilton also told a small group, a collective bargaining steering committee, that he had established an email discussion group for them. The group included Murthy, Williams, Fennell Evans, Berscheid, Walsh, and Rabinowitz. He wished them well in their deliberations.

On September 12, Swan emailed to the Gang of 19 and AAUP colleagues to report that the Senate committees would be meeting the following week to discuss the Morris proposal, and that he had been asked to distribute the schedule and note that they were public. He also told them that regents had “been asked to send a representative to each of the meetings to address general issues and to answer questions regarding specific language in their document.”

Morrison recalled that about this time “committee meetings and a Senate meeting were tentatively scheduled to consider the Regents’ proposals. Since the administration would not defend the document, [Regents’ Executive Director] Bosacker was asked who would speak for it. He said that no regent would come and that Michaelson [of Hogan & Hartson] would only be available for a limited time -- and only by phone.”

Morrison sent a 12-page memo to all faculty analyzing the regents’ tenure proposal, an abridged version of his September 10 memo to the committees and Faculty Senate. On September 13 Morrison wrote to the committees and the Faculty Senate identifying the source of the language about “‘proper attitude’” as a “poor paraphrase of the policy at Michigan State,” and noted the differences between the two codes. Humphreys emailed the same information to the Gang of 19.

Morris commented on this language. He recalled Morrison’s comparison with the Michigan State code, and said that “every time they used the Michigan State document as a form book, then they made it meaner at every turn, sometimes to the point where it becomes absolutely meaningless. You must have a ‘cooperative attitude toward your associates, both in and outside the university.’ That’s what Michigan State said. They [the regents’] said you must have a ‘cooperative attitude towards others, both in and outside the university.’ Is ‘others’ everybody else, including your enemies? People who are out to close Michigan State and let Michigan be the only university? Must one cooperate with them, too? And the statement that dismissal will be reserved for only the most serious cases? Take it out! Things like that; at every juncture, it was made worse.”

“What was broken that was supposed to be fixed, when by setting up something that we in the service used to call company punishment? There’s court-martial, but you can be disciplined without a trial, too. Your company commander can just discipline you. That’s what they did here. The dean can say ‘Morris, you need to learn a lesson. I’m going to cut your salary in half. Then you

can go grieve.’ What was particularly bad about that was that in the Gang of 4, it was made quite clear to Routh that the grievance procedure was set up in such a way as to not hear any questions of academic freedom. They knew that the grievance procedure could not be adequate; they put it in there anyway.”

“But also -- and this came out of the blue -- there had not been any indication anywhere that some sort of summary method of disciplining the faculty was necessary. We have a summary method. It works better in some decades than others; it depends on how much inflation we have. If we have fairly good inflation, the summary method is saying ‘Morris, you’re working next year for the same amount you worked last year.’ There’s a three to seven percent cut in your salary. There didn’t seem to be any need for this kind of thing; why did it come up?”

One AHC junior faculty member who was coming up for tenure wrote to Feeney to report that he had “heard a disturbing rumour” and “was shocked to learn that no tenure may be granted until all issues regarding the union and tenure revisions were addressed. Some have told me this could be 5 years.” He asked whether, if this were true, it were not the same as revising tenure “but maybe worse?”

Feeney responded and began by saying that “your inquiry is, I believe, the start of many potentially worrisome occurrences related to the Regents’ debacle on tenure.” He noted that a cease and desist order would limit “discussions about changes in the existing tenure code until the issue of collective bargaining organization is solved” but assured his colleague that “I don’t think it blocks consideration of faculty members under the existing code.” He also speculated that the length of the process “is anybody’s guess, but it is unlikely to be on the order of 5 years.”

Ten days later Walsh and Rabinowitz emailed to all faculty to report that UFA had discussed with the BMS the specific question of promotion and tenure and assured them that “it is our understanding that the normal . . . process which begins every year at this time should go on as it has in the past. This is our view, it is the view of FCC, and the BMS concurs.” Walsh noted “that UFA felt that promotion and tenure decisions should continue under the cease and desist order, and that BMS and FCC concurred. The UFA lawyer also transmitted to the BMS and the Board’s lawyers a list of actions that in its view could not proceed under the order. These included issues on which faculty governance had not been consulted.” Walsh pointed out that “it was not the idea of BMS or FCC to make this decision. It was ours. We just consulted with the others.”

On September 13, 1996, the AHC Faculty Consultative Committee sent a message to the AHC faculty with a “a brief, factual synopsis of the decision that are being made” about tenure. It noted that “the Regents have unilateral, final authority to change the U of M Tenure Code as they

have proposed. There is no appeal to a higher authority. The Faculty Senate proposal was strictly advisory.” It identified faculty options as lobbying or signing collective bargaining cards, the latter of which “may temporarily halt action by the Regents to adopt their proposed Tenure Code at their October 10 meeting and provide an opportunity for further negotiations.” The letter explained the machinery of collective bargaining, and then asked the faculty to review the various documents they had received, “particularly President Hasselmo’s September 3rd letter [protesting the Morris proposal] and the September 11 letter signed by most of the Regents’ Professors [urging that cards be signed].”

The same day, Wells emailed to Garrard that Walsh was filing the authorization cards that day, and asked who would “inform the AHC faculty that they are currently not included, and what steps must be taken to include them?” She surmised that “a lot of folks at the AHC will be disappointed when they learn that they are excluded from the current filing effort. It would be helpful, when this news is ‘broken,’ to have it accompanied by a plan whereby the AHC can be included.” She subsequently raised this concern with Walsh as well.

* * *

THE MEETING OF FRIDAY THE 13TH, 1996

Late the afternoon of Friday the 13th, faculty members Vic Bloomfield, Sara Evans, Virginia Gray, Russ Hobbie, and Craig Swan met off campus with Regents Keffeler, Reagan, and Spence and Senior Vice President Marshak to discuss tenure in general, not specific amendments. Morrison said he had “been told that the regents specifically asked that I not be designated” as one of the faculty to be involved.

At about 4:00, the Bureau of Mediation Services issued a “maintenance of the status quo” order for all Twin Cities faculty in response to a petition from the University Faculty Alliance requesting certification as the exclusive representative for the Twin Cities campus. The order prohibited: changes in the terms and conditions of employment, negotiations, threats or promises, questioning of employees about membership in the union, discrimination against employees who filed the petition, and it required the order be posted. A copy was delivered to the three regents and faculty meeting about tenure; the meeting broke up immediately.

Those involved in the meeting recalled it, not all in exactly the same way.

Bloomfield said, “I thought the tenor was fairly cordial. We didn’t expect to negotiate things; we wanted just to talk about the issues. We realized we were so far apart -- at least this was the faculty view; I don’t know what the regents thought -- that we really needed to begin at ground zero and just talk

through some things. That was the way we approached things. There was a reasonable spirit of cordiality. I remember we eventually got to -- at about 3:55 -- talking about how we [might] move toward some kind of change in the tenure system -- not that we were proposing that, but talking about their concerns for flexibility and reassignment and so on. I remember Jean Keffeler got up at the blackboard and started to draw diagrams. At that moment, [a staff member from Academic Affairs] walked in the door with the cease and desist order. The regents at that point behaved very much as if they had expected it. It was certainly a surprise to me, but they seemed choreographed to shut their notebooks and not say anything other than 'goodbye' from then on. I'm probably unduly gullible about these things; I thought it was a meeting where we were actually beginning to communicate with each other a little bit."

Gray thought differently. "It was definitely a tense meeting. It was tense, but the point of the meeting was to talk not about the specifics of the code but about the general issue of tenure. We had our ducks in a row, and our talking points, and they were listening. Where they started was, they said 'OK, forget all about the Morris document. We don't need to argue about that. Forget that ever happened. We'll just start over.' But then the way it was ending up, Jean was saying 'let's have more of these meetings, and let's discuss flexibility' -- it was going back to her basic 'we've got to have a strategic plan and we have to have all this before we can talk about tenure.' This is the thing about her; whatever you do, it's never good enough or fundamental enough or doesn't get really get to the core of the problem. I could see that we were going to go down a path we didn't want to go down."

"Basically, we had been doing the talking, and they had been doing the listening. The fact that I could even find six people who would be in the room with them was fairly amazing. I wasn't sure I could find anybody to go."

Marshak's recollection combines Bloomfield and Gray, along with a few additional twists. "The meeting was civil. It was strained, but civil. There were good discussions; people were talking. It wasn't going anywhere substantive, but I thought it was a reasonable first meeting. I didn't expect anything substantive to happen at the first meeting; this was sort of an ice-breaker. Everybody was so uptight that just getting them in the room was an accomplishment. Nobody yelled at each other; both sides were respectful, but very guarded. Everybody was walking on eggshells trying to behave themselves."

"It was very dramatic at the end. The meeting was supposed to break up at 4:30. I was supposed to drive to Washington that evening; my wife was supposed to pick me up in the car on the way to Washington. About 4:25 the meeting was sort of wrapping up anyway; Tom had a chartered plane

from the range, and the plane was waiting to take him back. We knew we really had to get done.”

“There was this pounding at the door. Somebody got up and opened the door, and [an assistant from Marshak’s office] strides in and she slaps this down in front of Tom and Virginia or somebody. These papers. Everybody was so shaken. I remember [my wife] was late picking me up, so I was standing on the street waiting for her. The faculty people were walking up and down the street looking like they had just seen a ghost. They went to a bar; they were so shaken, they went drinking. I think everybody went drinking.”

Marshak agreed that the cease and desist order wasn’t a surprise; “it was the way it happened. Even though it was an expectation, it was the way it happened. Everybody had been tense all afternoon, trying to behave themselves and trying to make a new start, and then to have it blow up the way it did, from the outside, that everybody was just shaking. It was certainly one of the defining moments of the year, in terms of the drama of it. There haven’t been many times, actually, when I have gone drinking on official business. I couldn’t go with them; I couldn’t talk to them.”

One of those who was there recalled that Murthy “had been in contact with Keffeler before that [September regents’] meeting, and Rama came away with the impression that Jean Keffeler would offer to take the Morris proposal off the table. Much of [this] meeting was spent with faculty talking about how objectionable the Morris document was, and trying to help the regents understand the depth of indignation that this had started.”

“Then the regents said ‘why don’t you let us talk and we’ll come back with a proposal.’ They went out of the room to talk. The door to the room had locked as they stepped out into the hall. I was closest to the door. I got up to open the door, and I could not help but say ‘gee, I would have thought it would have been you who would have been locking us out, rather than the other way around.’”

“Jean put three points about how to proceed on a bulletin board. Someone asked, ‘the Morris document seems to be this terrible impediment, can’t we get rid of that.’ Jean said ‘no.’ Her three steps -- I don’t remember the particulars -- it was classic Keffeler. ‘We need to consider everything, we need to look at best practices,’ all this stuff that was the standard rhetoric that was not going to get us out of the problem where we were at the moment. Then the cease and desist order was delivered.”

“Most of the faculty [at the meeting] thought that Reagan seemed inflexible. I don’t know if I agreed [with that proposition] as a result of that meeting, but certainly over time I’ve come to that position. Mr. Reagan does not like his decisions or his authority questioned, that is absolutely clear.

He thought that's exactly what this meeting was about. I didn't think that's what the meeting was about; I thought the meeting was about trying to solve the problem that we'd all gotten into. So maybe I wasn't sensitive to how he apparently approached the meeting."

Marshak had a slightly different slant on the attitudes. "Jean purported to take the faculty side and Reagan and Spence were left riding on a horse that Jean shot out from underneath them. I would not characterize Tom as inflexible but more as cautious. I think the discussion at the hotel was supposed to be a first step of a process and that everybody knew that nothing would be resolved that day."

On September 24, Isenberg wrote to the regents to report on the September 13 meeting of three regents, five faculty, and Marshak "to establish a process for communication and compromise." Gray "requested that no written summary of the meeting be taken or distributed," but "the consensus of those Regents who were present was that the meeting was productive and those present decided to have future meetings. The Status Quo order was served at the conclusion of the meeting." She concluded that "good things were happening before the cease and desist order halted a process which offered promise."

* * *

One observer said that the University had "a Board that was collectively out to lunch at that time. They did not know the University and they did not even have political sense. They never saw that they were moving further out on a limb and that their supporters in St. Paul would abandon them when the limb broke. That came with the Status Quo Order -- the limb broke."

Obtaining the cease and desist order was key, in the view of one bystander. "When that started, the situation changed. That the regents understood. The faculty saved themselves. When the faculty took this extraordinary move, urged on by the regents' professors, to start the unionization process, that was the first time some understood. You had to hit the regents in the head with the side of a 2 X 4, and that was the 2 X 4. Only that would have saved them. That was the moment at which the faculty saved itself."

"Even then, the regents didn't want to retreat. They hadn't suspected that such a thing would happen. Most of the regents were scratching their heads, 'what are we talking about?' The faculty should have met individually and told them what was involved, Hasselmo should have told them. I think Hasselmo tried, but the relationship was too bad. It's incredible. To this day they still don't get it. I don't understand how people can not get it. I give up."

Shively agreed about the cease and desist order. "While in my opinion the public response in the community was what turned events, the antecedent of the public response was the

faculty's desperate act of signing union cards. So, you could also say that the successful campaign to get the cards signed was the key."

Walsh and Rabinowitz sent an email to the UFA list reporting that the UFA had filed authorization forms and obtained the cease and desist order. They said that "this quick response of the faculty was only possible due to broad agreement among many of us -- UFA, AAUP, the ad hoc 'Group of 19,' our Regents Professors and governance groups. As a colleague has observed, 'the guillotine is stuck halfway down.'"

Walsh pointed out later that the UFA had been receiving authorizations "at about 100 per day (before the Regents Professors letter). On Thursday afternoon [September 12] and after the Friday mail, some UFA people made a final count of the forms. We had called an emergency UFA meeting around noon. About 50 members showed up and voted unanimously to file. . . . I think it is important to mention that the UFA membership voted to file. We did not do it without a vote." Walsh also doubted "that faculty were paying too much attention to the media, the analysis or all that. Most of those authorizations were in campus mail to us by the 6th or the 9th."

The University Retirees Association (faculty) wrote to the regents on September 14 to say it feared "disastrous polarization of faculty, administration, and Regents" so would not take a position. Its statement said that tenure should be discussed for as long as needed and there should be no "rush to judgement." They urged the regents to consult widely and to bring the issue to resolution with a "considered, thoughtful decision."

The cease and desist order, as with the other events, received front-page news coverage.

"Plan to revise 'U' tenure code blocked" (Star-Tribune, September 14). The article reported the BMS order had been issued and that the meeting of faculty leaders and regents was halted because of the order. The order "came after 10 days of fierce attacks on the regents" because of the tenure proposal. Hasselmo opposed the proposal, and when "the regents went against Hasselmo and presented their proposal, faculty members erupted." The article described the events and views of faculty and regents; Campbell said the regents "essentially ignored the Senate proposal." Faculty leaders' strategy was "to urge professors to sign cards, even though they were ambivalent about unionization" because the authorization did not create a union, only an election, and stopped the tenure discussion. Berscheid was quoted as saying that "we can burn in the fire of the regents, or we can jump off a cliff and join a union. We know we'll die the first way, so we might as well try the second." The AHC and Law School were not covered, and the AHC would have until November 1 to vote whether to be included with the remainder of the Twin Cities campus. Walsh said the UFA would work with other faculty groups and get "faculty governance with some really sharp teeth."

There was no time limit on the cease and desist order, and the University could litigate issues, so the election may not be held for several months.

“U regents’ bid to change tenure code stalls” (Pioneer Press, September 14). The article also reported on the BMS order and events leading up to it. The Law School and AHC will have until November 1 to vote on whether to be included in the Twin Cities bargaining unit. [Both units voted not to be included when an election was held in the 1980s.]

“Faculty tenure: Public good or private perk?” (Pioneer Press, September 15). The article recalled a popular professor in the 1960s who was seen as a radical and whose views created pressure on the University to fire him; tenure saved him, and a member of the Judicial Committee said he would have been fired under the regents’ proposal. The faculty are defending academic freedom while the regents want to be able to lay off faculty for programmatic change or “adequate cause”; the article recited cases reported by faculty in cow hormone research, ethanol research, tobacco and alcohol research, and human sexuality on why academic freedom was needed.

The Chronicle of Higher Education continued its coverage of Minnesota. In **“Tenure plan delayed at Minnesota,”** it reported on the cease and desist order, the major issues, and quoted Morrison as saying “I think everyone is relieved it [action on tenure] is a little bit longer off, and that maybe there is time to reach some sensible solution.”

Shively thought the faculty had little choice but to sign cards. “Absolutely not! Absolutely no choice. In my letter on unionization, I quoted a key community leader as saying that signing those cards was the faculty’s finest hour. It was like the Chinese peasants who, in the face of a Japanese invasion, flooded their fields because it was the one last thing left to them which could prevent the invasion. As I said in the letter, what would this key community leader think now of the Chinese peasants if, with the war now over, they decided they’d leave the fields flooded? I agree with that key community leader; I was so proud of the faculty for doing that. I was appalled, but proud.”

“A tale of two universities [;] In numerous ways, Wisconsin leaves Minnesota in the dust” (Star-Tribune, September 15, full-page opinion piece by Professors Donald Gillmor and John Finnegan, Jr.). They wrote that Minnesota had fallen so far behind Wisconsin academically that it might never catch up, and cited numerous statistics about the strength of departments in the two institutions. They noted differences in funding, from the state and private sources, and for research, and identified a number of measures comparing the two unfavorably (student-faculty ratios, faculty shortages, per capita spending, faculty salaries). The decline in Minnesota’s standing has prompted centralization and led to adoption of re-engineering and the regents’ hiring of a Washington law firm to rewrite the tenure code. This has led to unionization efforts among the faculty, which “would

signal the bankruptcy of the regents' leadership" and "a hardening of positions" with faculty becoming employees. If the state wants a top-20 institution, the regents must abandon their tenure proposal and seek to restore state funding.

Finnegan later emailed to Hamilton to report that he and Gillmor had been receiving many compliments about their editorial; he asked Hamilton to let the Gang of 19 know that, because they would have been unable to write it without a great deal of work by several individuals in the Gang of 19. He also reported that "Regent Keffeler also called me today to say that it was 'a splendid piece.'"

AHC faculty were notified that there would be an AHC Open Forum on September 26 about the cease and desist order and the tenure debate. The agenda included "academic freedom, due process, shared governance, and the role of the Board of Regents" and "exclusion of the Academic Health Center from the cease and desist (status quo) order." Participants included Morrison, Walsh, and an AAUP representative.

Tom Walsh and Paula Rabinowitz sent out another message to the full faculty on September 15, predicting the University would pose legal challenges to the identification of members of the bargaining unit, and appealing again for authorization forms to protect the status quo order.

FCC met late in the day on September 16, joined by Dempsey and Fogelman. Gray said faculty groups had been meeting all day in an effort to coordinate activities. She also reported on the meeting of faculty and regents. The three regents had not indicated they would withdraw their proposal, but wanted to continue discussions about the need for due process, the meaning of academic freedom, and competitiveness. Morrison explained the legal situation with the cease and desist order. (The Morris and Crookston campuses were not included. The Law and Medical schools had until November 1 to petition to be included in the Twin Cities bargaining unit by submitting authorizations from 30% of the members of the prospective bargaining unit; if they did so, elections would be held in the two units to determine if they would join the unit. They could not form their own units.) The cease and desist order restrained the regents and administration; the faculty could talk with one another. But FCC is a creature of University, unlike the other groups (UFA, AAUP), so must be careful about acting on proposals. The Morris proposal cannot be acted on by the regents (if they discuss it, that might be a promise; if they act, it would change conditions of employment). FCC concluded that meetings of Tenure, Judicial, and Faculty Affairs should be cancelled and that an open forum should be held in lieu of the Faculty Senate meeting so that the "consultation" required by tenure code cannot occur.

Gray reported there would be a coordinating group representing the four faculty groups (UFA, AAUP, Gang of 19, and FCC). FCC, after some debate, concluded it would be neutral on

collective bargaining. Some FCC members expressed concern that only pro-union faculty voices would be heard if FCC were neutral; it was noted that individual FCC members could speak their views. In the meantime, non-employment issues could be dealt with by committees and the Senate. Swan recalled that the coordinating group only met once, “and not to much effect.”

Williams and Hamilton exchanged emails on September 17. She had asked for his support in the attempt by Berscheid and Evans to oust the AAUP leadership; Hamilton had said that people needed to know what Williams stood for before he and others could support her. Williams said she could make that clear. She then went on to comment on a meeting the day before among faculty representatives, the national AAUP, and the BMS. “I believe that yesterday’s meeting with Tilsen [BMS officer] had a major political impact given that delegates from UFA and AAUP accompanied the national AAUP folks. . . .”

“The political impact of the meeting was apparent given Tilsen’s and others’ behavior, particularly when the issue of how mergers between 2 petitioners are handled. . . .” The question of how to handle a merger of the two organizations, under Minnesota law, was the subject of discussions. But “there definitely was a visible impact of coming to BMS with the prospect of a united faculty. And, I’m sure that message will be communicated with others like the governor through an assistant attorney general who is talking with the Commissioner.”

On September 17, Wells proposed an agenda for an AHC faculty forum on the “status of tenure, the cease and desist order,” and “the status of collective bargaining.” Sponsored by the AAUP, it would include representatives from FCC, the Gang of 19, and UFA. The Morris proposal would be explained, as would the cease and desist order and how AHC faculty could be brought under the order. (The subsequent announcement did not include the FCC.) Wells recalled that Fennell Evans had said that “the faculty need to see that unionization need not change anything other than provide “a Faculty Senate with teeth”; she also urged that they discuss items that might be in a union contract, such as “salary increases based on merit” and clarification of “who is permitted to teach at the graduate and undergraduate levels. . . , faculty control over course offerings and course content [and] . . . the necessity for faculty agreement prior to any major restructuring.”

Purple drafted a letter to his legislators that he circulated to colleagues. He wrote that “the faculty as a whole have lost all trust in the present Regents, with Regents Keffeler, Reagan, and Spence being singled out for particular scorn. . . . The conclusion of the faculty leadership is that these Regents are involved in a power play to ‘re-engineer’ the University following the vision of former Provost Brody. They wish to hire as the next president, a corporate CEO. To attract a strong one to their liking, they believe they have to clear the decks by ridding the faculty of tenure

protection, and to order the lines of control within the university according to the model of a privately held corporation. . . . While the faculty has signed enough cards to produce a cease and desist order, most do not favor unionization, except as a last resort.” But the last resort has come, he wrote, and the leadership will campaign for a union. “Those outside the faculty who are betting that unionization will fail, and that the fuss will either blow over or that they can then continue their course to ‘re-engineer’ the university, are wrong. . . . The University of Minnesota’s academic reputation has been very seriously damaged. We can soon expect to see an exodus of our stars who are recruitable, and an exodus of our bright young faculty (particularly those with grants and honors) who were our future. . . . We know that under the present conditions attempts to retain our good young faculty and attempts to replace them with equal quality are doomed to fail. Moreover, such attempts would not be in the best interest of the individuals being asked to stay or of those recruited to fill vacant slots. . . . This is a civil war of conflicting ideologies and neither side shows signs of bending. The rumor is circulating that the Regents have now hired (with public tax dollars) a star law firm in union busting. One side or the other will have to surrender. If the faculty surrenders, the University will be further damaged as a nationally prestigious institution, and in all likelihood will become an academic pariah censured by the national AAUP. A strategic retreat by the present Regents will not be trusted by the faculty. We are well aware that voting against unionization would then give them a year’s window to install their ideological system. That the present university administration has been an ineffective manager and is now in ‘lame duck’ status does not help. That the governor has avidly and actively backed Keffeler, Reagan, Spence and Brody is also common knowledge.”

Purple concluded that “if there is going to be a solution that restores trust and collegial governance to the University of Minnesota, it will have to be through the courage of elected State Representatives. The only way I can see the Regents surrendering now, would be for our State Legislators to demand that at least three of the Regents -- Keffeler, Reagan and Spence -- resign.” He said the future of the University was in the hands of the legislators.

Williams wrote on September 18 to ask him to change it. “A major concern is losing even more funding for the University if the wrong ‘twist’ is used in the message. Let me suggest that you verify or tone down the language about the Regents’ law firm being a ‘union-buster.’ My information is that the firm is very respectable, Minnesotan, and that the Regents were forced to hire them because the university’s attorney refused to represent the Regents in this matter. I’ve also heard suggested that the legislature is not ‘ready’ for the message that they need to demand the resignations of four regents.”

Campbell also responded to Purple. He wrote that “the only way that I personally see us regaining sufficient trust in the Regents is if at least three of them resign (Keffeler, Reagan and Spence). Moreover, if we cannot trust them, the only choice is collective bargaining. If there are others among you who see a third course, please spell it out. I also agree with Rick that the only way to get such resignations is through legislative pressure.”

Swan emailed as well. In the course of his comments, he said that “in all communications we need to be careful that we do not convince the public that the University is mortally wounded. The risk is that we could at the same time convince the public and the legislature that it is a mistake to throw good money after bad: ‘If the U is past saving, then it we might as well use our limited public dollars somewhere else.’ I would say that we are at risk, not that the damage has been done.”

Swan also called for restraint on the part of the group as a whole in terms of calling for the resignation of members of the Board. “Pragmatically, Keffeler is a master at maneuvering public and legislative opinion. She has had a lot more practice and experience than we do. She still has important friends in the legislature.”

Swan also reported to the Gang of 19 on September 19 about his understanding of meetings that Keffeler had had with legislators from her Congressional district (the legislators who, in essence, elect her to the Board). Swan said that Keffeler “recited her history of the tenure issue and seemed to be saying ‘I wasn’t the one doing the pushing.’ When asked who was, the answer was somewhat vague. Tom Reagan was the only other Regent named. When asked about the timing of the response after the faculty draft and in particular why all this activity over the summer, [Keffeler] said ‘I did not like that timetable.’”

In her comments to legislators, Swan learned, Keffeler had said that she was not certain the Morris proposal could be withdrawn, but “implied that she would have been willing to remove the draft.” Keffeler “talked about her letter to the Regents Professors as an illustration that she is not dug in but is rather open to discussion.” Keffeler repeated her position that the regents had not been given information on the aging of the faculty and the flexibility that would result, and “expressed frustration with the administration. She said the Regents have not been able to get the information they have requested.”

Swan commented that “if she is willing to remove the Morris document, it must be a new position. There was no indication that she or any of the other Regents were interested in such a move at the meeting Friday afternoon.” Moreover, Swan maintained, “with respect to information about retirements and flexibility, the Regents have been given information about the big picture.” He recalled that Academic Affairs Associate Vice President Robert] Kvavik first made the point

explicitly at the July meeting. At the July meeting Keffeler said “‘if this is true, it provides us with a great deal of insight as to how we address the tenure issue’ (Brief, July 17, 1996). The information on retirements was also repeated in Murthy’s letter in early August. Keffeler may [have meant] that the Regents have not seen a listing of the age distribution of the faculty by departments. That sort of detail invites inappropriate micro management. If she was really looking for a compromise and solution, she was given the information she needed.”

It was also on the 19th that Murthy, Swan, and Williams emailed to the AAUP executive committee. “We want to bring you up to date on recent events,” and reported on a meeting two days earlier that included Murthy and Swan, Walsh and Rabinowitz, Nightingale and Shaw from the national AAUP, Gray from FCC, and Berscheid and Fennell Evans from the Gang of 19. “The purpose of the meetings has been to explore ways in the which the AAUP and UFA can come to an understanding for cooperative action.” They agreed on several points.

“Walsh and Rabinowitz see the strategic advantage of AAUP being the sole collective bargaining unit option at the time of a representation election. At the same time they are concerned about protecting their cease and desist order. Their initial filing was close to the 30% margin.” The UFA was worried the regents or administration would seek to make the bargaining unit as big as possible, in the hopes that “the UFA filing will slip below 30%.”

Issues with respect to the AHC were not resolved, although some AHC faculty had signed cards. “The Bureau of Mediation Services (BMS) has told Walsh that they would view these cards not as a indication of affiliation with the UFA per se, but rather as an indication of an interest in rejoining the Twin Cities bargaining unit. If there is to be action on this issue, cards must be filed by the end of October (possibly November 1.) Such an action would lead to an election in the AHC about whether those units would rejoining the Twin Cities bargaining unit and would preclude an election of the question of specific representation until this issue of the size of the unit was resolved.”

There were also specific points that both UFA and AAUP needed to agree on. They included support of AAUP for signing of UFA cards, “to protect the cease and desist order”; after that, the two groups work on collecting AAUP cards; AAUP would then replace UFA once the AAUP were certified by the BMS; the AAUP executive committee would be expanded to include UFA representatives (perhaps four or five individuals); and possibly a “formal agreement for shared leadership during the interim to elections of officers next spring” (e.g., co-presidents).

The Morris Campus Consultative Committee wrote to the regents on September 19 urging them not to consider their tenure proposal, but to adopt the Faculty Senate recommendations.

* * *

THE POSITION OF FCC IN A COLLECTIVE BARGAINING CAMPAIGN

FCC met again September 19. It agreed Gray would send a letter to the regents saying no further consultation on tenure would occur, unless the regents requested it for units not covered by the cease and desist order. Morrison was unanimously voted to serve as pro bono counsel to FCC and would represent FCC at BMS hearings. Hasselmo joined the meeting and said the administration and regents would be neutral on collective bargaining, as the law probably required and as the regents and administration had concluded they should, and the normal business of the University would continue. The President agreed he did not have complete freedom to express his views on unionization, even though some FCC members were concerned at the absence of his voice in the debate.

Hasselmo noted later that he “did speak as an ‘individual’ and referred to statements against unionization I made earlier.”

Walsh pointed out that Morrison “was not the only attorney in these proceedings. He was essentially an interested observer, since FCC had no official standing with BMS (they did not file). At this point in the proceedings, UFA had to quickly choose a lawyer. A committee was appointed to interview candidates and Steve Gordon of Hvass, Weisman was appointed.”

Following the agreement by FCC, Gray wrote to the regents the next day. She noted that the Board would be unable to explain its tenure proposal because of the cease-and-desist order, and that no negotiations could take place; because participation by the sponsors was essential to consultation, FCC decided to suspend the tenure discussions. She said the Faculty Senate was committed to providing the consultation required by the tenure code, and would do so when the order was lifted or if the Board requested it earlier; she also noted that the postponement did not constitute consultation, nor was consultation waived. She also pointed out that consultation was complete on the Faculty Senate proposals.

FCC also issued the next day (after email consultation among its members) a statement indicating that as the elected leadership group for all faculty -- who have divergent views -- it would be neutral on collective bargaining. It also pointed out that since it is supported by University resources, it would be improper to use those resources either in favor of or in opposition to collective bargaining. FCC also expressed concerns over the threat to academic freedom from the Morris proposal and said it continued to support the Faculty Senate recommendations. FCC chair and vice chair (Gray and Bloomfield) would participate in a coordinating group that included two faculty each from the AAUP, the UFA, and the

Gang of 19. FCC adopted another statement on consultation during the “status quo” period, indicating tenure discussions would stop but that regular consultation with the administration would continue on other issues not covered by the cease and desist order. Regular consultation could continue in units not covered by the order, and promotion and tenure decisions could go forward, as part of regular business.

Gray later recalled that the union supporters “were very irritated that the FCC took a posture of neutrality. Initially, in the early fall, I went to an AAUP retreat or summit meeting. They wanted to use our Senate resources to organize the union. They expected me to turn over this several-hundred-thousand-dollar apparatus to the union, and they just couldn’t understand why I thought that was improper. Whatever you think about the union, it isn’t proper to use University funds to organize a union. It’s illegal. It just boggles the mind.”⁸⁸

“I do think we were neutral, and I think we had to be neutral, legally. I was very careful never to state publicly my opinion, or how I was going to vote. I felt my public position was very important, and I felt my role was to be chair of all the faculty, and I tried to maintain my neutrality. I also think we had to be neutral because we had people of every possible persuasion on FCC; we couldn’t get in one camp or the other and drive people off the committee. I don’t understand the criticism that I was supposed to tumble to the union.”

Shively commented that “FCC always has trouble with a union election. I was active in a couple of earlier elections, and FCC always felt it had to take a position of more-or-less neutrality. The problem with this time was that, because of the events, it was very difficult for there to be an organized group to present the case against having a union.” There was no organized opposition. “It was very, very difficult, partly because gathering the union cards was seen as an act of solidarity, and a big, positive, feel-good thing. It was awfully hard to then turn around and argue against having a union. That takes more emotional dexterity than most people are capable of. I was reluctant to write a public letter on the issue, as an administrator, although it was perfectly legal to do so. The only reason I did so in the end was because there was no faculty group getting together, and I thought I had some shreds of faculty identity left to me that I could use in this” [the letter is

⁸⁸Anne Pick, after reviewing a draft of this book, asked “where on earth did this statement of Virginia’s come from? NEVER did AAUP want to use Senate resources as she describes. I can’t imagine how she could say that.” Carolyn Williams (AAUP Vice President at the time) consulted with the President (Murthy) and Secretary-Treasurer (Stephen Gudeman) and prepared this response to Gray’s assertion: “The three AAUP officers at the time . . . have no recollection of a discussion, occurring at the fall AAUP retreat or at any other meeting of the AAUP, about using faculty governance funds to organize a union. The three AAUP officers agree that such use would have been improper, and they would not have supported such a suggestion, even if it had been made to them.”

cited later].

“The fact that FCC was taking a position of neutrality was more awkward in this case than in past times. In past times, FCC could say ‘look, there are various people taking positions here; we’re going to oversee the process.’ That was fine with everyone. This time it was harder, because people felt there was something wrong with the process, because by the nature of things it was very one-sided.”

* * *

Earlier, Regent Reagan had received a letter from the Senate clerk reminding him that the committees would be meeting and that the faculty had asked for a representative from the regents to discuss the tenure proposal. He was asked if, in light of the cease and desist order, the regents wished to postpone consideration of the proposals. Now the Executive Director of the Board of Regents wrote to the Senate office to inform it that the regents would not participate in committee hearings about tenure, pursuant to the cease and desist order. With respect to postponing discussions, he said the “Board expresses no opinion on the content or how the Faculty Senate conducts its meetings.”

Minnesota again received national attention because of the events.

“Minnesota Regents’ Proposals Would Effectively Abolish Tenure, Faculty Leaders Say” (Chronicle of Higher Education, September 20). The article cited Minnesota professors saying the regents’ proposals would end tenure at Minnesota. The changes would allow regents to “cut the base salaries of faculty for reasons other than a financial emergency” and “fire tenured professors if their programs were eliminated or restructured.” The article reviewed events and said Faculty Senate discussion of the proposal on September 26 was “not likely to be pleasant” because faculty believed they had done much to meet the regents’ requests for revisions. The article quoted Morrison on key provisions faculty oppose and as saying that “it is clear from these proposals that the regents who are promoting them have no respect for faculty.” Walsh said faculty were angry at the release of the proposal before many are back from the summer. The article reported on, and quoted from, Hasselmo’s September 3 letter opposing the proposal. It also quoted lawyer Michaelson as saying “the proposal is a moderate one, consistent with the approach taken by many universities,” and that under the existing code, “governance is tilted toward faculty control to an extent that is out of line with most institutions.” Reagan expected opposition but to saying the proposal would eliminate tenure is “an absolute, total overreaction”; Reagan said the University was facing decreased state funding and needed a way to deal with that situation. Hasselmo cited provisions of concern and noted “solid opposition” from the administration and faculty and said the regents would not likely impose something in those circumstances. The faculty were not waiting to see; the article described the union

effort.

“Furor Over Minnesota Tenure Proposals” (Science, September 20 (vol. 273), editorial). The writer said the University was “in turmoil,” described faculty reaction to the proposal and said the faculty had taken steps to unionize. It cited the letter from the committee chairs saying the proposal would “effectively eliminate tenure,” and quoted Morrison, “I have not heard a single person state anything except outrage.” Regent Spence said faculty are overreacting to ““suggestions”” to create flexibility but that the regents did not want to infringe academic freedom. Keffeler said ““we’ve taken pains to indicate that none of the ideas necessarily have the majority support of the board. . . . I’m sure the board will want to discard some of the revisions.”” The regents did not think the faculty proposals were sufficient, so hired a law firm and a consultant to draft revisions. “Outraged faculty” began writing letters, but the “most effective faculty tactic” was the unionization effort. That may be a “mixed victory” because few faculty at universities are unionized; one “observer” said it reminded him of “Chinese peasants who flooded their fields to keep the Japanese from occupying them.” The cease and desist order could bar compromises because there could be no discussion until after the union vote.

That the path to the marriage of AAUP and UFA was not completely smooth is indicated by an exchange in late September. On September 20, Carolyn Williams, on behalf of Murthy, Swan, and herself, circulated to proposed signatories, as well as to the Gang of 19 and national AAUP officials, a memorandum concerning events. She cautioned that it would not be sent until they had heard from Rabinowitz and Walsh that it was “consistent with the agreement we are developing between UFA and AAUP.” Names would not be attached unless those to be listed approved.

The opening paragraph of the statement asserted that “academic freedom and shared governance is under a severe attack on our campus. The TC-AAUP Executive Committee is united with other faculty leaders, including our Regents Professors, in calling faculty to: SIGN UFA CARDS IMMEDIATELY!” They explained that “there is a great concern that the present order may be jeopardized by a redefinition of the units and the number of faculty involved so that the present cards that meet the 30% requirement may not hold. We need to act quickly to gather more cards for UFA so that we can hold onto the gains we have made so far and proceed with the faculty collective bargaining process.” They urged the AHC and Law faculty to sign cards, to rejoin the rest of the Twin Cities campus.

Swan agreed with the note, but said there must be “an assurance that Tom and Paula are in complete agreement.” He also urged that it be written “to assume the faculty-at-large know nothing about the specifics of anything, including who represents what group, and including the situation at

the AHC. The note should clearly spell out that the AHC may not be in the bargaining unit and emphasize the need for quick action” because AHC faculty “are uniformly surprised that the AHC may not be included in the bargaining unit, but want to do everything to assure” that they are. “I believe we need to act quickly here. If the re-engineering pattern continues, there will be a judicial challenge to AHC inclusion at the end of October but not before -- when it will be too late to begin rallying the troops for a formal vote to get the AHC back in. We must head this off and get the formal vote over with as quickly as possible.”

Wells wrote back to object. “As an AAUP member, I am formally requesting that this potentially divisive memo not be sent to the faculty-at-large.” She pointed out that the AAUP membership had only been informed of the affiliation proposal the preceding day, and had not had time to consider it. She also said that the UFA membership had not agreed to it. Furthermore, “I perceive no need for such hasty action by the AAUP. Preservation of the cease and desist order is not a vital issue in the next several days, and certainly does not depend upon hastily sending this potentially divisive memo.” She noted that there would be a meeting with the AHC faculty six days hence, at which time presumably many faculty would sign cards. Wells argued that “this memo may trigger destructive infighting among the potential bargaining units on campus. To be quite honest, this memo seems like a heavy-handed way for the AAUP to seize control and to prematurely announce that they are the bargaining unit without carefully securing the appropriate formal agreements necessary to eliminate the potential for hopelessly dividing the faculty in the future months. We can not take a chance on this eventuality. All we have worked for is at stake here.”

Later in the day, Williams reported back that Walsh had “requested that we pull the letter for the time being. The AAUP Executive Committee will follow those wishes.”

Regents’ Professor John Chipman wrote to Regent Keffeler on September 20, and circulated copies by email to all faculty, responding to her request for a dialogue. He said the faculty did not understand the objectives of the regents and that the proposal would destroy the University. He referred to the recurrent use of terms such as flexibility and downsizing, and asked what units the regents would close if they had more flexibility (and noted the Board refused to consider closing General College). He said the faculty infer the Board will use political rather than educational considerations in making decisions, and pointed out that the University has already been greatly “downsized”; he noted that Minnesota had the “lowest faculty-student ratio of any university in the Big Ten, as well as the lowest salaries.” The point of tenure is “to allow research to yield the truth” and without it faculty credibility is compromised because research will be tailored to be acceptable. Without tenure, the cost of attracting faculty will be higher, and the proposed code would ossify

rather than create flexibility. He agreed that a dialogue was needed but said it would be pointless before the regents had a “greater understanding of the way a university functions. It will be a great pity if the only way for the Regents to come to that understanding is to witness the collapse of the university as a result of its policies. By then it will be too late. It takes a great many years to build a great institution but only a few years to destroy it.”

Keffeler responded to Chipman on the 24th. She noted that the cease and desist order limited what she could say, but she did wish to raise some points. She asked that Chipman and colleagues “accept this communication in the spirit in which it is sent, . . . [an] effort to communicate important ideas and impressions.” Keffeler said she would “enthusiastically welcome an opportunity to meet face to face and discuss these matters with you directly.”

Keffeler then laid out her views on the objectives of the tenure review (which she said were identified in the regents’ December resolution). Without speaking for the Board, she said she raised the matter in May, 1995, because in her six years as a regent, “we had never discussed any significant aspect of the code. . . . I observed that the tenure policy was among the most fundamental of regental policies and . . . we had never examined the impact of our yearly tenure decisions on the strategic future of the University -- nor examined whether our tenure code provides adequate safeguards to contemporary challenges to academic freedom.”

“My objective as a regent was then, and is now, to do what I can to see to it that every important policy and plan of the Board is examined for its suitability in advancing the University to a higher state of institutional excellence and competitive positioning. I don’t believe the tenure code should be ignored in this undertaking. Nor do I believe that revisions to the tenure code hold the greatest promise for institutional renewal. Nor do I believe they should command the greatest share of our attention.” Keffeler said a strategic plan was most important for the Board, and she defended its action on General College not as “symptomatic of an unwillingness to place educational considerations above political expediency” but rather “a predictable and proper reaction to a proposal that was incompletely thought out and precipitously advanced.” She urged that there should first be a plan, development of financial assumptions, and then identify how to reach the objectives.

Finally, Keffeler told Chipman that “I appreciate the specific concerns you have raised about the Morris revisions and I will take them into consideration when the matter is eventually brought before the Board again. Let me for now only say that there is no intention to abolish tenure and that no reasonable interpretation of the Morris revisions would reveal such an intent. Also, on the subject of lay off authority, many other fine universities provide that the regents or trustees, may, in compelling circumstances, lay off faculty when units are closed. At these universities, governing

boards have reserved this power without harming academic freedom or institutional excellence. Regardless, as I indicated in my earlier letter to the Regents Professors, certain provisions of the Morris proposal could and should certainly be changed or rejected when the Status Quo Order is lifted. There is much room for common ground and compromise.”

Keffeler reported that one of Chipman’s colleague regents’ professors wrote to the regents urging they should “look more innovatively for ways outside of the tenure framework for achieving our mutual goals.” Keffeler said she agreed; “we need to spend much more of our precious time talking about the strategic future of the university and much less of our time posturing zero sum games that characterize the actors as for or against tenure, for or against academic freedom, for or against the faculty. But the issues that gave rise to the regents’ desire to examine the tenure code are real and they also require our continued examination: a daunting financial situation and a relatively inflexible code.”

Wells wrote to Chipman and AAUP/UFA colleagues on October 8 to suggest that Keffeler’s letter “should be buried and not circulated further.” Wells said that “we do not know Keffeler’s real agenda. It is certain she has an agenda, and I would bet it is not favorable to faculty interests. Her real agenda might be to keep the faculty off-balance by having them think (hope) that the Regents are becoming more reasonable. Meanwhile, the unionization effort weakens, and Keffeler uses this time to firm up her support for drastic changes to tenure.” She told Chipman that “Keffeler wrote this letter for a purpose, and I think her purpose is to use you to distribute her misleading statements, while she herself cannot be accused of violating the Cease and Desist order, and while her statements acquire more credibility by having them distributed over your name.”

* * *

WHAT DID THE REGENTS THINK AND WANT?

Chipman’s comment about faculty uncertainty over the regents’ objectives was a theme that recurred. Those faculty very much involved in events believed that the faculty had supporters on the Board, but that point of view had no leadership, and that events might have taken a different turn had there been. One question in the minds of many faculty was “why were those who supported the faculty/administration position so quiet?”

In Sturdevant’s words, “they felt cowed.”

In the words of one who was close to events, “the problem was that [the faculty] definitely had supporters, but they didn’t have a leader. Nils was always saying, ‘I’ll go to the Board if you want me to and I’ll take a stand,’ or ‘I’ll force a vote.’ [The faculty] would say ‘no, not until you can tell me

you have within one vote. That is not safe.' And [he] never had that last vote. So we were in this holding pattern, trying to find the last vote."

Fogelman agreed. "I think the Board was not in complete agreement, but what we lacked, from my point of view, was leadership on the other side. The most effective leader on the Board, during the struggle, was Jean Keffeler, [who is], obviously, a highly-intelligent, very motivated, skillful person. There was nobody on the other side to counter her. Good sentiments were expressed at different times, and we know that some of the members of the Board certainly supported what we were trying to accomplish, were resisting the dismantling the protections of tenure. But nobody emerged as a spokesman on the Board for the other side. I think that was a big problem for us. Individual members of the Board were responsive to what we were saying, but we had no public spokesman on the Board to counter Keffeler. She dominated the Board during this struggle, and she was very effective, in my opinion. I certainly respect her as an adversary!"

In Morrison's opinion, "there were two problems. One of them is that Tom Reagan is used to Iron Range politics. He tried to run the Board the way you run Iron Range politics, which is either you're 100% with me or I'm 100% against you. So it was difficult for anybody to formulate an opposition without freezing themselves out of everything. And some of the potential opposition were people like Sahlstrom, who were really too tired to be effective in the kind of battle that Tom Reagan was going to fight."

"The other problem was that Tom had pressed upon the Board something that I'm told is even in the Board bylaws, it was a kind of a 'unified Board' approach. It applied to everyone except Jean, in part, but also Tom used that to suppress any difference of opinion. I had the impression that Tom would not talk to the dissidents outside the meeting, and basically wouldn't let any discussion take place in the meeting."

Campbell and Humphreys identified Regent Brian Neel as a particular case that mystified them. "There was a point at which Regent Neel seemed very supportive of the faculty. Even as late as that regents' meeting where Fogelman made his impassioned speech, Neel also made an impassioned speech. He changed. Once again, it's circumstantial, but the fact is that his main role in life is in the health care business, with Mayo."

Humphreys surmised that "somebody got to him, because his conversion to the Keffeler-Reagan point of view occurred in about one month. From the time he supported Fogelman, and was actually taking on Jean Keffeler in a regents' meeting, at the next regents' meeting he was toeing

the line. Somebody got to him.”

Campbell added that “by the time of the regents’ August retreat, he was completely on the other side. I don’t think that he was acting at that earlier regents’ meeting of Keffeler’s committee. He and Hogan were heroes for me, for awhile; Hogan continued to be, although I never understood why he was so weak, in the sense that he couldn’t get anything to happen.”

Humphreys said that “Hogan, obviously, finally found his voice. When he did, he did the right thing. But the other people who supported the faculty, who supported the academic mission of the University, were so weak that they had no effect. I’ve never understood why they were so weak. Perhaps they just weren’t paying attention.”

Russ Bennett of the Foundation Board of Trustees commented that it was a “fair observation” by the faculty that they had supporters who were quiet. He said that “early on in Tom Reagan’s administration, they had a retreat, and they agreed that Tom would speak for the Board, and that they were going to try to stop this thing in the past where regents had popped off so frequently in the press. Then Tom abandoned that, for whatever reason; he told Pat Spence and Jean Keffeler ‘go ahead, handle this thing.’”

Bennett said he had not personally heard Reagan say this, but he had heard it from regents who were involved. “I asked Pat Spence that question when she was a witness before the alumni committee. I said ‘I remember, Pat, a year or two ago, you guys all agreed that Tom would be the spokesman for the Board. I’ve seen nothing but quotes from you ever since. It’s nothing personal; I’m just curious why you and Jean Keffeler are the ones always pushing this thing, and seemingly leading the fight.’ She [Spence] said ‘we were authorized by the Chairman of the Board to be spokesmen on this issue.’”

“Whether that’s her version of what he told her, or what he really told her, but he certainly was in favor of what they were doing. Or maybe he said ‘who could ever muzzle them?’ He might well have said ‘I can’t muzzle those two anyway, I might as well let it happen.’”

Bennett said that “I do think that there were some regents who were more thoughtful, who were scared to speak up, because Jean and Pat are very intimidating. Tom is intimidating. I think they were intimidating to regents who might have had better views. Wendy [Regent Wendell Anderson] never spoke up, and Wendy knew enough to know that this was not going to be a good thing. But they’re all very politically sensitive; they’re not going to stand up for what’s right, necessarily. They’re going to hide whenever they can. I didn’t hear any regents coming out and saying ‘we should back the Faculty Consultative Committee.’”

Bennett concluded that the faculty were right to ask

why there appeared to be silence on one side of the issue. "That's wrong of the regents. But it's particularly hard when the chair of the regents, and Pat Spence and Jean -- when those three are going one way, it's probably hard for regents to come out. They were just glad the heat wasn't on them."

In Foundation Board Chair Luella Goldberg's view, "Jean was such a dominant voice and force, and is such a bright and articulate person capable of making those arguments, and framing them in a way that it is tough to refute for some of the people who maybe wondered if all that was right but who weren't prepared to start a public argument. And I think some of it, perhaps, was misguided good intention. In the beginning, it was seen as something important, 'this is something we should undertake, of course we should review it, it is going to cause significant problems for the University in the future, this is a good thing.' Again, without understanding the ramifications for a good university."

Sturdevant amplified on her views, and they were not in marked contrast to faculty views. "It does seem to me that when you have a basically weak Board, one or two strong voices can drive it. That seemed to be a lot of what was happening during some of those years."

"At one point, about the time Jean stepped down, I wrote something kind of ominous. We were being urged by a number of people -- not just one or two crazed faculty members -- to call for the resignation of the entire Board of Regents. As [State Representative] Phyllis Kahn did. We were being urged strongly to do that. One day we kicked it around the editorial board meeting, and we decided we were not ready to be that rash. But I did write some sort of ominous passage one time in an editorial that Jean Keffeler was not the only regent in the room when these things were decided, and that others maybe ought to search their souls about whether their services were contributing to resolution or contributing to conflict. I'm told that that passage disturbed several regents, who were thinking that any day now we were going to call for their heads personally. At some point, those regents other than the leaders kind of woke up and began to think about 'what is my role here?'"

Sturdevant responded to the view that some of the regents hadn't paid that much attention to tenure, and after September found themselves in the middle of a war. "I almost think Bryan Neel was in that camp. We kind of said, at one point, 'you're vice chair, you have some accountability for what happened here,' and he kind of said 'what? who? me? what was this again?' He was never very attentive or really participated, but he wore the title 'vice chair,' so we thought he ought to behave like somebody who's a leader on that Board. He didn't."

Gorham, too, wondered about the faculty supporters. "The more active ones were playing it close to the vest; the others never did summon up the courage to challenge them. If we did have friends on the Board, they never made it really plain, at least not to anyone but very close confidants who didn't relay this to people like me. I was always surprised that Stan Sahlstrom, who was the only one who stood out on this, couldn't garner more support within the Board of Regents. And it's been a continuing puzzle why the people who were on our side weren't more active."

One faculty member surmised that the silence of faculty supporters on the Board "has to do with personal dynamics. I have heard some people say never underestimate the ability of the one person to affect interactions in a small group. There is that piece in Trusteeship by the three ex-presidents. One of the things they argue is that public boards are typically so small they can be dominated by one or two people. They are talking about boards that are the same size as here."

With respect to Regent Sahlstrom, one faculty member condemned Keffeler. "You've seen the way that Jean treated Stan. It was the most insulting thing. The way she would deal with Sahlstrom in these meetings -- Sahlstrom was clearly someone who was a faculty supporter down the line -- the way she dealt with him was so insulting, I don't know how he even stayed on the Board. There is, on the regents, this not wanting to air their problems in public that has I think hurt us all, because not since [a dispute over the leadership of the Board about a decade earlier] have I seen the regents actually stand up to one another. Until -- I wasn't there -- the meeting when they got into the argument about whether the Law School dean would be allowed to speak."

Williams reflected on the lack of public support for the faculty from the Board. "Why was there no leadership on the Board? I don't know. People were put in these powerful positions as regents for their views. There was a sense that the management of the University was in trouble, so we need to give strong management-oriented people. Certainly Brody was brought into the administration for that reason. What happened is that there were people on the Board who brought a viewpoint that was contrary to the faculty, and no willingness to listen to the faculty or learn about the faculty." She agreed that there were faculty supporters on the Board, but "they were very quiet, and I don't know that they were paying attention. And once it got so far, they couldn't stop it."

One long-time participant in University affairs evaluated some of the Board leadership, incidentally perhaps explaining part of what Campbell and Humphreys could not understand. "I had the feeling that it was so complicated, politically. Regent Spence didn't quite understand it. She

thought she was doing something very worthwhile. She had been asked to undertake a task. I think she meant no harm, but in my assessment, she was led down a primrose path and there she was, finding herself defending it.”

“Regent Neel hadn’t taken the time to focus on it for the most part. I think he’s plenty smart, that he understands a little better than many what a university is all about, and he was operating partly out of loyalty to the chair -- a good deal out of blind loyalty to the chair. He hadn’t taken time to analyze the issues, but in the end he was willing to weigh the issues and what was at stake. In the end, he supported the compromise. My impression was that by the end of it, he understood the importance of compromising, and of not simply staying in the position of ‘we’re going to get this through no matter what.’ I think he really by the end understood, and maybe behind the scenes even helped Reagan understand it. That was my impression.”

Perhaps because of a number of conversations in which he was involved, Regent Wendell Anderson “stepped up to some leadership on this issue. Of course, Regent Sahlstrom had been there all along.”

Relatedly, one of the mysteries (to the faculty) all along was “what the Board wanted” or “what the Board was thinking.” There may have been such division on the Board that it could reach no agreement on anything. It did not fire the President, which most Boards might have done, under the circumstances, but also did not adopt any draconian tenure changes.

Craig Swan said simply “I wish I knew” what the Board was thinking. “But I sure think the dynamics handicapped Nils. It seemed like they got deadlocked. Donna Peterson asked Virginia and I to talk to a group of Big Ten lobbyists. Virginia said that one of the problems was that we had a lame duck president. I said he wasn’t only lame, he was wounded.”

Sara Evans said “that’s exactly right” when it was suggested the faculty did not know what the Board was thinking and that there seemed, at times, to be only two or three members of the Board of Regents, if one judged from who was doing all the speaking. “In the earlier time period, we had no sense of what was going on inside the Board, and it was very hard to understand why the Board couldn’t discuss something in public, and take a vote, which might be a mixed vote. But the way they functioned, and I think this was a function of Reagan’s leadership style, is that they never did anything unless they were unanimous ahead of time. Which they could never become through public discussion, because then their differences would have to be aired publicly. So it was all done behind the scenes, in one-on-one kinds of ways,

so no one could ever quite know.⁸⁹ The breakdown in communication between the Board and the administration seemed so extreme, as well, that you couldn't get information that way, either. The Board appeared, to many faculty, to be a group of people with very little understanding of what a research university is, with a kind of model that's a business model of how any large organization functions, that doesn't fit a university. I think most people perceived them as simply not understanding who we are, what we do, not understanding what we go through to get tenure, not understanding what the tradition of tenure is, not really understanding very much about how we spend our time. So the gap in communication can't be overstated. It was never clear to us, when they raised the issue of tenure, that we were talking about the same thing. Or maybe they did know -- 'they' being Jean. Did most of the Board care about tenure? We never knew! There were a few people who seemed so powerful, that the rest of the Board was silent. I think there were allies of the faculty on the Board, but they were very quiet. That's part of this style thing."

Bloomfield knew the question. "What was the Board thinking? There was such division within the Board -- that's what we kept speculating about." One point that puzzled him about this was Reagan's influence. "I'm not sure what the nature of his power over the other people was. It never was clear to me what he held over them that kept them from opposing him. But there seemed to be something. That was clearly very bad for the whole thing."

"By this time Jean was back-pedaling. What do you know about Jean that would give her power over the lives of other people? The other people on the Board are not patsies in their own lives. I don't understand the dynamics there."

"What did the Board want from the very beginning?" Marshak said that "I don't think the Board actually ever wanted anything. The Board as the Board never wanted much in the first place. First of all, remember, they were getting hammered by Becky Kelso; for awhile Becky Kelso was on [some news show] constantly, along with some of her friends. Things had to change." Brody and Keffeler got to Kelso "and a few other people, so the Board felt it had to do something. I don't think the Board ever had a preconceived notion of what it was they had to do."

Marshak thought Keffeler's role was revived by one event. "We haven't talked about something that was very, very important: General College. General College, in my view, played a major part in all of this. Because General College was

⁸⁹In these comments, Evans implicitly echoes the concern voiced by Gray and others about the impact of the state's open meeting law.

the rebirth of Jean. By the end of Jean's term as chair, my understanding from a number of regents was that they were ready to kill her. Then Tom stepped forward. The problem was getting anybody; they would have voted for anybody if anybody had had the guts to step forward, because they were all sick of her. She was resurrected, and her power. For awhile, she had no power, but she rebuilt it by her intelligence, by her dedication, sheer force of personality. What really helped her rebuild it was the General College affair, because a number of the regents felt they had been set up by the General College affair. That reinvigorated Jean and her power."

"Most of the regents -- I don't think they knew what they wanted. What did they want? They wanted Becky Kelso off their back. They wanted to collect their \$8.9 million or whatever number that Laura King said she wouldn't release. They had no commitment to the Morris code."

As for what the regents wanted, one participant said that he understood that Reagan believed "we [the University] needed, for political reasons, because the people in the state would not stand for less, to do something pretty dramatic on tenure. Now, that doesn't mean that was gospel for him. Maybe that's what he thought [at that time]. But certainly that thought was in his head very early, before this heated up at all. It had nothing to do with the merits of the case; it was a concern for the political position of the University in the state."

"I do think that Reagan, Keffeler, and Spence were seeking different things. My own view is that Reagan was more concerned about the political necessity of doing something about tenure. I think the others were thinking more about the virtues of doing something about tenure." This person agreed that it was probable, as Marshak maintained, that the Board didn't have any preconceived notions about what it is the Board, as a Board, thought they ought to do. He added that "I think emotions came to play a part in it."

Shively's view about the impact of the General College issue paralleled that of Marshak to a remarkable degree -- and they were unaware that each other held the view, according to Shively. He said that Keffeler, who some believed had lost influence on the Board, "was doing very well on that Board before General College. I have another take on the General College [GC]. I think it strengthened her within the Board. But I think she lost much of her constituency outside the University on that. Her constituency had always been the business community, and in a more generalized way, the feminist liberal Democratic community. That was a marvelous coalition. But on GC she lost the business community. And after that, she was much weaker."

“So when it came to the tenure discussion -- [business community] instincts were the same Jean’s on that -- she did not have them with her on that because she had lost them on GC. I think she was in a much weaker position going into the tenure battles because of GC.” That outside support, he said, “was really a huge base of her strength. . . . The GC thing played both ways. I think the way the business community operated in the tenure issues was affected by the GC discussions. The Board of Regents had lost a lot of the faith of the business community over the GC issue.”

In terms of there apparently not being a majority in favor of any course of action, Morrison’s view was that “I think that’s right. I think it could not reach agreement to do the tough thing, which was to fire the President.” He agreed that there probably was a majority NOT in favor of firing the President. “And given that they were unable to do anything that had the support of the President, we had a kind of institutional paralysis.”

Morrison offered another interpretation of events up to this point. Because the President didn’t believe in all this, “it was impossible to negotiate with him. He wasn’t really a discussion partner. The real driving force for this was coming from other places, who would never be at the table to discuss it. It was coming from Keffeler [and others]. The essential players never talked to one another in the course of this whole exercise. The faculty and the board. Because the administration did not believe in what the Board was trying to do. By the Board, I mean the subset of the Board, plus Brody, and maybe plus Jim [Infante]. Plus [General Counsel Mark] Rotenberg, plus the consultants. Of course, they never participated in the discussions. So the faculty would meet with the administration, and you’ve dealt with a marshmallow! The administration was not at all unhappy with the faculty’s position, and then they’d come back with something from the Board, or we’d get some position from the Board, but we weren’t sure whose position it was, or how broad it was. Some of those were things that were discussible, but the administration didn’t know what the underlying issue was, so they couldn’t discuss it, and the Board wouldn’t discuss it, or subsets of them wouldn’t discuss it, with the faculty. So nothing happened! Each side essentially developed its own view of what was going to happen, and there never was a discussion, except for the very abortive one on the 13th of September.”

“Even when we got to the end game, they refused to discuss the end game! They never met with the Committee of 8. The Committee of 8 met with the President and Mike [Bognanno], and the President and Mike met with regents, then they came back; we have no idea what went on.”

* * *

Chapter Ten

Union Efforts and Press Coverage Accelerate and Various Other Events

As September wound down, there were various communications and activities. It was a steady drumbeat of events, rather than anything dramatic.

- The human resources office sent senior administrators and others on September 20 a 4-page memorandum on “Pre-election guidelines for managers and supervisors” outlining what individuals could and could not do about the upcoming faculty union election. It said the employer had the right to make its views about the union known, so long as there is no threat or promise. Information could be disseminated by union groups only in the same manner as other non-employer groups, and the employer and union advocates may not interfere with employees who exercise their right not to join a union. If an election results in a union not being selected, another election may not be held for one year. The question of what the administration could do, and that if the vote failed, there could be no election for a year, were both issues as events played out.
- Wells emailed to Hamilton on September 23 with a proposed message to Walsh. She raised a series of questions that she thought needed to be posed. She said that “we need to establish that AHC positions are not in conflict with the position the UFA will take at the prehearing conference [at the BMS].”

Additionally, if the AHC had its 30% signatures, should there be simultaneous elections in the AHC and the rest of the campus, or should Hamilton ask for more time? Would there be two questions on the ballot, both about rejoining the rest of the Twin Cities campus as well as electing the UFA as a bargaining agent? Should the eligibility rules for the unit be the same in the AHC as the rest of the campus?

A very important question, Wells said, was “is our overall strategy to go fast or to go slow, i.e., do we attempt challenge every proposal put forward by the administration? Do we attempt to introduce requests (such as data collection) that would clearly take a considerable amount of time to fulfill? Do we want a fast election in a month or an election six months from now?” She thought the best time would be in six months.

Another possibility was to challenge the inclusion of the other colleges with the Medical School, and to argue they should be included with the rest of the campus.

- Also on September 23, Wells emailed to Walsh that she had received advice from an experienced family member that they should “at all costs, hire an attorney immediately.

Alternatively, ask the BMS to delay the Wednesday meeting to permit you adequate time to hire an attorney.” “To hire an attorney at the last minute before such an important meeting would be ‘curtains.’”

Wells also described the role of the hearing officer at the BMS hearings. She cautioned also “during the conference, choose all words carefully. A court recorder will likely be there who takes down everything, even the word ‘um,’ and you do not wish to have a careless comment picked up by the opposition to be used against you later, or to be used by the Hearing Officer to justify a ruling that you may disagree with.”

- **“‘U’ and tenure: Amend order to resolve issue now”** (Star-Tribune, September 24, newspaper editorial). The editorial said the “ill-advised” Morris proposal was “locked in place” because of the cease and desist order, but the layoff proposal “has metamorphosed into a giant bull’s eye” leading to a barrage from academe across the country and it would do more harm the longer it lasted. The cease and desist order was not a long-term faculty victory; it allows “positions to harden and animosities to intensify.” The regents must indicate they were willing to withdraw their proposal and accept the faculty proposal, but with the cease and desist order, they need faculty assent to resume discussions. A panel of experts could consult with both sides and assist in ending the tenure fight, and opportunity should be taken to improve handling of tenure in the future.
- Professor David Lykken (member of the Judicial Committee) wrote to Keffeler on September 24 to propose changes in disciplining faculty because the current process is “unnecessarily cumbersome and costly.” Lykken said the faculty have no interest in protecting colleagues who engage in misconduct. Keffeler forwarded the suggestion to Chait, Michaelson, and Hasselmo and asked for their review, and suggested the proposal might move the issue forward.
- Letters came on September 24 from the Minnesota chapter of the AAUP to the regents, administrators, legislators on education committees, other Minnesota college presidents/regents/alumni leaders, and the Governor transmitting a September 5 statement. The Executive Committee members strongly opposed the Morris proposal and said that its provisions “seriously violate the basic principles of academic freedom and shared governance,” and they would recommend the national AAUP censure the University if the proposal were adopted. The proposal did not recognize that the university mission is different from business. The regents should withdraw their proposal because the Senate plan recognizes regental concerns. They noted that both Hasselmo and Cerra accepted Senate

proposal. They said the academic strength of the University affects all Minnesota colleges and universities, and that other faculty work with the University, and that the University contributes to the well-being of the state.

- Judicial Committee chair Fogelman also wrote to the regents on September 24 and said the impasse will lead to the faculty voting for a union, which would undermine the University's status as major research institution. But there was no alternative for the faculty if the Morris proposal is what the Board prefers. No matter the intentions of the Board, their proposal was a "direct attack on academic freedom and on long-standing practices of faculty self-governance" and the only way to resolve the matter is for the regents to withdraw the proposal and to adopt the Senate recommendations for units not under the cease and desist order. Fogelman said "bold action" by the regents might avert an outcome that "will leave us all worse off," and that they could "exercise courageous leadership."

Walsh commented that "the claim by Ed Fogelman that collective bargaining would undermine the status of the University was made without any supporting evidence. This claim was later shown to be contradicted by a study of the national rankings of departments. But the claim would be repeated many times."

- **"Keffeler says lack of plan for tenure is good, bad news"** (Star-Tribune, September 25). The article reported Keffeler said the regents have "no definitive plans for restructuring or shrinking programs" and that state leaders should look at tenure. She continued to support the lay-off proposal but would "suspend" the process until regents can have more information on retirements, which the Board has not received. The article reported Keffeler is the focus of faculty anger because she is seen as the leader on the tenure proposal, while Keffeler saw herself as a "staunch defender of academic freedom" who agreed with faculty who say the tenure discussion should be in the context of a strategic plan. She maintained the regents had not gotten information they needed and faulted the Board for not demanding that the administration provide a plan. Keffeler said the tenure debate arose with the AHC changes, when Brody "said one of the chief stumbling blocks to the reorganization was the rigidity of the tenure code," said the same to state officials, and the result was the contingent AHC appropriation. She said that as "I read Prof. Chipman's letter and come to understand the degree of faculty misapprehension because of this belief that there is a hidden plan, . . . I want to say that the tragedy is there isn't a plan. . . . I say to the faculty, the good news is there isn't a plan, and the bad news is there isn't a plan."

Hasselmo later pointed out that Keffeler had raised the issue, in the spring of 1995,

before Brody did. Wells commented that it was “very important that Keffeler mentioned [in this article] that Brody was the one who went to the legislature to request that [the] AHC appropriation be tied to changes in tenure. Many of us had suspected Brody was guilty of this highest level of betrayal of faculty trust. However, I was not absolutely sure Brody was the guilty party until Keffeler gave us the information in this article.”

-- A faculty member in Aerospace Engineering again wrote to Keffeler and the other regents on September 26 to say that if they support academic freedom, they must support an environment that protects it; layoffs and salary reductions do not. If the regents’ “arm can reach as far back as particular departments or programs, . . . [that] makes the concept vacuous indeed.” He said he did not understand why there had to be a link between a strategic plan and radical tenure revisions because the tenure code is not the source of financial problems. He suggested adding to the adage that she had quoted in the September 25 Star-Tribune: “management proposes, board disposes, [university decomposes].”

As required by state law, the collective bargaining machinery began to move forward, in response to the petition from the UFA seeking to be the bargaining agent for the faculty. The first BMS pre-hearing conference was held in late September; the parties involved were UFA and the University, with other individuals and organizations present. The University failed to provide a list of eligible voters.

Morrison emailed to FCC to report on the conference: the University tried to restrict the proceedings to UFA and University lawyers and wanted department heads/chairs excluded from the bargaining unit. Morrison said he insisted there be no action on items before the Faculty Affairs committee on which there had been no consultation.

Morrison emailed to FCC again to report an additional BMS conference and on the statement that was issued: “At the request of the Commissioner [of the BMS], representatives of the Faculty met with three members of the Board of Regents and the Commissioner. We are trying to ensure that communications between the Faculty and the Board of Regents remain open and positive while the faculty’s petition for a collective bargaining election is pending. At the suggestion of the Commissioner, the substance of our conversations will be confidential.” Morrison later said the statement meant exactly what it said, no more and no less.

Wells inquired of Swan who circulated the message to FCC, and forwarded a message from Purple concerning it. Purple maintained that “we should strongly disagree with this ‘confidential’ talk business. Who are the representatives of the faculty? Who are the members of the Board of Regents who are meeting with them? This should not be confidential information. No matter how

you choose to interpret or speculate on the content of such conversations, the knowledge that there are 'confidential' talks going on between unidentified 'faculty representatives' and unidentified Regents can color the coming election. How do we object formally to this?"

Walsh and Rabinowitz also emailed to the faculty to report that its representatives met with regents, at the request of the BMS, to "limit misunderstandings, uncertainty and tension" before the election, and that they would do so again if those purposes were served, but they would not discuss tenure issues or the possibility of lifting the cease and desist order, and that they would only represent UFA. They also transmitted the statement issued by the BMS the day before.

This message prompted one faculty member to email to the UFA. "Just a few weeks ago the UFA was soliciting faculty for signed authorization forms on the basis that that was the only way to block precipitate action by the Board of Regents. The Regents' Professors cited the same reason in recommending that we turn in signed authorization forms. They added: 'This will allow us time to engage in a dialogue about how we can best protect and enhance the future of the University and the interests of the people of Minnesota.'"

"The UFA has achieved the first objective. But instead of creating a breathing space for dialogue the result has apparently been to slap an embargo on any such dialogue. I suggest that the UFA Steering Committee formally ask the BMS to waive or suspend provision # 2 of its 'Maintenance of Status Quo Order' insofar as it bars discussion of the tenure code. That way we can use the breathing space the UFA has bought us to re-start negotiations over tenure."

About the meeting, Walsh said "Paula [Rabinowitz] and I were contacted by BMS about having this meeting with members of the Board. We felt that BMS was under a lot of heavy political pressure and it would be difficult not to cooperate with them. We also felt obligated to do what we could to keep tensions down, but we were very aware that all previous faculty contacts with the Board had led to disaster. So we met with three Board members with Fred Morrison and BMS present, but without either the Board's lawyers or our lawyer. It is not divulging anything we agreed to keep confidential to say that Paula and I were appalled by our conversation with the Board members. This was clearly a waste of time; the UFA steering committee later set ground rules for further contacts. But there were no further contacts. It had been made clear to us why all previous faculty discussions with the Board had led nowhere."

FCC met thereafter; Morrison reported on the BMS hearing. The University did not want FCC involved in the proceedings. Morrison read the statement that had been issued; the meetings called for were intended to allow informal discussion so the situation is not one of extreme hostility at the end of the process. With respect to excluding FCC, he said it was unclear who the University's

lawyers represented: the administration, the regents, or some portion of the regents. Nor was it clear who was giving them instructions. FCC expressed concern at the University position removing heads and chairs from bargaining unit. The Faculty Affairs Committee may discuss other issues unless University requests it stop doing so. FCC also decided it still supported the faculty tenure proposals, although some faculty may not, any longer, for fear it would simply be used as the starting point for additional negotiations with the regents.

FCC member Russ Hobbie emailed to a colleague (with copies to FCC), in response to a question, about the FCC meeting and the cease-and-desist order. “My own understanding is that the status quo order applies to the administration and regents. The faculty senate could take the 1996 proposal off the table if it wanted to. Do we want to? That is a matter of negotiating strategy. My own view (and that of most who were at FCC today) is that the 1996 senate code is an improvement on the 1985 code, though I would NOT be willing to negotiate any further toward the regents’ draft.”

Morrison wrote back to FCC colleagues to urge that they not “withdraw the June draft. I think that that would send the wrong message -- that we are engaged in a ‘tit for tat’ fight. We must take the high ground, that our proposal of June was a reasonable compromise, satisfactory for the faculty and sensible for the University. If we withdraw it now, we would be saying that we don’t want to do things sensible for the University, if only to spite the Regents. I don’t think that makes a good public impression.”

- The drumbeat of publications and events and the steady flow of news coverage continued.
- Swan emailed FCC reporting that the Sociology department chair had received letter from the UCLA Sociology department chair and director of graduate studies saying they would advise students that tenure at Minnesota may be compromised and that it “would be difficult to advise any students that have a choice of jobs to accept an offer at an institution so far out of the mainstream of academic practice.” (The letter was subsequently mentioned in a local television news show by Virginia Gray.)
 - Hasselmo distributed at the end of the month a memo to external friends of the University to provide his perspective on the tenure debate. He said the disagreement on tenure was about the institution’s ability to change, not about academic freedom, and maintained that the University could change. He noted faculty turnover and said the Senate proposals were constructive responses to regents’ request for changes. There is no lifetime guarantee of employment because tenured faculty have been removed. He expressed “complete support” for the Senate recommendations. Hasselmo commented later that the University “had

changed! With faculty support!” (emphasis in original).

- **“‘U’ Board of Regents has been unfairly characterized as an enemy of tenure”** (Star-Tribune, September 27, editorial by Regent Thomas Reagan). Reagan said the regents had been “frightfully misunderstood” in their effort to modernize tenure. The administration and faculty presented recommendations in June; the Board reviewed them and “suggested some additional revisions, which were intended to focus dialogue” before the regents acted. The regents are being characterized as “an enemy of tenure” “in a hailstorm of reaction.” Reagan maintained the regents did not want to end tenure but to protect academic freedom and faculty independence. Resources are becoming scarcer and demands on them are growing, so the regents asked the administration for a review of several areas, including tenure. There was “overcharged reactions to three issues: layoffs, pay cuts and discipline.” Reagan explained the need for layoffs when programs were discontinued, and said the AAUP allowed them and several Big Ten universities had such a provision. No institution guarantees a salary against reductions, so the administration should have the right to do so if there are compelling reasons. Reagan defended, and cited, the language about “proper attitude” and noted that Michigan State had a similar statement. The regents expected wording differences to be worked out, but the process had been stopped by the cease and desist order. He reaffirmed that the regents were not trying to weaken the tenure code, but wanted the University to be able to make “prudent changes.”
- **“Hasselmo defends faculty opposition to tenure changes”** (Star-Tribune, September 27). In the same issue carrying Reagan’s editorial, the front page reported Hasselmo’s support for faculty actions to stop the tenure debate. He said “compromise by the faculty will hurt the University” and that he had “repeatedly warned that the regents’ attempt to revise tenure would trigger a strong reaction from the faculty.” The comments illuminated a “serious split in leadership” at the University in the tenure debate. Hasselmo was trying “daily” to get the regents to drop the Morris proposal and accept the faculty’s; he disagreed “strongly” with Keffeler’s assertion there is no plan, noted the accreditation review calling the University’s planning “exemplary,” and he disagreed with the regents that the faculty proposal would hinder restructuring or the ability to shrink programs. Hasselmo commented that “I recommended in June that the faculty revision be accepted. . . . I recommended it again in July and in September. For some reason [the regents] wouldn’t accept it and developed their own. I knew this was likely to be a donnybrook without accomplishing anything.”

Virginia Gray wrote to her colleagues about the two newspaper pieces. “I thought the interview with Nils in today’s Strib was great, but the piece by Tom Reagan was very discouraging. If that is what he really believes, he hasn’t listened to a word we have said to him in the last 3 months. I have asked Ed Fogelman to write a response.” She also reported that she had talked to Senate Majority Leader Roger Moe “and am quite encouraged. He says this is ‘crazy,’ and wants to help by talking some sense into the regents. So I certainly encouraged him to get involved behind the scenes.” Moe also indicated he was interested in improving the process of regent selection and caliber of those selected.

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THE ADMINISTRATION VERSUS THE BOARD

The Foundation’s volunteer chief, Luella Goldberg, said that to her, “and to the Foundation Board, the fact that the President of the University felt that the governing board had gone in a direction that was not positive for the University -- that was not irrelevant. That was a major signal to us that something was very wrong. I agree with all of the people who say that it just doesn’t work when a president and a governing board are out of synch on important issues, that something is very wrong. The Foundation Board, and I, respected very much the view of the President in terms of what was going to be best for the University, so I think the President supporting the faculty in those later stages meant a lot to us.”

Fischer confirmed this. “They were also concerned about what had emerged, as a perceived rift between the Board [of Regents] and the President. One of the ground rules of good governance is that the Board needs to protect and support the CEO. If the CEO isn’t performing, it’s better to replace the CEO than to create any condition of a chasm.” But, Fischer affirmed, they did not see that as the case. “Our Board believed that we had a distinguished leader in the CEO, who was driving substantial and good change, and who was highly effective in fund-raising and building the confidence of our constituencies -- donor prospects and alumni. He was getting high marks around the country and around the state. The Foundation Board also had an understanding and high regard for what is good governance. They saw Nils trying to hold the faculty together, and have the faculty drive substantive change, and the faculty proposed substantive tenure reform.”

Marshak recalled that after the Morris proposal was issued, the central officers stuck together in opposing it. The

provosts “and Mike [Bognanno] and I met every week, on Monday mornings; we were meeting for breakfast. Then Nils started coming to those, then [Vice President for Research Mark] Brenner started coming -- everybody deciding that was the real group that was deciding things. The goal, again, was to try to keep things together.”

More than one individual offered the view that the senior officers were guilty of insubordination, and that the Board could have fired all of them for being in revolt against them on the tenure code.

Marshak responded to this idea. “OK, but I was the chief academic officer of the institution. I was doing my job as the chief academic officer. They’d hired me to help define academics, stand up for academics, and I was doing it. If they wanted to fire me for it, fine, let ‘em. I didn’t consider that insubordination, I considered that doing my job.”

“I was the chief academic officer, this is what they hired me to do, and I did it to the best of my ability. Having a war with the faculty was not part of what I was hired to do. Telling them the truth, I thought, was my responsibility -- to tell the regents the truth as I saw it. I eventually learned that the place to start -- I could talk to any number of regents I wanted to, but the first regent I should talk to was Tom. And tell him straight out. Tell him what I was going to tell the other regents; if he didn’t like it, then tough. He actually respected that. He would say ‘I don’t like what you’re saying, and I don’t agree with you, but you can go tell anybody else you want to tell.’ But he would get mad if I would tell somebody without telling him. I thought that was fair. That’s the agreement we came to: I could talk to any of the other regents and tell them anything I wanted to tell them, as long as I told him first, and didn’t go around his back. If I was delivering bad news, OK, it was bad news, but straight to his face. The language we used with each other was not something you would find in the newspaper. And the tone of voice.”

“Was it insubordination? Sure, in that sense; he was the boss and I was the subordinate, and subordinates aren’t supposed to yell and curse the boss. That was our understanding. It took me a couple of months to realize that this was the only way that I could operate; in the end, that this was the only thing that was going to work. At least for me and for Tom. My justification is that it worked. It wasn’t very nice, but it worked.”

“The end of this story, of course, is that we got out of this in a way which -- I won’t say it didn’t have any negative effects, because it did -- but it’s hard to see how we would have gotten out of it. In September, if I had dreamed the best possible scenario for getting out of the mess we were in, we almost followed that. We pretty much tracked the best possible scenario one could have dreamed of in getting out, and we got

out with as much of our dignity as an institution as we possibly could have imagined in September that we would get out with. The other scenarios were all worse than what actually happened. And it required a lot of people coming together, and making an effort, to get us out of the mess as well as we got out of it. In my view, we got out remarkably well, and that wouldn't have happened without a lot of people really contributing. We got out with our honor relatively intact, our dignity relatively intact, and 150 million bucks. And a presidential search that didn't blow up in our face."

"Of the three major issues that I was involved in last year, they all turned out very well. They were getting out of the tenure mess, getting a big chunk of money from the state, and hiring Mark [Yudof]. At one point, that looked like it was teetering. We lost a number of people on the tenure mess, because when I first talked to Mark, in September at the AAU provosts' meeting, I talked to a number of other people who showed up on the Michigan finalist list. People said 'no, I'm not that stupid that I'm going to get involved in this.'"

Shively commented as well on the issue of insubordination. He maintained that the provosts and senior officers were not insubordinate. He agreed that the Board should have fired all of them, "but the Board should not have fired the provosts without firing the President. I don't think the provosts were in any insubordination, and in fact, I don't the President was. I had to keep reminding people during this period the Morris proposal was not a regents' action. The Board never took action on that proposal. We didn't know for sure that more than about three regents supported it. I don't think that the President, arguing actively against that proposal, was acting insubordinately with regard to the Board. I'm not sure I would agree that the President was insubordinate. That proposal was not Board policy. I remember that people asked me if the President wasn't being insubordinate. I said 'no, he is not, because he is not acting against a Board policy. He is commenting on a proposal to the Board of Regents by a consultant.' I had discussions at the time; people outside the University would say 'how can the President be taking this position against the Board of Regents?' I made the argument I made."

When Hasselmo began to be vigorously outspoken in supporting the faculty proposal, there was a question about the appropriateness of what he did. As one outsider said, "in terms of governance, Hasselmo came very, very close to violating real governance by siding with the faculty. I thank God Almighty he sided with the faculty. The policy is supposed to be set by the Board. I think Hasselmo did the right thing, and I would have done it if I were in his shoes. I would give Hasselmo enormous credit. He's guilty of some things in this, but at the last minute, his publicly siding with

the faculty against his Board, although it violated the rules of governance to some extent, saved the University. I can make a complicated argument on how it didn't violate governance, but it's a tight little argument. Hasselmo's position kept the faculty from unionizing, and the margin was so slim. He did that, and I bless him for that. Sometimes you have to take exception to rules of governance."

It was a noted that one person at the University (Shively) took the position that the Morris proposal, which was really the subject of the debate, was never a proposal from the Board. The Board never voted to send it to the faculty. It just kind of appeared; "here it is, take a look at it." That was never formal policy of the Board, and so Hasselmo was not insubordinate. The observer agreed. "We just want your opinion about it.' That's true. That's the complicated argument. Because as a practical matter, it was insubordination. It's technically true, however, that it was not."

* * *

- **"Professors distorted facts about state funding for 'U'"** (Star-Tribune, September 28, opinion piece by Morrie Anderson, the Governor's chief of staff). Anderson took issue with the claims of Finnegan and Gillmor in their comparison of the universities of Minnesota and Wisconsin. He cited a variety of statistics to demonstrate that Minnesota spending on the University had increased, that faculty salaries had increased well beyond the rate of inflation and were above those at Wisconsin, that enrollment at Minnesota had decreased, as had faculty teaching loads. Contrary to what the two wrote, Anderson said that it was "to the credit of Gov. Arne Carlson and the Board of Regents that this discussion" of faculty productivity had been undertaken. The regents must have the "flexibility to reallocate resources"; the unionization move and resistance to tenure changes will prevent the University from achieving excellence. Making better use of resources is the issue, and "a reasonable tenure code is key."
- Wells sent a letter to the Star-Tribune on September 28. In it, she noted that both Reagan and Morrie Anderson, the Governor's Chief of Staff, had written in support of the regents' tenure changes and asserting they supported academic freedom, "while endorsing tenure proposals that advocate punishing or terminating faculty for such offenses as failing to 'maintain a proper attitude.'" Wells reported that when she teaches, she urges students to "interrupt me, to ask questions at any time, and to point out where they might disagree with whatever I had to say. . . . I wonder what would happen if I begin my next lecture by announcing that if I

perceive a student does not exhibit a 'proper attitude,' I reserve the right to deduct points from test scores or to dismiss individuals from the classroom. What would happen to the free exchange of ideas in such a setting?" She commented that she would "gain the flexibility to direct my classes as efficiently as possible, stressing the topics I felt were important, while eliminating others. I would be free to make mistakes that no one dare point out. I could still state that I was committed to the principles of academic freedom because those words are difficult to define."

- **"Tampering with tenure will destroy climate for 'U' faculty outreach"** (Star-Tribune, September 30, editorial by Timothy Ebner, Neurosurgery). Ebner recited events of "Brain Awareness Week" as an example of extensive outreach, and said the regents "through a Washington law office have introduced a shocking, hostile new tenure code which will, overnight, destroy academic freedom and the spirit of collegiality" necessary for outreach programs.
- *September 30: The Faculty Senate (as well as the AAUP chapter) received a letter from the Tennessee AAUP transmitting a resolution deploring the regents' Morris tenure proposal and declaring "solidarity with" the faculty at Minnesota.*
- Eleven legislators from Reagan's congressional district wrote to Reagan on September 30 to tell him that reports that the tenure changes were driven by the legislature were incorrect. Kelso and Kelley did not speak for legislature, and the faculty tenure proposals satisfied the legislative rider. The regents' proposal "would constitute a serious infringement of academic freedom." They said the tenure stalemate the regents caused jeopardized the \$8.6 million, and they "do not support the drastic tenure changes proposed by the Regents" (emphasis in original). Reagan responded a few days later, and said the "Board has never suggested that the legislature is driving tenure reform," but regental, legislative, and gubernatorial interests were moving in parallel. He agreed that there were areas of disagreement between faculty, administration, and regents. He pointed out that discussion was stopped when the BMS order was issued, but they were still seeking to have any discussions permitted by law.
- Fred Friswold, a past president of the Alumni Association and trustee of the Foundation, wrote to Reagan on September 30 that he was "sick at heart" over the regents' "confrontive approach to the faculty" on tenure. He said one cannot overestimate the damage being done; as a long-time fund-raiser, he said the hours he had spent on behalf of the University "have been expended in vain" and the efforts "nullified by one reckless act of the Regents." He said the regents must get their tenure proposal "off the table and start mending faculty fences." He said "it is difficult enough to build a great university, but that is not nearly as

tough as re-building a university that had once been great.”

-- “Some myths about tenure” (Kiosk, October, column by Virginia Gray). Her recent appearance on a radio talk show made her realize even more how poorly those outside academe understood tenure, and faculty needed to take more opportunities to inform people about it, how much it work takes to achieve tenure, the value of freedom of inquiry (rather than academic freedom), that it is not a guarantee of life-time employment, and that faculty have urged many changes to increase flexibility.

-- The president of the local United Food and Commercial Workers union wrote to the regents on October 1, and said the University Hospital sale and the tenure debate reflect the theme that “people are expendable.” He said the regents should allow the faculty to join a union.

On the matter of the alumni, Gray reported to her FCC colleagues on October 1 (Monday) that she had spent the previous Saturday “trying to persuade the Alumni Association National Board to adopt a resolution of support for the faculty. Unfortunately, their resolution urges us and the Board to “mutually explore ways to resolve the tenure dispute immediately.” I tried to explain that we needed something stronger” but was unsuccessful.

Gray also reported to FCC that “there is a lot of legislature pressure mounting. One influential group of legislators has a very forceful letter in the works, can’t say more now.” She had learned that Kelso had changed her mind “and is trying to figure out how to tell the Board they have gone way too far.” She said she was “hopeful that some of these efforts will pay off this week.”

* * *

THE KEFFELER LETTER AND RESPONSE

On October 1 Keffeler wrote to the other regents transmitting a letter it was said she had written on September 18. In that letter, to Reagan, she had written that events “have made constructive deliberation” of the tenure proposal “impossible.” There were legal restrictions on communicating with the faculty now, but when it became possible, the Morris proposal should be withdrawn. The problems that led to the tenure review remain, but tenure is not the “chief barrier to institutional renewal nor highest priority” for the regents’ attention. She wrote that a “badly managed process, in combination with an extremely sensitive subject, has created wrong and harmful impressions. The argument has been framed on our campuses and in the media as a win/lose proposition, with actors in the drama cast as for or against tenure, for or against academic freedom, for or against the faculty.” They now

confront an “unnecessarily divisive conflict with the most indispensable members” of University. She hoped the debate would lead to appreciation of the importance of the University and the quality of the faculty. She said many Senate proposals would improve the code and should be considered when that would be allowed. [The letter was reviewed with Reagan, but not sent at that time.]

She now told Board members that Reagan and Spence had said, when it was first written, that the letter was “not in the interest of the University.” She knew Reagan and Spence worked to solve the problems, and now sent the letter because the original reasons remain, “perhaps intensified, as this sorry process has continued to be badly and harmfully managed.” She said she hoped, after the cease and desist order had been lifted, that the faculty and administration would join in “taking a fresh look at the many important issues that have been outlined over the past weeks and have divided us all in such a destructive way.”

Feeney did not believe Keffeler. “I’m the one who made the comment that it is very interesting it shows up at point X, but was supposedly written at point Y, but I didn’t think the ink was dry on that letter when it showed up. There may have been some discussions Jean had about the souring of the process, I don’t know. But quite frankly, her credibility by that time was so eroded, I viewed this as an attempt at damage control on her personal part. It had nothing to do with the Board. I think she was becoming viewed as the wicked witch of the tenure code, and that all of a sudden, when this process was really beginning to stink, this was a way of saying ‘we’ve got the damage going, we’ve got the cauldron boiling, let’s just stand back and let it stir itself now, and divorce ourself [sic] from the process.’ I don’t think anybody bought that for a minute. If she had all the influence she thought she had, and didn’t want the process to go the way it did, then it wouldn’t have. She was one of the prime movers in many of the problems that were there.”

“Jean, in my opinion, had been a threat to tenure for years. Before this whole tenure thing blew up, I remember her coming to an FCC meeting. I’ve never seen a more animated, aggravating meeting; everybody left the meeting saying ‘where did this so-and-so come from?’ Fortunately, I had to go to a [Faculty Affairs] meeting and didn’t have to sit there and listen to the rest of [the discussion]. But it was very obvious this individual had an agenda, she didn’t care what you thought, and was almost like ‘I will go beneath myself to come and talk to you, but I really don’t want to be here.’ That was what I left that meeting with, and I think what most people left that meeting with.”

“With the credibility gap she had at that point, I think this was personal damage control. I’m not convinced, in a lot of issues, that the best interest of the Board, or the best interest of

the institution, or the state, was really being looked at. I think people had selected agendas. Reagan was going to win this for the gipper, and Jean Keffeler was going to be sure that her point was made, that she'd been making all along, and when Brody came along, this was the individual who could really fix things."

Nor did another faculty member involved in the events. "Mea culpa, mea culpa. There were two things. She wrote to John Chipman, and she circulated that by email to a large group [with several appendices]. The letter tried to say why it wasn't her. Well, it was her! If you read those documents, it was her. Then there was this business of the private letter to Reagan. She implied in that letter that the Morris document was a terrible mistake. But that letter was dated before the meeting with the faculty at the hotel in St. Paul. It gets all very confusing, what she was thinking when. One member of the Board told me that one problem with Jean was that she was on all sides of every issue, so you never knew where she stood on anything."

"That's very consistent with [Murthy] being able to come away from a conversation with her, before that earlier meeting, with the impression that she was ready to take Morris off the table, and then it turned out she wasn't."

Vikmanis commented, apropos the Keffeler letter and the situation generally, that everybody was saying "'not me.' It's very funny how all of a sudden, when the storm broke, everybody who said 'right on, we've got to do something about tenure' -- whether it was Keffeler or legislators or other regents, and even the Governor, now said [we] 'gotta make peace; cease fire.' It was somewhat amusing that everybody said 'let's charge the barricades,' and when the fire got heavy, everybody started diving into the foxholes. It's interesting [to think about] what would have happened had Brody stayed." Vikmanis agreed that by the time the real firestorm broke, Brody had left. "He donned the scuba gear and went over the side without creating a ripple."

Like several of the faculty, one outside observer said of Keffeler's letter that it "was incredibly duplicitous; she'd been for the changes in tenure. She was protecting the record."

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Legislative liaison Craig Swan emailed a copy of a letter to him from Lawrence Litecky, the president of the Minnesota Community College Faculty Association on October 2. He expressed support for the University faculty; Swan reported that Litecky had testified against the legislature withholding AHC funds pending changes in tenure, arguing that tenure is internal and legislative interference was a mistake.

"U regents reconsider tenure code changes" (Pioneer Press, October 3). The article

reported on Keffeler's letters calling the tenure debate a "sorry process" and urging regents to abandon the layoff provision. Some faculty were pleased, some called it "diabolical and treacherous." The article also reported there would be a non-public regents' meeting, that the AHC filed authorization forms, and that the Governor was appointing a panel. "These developments are part of a process that began last November, has shaken the university to its core and produced enough rhetoric to blister the ivy off its hallowed halls." The Governor's panel was to establish a "60-day fact-finding period," list concerns, obtain advice from others, and "create an environment of cooperation and mutual understanding' for the new president." Berscheid said the "faculty no longer trusts the regents -- especially Keffeler. To have Keffeler, the prime mover behind weakening tenure, suddenly back away from the regents' proposed plan to allow tenured faculty layoffs can only mean one thing . . . union-busting." She also said the union effort would fail if the Morris proposal were withdrawn, but then the regents could change the code because faculty would be barred from a union election for a year, and that "this is treachery. . . . She is trying to wash her hands of all this -- something she started. . . . We cannot trust them." Fennell Evans drew an analogy with Jews in Germany in 1943, with the faculty at the train station but the doors of the boxcars locked (by the cease and desist order).⁹⁰ Gray said withdrawing the Morris proposal would be positive and probably permitted because it would not change working conditions. Representative Kelso also said the regents should drop the Morris proposal and that the Governor's citizen panel was a good idea.

Morris recalled that he had shared part of Berscheid's view. "The thing that bothered me, and it was the thing that Ellen Berscheid said, that she didn't trust Keffeler because what Keffeler was doing is going to soften the drive to a union, there will be a vote 'no' on the union, and then there will be a whole year in which we will not have that tactic available, and then the regents will do something terrible. I had that fear. I didn't share Ellen's view that Keffeler was being Machiavellian or manipulating us; I had no idea what she was doing."

Wells emailed to the AAUP/UFA on October 1 to forward a message she had sent in response to one from John Chipman. Chipman had reported that "I learned from a faculty member of the Carlson School that last week Carl Adams, supported by the Dean, convened a meeting to get the School's support for petitioning to opt out of the bargaining unit. He was voted down." Wells reported that Adams had been at the BMS hearing the week before, had "registered himself as an

⁹⁰One faculty member later observed that "Fennell made a comment in the St. Paul paper that stuck in the craw of a lot of people. He made a comment about cattle cars; he said the faculty won't go onto the cattle cars the way others have. We have to look back and see if he said Jews in Germany. He was quite proud of having gotten that quote into the paper, and other people were just appalled."

“interested party” representing the Carlson School of Management, . . . and mentioned that the Carlson School might withdraw from the bargaining unit. Some of us wondered how Carl Adams was empowered to represent the Carlson School.” She asked if it was possible to prevent his attendance at future meetings “unless he can verify that he truly represents the faculty in the Carlson School as he has claimed?”

Chipman had also reported to his colleagues in the AAUP/UFA/Gang of 19 that he had received a voice mail message from John Adams, and he had transcribed it. The message from John Adams said that “I just wanted to let you know that I thought your letter that I read on the e-mail was just marvelous. Thanks for doing that. . . . I certainly agree with everything that you said and appreciate the effort and time that went into drafting it and distributing it.”

On October 1, the Executive Committee of the (national) AAUP adopted a statement, saying it “deplores” the Morris proposal. It itemized the elements it found objectionable, said the proposal threatened academic freedom and faculty governance, and concluded that it was “well outside the mainstream of sound and widely accepted practices at American colleges and universities and violate longstanding policies of the [AAUP],” and would “do a severe disservice to one of the great public research universities in the nation.”

On October 3, Swan suggested to the UFA/AAUP leaders that they talk with someone from Rutgers, the only closely comparable institution that had a faculty union. He cautioned that “that there may be both positive and negative things to learn from Rutgers. They may do some things that are quite effective and we should think of adopting, but they may also do some things in a terribly ineffective and destructive way in which case we need to figure out how to avoid the same mistakes.”

He also told them that the chair of the English Department, Shirley Garner, was circulating a letter among CLA chairs to object to the University’s position that chairs and heads should be excluded from the bargaining unit. The letter to the BMS Commissioner said that “we view ourselves and act primarily as faculty members rather than administrators” and pointed out that they are elected by their departments and serve at their pleasure. Personnel decisions are made by the dean, not the chairs, and chairs are eligible to serve in the Senate and on its committees, which deans are not. Moreover, over half their time is spent on regular faculty responsibilities.

“Carlson plans panel to help end ‘U’ dispute” (Star-Tribune, October 3). Yet another page-one article it reported the Governor was appointing a 3-member blue-ribbon panel (members not selected) to help end the tenure debate. The Commissioner of Employee Relations, who was to select the members, said he wanted a “‘cooling-off period’ so the faculty and regents ‘stop throwing missiles at each other.’” Faculty reaction was “mostly negative”; Berscheid said it may be an attempt

to block the union movement, and she noted that if unionization were not successful, no attempt could be made for a year, and “during that time the regents could impose anything they want on us, and we couldn’t do anything about it.” The article also reported Keffeler released her September 18 letter to other regents “calling on regents to withdraw the [Morris] plan and approve an earlier tenure proposal by the faculty” as well as her October 2 cover letter; the article quoted from them both. Fennell Evans was quoted as welcoming the Governor’s interest but querying what a commission could do and with what authority, and said the faculty are isolated and must do what “we think is right. We don’t have a lot of faith in a governor who has been a vehement opponent of the faculty.”

Walsh recalled that “so far as I know, this Carlson proposal was never made to the AAUP/UFA leadership. I thought of it as a public relations matter, not a serious proposal. At the time, we strongly suspected that the Governor’s office was ‘leaning’ on BMS and some of us were extremely wary.”

Continuing its position of relative unfriendliness to the faculty position, the Pioneer Press editorialized again in early October about the debate. In “Faculty, regents need to pursue compromise,” the editorial called for a tenure compromise by all. “The university would be harmed if the regents were to capitulate to pressure” to retract their entire proposal because if the regents were humiliated, they would have no credibility and that would reduce public support. Rather than receiving comments on their proposal, the regents faced “a virtual insurrection” in response to the Morris proposal. The President openly broke with board, and it would be a mistake for the regents to respond to Hasselmo’s position. The regents’ proposals had flaws but there should be compromises; the regents must “affirm their determination” to run the University for the best of all of the state.

Sturdevant spoke to the difference in editorial positions taken by the two papers. “The lead writer in higher education [at the Pioneer Press] is a man [Doug Tice] who I think bought the Keffeler line more than I did. That some significant change in tenure policy is needed for the sake of the University’s future. I never did quite buy that, at least not hook, line, and sinker like he did.”

Sturdevant said that Tice “may also have been swayed by the argument that there is no particular reason that this profession needs more job security than any other professional body would. I felt that was a bad argument for me to make, sitting with my union guild card always handy in my purse, and all the protections that come from being a 22-year guild member. I feel as though I have the protections that sometimes faculty members have lacked.”

“Editorially, when we saw what came out in the Morris proposal, we objected to that on a philosophical level. I mean ‘we’; the whole editorial board felt this way. We objected to the tactics that had been employed, and really felt that the University was being affected. I kept being reminded

by Nils, and my other conversations, that this is a university that is going to have to remake itself, hire the next generation of faculty members in the next several years. The turnover is going to be massive, and if this university positions itself as an outlier, at this juncture, that's poison. That's what I kept thinking about. We cannot appear to be out of the academic mainstream, and that was the way it was going. So the differences are just between how Doug and I saw the issue."

Sturdevant emphasized that "I was very much speaking for my editorial board when I would write editorials saying this is not the way the University should go, and it should back off quickly from this bad idea."

The thoughts of the Foundation ran parallel to that of the editorial board. Fischer recalled that "it was the Morris meeting when the reality that regents wanted reforms well beyond the faculty's proposal became more publicly known. Some of the reports were that the regents wanted the equivalent of at-will employment, and could make subjective decisions based on attitude. What was triggered in the informed public's mind -- I'm thinking of the trustees of the Foundation -- was that many of them were concerned about whether the University could compete in recruiting quality faculty if we had a tenure policy that was regarded as substantially different from the norm. If so, were the regents putting at risk the excellence of the University, through their desires to push further? There was a lot of anguish and concern developing about that."

On October 2, the AHC faculty filed a petition with the BMS, which issued a cease and desist order. The Crookston and Morris campuses followed suit on October 8 and 9, and the cease and desist orders were issued. As a result, the only segment of the University faculty not subject to a cease and desist order was the Law School.

Gray reported to FCC that the regents would be holding a non-public meeting to "discuss resolving the tenure debate." She noted that the Board was constrained in what it could do, given the cease and desist orders for (at that time) all but Morris, Crookston, and Law. In an unknowing prediction of events, she reported that no action could be taken in a non-public meeting but that "once they have resolved what they want to do, they must meet again in public to take action. There is a requirement of 72 hours notice, but apparently there are ways to get around that."

Hamilton wrote to his colleagues to explain the action. "With the advent of the extraordinary closed meeting of the Board of Regents scheduled for Thursday, I decided after consultation with a number of you, and with Steve Gordon (the UFA lawyer), that filing the UFA cards for the AHC was of high priority to protect our interests from any untoward action by the Board."

“This morning I petitioned the Bureau of Mediation Services with the cards on hand (which exceeded somewhat the necessary 30% of faculty) and this afternoon a Status Quo order was issued that includes the total Academic Health Center (including Duluth and the School of Veterinary Medicine). The effect of this order is to bring to a halt any changes in terms and conditions of our employment, but as I understand it does not stop promotions or salary increases.”

The UFA sent an email announcing a meeting on October 2, to discuss with their lawyers affiliation with other groups, ideas about collective bargaining and “how we go about dispelling myths about collective bargaining of professional groups such as faculty.”

Walsh recalled that “at this time, Paula and I wanted to affiliate with AAUP because it was a national group with the resources for this fight. It was also a professional academic organization, despite having a collective bargaining arm. There were rumors that the UFA leadership wanted a standard industrial union, but that was nonsense. In fact, the UFA members who had been around in the 70’s and early 80’s were horrified by the divisiveness of the collective bargaining fight at that time. There was not even one member of the steering committee who would risk that again. This was the case despite the fact that most of them felt that the local AAUP had been a ‘spoiler’ in the 1981 collective bargaining election. You have to understand this background, since UFA and AAUP both voted unanimously to affiliate.”

* * *

THE MERGER OF THE UFA AND THE AAUP

At the end of September, Pat Shaw of the national AAUP wrote to Murthy transmitting a draft affiliation agreement between the local AAUP chapter and the UFA. He said that “there are a number of difficult, even volatile issues, several of which have been finessed. I must warn you that the proposed arrangement has its potential pitfalls which can only be avoided if all involved proceed with good will and in good faith.” The affiliation agreement provided that the objective was to represent the Minnesota faculty in collective bargaining, that the AAUP national office would provide support, that the UFA would affiliate with the AAUP and, after the election, merge into the AAUP, “which shall assume any rights as the exclusive bargaining representative.” Meantime, the AAUP would enlarge its Executive Committee “to include an equal number of UFA representatives who are also member of the AAUP.” Tom Walsh would chair the campaign committee.

Walsh and Rabinowitz emailed to the faculty on October 2

reporting the AAUP and UFA had affiliated, and both were committed to “a collective bargaining concept appropriate to a quality research university.” This would ensure support from the national AAUP.

On October 2, Murthy emailed to the faculty that “this week has been momentous in showing the sense of solidarity the faculty have been able to create. The two major organizations of the faculty, the local chapter of the American Association of University Professors (TC-AAUP) and the University Faculty Alliance (UFA) have joined hands now to present an united effort to fight the threat imposed by the recent actions of the regents.” The membership of the two groups had unanimously endorsed a memorandum of agreement, which said that the two groups agreed on the objective “that the faculty of the University of Minnesota -Twin Cities be represented in collective bargaining” and that the AAUP would be the bargaining agent. Murthy reported on points Shaw had made and said “this is a historic moment of unification of the faculty” which had been joined by the AHC faculty, which had sent in enough cards for a petition to join the rest of the campus. He invited faculty to join the AAUP.

The Twin Cities AAUP also issued a statement announcing the affiliation. It said there had been a “serious breakdown of trust between the faculty . . . and the Regents on many issues. Tenure is one of these issues, but it is not the only one. Trust can be restored in the context of collective bargaining.” The release also welcomed the Governor’s interest in the University’s future and a commission to help the University regain its status as a top 20 research institution, but noted that “many faculty question the impartiality of the Governor in the present process” and pointed to the actions of Commissioner King and Chief of Staff Morrie Anderson.

On October 10, Mary Burgan wrote to Rama Murthy notifying him that the national office approved involvement of the local AAUP chapter in the collective bargaining campaign. Burgan outlined the commitments of the national office with respect to staff (Jack Nightingale would coordinate the campaign, in concert with local faculty leaders), communications (the AAUP would provide money for a campaign), and legal efforts. The national would provide \$175,000, contingent on “an ongoing membership development program.” She emphasized that this was a significant effort for the national AAUP, and that it was committed to helping the faculty in “repelling these attacks on academic freedom and tenure.”

Why the merger? In Williams’ words, “we saw it as the only alternative. The regents were going down this track, no matter what we did, and we felt that was heading towards disaster, and the union was an alternative. So many of the Gang of 19/AAUP came to the conclusion that a union was necessary,

well into the process. There were those who were supportive of a union and those who weren't, but then eventually we all came together." Murthy's words perhaps reflect the divided feelings about unionization: "for some, it was the only [path]; for others, 'I'll swallow it, it's a bitter pill, but that's OK.'"

Murthy agreed with Williams on the choices. "It's actually very simple. By the time the Morris code was there, our options were limited. Not only our options, the administration's options. At that time, we were still actively talking with the administration [about] how to stop the regents. There was a meeting in which I, and the three provosts [discussed strategy], a morning meeting, in Provost Shively's office, after Morris. I didn't involve Nils at that time, but was talking to Marshak. All the provosts came to the Gang of 19 meeting once, to make presentations on strategy. We were all together at that time."

Murthy thought that "the real support for UFA came by their joining AAUP. When they were strictly UFA, I think it's probably fair to say that they were considered a splinter band. My guess is they had about 50-60 actual members, and probably 100 or more that would support them. I'm guessing. But it was recognized by them that they could not succeed by themselves. That's why the question came of merging with AAUP."

According to Williams, "by the time Morris came about, all of us on AAUP -- and actually, at that time, too, even the Gang of 19 [supported unionization], because Ellen Berscheid led getting the regents' professors to send a letter out. There was pretty much unanimity among AAUP, UFA, and Gang of 19."

So, according to Murthy, "it was decided we'd have a strong faculty presence, since the Senate was not able to do much. Our lawyers came up with the idea to create a single organization. We took it to our respective membership; both sides unanimously voted for the merger. It was agreed at the time that as soon as the election is over, UFA will disband and there will only be AAUP."

Shortly after the announcement of the merger of the two groups, the BMS denied a request to amend the UFA petition to reflect the affiliation with AAUP, despite, Walsh maintains, "a previous BMS verbal agreement to do so." He said he then "felt convinced that BMS was either running scared on its own or under direct pressure from the Governor's office."

Williams recalled that "we tried to merge before the election, and the administration objected. The reason we had to merge after was because of the protest by the University. But basically the Executive Committees of both organizations [agreed]. AAUP became well aware that unionization was the only way to stop what was happening here. We agreed to have a merged Executive Committee. I think we had 12 new members come to the AAUP Executive Committee. We really never met until December or January."

The conjoining of the UFA and the AAUP was not without its complications. Several faculty offered opinions about the merger.

Gorham thought it was critical. "I think the vital event, in the whole operation, was the joining of a rejuvenated AAUP with UFA, to call for cards, because up until that time I don't think UFA would have done it, because I don't think the faculty trusted them enough. But when AAUP joined with them, and brought a bunch of credible faculty members into the game, that was vital to our turning back the regents in their efforts."

Gorham confirmed that many of the Gang of 19 members joined the AAUP. "Many of them, including myself, joined UFA at the same time, to have a voice there. Without that joining up, I don't think the regents' professors would ever have issued their call for signing cards. The regents' professors felt strongly enough to issue that call, as a way of slowing down the regents. But they would not have done it had it just been UFA calling for cards. It was the fact that a more responsible, widely-recognized national organization like AAUP had joined the fight was what allowed the regents' professors to be willing to sign that statement."

Gorham agreed that it was not the smoothest of marriages, at least initially. "There was some distrust, particularly of some of the more radical UFA people, who expressed views that many of us thought were untenable. They wanted actions that would alienate the rest of the faculty. They'd rather go down with all guns blazing than compromise. But there were a lot of more sensible people in UFA, and Tom Walsh did a lot in holding the wilder members in check, to make possible the conjunction with AAUP. They did have some pretty radical folks there who didn't help, but they were absolutely indispensable in alerting faculty to the issue, getting the whole thing publicized early, getting the card movement started. Without them, we'd have been lost; we'd have been too late at the gate. But there certainly was some distrust that only gradually got ironed out as people became convinced that Tom was not going to represent the wilder fringe of the UFA."

The differences were ironed out, Gorham thought. "In the sense that at the end of the whole battle, people in AAUP were absolutely laudatory about Tom and Paula Rabinowitz, and the fact that they had started the whole thing rolling. Nobody ever felt satisfied that some of the more radical members were ever really on side in the way things were going; they much would have preferred to have a more 'pure' position." Gorham thought that group would never have been satisfied. "The folks in AAUP felt they were a fringe part of the group, and that we could trust Paula and Tom. Although there were occasions when we got angry with Tom for speaking in the Senate, when he might not have done, but by and large those things were ironed out. At the end of it, I think we all recognized that we

owed a tremendous debt to Tom and Paula.”

In the words of some of the participants, about the merger, “there certainly were some rocky times.” “I think it’s fair to say there was distrust, but I don’t know that I would characterize it as distrust of AAUP leadership and UFA leadership. Rather, it was individuals. It seemed to me there were individuals among the UFA leadership who were mistrusting of AAUP. There were a number of people who were active in both groups.” The genesis of the two groups was “quite different,” with senior faculty who had been involved in governance in the AAUP, where the UFA tended to be the more militant unionists. There “certainly was united reaction to the regents’ actions,” however. “When Jean Keffeler came out in the paper about Nils, about trying to get his resignation, I did have a colleague in another department who said ‘isn’t it wonderful what Jean Keffeler has done to bring the faculty together?’”

As for the problem that the more militant union folks saw the AAUP as a spoiler, remembering events of the early 1980s, “there certainly were concerns about that, but Tom Walsh said that the UFA couldn’t have won an election by itself. I think the UFA was looking for some accommodation that way, and the AAUP was so appalled at what the regents had done that giving serious consideration to collective bargaining was something that people were willing to consider.”

The two groups ended up coming together “through a series of meetings, discussions. It isn’t a simple road from here to there; things went back and forth as people talked about things. Looking back on it now, we probably wasted a lot of time; we probably could have done it a lot more efficiently.”

The active discussion of merger did not begin until the fall. “There were some off-and-on discussions [earlier], but the Morris stuff made it quite clear. Ellen and Fennell had been pushing way back in June, ‘we need one group, you guys have to get together.’ I think at one point Ellen even said ‘why doesn’t the AAUP come out and support the UFA?’ I think everyone still had their fingers crossed, and if the regents would adopt the faculty tenure proposals, that would be the end of it.”

Williams and Murthy also agreed that the merger was not without problems, and that the faculty in the two groups came from a different perspective. “It was a marriage of necessity on both sides,” Murthy commented, and Williams recalled that there had been “distrust and suspicion.” Part of the reason, several said, was that the strong union advocates saw the AAUP as the spoilers in the earlier collective bargaining elections.

Murthy agreed. “There were allusions to that, how we messed it up before, what incompetent dodos we were.” Williams also noted that “there was some discussion about whether Rama and I were good leaders. About the time we were

merging the executive committees.”

Murthy concluded that “it is probably safe to say that there wasn’t complete trust, except at the very end. Even at the very end, I thought there were some fractious moments, one of which led to my resignation.”

Campbell said that “Tom Walsh is kind of a take-charge guy. If he thinks something has to be done, he just moves for it. I think he read things very accurately. I think Walsh and Paula got on very well with the members of the Gang of 19, when they were involved. I think both sides recognized, not that they were opposites, but both groups recognized that these were separate groups. In fact, Tom had taken the initiative earlier than the Gang of 19, because his initiative really began with that January meeting.”

Humphreys said that it was important to understand “the role played by the national AAUP. They took a direct hand in this as soon as the Hogan & Hartson [Morris] code came out. They had a full-time representative here in residence at the University, beginning by mid-September. He had an apartment here, and an office. He was here full time until the election. There were also two other people, their legal person and another advisor on collective bargaining. Nightingale was here all the way through; Shaw and Finner showed up sporadically and were here virtually full time from January to the election. These people are extremely good.”

As for the two groups, Humphreys said, “if you want the truth, there actually was tension in the AAUP-UFA joint organization between what you might call the more conservative members, who represented the old AAUP, the inactive AAUP, who basically did not want to do anything and opposed anything, and the more activist members. And I wouldn’t say they were divided between AAUP-UFA members. The UFA members were more activist, but there were activist AAUP people as well. But there was a core group, what I called the old family AAUP people, who were pretty much opposed to any action, most of the time.”

Sara Evans, in recalling how she became involved in both groups, also recounts the differences between them. “I was invited in the late summer [1996] to get involved in AAUP. I got a call . . . saying that a group of them were working to revive AAUP, given the crisis that was going on. Because I had been in the collective bargaining campaign many years ago, I felt very strongly that if we were to have an effective collective bargaining campaign with the faculty, [to persuade them that] what the faculty needed was collective bargaining, the only way to be successful was by linking with AAUP.” Evans was not a member of either AAUP or UFA at this point; she “joined AAUP and UFA in a formal sense at about the same time. I went to an early fall early meeting or retreat of AAUP, and somehow got put on the Executive Board. By that time, there had been the

Morris meeting; we knew there was serious crisis. So at that point, my own wish was to become active in both UFA and AAUP, and I was very sure that only by bringing those two together was it possible to have an effective campaign.”

Evans agreed with the assessment of her colleagues about AAUP and UFA. “They were different groups of people who did not necessarily trust each other. When we went through a process, around the collective bargaining campaign, of linking together the [the two groups], the way that link was carried out was that UFA elected four people to be on the Executive Board of AAUP. I turned out to be one of the UFA people elected to the Board of AAUP. I never knew I had been a candidate. I got nominated and elected without ever knowing it. I was on the AAUP board both because I chaired a committee and because I was elected by UFA. I was in that group kind of a bridge person because I knew a bunch of UFA people.”

Asked how the two groups ultimately came to work together, Evans said “it was a matter of mutual need. The UFA had initiated the collective bargaining campaign and was collecting the cards. The cards said UFA. The AAUP was the national organization that had had a real presence, by Mary Burgan coming, but it was the most logical and credible national organization to affiliate with, if you want to seriously entertain collective bargaining at a major research university. It’s the only organization that has standing that can bridge that, because it does represent a culture change for faculty at a school like this. And UFA members realized they needed a national affiliation. Obviously, many other groups would have been happy to jump in. Personally, if UFA had decided to affiliate with another organization, I think we would have gone out and collected AAUP cards, too.”

What would have led to the same schism that occurred in 1980, which, in Evans’s view, “would have been terrible. Nobody wanted that to happen. That’s where there was mutual need. There was a very strong perception on the part of AAUP activists, as it was reviving, that collective bargaining was necessary, but the drive had been begun by UFA. There was a very strong perception on the part of the UFA people that they had to have an affiliation with a credible national organization; that was AAUP. These two groups just needed each other. There were some people in UFA who were veterans of that earlier campaign who had deep suspicion of AAUP; there were people in AAUP who felt that the style and the approach of UFA was different than their own, to put it carefully. AAUP included a lot of people who’d been traditionally active in faculty governance, with long histories. UFA people tended not to have that tradition. I think that was the gulf. But it also meant the mutual need was there, too; you needed both the kind of fiery willingness to challenge things as they are, and the sense of how the place works and how to work it.”

Morrison's assessment was similar. "They are two very different groups of people. United fronts are always united by a common enemy. When they are united by the common enemy, they can react cohesively. When the common enemy disappears, then they go back to their old differences. That's what those two leadership groups are like."

Bloomfield "thought they got along remarkably well, frankly. I wasn't involved on either side. I think a lot of people had a lot of mistrust of Tom Walsh. The couple of meetings I had with him, I was somewhat reassured -- probably incorrectly, in retrospect. I thought he was behaving reasonably, and taking a statesmanlike and cooperative position within the general constraints of what he was trying to do."

Virginia Gray thought quite differently. "It was always a very uneasy relationship, as far as I could tell. I'm an AAUP member, but not a UFA member, and not in the leadership of either, obviously. But I think it's fair to say that AAUP never really controlled UFA, and we had numerous examples of this lack of control. AAUP would tell me one thing, and then Tom Walsh would publicly do the opposite."

"On the eve of the election, a week or two before, Rama resigned over this. They agreed to support something in the Senate, and then they got there and voted the other way. He couldn't control them. He called me and said 'I quit. I called the national AAUP and told them, I'm telling you, and I'm telling Nils.' I assumed this resignation would be in the paper the next day."

"We were supposed to having these 'four by four' negotiations,⁹¹ so I wrote an email to Carolyn Williams, who was vice president, and said 'you guys need to get your act organized; how can we negotiate if we don't know who we're relating to?' Then we had an FCC meeting, and I said the same thing to Sara Evans: 'what is going on? How are we going to proceed if you guys don't even know who your president is? Who's it going to be?' 'Yeah, yeah, things are falling apart,' was the answer. Then all of a sudden Rama didn't resign, and they were proceeding toward the election."

"I think, to some extent, people sensed this. They didn't know what they would have elected. It was whoever was yelling the loudest that day."

In addition, Gray said, "when Vic and I had these meetings with Rama and Tom, the precursor of the four-by-four, over the Christmas holidays, Tom was still protesting post-tenure review. He was trying to undo things the Faculty Senate had done the year before. He didn't even agree with that. So the idea that he represented the general faculty boggles the

⁹¹That is, discussions with two representatives from each of the groups: FCC, UFA, AAUP, and the Gang of 19.

mind, because in these negotiations, he was representing himself. He and [another faculty member] were the only two people against post-tenure review, by that time. It was very frustrating. We couldn't make any progress in our talks, because he kept going back to stuff we had decided the year before."

Gray summarized by saying that "basically, they had said they would cooperate, but then they didn't. That was unfortunately all too typical, because they couldn't corral their members. They would take votes in their executive committee, and the members of the committee would go out and say what they wanted and do what they wanted regardless of the vote. I don't think of these people as democratic, because they don't abide by the democratic process in their organization."

Dan Feeney had a more benign view. "The other thing that gradually emerged -- it may have been there all along, but some of us weren't aware of it -- [was that] the union was not looking to throw the baby and the bath water out all at the same time. They would work through the faculty governance structure; we heard about 'faculty governance with teeth' and that stuff. I think that came about as the AAUP came in -- not that Paula and Tom hadn't thought about it."

"We invited Paula and Tom, early in the process, to come to [Faculty Affairs]; I think there was visible turning of attitudes towards them as individuals, and what they were talking about, after we had actually met them and talked with them. There were some people who were asking if it was a good idea to invite these people to a faculty governance meeting. My feeling, and that of a number of other people on [the committee], was 'we better talk to these people, they are a force out there to be reckoned with.'"

"The difference between the way we looked at it and the way FCC looked at it is that there was a certain amount of head-butting with selected members of FCC and the union. We had a very cordial and open discussion in [Faculty Affairs] when Paula and Tom came. I thought that's the way it should be; either way it worked out, we did not want people with a bunch of angry and hurt feelings when it's all over. Who do we have to fight? We have to worry about the legislature, to a certain degree we have to worry about the administration, and we had a Board that was going awry at the time. Those were the people we had to worry about; we didn't want an internal fight. As things evolved, when the correspondence went out about tenure, I just carbon-copied initially Paula and Tom; when Rama and the AAUP became more visible, we put them on there, too. Those people knew what was going on; we didn't have any secrets, anyway. We were not working for totally different causes and we don't have totally different ideas, but that is what people needed to come to understand."

"I'm not sure FCC handled that as well as it could have.

But then as we talked to these people -- and I think they mellowed a little -- it became very clear that they were going this way and we were going that way."

* * *

THE SEPARATE PATH OF ELLEN BERSCHIED AND FENNELL EVANS

Even in the face of a proposal that the faculty universally opposed, the faculty remained fractious. Carolyn Williams recalled that in the fall, "I think it was Ellen Berscheid who suggested there needed to be new leadership in AAUP." Murthy remembered that "somehow, Fennell Evans started a rumor that Rama is making secret deals with the regents. It was the Gang of 19 that told me to talk to the regents, and I'd been reporting to them what I was talking about. But somehow he had the notion that I was making secret agreements. Of course, he doesn't say to the Gang of 19 or bring it up for discussion in the AAUP, he calls Washington."

Williams said that Evans, while in Washington, went to the AAUP offices and spoke with Mary Burgan, and there was a conference call with Berscheid. Murthy reported that he was told of this by the AAUP. "AAUP didn't believe that. I don't know exactly what went on, but it was clear that they had immediate distrust for Fennell. He masterminded things." Williams observed that the national AAUP office "would not interfere with the local chapter's elected leadership."

Murthy said that he had been completely open with the AAUP Executive Committee, and that "I had nothing to disguise. Everybody backed off. How I wish had the power to make agreements with the regents!"

These events were fairly widely known. Pick recalled it as an "unfortunate set of incidents when Ellen, and I suppose Fennell, got angry because Rama -- who by then was the president of the AAUP -- had talked to Jean Keffeler. Ellen was lobbying everybody, 'you've got to get rid of Rama as President. The AAUP will have no credibility.'" Because Berscheid felt Murthy was compromising with Keffeler. "And then it turned out that Ellen was also talking to the national AAUP people, saying how Rama had to go. They sure were being their own camp, at that point."

Pick's last comment points to a change that many noticed. At about the time that the AAUP and UFA merged, two of the original leaders of the Gang of 19, Ellen Berscheid and Fennell Evans, separated themselves from the new organization. The fact that two faculty members went in a different direction would not be especially noteworthy, but because it was these two, the separation didn't occur without notice. Berscheid and Evans continued to play an active role in events, but by

themselves, rather than in concert with an organized faculty group (either FCC or AAUP/UFA). Several of those who were involved in events commented on this separation.

Regents' Professor Gorham said "Fennell and Ellen did essentially divorce themselves from the Gang of 19 and the AAUP. I've never quite gathered why. I just don't understand it. Many of us were really saddened by the fact that they isolated themselves from the rest of us. Despite their disagreements, if they'd hung in there and argued them more effectively within the group, rather than standing on the side -- although they did talk to some of us, at various times, to try to convince. It all seemed to happen so suddenly, too. That's the way it impressed me. At one time I thought Ellen was on our side. I don't talk to Fennell at all, except casually, but I have talked to Ellen, whom I've known for some time. It seemed to me that all of a sudden she decided to take it into her head to really take a different tack, to say that it was not the way to go."

"I think she felt that the AAUP/UFA was pushing too strongly for unionization, and that perhaps we might win. Up until the time that it looked as though we had a chance of winning, I think she saw our activities in a positive light -- that this was going to stop the regents and put things off until they could get a new kind of code passed. What happened, in my perception, was that when she saw that maybe AAUP/UFA might win an election -- and many of us thought it was going to be a close thing, because the polling we did suggested we had a strong chance of winning, very narrowly -- that's when Ellen changed her mind about us. I think she divorced herself from the process from then on, when she thought the union really might win, because she was persuaded that it would be a bad thing. I think that was true of many of the regents' professors, when they saw that there might be a chance that we might win. That's when they issued their second letter. With one notable exception."⁹²

Hamilton, recalling the gradual death of the Gang of 19, said "we kept going, after the April 18 meeting, although not as frenetically, although we did continue to meet through the summer of 1996. I can't remember when we stopped meeting, but it had something to do with the UFA, and Ellen and Fennell sort of going off as a duo and being disenchanted with it, and in fact working against it. I honestly don't know why. I kept up my evening conversations with Fennell, but I could never get out of him what it was that was bothering him. I talked periodically to Ellen, and I couldn't get anything out of her, either. But I wasn't concerned about that. I thought we had had an effect, as a group of faculty, that the FCC had not been able to achieve. That's what I had set out to do."

⁹²That is, Gorham himself.

Humphreys offered a short explanation. "They were acting, behind the scenes, to get the Sullivan I document [a "compromise" tenure code proposal purportedly written by the Dean of the Law School, E. Thomas Sullivan, about which much more later] in front of the regents."

Murthy said, about Berscheid and Evans, that "they diverged from everybody. When the Sullivan II proposal came along, Ellen took the position that perhaps we could work with something like this." At this point she did not believe a union desirable, "because in her mind, unionization was a worse fate."

She had been supportive of unionization earlier, Williams said. Murthy agreed. "She was the one who yelled at me, 'why aren't you publishing the survey?' She thought I was holding it up. She was the one who made the regents' professors sign the cards. What she didn't imagine was, or didn't follow through in her mind was, that the natural consequence of going that route might lead up to a union. She had somehow forgotten that link. When actual unionization became a real question, she backed off, and completely took the opposite side. And took to saying all kinds of things about AAUP. I don't know what she said."

Murthy recalled that "Fennell and Ellen are close personal friends. Ellen was the one advising me all the time, in late-night conversations -- what to tell the regents, how to talk to the regents, the wisdom of doing that -- she was my confidant all this time! It was surprising, because Ellen spent endless hours encouraging me to do this. Fennell would call me. As long as they were the center pieces. . . . That's OK. Fennell is the one who organized, for example, one of the petitions in the Senate, counter to the regents -- within one day he could get that passed unanimously in the Senate. So there was a sense of power. But by the time formal structures got built and you had to operate by open discussion, then you're no more in the center."

"Anyway, she masterminded the events. Then recently [later in 1997] she thanked me for what I did in the AAUP. I have a wonderful letter from Ellen. I said come back to AAUP; we have work to do." But Williams ("that's a big puzzle, the role that Ellen and Fennell finally played") and Murthy ("it's baffled many of us; we can never know") remained perplexed. Murthy noted that "if you see the newspaper clippings, Ellen and Fennell had direct access to all the newspapers." It was Williams' view that for the reporters, "Ellen and Fennell were the voice of the faculty."

Gray commented that she "thought it was odd that right after the Morris debacle, Fennell was the one organizing the signing of cards. Then later, it was kind of like the Gang of 19 were pro-union and then anti-union. In the end, some of the Gang were very anti-union, but at that point [after Morris] they were pro. Right after Morris, everyone was running around like chickens with their heads cut off, doing anything."

One faculty member said, of Berscheid and Evans, that “I think they saw the power structure possibly taking a major shift, and the union was really now possible, and that was scary. At the time in May when we were going to formalize the Gang of 19 and come up with a name and publicize ourselves to the faculty, we went through several iterations of names, and everybody voted on one. ‘The Faculty Coalition for Rational Change’ is what the Gang of 19 was going to become. David Hamilton had drafted an email saying ‘hello, faculty of the University of Minnesota, we are the group that used to be the Gang of 19, we are now this, this is what our goals are, this is what we’ve been doing.’ Pretty much everybody agreed this is what would happen, and then all of a sudden -- I think it was Ellen -- who said ‘no. We need to continue to be a behind-the-scenes force, not be formalized.’ There was also at that time funds going to hire attorneys, and other activities, and a sense that we don’t really want to be a direct target, so we’ll stay this amorphous group.”

“When there really got to be the idea that there would be faculty-based power, that would be elected, that would be a union, that really changed the power structure, and she wasn’t comfortable with it. Nor was Fennell.”

One faculty member simply observed that “Ellen and Fennell were always alone.”

Shively observed “I think Ellen and Fennell were very influential throughout this.” He also made an observation about organizational dynamics. “Another reason they had greater clout than the AAUP group was that the AAUP was in such a difficult strategic position. They were almost hamstrung. Maybe I’m reading this wrong. They were working with the union, but at least some AAUP leaders didn’t find the union a satisfactory partner, and they were always feeling they were being undercut. It was hard for them to look like strong, dynamic leaders when they were looking after their own backside all the time. I think they were so distracted by that, whereas Ellen and Fennell were just out there doing their thing.” The AAUP leaders had to spend “an awful lot of time tending the organization, rather than taking positions on the campaign. A lot of their energy was going into maintaining that united front. That’s my perception.”

Sara Evans recalled that “I don’t even know who the original 19 were. It got to be more than that. It got to be an email list. There were a lot of meetings. I don’t know how much it kept meeting through the summer. It became more of an email list than a group that met. I think once the AAUP actually got underway, it kind of dissolved, as far as I know. It didn’t have much coherent existence. By the fall of 1996, it was not active. I may have gotten on the mailing list at some point. But people had to make a strategic decision in September and October of ‘96, whether collective bargaining was necessary. A

large number of people made step one, strategically, that we had to file in order to stop the regents. Once they introduced their infamous code, we had to stop them. So all the regents' professors sent out a letter saying 'sign the cards.'"

"Once that was done, then the question was, did we have to win? That's when more divisions appeared. People like Ellen, at one point, talked very much like she was a supporter of collective bargaining. And then she changed her mind. I think the same thing is true of Fennell. I was in at least one meeting where they were both there, and they seemed more supportive than they were soon after. They may have just changed their mind; Sullivan II may have been the reason."

Berscheid, thinking about the November 20 letter and the lunch with the regents' professors, recalled her feelings and identified the path that she and her colleague Fennell Evans⁹³ would follow. "I remember in December of that year, being upset. I had not realized that Nils was in the other camp, although I had been distressed that he did not appear to be trying to stem what the regents were doing. I recall as though it were yesterday talking to Fennell about my feelings of betrayal on the phone, and saying that we (the faculty) had zero power to turn things around by ourselves, that we were now in a game of billiards where we could only shoot a ball when we had a chance, and had to be very careful where we shot that ball, because our only hope was to set other balls in motion. Because we could do little ourselves, our only hope was to get other forces in play. We went back to that analogy several times. That's what we tried to do all along. It was always a matter of making calculated and oblique shots to put other bodies in motion."

The shots, Evans said, were made "in any way that opportunity presented itself. The way you do this kind of thing is, you have a vision. And you ask yourself every day, what are the opportunities I have today, what are the new things that I can do, and sometimes you turn 180 degrees and go in exactly the opposite direction from the day before."

Berscheid concluded that "I think that's what puzzled some people -- the seeming inconsistency, that we were constantly twisting and turning and zigging and zagging with the flow of events. This is one of the reasons it was so time-consuming for us; every day we checked in with each other and many other people to identify the events of the day and to decide how we could use them to advantage. The vision, the goal, was our only constant."

Berscheid and Evans offered their own perspective on their actions as events proceeded. Evans said that in the late

⁹³In the preceding few paragraphs, "Evans" refers to Sara Evans. In the following paragraphs, "Evans" refers to Fennell Evans. The two are not related.

spring and early summer, “the Gang of 19 got to the point where it was so large, it no longer was an effective group -- it was hard for people to coordinate their activities and keep track of what was going on.” But, Berscheid said, “we could see that there needed to be a continuing, formally-organized, faculty group for several reasons, including keeping the FCC ‘honest’ in its representation of the faculty, if nothing else. Melding the Gang of 19 into a previously-established group with strong academic values like the AAUP that could provide ‘instant structure’ seemed to be a good idea.” She said the idea also was personally appealing because it would allow Evans and Berscheid to “fade out” of their time-consuming participation as soon as the tenure issue was resolved. “So that’s what we did; we all joined the moribund local chapter of the AAUP. But then we got more familiar with the AAUP and developed some doubts about that organization.”

Evans said that “what happened was that as time went by, the Gang of 19 became less important as a functioning agent in terms of things that were happening. We got into the midst of the AAUP and started having some misgivings about the aims and effectiveness of that organization.” While Berscheid remains uncertain what her colleagues meant when they say they believed that she and Evans diverged from the activities and goals of the Gang of 19-cum-AAUP members, both she and Evans were quite clear on why they chose not to work actively with the AAUP in the fall.

Berscheid recalled their fears about the AAUP leadership. “We were working hard on several initiatives -- this was before the regents started bending, although the handwriting was on the wall.” She and Evans worried that Murthy would inadvertently undermine their efforts, because he “was on the phone constantly with Jean Keffeler and we were afraid she would succeed in using him for her own aims as she had used other people.” They were concerned that in his desire to be liked by all sides, and his efforts to reach some kind of “Neville Chamberlain compromise,” Murthy would derail their ongoing projects. “Being popular with the regents,” Berscheid said, “was not our objective at that time. So we were uneasy about Rama - - not because we didn’t like him. We did. It was just that Rama is constitutionally unable to be anything but helpful and cooperative with anyone, and we suspected Keffeler was smart enough to take advantage of that. We also thought Rama was naïve about Keffeler’s openness to reasoned argument on the tenure matter.”

Evans also recalled their interaction in the fall with the national AAUP office with respect to the leadership on the Twin Cities campus. “I was in Baltimore, on a Friday morning, and I was going to Washington. I got on the phone and got hold of Mary Burgan. I said ‘I’m coming into Washington, I’d like to come over and talk to you. Do you have time?’ She said ‘yes.’

So I went in, and we had set up a conference call with Ellen, so the three of us had a talk. We discussed with Burgan our concerns about the local chapter, especially their role in the last union election, and their current narrow base of leadership.” At this point, both Evans and Berscheid believed unionization would be necessary and doubted the AAUP’s ability to mount a successful campaign without broadening their leadership, especially by including those who currently were working for unionization with Tom Walsh.

“The beginning of the breakaway from the AAUP for both of us,” Evans said, “was when it looked like the leadership wasn’t going to change.” They like Murthy and thought he would be a good president under “normal” conditions but not then, when he could accidentally sabotage the further surprises they were planning for the regents. Berscheid recalled that after they believed they had reached an agreement with Rama that he would have no more conversations with Keffeler, “I accidentally discovered that he was talking to her again.” Evans was quite blunt about his reaction: “Right after the Morris meeting -- when Rama had told Keffeler about our survey in advance -- I ended up having lunch with Rama. What I told him was that I thought his behavior was absolutely disgusting, and that he was behaving like the equivalent of a Nazi co-conspirator” Not surprisingly, Evans said, this made Murthy angry. “But that’s what it came down to.”

Berscheid said not only had they expressed their concerns on the telephone with Burgan, but they also expressed them when some national officers came to Minnesota in the fall: “the local AAUP had been in the grip of a small clique for a long time. They had very few members and so they couldn’t -- or didn’t see the need to -- expand their leadership. Everyone I know of in the Gang of 19 was concerned that the AAUP have a democratic election and broaden its leadership. ‘Yes, yes,’ they said, they’d have an election in due time. Fennell and I had joined the AAUP and the next thing is, what we get on our computer screen -- didn’t even get a paper ballot -- is a slate where there was only one candidate per job and the candidates were ‘same old, same old.’⁹⁴ It was like an election in communist Russia. That’s when I told Fennell that I didn’t want to belong to a group where I had no real vote on the leaders. I believed that Roberta [Humphreys] would make a good president at that time because she was smart and had the heart of a lion; Fennell thought so, too, and Roberta would have been willing. But it was the same old bunch. So Fennell and I mentally backed away from the AAUP.”

⁹⁴Anne Pick commented that “this is simply not true. Most of the officers 1st time around -- Rama and Carolyn and Steve were recent members of AAUP. Next time around . . . Marti was on the ballot and was elected secretary; Tom and Roberta were both on the ballot and elected to the executive committee. Ellen’s recollection is simply incorrect and the record of AAUP will easily verify this.”

Berscheid said she and Evans still hoped that the next election would be different “as national had promised it would be. But it wasn’t. When the next proposed slate came out in the spring, this time there was a choice but it still didn’t have people like Tom Walsh and Roberta Humphreys and Marti Gonzales on it or many of the people who had worked their buns off running a good unionization campaign for the AAUP. It looked mostly like the old AAUP. But Fennell and I heard through the grapevine that when the proposed slate was presented at a meeting, a little ‘revolution’ was staged from the floor, and people like Walsh and Roberta then got on the slate. But by this time, we’d decided the AAUP was a headache and we were tired and needed to get back to all the academic work we’d set aside to work on the tenure threat.” She noted that the local AAUP did later broaden its leadership and is doing “a good job now of representing faculty interests on many issues.”

From the perspective of an outsider who followed events very closely, “Ellen Berscheid was a very great hero in this, in my view. It seemed to me she was leading the faculty fight, and she was very outspoken about the regents. She got in the paper more than anyone else because she knows how to communicate. The faculty generally are not good at this kind of communication. She articulated things in a way that helped reach the general public.”

* * *

In late September all faculty were emailed a notice of a tenure forum to be held October 3 to discuss what occurred over the summer, the implications of the Morris proposal, and the situation under the cease and desist order. Discussants would be Dempsey, Feeney, Fogelman, and Morrison, with AAUP and UFA representatives also present. The four explained the situation, and the faculty present asked questions. There was nothing notable about the meeting, according to those who were present.

The forum did, however, provoke a long email from Carole Bland to her colleagues on FCC. “Yesterday’s forum pointed out the need for further discussion about the features of union governance [versus] other faculty forms. The attendees seemed to fall into the groups Fred had predicted at our earlier meeting. Some were clearly union supporters. Several were in the undecided middle and expressed concern about the lack of information on what a union would look like. Others were unhappy about being persuaded to sign cards to stop the Regents proposal -- not because they supported a union -- and now finding out the union opposed allowing further discussion between the senate and Regents about the senate tenure code. Some were anti-union.”

“I think it is very important that an informed dialogue be held and perhaps even papers be produced about the features and advantages and disadvantages of a union (or probably various forms of a union) and a senate as we know it (or modified forms of the senate.) Some of you have argued that the union will hold forums, and that that is sufficient, or that people interested in other forms of governance should hold these. I suggest that as the people elected to represent the faculty [i.e., the FCC], we have a responsibility to inform them on this issue just as we have had on other issues that involve faculty and major university decisions. What ever happens from this unionizing effort, we all hope to come out with a form of faculty governance that is better than what we have now -- be it a union or a revised senate or some combination.”

“The comments yesterday convince me that the next few weeks could involve faculty in constructive conversation about these issues that could lead to better governance or it could involve divisive, destructive tactics and arguments. Yesterday’s meeting was moving toward the latter of these alternatives. I believe this was because people had no common set of information or even conflicting information on which to base a conversation. Thus, some were resorting to emotional pleas, expression of anger at feeling hoodwinked, many non-verbal dismissing behaviors, and comments meant to shut people up instead of encourage mutual understanding. I understand that this is an emotional topic. But, academics are drawn to logical arguments if given facts to consider and base an argument on. I believe as senior faculty and as elected senate leaders husbanding the ‘machinery’ of the senate, we have a responsibility to facilitate informed discussion on issues of concern to faculty and a responsibility to facilitate the preservation of a civil, respectful community.”

Bland urged that FCC take up the issues. She said governance was “incredibly important” and that “as elected faculty representatives we have the responsibility to seek the best salaries, benefits, and job contracts possible for faculty. I believe we have worked hard on these issues, albeit not with the complete results we want. But, morale, commitment, and productivity are issues we are also all concerned about and, I believe, as elected leaders have a responsibility to facilitate.”

“Tenure debate halted” ([Kiosk](#), October). The article reported release of the Morris proposal and faculty unionization efforts, the email from the four committee chairs saying their efforts had failed, and the email from Walsh and Rabinowitz saying the University would have the “most punitive code in the nation.” Faculty objected to many provisions, especially the “proper attitude” clause.

In early October there began to be rumors that the regents would, at their October meeting,

enact the Morris proposal for those parts of the University not covered by the cease and desist order.

On October 3, the regents held the first of several non-public meetings with their attorneys. (The regents held a non-public meeting with their attorneys on October 3, again on October 4, and on October 9.) It was these meetings that prompted Hamilton to file the cards for the AHC.

Several news accounts of events taking place appeared.

“Regents will meet again with lawyer” (Star-Tribune, October 4). The article reported that the regents discussed for three hours the “legal implications” of the tenure dispute. Senior Vice President Marshak said there were no conclusions but that no policy decisions would be made secretly; Hasselmo and Reagan said the talks were “fruitful.” The meeting was to continue on the 4th. Hasselmo reported that “only the legal issues were discussed. We were quite fastidious.”

“U regents meet privately; faculty holds forum” (Pioneer Press, October 4). The article reported the regents met, in closed session because the subject was attorney-client issues. Reagan “welcomed” the Governor’s proposal for a task force, but they hoped to settle matters before March. At the forum, “about 120” faculty had divided opinions on unionization versus waiting to see what the regents would do. Walsh was quoted as saying that it was a matter of trust, and that “to believe the regents at this point would be running on hope, not reason.”

“Regents hold closed meeting” (Minnesota Daily, October 4). “After meeting in private Thursday for almost two hours longer than scheduled, [regents] remain tight-lipped on the extent to which tenure was discussed”; the meeting included three administrators and four lawyers. Marshak said “I can assure you, as a layperson, that nothing was decided.” The article described when non-public meetings were permitted under Minnesota law (attorney-client matters, labor negotiations, hospital marketing), but “there have been instances where regents have been able to circumvent the open meeting law” and cited a meeting with Reagan, Spence, Keffeler and faculty leaders the previous month (the law permits meetings with three or fewer regents to be private).

“Faculty hold tenure info forum” (Minnesota Daily, October 4). Some faculty “expressed concerns” about unionizing; “many characterized the move as their only option.” Fogelman said “we are vulnerable” and that if the situation did not change before the election, faculty would have no choice but to vote for a union. About 70 faculty attended. Morrison “asked faculty to be careful when characterizing the actions of the regents. ‘Don’t assume that all of the regents are working against us. . . . There are regents working quietly and not so quietly to move forward” on tenure.

* * *

THE FOUNDATION AND THE ALUMNI

In a memo to the Foundation Board of Trustees, chair James Campbell reported on a conference call held by the Executive Committee on the “adverse effect” of the tenure debate and that they decided to send a letter to the regents. He urged Board members to contact regents and tell them that a “positive outcome on tenure is essential” if fund-raising is to be successful.

The letter from Campbell and the Foundation vice chair (on behalf of the trustees), to the regents said the tenure debate disenchanting many donors and cited Chait to the effect that if certain tenure changes would lose faculty goodwill, the price would be too high. The “trust and goodwill of faculty have been damaged severely” and the excellence of University was at stake. They urged regents to adopt Hasselmo’s recommendation to accept the faculty proposal, to pursue national tenure reform in a way that does not jeopardize University competitiveness, and to start a process to restore faculty trust and collegiality.

Morrison related that “I have heard that in addition to the letters, there were oral representations made to some of the Board members that they should not expect some of the Foundation directors, some of the outside big money people, to remain on the [Foundation] board if they [the regents] pursued this course, because there wouldn’t be any point in trying to raise money because people wouldn’t give the University money.”

Fischer affirmed “those were factors that were discussed. Several Foundation trustees were regents or former regents. One-fourth of our Board is appointed by the regents, and we can have up to four standing regents on our Board, as well as the President of the University. [Regent] Wendell Anderson was on our Executive Committee, along with the President, so even in the deliberations that occurred between Foundation Board meetings, he or the President were available to report back to the regents the thrust of it.”⁹⁵

⁹⁵Fischer recalled that the Foundation was also considering another project that was potentially at risk because of the tenure debate. The University was contemplating a capital campaign, and planning committee “started meeting in 1995, to plan a major capital campaign. It had been ten years since the last campaign; it was time to prepare for the next one. The committee consisted of several members of the Foundation board, a number of past chairs of the Foundation board, the chair of the Medical Foundation board and CEO, the chair of the Alumni Association National board and its executive director, and Regent Hogan.”

One of the exercises that this committee undertook was to conduct consultative interviews with people who might be major gift prospects for the campaign, who had been past major donors to the University. The interviews were designed to ask the following questions: “What’s your view of the University? What do you feel should be the major strategic thrusts of the University? What are its strengths and weaknesses, do you believe the University could be successful in launching a major capital campaign? What would be the key success factors to achieve its goals?”

“We received interesting feedback. There was deep concern expressed about the quality of governance at the University. There was concern about lack of support of the president of the University,

15 past presidents of the Alumni Association also wrote to the regents and said “we are headed on a collision course with terrible consequences if the tenure issue is not resolved in a collaborative way with the faculty.” The debate harms the presidential search and the legislative request and will lead to a loss of academic standing. They “implore” the regents to seek a “sensible solution” and expressed support for Hasselmo’s leadership and the “academic integrity of the faculty” and urged the regents to work with them.

Gerald Fischer reported that “by October, a couple of Foundation Trustees had feedback from their conversations with individual regents, that this tenure issue was heading toward a public train wreck, and the regents were not of a mind to be flexible. So we sent a letter to the regents. We had a long discussion in the Executive Committee; I prepared a draft letter summarizing their views. We met to discuss the letter, made a couple of changes, and sent it to the regents. Frankly, some believed that it should have been widely distributed to the press, to the legislature, to the public at large. The committee resisted that, saying ‘we’re here to work with the regents, to support the University, to do what is in its best interests. We’re not here for public warfare; we want to pursue this directly with the Regents.’”

“We urged the Regents to support the President’s recommendation. Because we felt that going beyond that could be perceived as having a detrimental effect on the competitive position of the University, and the excellence of the University, we suggested that the Regents should pursue change beyond the President’s recommendation on at the national level through the Association of Governing Boards, through the national faculty groups, in a way that would not push Minnesota to a position where it would be at risk or non-competitive.”

Luella Goldberg of the Foundation said that the actions of the Foundation and Alumni Association were not taken in concert. “We were aware that they were also undertaking some sort of effort, but we didn’t decide ‘let’s both do this at the same time.’ My recollection is that each was inspired by how grave the situation had become and by how much we felt was at stake. It was very unusual for the Foundation to get involved in issues of governance, because we realize that that simply isn’t our role; it’s supposed to be the role of the Board of Regents. But there came a point, beyond which it was almost irresponsible, or an

and just generally, as this tenure reform was unfolding during the later interviews, we heard much about that. Some comments supported the need for tenure reform, but criticized the way the acrimonious process was damaging the University, with people all over the country were focused on the University only on this issue. Some people were blunt; they said ‘don’t even think about a campaign until you upgrade/fix the governance situation, the quality of the Board of Regents. There’s got to be a better way.’”

issue of conscience, where we couldn't just sit by and watch something so serious happen without conveying the importance of it."

Russell Bennett said the Foundation Board of Trustees was unanimous in its views. "They were unanimous on blaming Jean Keffeler. That may not be fair, but that was their perception. They felt that Jean Keffeler was enemy number one; they didn't know about Brody. And they were very adamant that she was not giving good leadership. They were unanimous in that view. Here you have 40-50 qualified people, from experience and track record on the Foundation, and they're not vindictive; they would give very low ranks to the regents' performance during the last ten years. They would feel very definitely that the regents were a very weak link in the chain. I like Jean, and I'm being awful frank about blaming her for all this and for what the Board did. I like Jean, but I feel sorry for her."

Goldberg related that "what triggered the Foundation's concern about [the tenure issue] was this great difference between the faculty and the regents that seemed to be pushing the faculty toward unionization. In our view, that was going to be tremendously detrimental to the quality of the faculty, and particularly the community's and donor community's perception of the quality of the University. Therefore, it would certainly have a major impact on the Foundation's work, on what donors would be willing to give, would be inspired to give, what they would want to do."

"I suppose it came to our attention for two reasons. One, our specific responsibility of raising private funds for the University we felt was in jeopardy over this issue and the way it was going. Number two, a more basic reason, most of us wouldn't be bothering to work for the Foundation if we didn't feel that the University was such an important place, and that its well-being mattered so much to all of us, and to this state. In our view, the way this issue was being handled wasn't going to promote the University's well-being."

Goldberg thought that the concern about unionization might have been greater than the worry about tenure for some on the Foundation Board, but said that "my own view is that academic freedom is a terribly important principle, not to be violated, as uncomfortable as it can get, at points, for people, and that tenure has to do with academic freedom. Therefore, personally, I was very concerned about it -- not that I didn't agree that some adjustments were in order. But I think the Foundation's real concern, in a broader sense, was the quality of the University, and that has to do with tenure: to attract top quality faculty members, from our point of view, you can't attract them without a tenure system, because every good university in this country has it. A top-notch faculty member isn't going to bother to come to the one place that doesn't have

it.”

Asked what prompted the Foundation Board of Trustees to take action, Bennett’s thoughts ran along many of the same lines as Goldberg’s. “A real fear -- they probably laid it on Jean Keffeler more than they should have -- they blamed her for the whole problem. I think that’s probably not fair, either. But the Foundation felt that this tenure issue could destroy the University, they felt that a union definitely would destroy the University, they felt that their job as fund-raisers was out the door -- forget it -- if they didn’t find some way to turn Jean and the regents around. Regents aren’t easy to turn around, because they aren’t shrinking wallflowers. They’re verbal, they’re smart, they’re unfortunately manipulative in some cases. The Board of Trustees of the Foundation definitely felt their mission threatened by this whole fiasco. As responsible people, they felt they ought to try to do something about it.”

Asked if he thought their efforts made any difference, Bennett responded “I don’t think we made even a dent.”

Bennett recalled a meeting of the University Foundation at which he had a conversation with Regent Wendell Anderson. “I said ‘Wendy, do Jean Keffeler and Pat Spence and the rest of them have any idea how bad the average person in Minneapolis, including the business community, regard their performance, the way they’ve pushed this thing and they way they’re making all these statements in the press, instead of Tom Reagan making them? And the fact they said ‘we don’t want to study history, we want to make history?’ That sounds like the worst kind of an ego trip to me, the idea that this is something you’re going to jam down the faculty’s throat. This union vote is coming up, and you’re certainly going to put this university in the greatest jeopardy of anything in the last 50 years that I’ve been around.’ Wendy said—he’s a thoughtful guy -- ‘have you ever been to Bovey, Minnesota?’ I said ‘I’ve never even heard of Bovey, Minnesota.’ Wendy said ‘someone was in Bovey for an event last week, and the miners are saying “why do those damn teachers think they should have tenure; we don’t have tenure?”’ I said ‘that’s right, that’s the spirit out there on the Range. The problem is that this isn’t a business, this is a university, and that isn’t the way you fix tenure, even if you think it needs adjusting. You let the faculty bring it from the bottom up. Nils has already told me they’re doing that.’

But Wendy’s comment was interesting to me, because I had made the statement that everybody was thinking that the regents were doing such a bad job, and he said ‘it isn’t everybody that thinks the regents are doing such a bad job.’ I said ‘well, that’s the trouble with having politicians being regents; you guys are sticking your finger in the air to find out which way the wind is blowing, and then you’re trying to do things as if you represent the Range or you represent Blacks or you represent labor or you represent whatever. The fact is,

you're supposed to be above all that, you're supposed to be making the call for what's good for the University." Bennett concluded that "I don't think, to this day, that Jean Keffeler or Pat Spence or some of those people realize what jeopardy they put the University into, and what damage they could have done."

Bennett recalled that he did not know "all the ins and outs of what [the regents] were thinking about tenure. But what I kept saying [after the Morris proposal was issued] was that in the first place, it has to be a national effort, not a University of Minnesota effort. Number two, the problem is going to solve itself, if you'd be patient. They said 'why is that?' Because I can see that the way expenses are going up, that universities are going to hire more and more part-time teachers. I don't think that's necessarily good; they aren't even going to be professors. They're going to be hiring part-time people who don't even have tenure. The worst results of tenure, if there are any, will gradually fade into the background, because these young people they hire -- I'm talking over the next five, ten years -- I think you're going to see more and more of a trend to hire these part-time people, as distinguished from full professors. And they won't hang tenure on everyone." Bennett concluded that "then you say to yourself, 'if you're hiring part-time professors, and maybe not even professors, you're throwing out the baby with the bath water.'"

Fischer understood the view that Anderson communicated to Bennett. "From the public's point of view, the regents' desire to seek change and reform in tenure was reflective of the view that universities are not well-managed and the behavior of few non-productive faculty who get covered in the press. Unfortunately, the public, with a somewhat simplistic view of what education is about, tends to focus on teaching as the primary mission, and expect faculty to spend most of their time teaching students. So those who are doing research and pursuing creative activity is of secondary importance, and as long as you're not in front of a class or directly involved with students for a high proportion of your time, you're not viewed as fully productive."

With respect to the alumni perspective, one close observer reported that earlier in the debate, "there were very influential people in the Alumni Association who believed that tenure needed to be looked at." But the perspective of those people "wasn't quite what the faculty thought they were thinking about. What became public was 'what about the faculty member who isn't doing a good job teaching, researching?' That really was not the issue. The issue was, if you are to fundamentally change a university, if you are to have hallmark departments, if you are to say we aren't going to have departments as they were in the past and may configure them all differently, what if we had three or four mega-colleges? If

people come to think of their job as having no direction, no coaching, no retooling, you can't really fundamentally change an organization."

The alumni had not studied tenure, were divided on the issue, and "because nobody in their wildest imagination could have envisioned the sweater unraveling the way it did," they had taken no stand in the debate. "What happened at Morris was a turning point, when they made the statement about a proper attitude, which was pejorative, condescending, non-collegial -- all of the words you want to use." A former Alumni Association president, Fred Friswold, took action right away. In September, the alumni national board "still waffled a little bit, and urged the faculty and the Board of Regents to mutually explore ways to resolve the tenure issue immediately."

* * *

Again, through the first week in October there was steady series of events.

- Walsh and Rabinowitz emailed to the all-faculty list on October 5 to explain that buttons with "proper attitude of industry and cooperation?" and the Regents' Office telephone number written on them were available. [A number of faculty had begun wearing the buttons, and Gorham pointed out that "some actually called the number."].
- Gray emailed to her FCC colleagues on Monday October 7th that "there has been a rumor since noon that the regents on Friday will try to enact their dread document for the nonunionized parts of the campus, i.e., Crookston, Morris, law school. In the last few minutes I have gotten confirmation of this rumor from a credible source. I have advised our reps in these units so that they can take appropriate defensive action by Friday, i.e., sign cards. I am sorry to report that the widespread support we have received has not resulted in swaying 7 regents to our side."
- **"Lack of leadership and vision diminishes U"** (Minnesota Daily, October 7, opinion piece by Thomas Walsh). "A lack of vision and leadership . . . is causing a slow but certain decline in a great university," it is trying to be both a "classical university" and one that provides professional training, and is, "in an uncritical way, adopting a corporate style of thinking." Corporatization threatens academic freedom, and the resources for the classical university (devoted to education and research) have been cut, which means the University would "become a good community college surrounded by good trade schools." Bad leadership is allowing the classical university to die, and the regents are doing "exactly the thing that can destroy the University most quickly": the Morris tenure code.
- **"Progress evident as U builds for next century"** (Minnesota Daily, October 7, opinion

piece by Nils Hasselmo). He outlined the improvements that had been made in education and increases in funding and enrollment that had been achieved, and noted an “aggressive” biennial request being made to the legislature. “There is no reason why the current controversy over [tenure] must undermine the progress. The rhetoric has been heated and the formal process of a collective bargaining election has complicated the resolution of issues, but they will ultimately be resolved in good faith. The last thing I want to turn over to our next president is an unresolved dispute over our tenure code. As I have stated publicly and repeatedly, I believe that our Faculty Senate’s proposal is on the mark.” He noted that he and the regents “were not in full agreement on these points” [elements of the tenure code], but said the Board understood “the seriousness of the issue.”

- **“Shared governance key to academic freedom”** (Minnesota Daily, opinion piece by Craig Swan). The strength of U.S. higher education can be explained by academic freedom and shared governance; Swan noted Hasselmo’s, FCC’s, and other university faculties’ objection to the Morris proposal as undermining academic freedom. He recited recent instances when it been attacked, and explained how tenure protects academic freedom. Shared governance is also essential, and with academic freedom, institutions that have both attract the best scholars and make contributions to the community. (The editorial was reprinted from the St. Cloud, MN, Times.)
- The Council of Graduate Students submitted a resolution to the regents that said graduate student work is linked to academic freedom and the Morris proposals “are a grievous attack” on it and tenure, and urged the Board to accept Hasselmo’s advice and approve the Senate changes.
- The regents’ Executive Director sent a memo indicating the Board agenda item on tenure for the October 11 meeting had been changed from “action” to “review.”
- Murthy emailed the Gang of 19 to report a lunch conversation with Hasselmo, who said the regents may ask him to resign. Hasselmo told Murthy that “if the Regents were to take that approach, that he would NOT resign voluntarily, but they would have to fire him, in which case he would ask for a public vote of the Regents on this matter. He had ‘no intention of quitting the fight now.’” Faculty friends on regents were meek. Hasselmo later pointed out that his comment was in response to a question from Murthy “about rumors to the effect that I might be pressured to resign. I said I did not intend to do so and that if I were to pressured I would ask for a vote.”
- **“Tenure flap hits outlying U campuses”** (Pioneer Press, October 9). The article reported

that half or more of the faculty on each of the Crookston and Morris campuses had signed union authorization forms. The Morris faculty were also challenging the state law establishing as the only option for Morris (and Crookston) that of joining the Duluth faculty bargaining unit (the Duluth faculty had been unionized since the mid-1980s). The Morris faculty were also signing AAUP cards, and preferred to join the Twin Cities unit. Professor James Gremmels of Morris reported that his colleagues were signing forms because of the rumor that the regents intended to apply the Morris proposal to the two outstate campuses (the only units, besides the Law School, that were not covered by a cease and desist order). Regent Bill Peterson, according to the article, said the rumors were not true. It also reported on another non-public meeting of the regents with their attorneys about tenure.

- **“National group goes to bat for faculty”** (Minnesota Daily, page 1). The article reported on the involvement of the national AAUP. It noted the local chapter was inactive before the tenure debate and quoted Murthy as saying stereotypes of unions must be overcome. The article reported on the AAUP’s involvement in collective bargaining elsewhere in the country.
- Three more legislators wrote to Reagan to convey their concern about regents’ proposal and because of their “sense that the regents are taking this action because of legislative pressure.” They said they wished “to make it clear that we oppose the Regents’ proposal,” and said the legislature only asked for “modest” changes in the AHC, not for changes in the whole tenure system. The Morris proposal would reduce academic freedom, even if not intended, and faculty may leave. They urged the Board to withdraw the proposal.
- About 35 faculty met with legislators from the 4th Congressional district. The discussion focused on the damage being done to the University by the Regents’ tenure proposal. After the meeting several Senators wrote strong letters to the Board.
- Campbell, in Austria, circulated to UFA and FCC a letter from Representative Myron Orfield (Campbell’s representative), who said the tenure struggle “is essentially to determine whether the [University] will remain an academic leader as well as one of the nation’s prominent research universities.” The faculty proposal preserved academic freedom while the Morris proposal would “drastically weaken the tenure code” and harm institutional quality. Orfield expressed alarm at the changes because they would lead to the loss of leading faculty, and he “strongly” recommended the regents withdraw the Morris proposal. Orfield enclosed (and Campbell circulated) his own letter to Reagan urging the Board to withdraw the proposal and adopt the faculty’s, with the same comments he had made directly to Campbell.

-- Senator Richard Cohen wrote to the regents and said the University “has been torn apart by the actions” of the regents, and the University is “the single most important institution” in Minnesota, which the regents seemed not to recognize. He said the Board had “only one choice” at its meeting on the 11th, and that was to adopt the Faculty Senate proposal. He said the legislature shared in the blame, but the regents could begin the healing.

A number of faculty recalled that there had been many contacts with legislators during the summer and especially after release of the Morris proposal.

Vic Bloomfield spoke about them. “They were very intense. I remember we had one at a Vietnamese restaurant on University Avenue. [There were] 30-35 faculty and 4 or 6 legislators. It was clearly a big thing, and the legislators were blown away that so many people showed up. The intensity and the articulateness of what was said -- this was [Regent] Kim’s district -- had a clear impact on her resignation afterwards.”

Bloomfield said he thought legislators were surprised at what the faculty had to say. “They don’t get this kind of constituent turnout. We’ve had coffee parties around legislative decision time, and you get 4-5-6 faculty showing up and very mild conversation. This was a very different thing. The room was packed; they had to bring in a dozen extra chairs because more people showed up than they thought would. Nobody would stop talking and everybody was fired up. Legislators respond to that; I think they were surprised. I gather the district 5 [Regent Keffeler’s district] meeting went similarly. I think that had a big impact.”

Carolyn Williams related that “I had many conversations with an influential member of the House before, and during, and after the Faculty Senate. The conversations continued until we decided to go for the union. At one point, we were talking about the person possibly being a mediator, or getting people together. That became moot when we decided to move toward a union. So we stopped talking.”

Murthy reported that he and Swan “talked to [Representative] Lyn Carlson in his office. Lyn was extremely supportive of the faculty. He even thought for awhile whether he should convene a meeting between some members of the regents and the legislature, mostly the House and Senate education committees. To take the posture that whatever they’re doing now is doing a lot of damage to the University, and perhaps this is not the way to resolve the question. At some stage, he decided that was too much direct interference. That was my only direct contact.”

On October 8, Wells emailed to Jack Nightingale, of the national AAUP staff, that “we could use your help at the Academic Health Center (AHC), but the timetable is quite short.” She told him it was difficult to communicate with clinical faculty, spread out over the Twin Cities, and that a meeting

of the Medical School Executive Faculty would present an opportunity to speak to them about the cease and desist order “while carefully introducing/clarifying the concept of collective bargaining.” Hamilton and Walsh would be present. She asked that Nightingale prepare a handout. Nightingale responded to Wells’s request for material to distribute to the Medical School faculty, and also put her in touch with medical school faculty at the University of Cincinnati, which had collective bargaining.

In the midst of these events, John Adams received an email from a former University faculty member who was contemplating returning to the University. He made a point to which none had given explicit consideration in any of the debates that had occurred. “I have been trying to follow the recent proposals to change the tenure code. Nowhere have I found the Regents or the Faculty discuss some of the financial implications of these revisions. In particular, if these proposals go through what is the COMPENSATING WAGE DIFFERENTIAL, that is, how much of an increase in salary will it take to attract the same people as before. I was thinking about it and for me the number might be about 25%. That is, to compensate for the increased uncertainty that I do not currently face in my job I would need about a 25% higher salary under the new tenure rules relative to the old tenure rules. . . . I am sure that with the extensive inputs from corporate consultants the Regents have had they must have been using some number for the compensating wage differential. Do you know what it is?”

“On the one hand they can save money by laying people off. On the other hand, having to pay a compensating wage differential will cost them money. Do you know of a report that ‘runs the numbers’? I might bet that under reasonable guesses the University might actually lose money.” This point never received attention.

Chapter Eleven

The Reagan-Spence Proposal & Reflections on the Role of the Media, the Faculty, and External Groups

Mary Dempsey emailed to Fred Morrison on October 8 that “I heard this noon at a meeting with some legislators that the Regents are planning to put some new revisions from their Washington, D.C. lawyer on the table on Friday. I thought they might withdraw their Morris revisions and accept ours in order to defuse the crisis -- but that may not happen.”

Dempsey’s information was correct. On October 9, two days before the October Board meetings, a member of the regents’ staff sent a revised 49-page tenure proposal (subsequently labeled “Reagan-Spence” because they were identified as the two chief authors) to the regents for consideration at their meeting two days hence; copies of the letter and proposal were delivered to

FCC Chair Virginia Gray and Law School Dean E. Thomas Sullivan. The draft was (supposedly) written only for the Law School (the only group of faculty now not covered by a cease and desist order). The discussion would be “preliminary to submitting” it to the Senate. The revision removed language allowing individual faculty salaries to be lowered, accepted the Senate language on peer review, removed the “proper attitude of industry and cooperation” phrase, and the programmatic change provision “moves as close as possible to AAUP language.” Chait had reviewed the draft and said the changes “are reasonable and helpful.”

Morrison wrote to FCC on Reagan-Spence and described it as “a welcome change in attitude, but it shows little movement on the basic questions of due process and academic freedom” and said it would “also probably serve as a barrier to change.” He reviewed changes from the Morris proposal and how they did not meet Senate recommendations on programmatic change, base pay, grounds for discipline, and judicial procedures. The document imposed limits on due process and academic freedom and there are “still substantial areas of disagreement.”

Wells wrote to her colleagues on October 10 that if the regents acted as expected [to adopt Reagan-Spence], they would consider proposing Senate resolutions. One would be a “vote of confidence in Nils Hasselmo’s position in supporting the faculty in their opposition to the Regents’ lawyer-drafted tenure code.” The second would be a no-confidence vote in the regents. She suggested the second might end with a recommendation that “the legislature adopt new mechanisms for Regent selection, and adopt mechanisms to make the Regents more accountable, so that a renegade band of Regents cannot have omnipotent power to destroy the University.”

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THE “REAGAN-SPENCE” PROPOSAL

Reagan-Spence was a modification of the Morris proposal that the faculty quickly rejected. It did represent a change of position by the regents, however; why did they draft a revised proposal?

In Gray’s view, “the reason Reagan-Spence was developed was they were trying to show they could moderate and take the very worst thing out. It still was a bad document.”

“If the original document hadn’t had the Chairman Mao provision,⁹⁶ I’m not sure we could have gotten the public ridicule. That made it so ridiculous it was easy for columnists to caricature it. It made it a sitting duck. Without that, the arguments were much more subtle. It would have been much

⁹⁶The language saying faculty could be subject to discipline if they did not maintain “a proper attitude of industry and cooperation.”

more difficult to get public support if they had started with the more moderate version.”

Luella Goldberg lent only modest support to Gray’s view. “Personally, reading that phrase -- that was the hugest red flag I could imagine. But I’ve been involved through the years with faculties. I chaired the Board of Trustees at Wellesley for eight years, and for a few months filled in as acting president, so I knew very much how faculty members view some of these issues. I’m not sure the general public, or even many members of the Foundation Board viewed that phrase as the huge red flag that anybody connected with academia would.”

One faculty member speculated on Regent Spence’s role. “I think Pat is a very political person. With regard to the Spence-Reagan tenure code, the major and possibly only change was the elimination of the Chairman Mao phrase. A number of the other things that systematically dismantled the protections of academic freedom and allowed for unilateral, arbitrary administrative action, without access by faculty to review and redress, were still there. My sense is that Pat saw the Chairman Mao phrase as a political problem, and ‘well, the easiest way is to get rid of it; is that really getting us anything? So let’s propose to get rid of it.’”

Morrison thought that “there was always a plan to do something like Reagan-Spence. I think there was always an intention to water some things down. That was not where they wanted to get. As you know, the Board met for two or three days in September, in non-public meetings. I think Reagan probably wanted, with the Morris draft, to put it out there, do some small tinkering, so that he could say he was being responsive, and adopt it in October.”

“It became clear that small tinkering would not do. It’s very interesting to me that there were five or six major issues. Essentially, if you read Reagan-Spence, the regents caved on numbers one, two, and three, and maintained their firm position on four, five, and six. I think it was a ‘let’s see if we can meet them half-way, just take the first three out and leave the last three in.’ And not much more thought than that was given to it.”

Bloomfield offered a different perspective. “There were all these different things going on. Some people -- I’ll number myself among them -- really wanted a solution to this, and didn’t view the union as a solution. So if there was some backdoor but legal way of sending signals, then there were a certain number of people who thought that was a good idea. I assume that that was what was going on -- some attempt for the Board to try to say ‘OK, we blew it with Morris, we’d like to come up with something more sensible, the cease and desist order keeps us from doing that except for the Law School, so let’s give it a try.’ I think that’s what was going on. They must have realized, by this time, that they needed to do something,

that they were going downhill quickly and tried to salvage something.”

One faculty member said of Reagan-Spence that “I think the regents were looking for a way out. The regents didn’t want the faculty to unionize, and wanted to send as clear a signal as they could.”

* * *

Newspapers quickly covered the new proposal.

“Two ‘U’ regents suggest changes in tenure proposal” (Star-Tribune, October 10). The article reported on the Reagan-Spence modifications and said the most controversial parts of the Morris proposal remained. Reagan and Spence did not know if they would get support from other regents and they had achieved no agreement at closed meetings the previous week. Reagan said the document “is our effort to show how reasonable we are to the faculty of the Law School” but it would demonstrate to the entire faculty what the two wanted. The Morris proposal went further than the regents wanted in authority to cut base pay, but Reagan-Spence appeared to have deleted all authority to cut pay; Spence said they will have to review it.

“U regents form new policy on tenure for law school [;] Plan made in secret; aim is to send signal” (Pioneer Press, October 10). The article reported that the regents wrote a new policy “in a series of nonpublic meetings” that made concessions but still contained layoff authority: the proposal distinguished between program discontinuance (allowing layoffs) and “restructuring.” The regents offered the proposal for the Law School to tell the whole faculty what they will propose when given the opportunity. Berscheid said it is “still a no-tenure code because there is still the right to lay off (faculty) with program closures” and pointed out that programs can be as few as one or two people. The Pioneer Press lawyer said “this board of regents is lawless. These proposals spring fully developed with little discussion on the record on an issue that could rip the place apart.”

“Tenure reform on deck for Law School?” (Minnesota Daily, October 10). The article reported the regents would probably act on tenure for the Law faculty, and explained the situation permitting it. Chait said the revised proposal [Reagan-Spence] was “‘a good faith effort to remain responsive’ and that the regents were attempting to deal with language and provisions which were deemed ‘objectionable. The regents were less concerned with what was judged to be standard practice and more concerned with an effort to develop a document that took into account the faculty’s reservations,’ he added.”

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THE IMPACT OF MEDIA COVERAGE

In the minds of the faculty, Reagan-Spence represented a retreat from the Morris proposal. One factor that many faculty believed was important in the apparent change in the regental proposal, and the subsequent significant change of position by the Board, was the continuing media coverage of events.

One faculty member, asked about the role played by the press coverage, said "I think quite a bit. And I think the faculty helped at that time. Pressure on the Board must have been quite phenomenal. It clearly had to be a contributing factor to Jean Keffeler's decision later that fall to resign. Jean also needs to bear some responsibility; she was the one who stirred the pot, and stirred the pot in a way that had to be calculated to make for controversy and make the whole thing more difficult. For her to say 'I didn't mean to do it' rings a little hollow."

In Gray's opinion, media coverage "was critically important. One thing I always point out to people is that the Twin Cities is very unusual in having two newspapers that are basically in a circulation war. They devoted an incredible amount of resources to this fight. They love conflict, so it got attention that this kind of a battle wouldn't have gotten in any other location in the United States."

"As far as the Star-Tribune was concerned, basically everything they wrote was at their own initiative, it's what they really think. The key person is Lori Sturdevant, she writes all their higher ed editorials. These are entirely her opinions; as a board member, she thinks that faculty are the heart and soul of the institution and faculty power is very important, so this is not a person that needs convincing about the faculty's role. She helped an enormous amount." Gray agreed that the faculty did not receive the same treatment from the Pioneer Press. "No, and we worked on it. They were trying to be conservative."

Fred Morrison generally agreed with Gray. "I think, starting the 5th of September, we no longer had a substantive discussion, we had a public relations problem. A public relations issue. I think we realized that quicker than the regents realized that." And it was to the faculty's advantage, Morrison agreed.

"We were in a situation in which the regents had clear legal authority to adopt the Morris proposal, I think, with consultation. They could get a 'no' vote [from the Faculty Senate] and then do it. It has always been my impression that Tom Reagan wanted there to be a few excessive things in there that they could back off of, so they could get the rest of it and still look like they were being generous. He just misjudged where that line was."

"The public relations issue started that Thursday night" [at the FCC meeting at Morrison's home]. "The reporter called up and asked if he could come. I said I wouldn't keep him out. You will recall I made a specific statement, and I repeated it

twice, and he wrote it down in his notebook, and it appeared on the front page of the paper. It was a statement that was intended to say that 'we've reached the crisis point,' to carry that message clearly to all faculty members. That was intentional. And it worked."

"After that point, our problem was to show that we were reasonable and that the regents weren't, rather than to argue about any language. We were doing things both in the press and other places. We said 'sure, we'll talk to the conciliation commission' that the Governor wanted to set up, and Reagan said 'no, I'm the president of the Board of Regents.' Score one for the faculty. The regents professors came, and the whole thing unfolded."

"Yes, it was a public relations issue. One of the things was getting the right media coverage. Ellen was very good at facilitating that; Fennell was very good at facilitating that, and other people had their connections."

Vic Bloomfield recalled that "in media coverage, you had both sides. The Pioneer Press had favorable reportorial coverage and unfavorable editorial coverage, and vice-versa for the Star-Tribune." In terms of the editorial coverage, Bloomfield attributed the favorable coverage in part to faculty action. "I think Virginia and Craig [Swan] did a lot there, to meet with editorial board writers to try to explain to them what was going on, to get some sympathy for the faculty cause. I think that had some effect. I don't think that the Star-Tribune editorials would have been as favorable if Virginia hadn't talked to [editorial writer] Lori Sturdevant a couple of times."

Feeney also thought the editorials were important. "I think one of the biggest influential things was the two or three editorials scattered throughout. Those, I think, had a big effect. We can criticize newspapers as not being the voice of the people, but there was a couple of very rational, sound editorials about 'why are we tearing apart the jewel of the state over issues that probably aren't going to matter?' That's what those articles said. There was one that said Regent Kim made the wise decision (to step down), and Neel should follow suit. Those are the sorts of things that when a newspaper comes out and says them, you're really swimming against any type of mainstream thinking. It basically said that Regent Kim, with the rhetoric she was talking about, should stick to managing a small business, and there was no rationale to what was going on within the institution, and it was obviously damaging the institution. Those kinds of arguments make sense. The Governor stepping because he wants this solved -- he could not, in my opinion, articulate the arguments. The newspaper article did."

One faculty member commented on what was perceived as "the arrogance of these three or four Board members, not wanting to listen to 3000 faculty, and no perception that we

would have friends in the legislature, would not know how to use the media. We worked very actively in the media and the legislature. I was collecting the media articles; we turned it!"

Williams believed the faculty role was "tremendous. We were submitting op-ed pieces, we were talking with the media." Murthy had a meeting at his home with columnist Doug Grove and several faculty members (including Chipman and Purple). It was after that meeting that Grove wrote the column about the "machismo" regents. Williams recalled also that "we had another big meeting in November with the editorial board of the [Star-Tribune] [including Sara Evans, Williams, Murthy, Rabinowitz, and Walsh]. They called me, and I said 'would you mind if I bring anybody.' Lori Sturdevant said 'by all means, bring anybody you like.' We spent a couple of hours with [some of the editorial staff]."

In Pick's view, "one of the things that I think did happen over time, and this involved, among other things, the communications in newspapers, was a change in the view of tenure as protecting academic freedom, rather than as jobs for life. Many segments of the public became more educated than they had been initially about what the issue was. It has to do with academic freedom, not job security."

Murthy recalled that the AAUP/UFA had discussed this. "There are two things: we got to get to the media and we got to get to the legislature.' That was a tactical decision. In retrospect, I think we made the change." Murthy also commented, about the press connections and quotations from Berscheid and Fennell Evans, that "oh, yes, they were vastly superior to whatever we were doing." Even though Berscheid and Evans ultimately came down against collective bargaining, which Murthy and Williams supported, both Murthy and Williams agreed forcefully with the view that Berscheid and Evans hammered at the Board on behalf of the faculty. Murthy said, about the press coverage in general, that "I think that's what sensitized the public to criticism against the regents. That's when the legislature [reacted] -- even Kelso backtracked a little bit. They knew that real damage [was being done] -- that's when the alumni board acted."

Goldberg agreed with the general view, saying that the newspapers were "very helpful in bringing pressure to bear." Not helpful to the regents, but "very helpful in resolving it in favor of the faculty perspective -- and the Foundation perspective." Although tenure is an arcane public policy issue in some ways, Goldberg thought it fortunate that the newspapers were "that interested in it. I think that reflects some recognition that this University is a plenty important institution in this state, and that something more major than most people realized was going on there in terms of the future quality of the place. I think it was extremely fortunate that they did become so interested. It helped build pressure within

the community, that was brought to bear on the regents to modify their stand. I think they [the regents] thought for awhile 'everybody out there supports abolishing tenure,' which wasn't the case when people realized the cost of it."

Sturdevant recalled the events that led to the Star-Tribune editorials that largely supported the faculty position. "I was vaguely aware, because of some conversations with Jean Keffeler that probably go back to 1994, of her interest in doing something different with regard to tenure."

"I was probably not really aware of how this issue was going to crystallize the way it did until about February of 1996, when Win Wallin and Becky Kelso came to call on me, sort of carrying water for Bill Brody. They were saying the AHC can't re-engineer itself, can't reform itself, unless it has some relief from the strictures of tenure, and wouldn't I like to give this idea some editorial support."

"It felt like a much bigger issue than that to me, so I was hesitant to just plunge into it. I began to talk to people over there, as I would go about my other kinds of contacts, and watch what was happening. I don't think we wrote an editorial about it. I might have written an editorial advising the legislature not to get too prescriptive on this point, toward the end of that legislative session. But it was a narrow editorial, directed just at the legislation that Kelso was working on. The editorial I wrote then simply said that tenure is a matter for academics, not politicians, and the legislature should tread carefully and lightly. But we didn't get into the meat of the issue."

"I am aware, because of my own service on a private college board in Iowa, how tenure issues are often much more complex than people outside of academe see them. So we didn't write a tenure editorial until after the Faculty Senate acted in June. At which point we said the faculty had moved a long way in 1995-96 in its consideration of this issue, and the regents should, in our view, embrace the work of the faculty and resolve to keep talking over a period of time, because this was probably an issue where the institution's needs were going to be changing, and a good, healthy, positive, collegiate relationship was in order on this question, so the University could make moves in the future as both sides saw that they were warranted."

"When I talked to Jean Keffeler about that time, she signaled to me that that was indeed her view, that the Faculty Senate had done a good job, that they had moved a long way, that maybe there were just a couple of little points they might want to come back to them on, but basically they were inclined to accept that."

"So when this Morris thing came out, about two months later, it surprised me. I think it surprised a lot of folks. Because the signal I had from Jean, who was certainly the lead

regent on all this, was that the faculty's position was going to be fine. That they would come up with something so different from the faculty, and the way that they did it, was really a surprise. Rather soon thereafter, we hopped on and said 'no, no, no,' and we stuck with that until that proposal was beaten to the ground. We wrote several times, in several different ways, editorials that said this was the wrong approach."

Sturdevant said she was "aware that people want editorial support for their cause, and they are willing to go to some lengths to get it, including break into their busy days and hop into cars and hassle with parking at the Star-Tribune and come talk to me for an hour. I appreciate that! I felt that both sides wanted to have some editorial support from this newspaper. Jean Keffeler was always fairly good at seeking us out. But other regents -- particularly Regent Reagan, who I knew from his Oberstar life -- should have felt quite free to call me and just chat, and never did."

Sturdevant summarized her own views. "I hope that we helped the faculty beat back what was a devastatingly bad proposal for the future of the University." Although the reporting side of the newspaper would not say it took sides, the editorial staff had no such reservations, "so I can say yes, we wanted to help the faculty prevail."

"I mean we, the Star-Tribune editorial board, this institution; to the extent the editorial board is the voice of the Star-Tribune, this institution wanted the faculty to win, in that we wanted the Morris proposal to be withdrawn, and we wanted any tenure change to be produced through a much more collaborative and collegial process. We're not opposed to all tenure change, not at all, but to step way outside the mainstream on this employment practices issue for an institution that has the lofty aspirations that this one does is futile and fatal, both. To the extent that the faculty wanted the Morris proposal off the table, and something they could live with, we wanted that, too. In that sense, we were with the faculty."

Berscheid and Fennell Evans spoke about communication and the press as well. "One of the things that was important was that the Gang of 19, every time we would pick up something, we would email each other the information, so there was now this tremendous information net out through the whole University. Which meant that we knew, many times, things that were coming down the pike before it ever hit the administration, before it ever percolated through to the public or to most of the regents. We had tremendous amounts of information that probably very few other people had."

Berscheid said that "Fennell and I had different sources -- some were overlapping, but not many. What that meant was that we had to be on the phone with each other constantly exchanging information and calibrating and analyzing it to fill in

the blanks. We were communication hubs -- people would call to get information, but then they had to give what they had in return, and then we had to distribute it to the people who could use it."

Evans continued. "We had this information. So we had the press people calling all the time." Berscheid agreed that one reason the media kept coming back "was because we always had a lot of information, not only about events that had happened but things that were going to happen." Evans said "sometimes we would call them and give them a 'heads up' about things that were coming down the line two or three or four days ahead of time."

As several had noted, she and Evans had been quoted often in the press. "And didn't really want be, either," Berscheid said. "It was uncomfortable. It always is -- you talk an hour and you never know what one sentence they'll pull out to quote or what spin they'll put on it." But, she said, "I tried to return every phone call as fast as I could with as much straight information they wanted -- even people I knew were against us and would put out an unfavorable story or editorial. I'd often ask to be put on background and not quoted unless they were desperate and couldn't get one by deadline from someone else." Berscheid continued, "we needed the press, and I knew from my husband [a newspaperman] and his friends, and also from my own years of experience with the national press on my research, that if we didn't respond fast and accurately even if it was inconvenient or dangerous for us at the time, we'd lose the chance to be heard when needed to be heard."

Berscheid and Evans agreed that "we owe those reporters a lot. The people of Minnesota owe them a lot. Most of them were fair and accurate and they kept the faith with us." Berscheid added that "some days they kept me going when I felt like giving up and just taking the next offer out of here. They knew we were a rag-tag group and out of our element -- guerillas trying to beat off a well-fed army that held all the cards, power, and money. We didn't have a press office or public relations flacks like the administration and regents did. Also, we didn't have flunkies to answer phone calls and arrange interviews, type press releases, and the rest of it. Without those reporters, columnists, and editors -- especially the Star-Tribune editorial board, which had the guts and integrity to change its position mid-stream -- the University would be in a very different position than what it is today. They're really the ones who saved the University for the state -- with some help from the faculty, of course."

Another important point, which Evans and Berscheid didn't mention, was that they both had ways of saying things to the press that were news bites or colorful phrases that the reporters could print.

Marshak spoke to the national context of what was going

on; he affirmed that it affected events. "Oh yes. [At] every national meeting I went to. I went to the AAU provosts' meeting in September [1996], and everybody was saying 'what's going on?' It was worse than that. They didn't say 'what's going on,' there was also an undercurrent of 'you guys are a bunch of idiots and you've let this thing blow up and we're all going to suffer for it, because our board is now aware maybe they ought to do something, and we have some people on our board.' There was this undercurrent of 'you guys' -- 'you guys' being the Minnesota administration -- had screwed this up by letting the Board get away from us. And that they all -- major university administrations -- were going to pay a price for this. They weren't real pleased about it, both in pressure from their faculty and from their boards."

Marshak wrote that the "use of technology to galvanize both local and national interest is perhaps the most important lesson that came out of this whole affair. At every national meeting I attended, I certainly was approached multiple times about tenure. The Regents must have had a similar experience at AGB and other meetings. It had an effect on me. I can only suppose it had an effect on them."

Shively agreed that the press coverage was important, but pointed to other factors as well. "I think a couple of things were very important after Morris. One was that a number of old friends of the University remembered once again why they were friends of the University. Former members of the Board, and so on, came out very publicly in favor of the faculty position."

"Another really important thing was that the business community sort of got neutralized on the issue. They had been pro-changes. They continue to find it odd -- they don't see why you should have tenure. And it's a hard one to sell to them."

Shively recalled a meeting of a business group that he had attended, at which he had discussed tenure. "I remember I presented to them a whole set of arguments which I thought were terrific arguments. For instance, I said that different organizations, depending on their product, have to be organized in different ways. That an organization which has a physical product, where it has to come out very standardized, has to pay a lot of attention to accountability, to checkpoints, to quality control, so that when this thing comes out at the other end, it comes out within a micrometer's tolerance. For that you need a very tight organization. Within government structures, the armed forces are that sort of thing."

"Other kinds of organizations have a product which is much more individual. A law firm, an advertising agency. Those organizations have to give each individual producer within the organization much more latitude; they need a much looser organization with security for those individuals to make even unusual decisions with safety. So you can array businesses from a manufacturing organization to this sort of research

organization. The University is that kind of organization.”

“Then I looked around the room, and there were all these stony faces, and I realized that every single one of those guys represented a manufacturing organization. I had all sorts of arguments. That if you didn’t offer faculty tenure, you’d have to pay them more money, so the University would become more expensive if you didn’t have tenure.”

“The president of the association said to me at the end, ‘if I went to my Board of Directors and I told them any one of these reasons you’d given, they’d say “what kind of crap is that?”’ He said ‘this is just crap! The only thing you’ve said that makes any sense is that the University of Minnesota can’t be the first university to do this, because you’ll lose faculty to other places that haven’t done it.’ I said, ‘if that’s the argument you accept, so be it.’”

“After that meeting, a member of the [group] took me aside. He said ‘Phil, I’ll tell you something. If the membership of the [group]’ -- and this is a group of people who are very friendly to the University, in general -- ‘if they had to vote right now on whether the University should accept the regents’ position on tenure or the President’s position, right now, 95% of them would say “go with the President’s recommendation.” If they had to vote on whether, five years from now, they’d like to see the University organized the way the regents are talking about, 95% of them would say they’d like to see the regents’ organization plan.’ But he said ‘they don’t think it’s good for the University to get in this kind of conflict with the faculty, with the President.’ So he said ‘so I’ll support you. But it’s only because of that.’”

Shively maintained that “that was just key! This is partly where Jean having lost her position in the business community over General College was very important. Because I think the key thing was the business community. They might have come to this conclusion anyway, even if Jean was in real good favor with them, but many of them were down on her after General College. Nils really had the business community’s support on that. The business community really thought we were doing the right thing on GC. That’s also partly why the GC thing ended up being an affirmation of the research role of the University, oddly enough. Because it mobilized all that, even though the decision went the other way.”

Shively reiterated that “the business community was just critical in the tenure debate! Just critical! And the faculty’s action in signing those cards is what moved the business community. They could see so clearly that the faculty were desperate. Up until then, I don’t think they believed it. I was working with a lot of those guys. I also think the media publicity, and the editorials in the [Star-Tribune] were very important. The way the business community came down, in the end, was critical.”

It was critical, Shively said, “because they influenced the Board of Regents.” And they did influence them, he maintained. “Absolutely. I think the Board responds very strongly to the business community, and they made it very clear they thought this was going in the wrong direction. Getting this kind of conflict, getting a faculty union. Also, they accepted and understood the argument the President was making, which was absolutely true, that if we adopted these kinds of changes and no other university did, we were going to lose a lot of faculty. They could see that. They couldn’t see the arguments the President was making, or that I made on his behalf, but they saw that. They had great influence on the outcome.”

Much of the analysis after the fact suggested that the Board lost the war. One keen spectator agreed with Shively’s view about one of the major reasons. “They did lose the war. Sullivan II was basically nothing more than the Faculty Senate proposal with a few paragraphs rearranged. The Board collapsed because of the threat of unionization. Because the regents, whether or not they understood the tenure issue, understood perfectly well that if Minnesota were the only major university in the United States to unionize, the best faculty would all leave and we would have no university. They were also at this point being lobbied heavily.”

“Although I cannot tell you, even at the height of this, how many business leaders were still saying tenure should be changed. I had lunch with a very prominent business leader at about this time. He said ‘what is the matter with those faculty? In my company, I can fire all the people I want; sometimes we have to preserve the jobs of the others. Why is the University so special?’ For ten minutes I explained it, and at the end of it, he said ‘I’m ashamed at myself for raising the question.’ Why didn’t anybody explain that to the regents? The business community thinks that the faculty are the employees of the University. They are not the employees of the University, they are the University. If you want to put it in business terms, they are the product of the University: that is what the University is selling. If General Motors downsized, it wouldn’t downsize the quality of its cars, because what could it sell? If the University wants to lay off civil service people, and non-teaching people, that’s another thing. That’s fine. You could blow up Morrill Hall and people wouldn’t know about it for two weeks.”

“Then, when the faculty was about ready to unionize, the business community understood that even better than the regents. All of a sudden, the business community unanimously started yelling and screaming to the Governor and to regents and to everybody else. I don’t know how they reached Board members, but suddenly the business community hysterically started saying ‘get off the tenure

thing!' Because they understood what it would mean to have the only unionized university. How would you like to be the only cereal maker who was unionized in America? You wouldn't be able to compete. It's one thing when everyone's unionized. That made the difference in the business community. And now the conventional wisdom is that the regents were crazy to do this on tenure."

* * *

THE ROLE OF THE FACULTY

The faculty believed that they themselves played a significant role in turning the tide of opinion against the regents.

That certainly was Gray's view. "I believe our PR effort was also critically important. We had professional PR help. I basically became a full-time political operative that fall; that's all I did, 24 hours a day, seven days a week. Every time there was an issue or an editorial, we had an op-ed response. I wrote them myself, I assigned people to write them. We had people, including myself, on radio and TV all the time. I literally got [to the point] where strangers would recognize me. I was extremely visible."

"FCC had a number of press conferences, that we started in the summer. Upon learning that there were press conferences after regents' meetings, we just had our own. [The University Relations people] practically died the first time we did this, but we just kept doing it. The media would come, and they would report what we said."

"After Morris, we had a meeting in Fred's living room, a reporter was invited, we said 'OK, what do we want the headline to say the next day,' and that's what the headline said. After the Reagan-Spence proposal, where they took out the worst things, we had a press conference and denounced it. This was the day before the regents' meeting. We said 'what do we want the headline to say?' and that's what the headline said."

"I think you can't overestimate the impact of that. I didn't know I knew how to do this; I learned how to do this! I have to credit Vic [Bloomfield] with finding the PR agency and having the idea of using them. But most of the media contact was with me."

"When I was giving a talk to the Big Ten lobbyists about this, they were just marveling that the faculty did this. They said 'how did you organize this?' I said it wasn't so much that I organized it as I was the central figure. I would come to work, and people would call or write and say 'I have a chance to be on Almanac' or 'I know somebody at the paper' or 'I can get so and so who is an alum to write a letter' or 'what would you like me to do?' People were seizing the moment and volunteering to do

things. It wasn't like I had to personally go around and order 3,000 faculty. They just instinctively wrote their graduates, and their graduates wrote the regents, or they wrote their colleagues in their national professional associations, and they passed resolutions denouncing the regents. I tried to keep a file of the things people copied me on, but the regents had many, many more letters than that, that I never saw. Most of this I wouldn't say I orchestrated; people thought it was a crisis and they were trying to help. Sometimes I gave them a little direction."

"What I said to the lobbyists was that in the end, I think the entire State of Minnesota placed the Board of Regents into receivership. I don't think it was any one thing; it wasn't just the faculty. It was the trustees of the Foundation, it was all the former presidents of the Alumni Association, it was every graduate who cared to write, it was everybody who you'd run into at a party who'd say 'what's going on, what do they think they're doing?'; it was legislators; in the end it was the Governor. It was everybody. I think that's the best expression for what happened; the regents were put into receivership. They were restructured. The legislature elected four new members and gave one a scare; there's a new chair. After a certain point, the regents couldn't do anything to us. The state would have taken out a contract on them or something. After awhile, we didn't have to worry."

Fennell Evans recalled that he and Berscheid were in contact with the press, often on a daily basis. "We would fill them in on all kinds of background stuff. Set them up so they were knowledgeable, so they would ask questions. We used absolutely everybody that we could."

In response to the question of whether the faculty were responsible for the turnabout in public support, Fogelman declared that "absolutely they were. One of the things that astonished me was what a vacuum we [the faculty] were working in from the standpoint of University external relations. We met with legislators, we met with the boards of newspapers -- this was an enormous effort on our part. I've not seen anything like it, how many faculty were willingly involved. We were working in virtually a vacuum, in terms of public understanding of what the issues were and support for the faculty. There was nothing out there, as far as I can tell."

"This didn't just happen, it was a real campaign. People were in touch with each other; 'who's going to do what?' It was not just that the tide turned; it was a terrific effort to turn the tide. When I say vacuum, it was an effort that was starting from ground zero. And without help from the University, as far as I was concerned. That is one of the things that struck me, the ineffectiveness of [the University's] external relations in developing a public opinion that was generally supportive and understanding. It just wasn't there."

"And the legislators. I remember very vividly a meeting

with a group of them, and we said ‘this is what’s happening.’ They said ‘if we knew this is what was going on, we would have had entirely different reactions.’”

Morrison offered another perspective on faculty activity. “There are several things that the faculty did. The first is that this faculty is spread all over the Twin Cities. By and large -- and here I’m an exception -- most faculty are DFLers.⁹⁷ And many of the faculty are semi-active DFLers. They are the precinct committee members, or the ward treasurer, or whatever. They are generally liberal, which is what the DFL is, and they contribute small and moderate amounts of money to obscure campaigns -- state legislator, council member, whatever. They are the people that the DFL legislators prize. And by and large the faculty don’t come and ask for stuff.”

“[This time] they were all there. And they said ‘our time of need has come; here are our green stamps; now you deliver for us.’ That was one of the big things.

“The second thing that happened, and this was mostly out of IT [the Institute of Technology], [was that] there are all sorts of people over in IT who are consultants for Medtronic, and people in the business school do stuff with Norwest, and so on. They went down to the folks at Norwest and Medtronic and 3M. Everybody got asked what’s going on over at the University; they started saying ‘I’m putting my resume out because it looks really bad over there.’ All of a sudden the business community said ‘whoa, we’ve got this pool of really top-rate consultants, and they’re all going to leave? Something’s wrong over there.’”

“So we got the political community, and the business community, and we were able to lock on to the Star-Tribune side of the editorial community and the reportorial side of the Pioneer Press. All of a sudden, the ‘public opinion’ in the Twin Cities shifted.”

Morrison also recalled that “I spent a lot of time with Wayne Simoneau [a member of the Governor’s cabinet]. I never did talk to the Governor, but I think we had some influence, through Wayne, on the Governor. Tom Reagan was pulling his typical ‘I’m in charge and I’m going to do this.’ So we started having the tide turn.”

Bloomfield concluded that “eventually people started thinking about the University, maybe for the wrong reasons, but they started realizing what it meant to the state, and that it would be much worse to lose it than to insist on some management prerogatives. I guess that some opinion leaders and some legislators and maybe the Governor turned -- I’m sure that the Governor’s kitchen cabinet had something to do with that. But this is all speculation.”

⁹⁷As noted previously, in Minnesota the Democratic party is the DFL.

He added that “it would be interesting to know the dynamics in the legislature. It was quite clear that Becky Kelso and Steve Kelley were leading the charge. There were other people who were more senior who weren’t saying a lot but who must have had a lot of influence. You wonder. I can imagine that her [Representative Kelso’s] style is one that other legislators might not like. They might not want to publicly dispute with her, but in private she might not have had as much influence as she was having publicly. Again, that’s speculation. One of the things you come to realize in these things is that just because people are visible doesn’t mean they’re influential, that they reflect a deep, broad feeling on the part of other people.”

One knowledgeable witness to these events echoed Bloomfield’s view about the legislature. “At the beginning, people like Becky Kelso stimulated the regents. Keffeler and some of the legislators, wanting to play this managerial role, were all in favor of the tenure changes. As soon as the unionization vote started, the legislators, who are very, very good at protecting their rear ends, immediately became anti-regents on this, and I think that’s probably why Keffeler quit.”

“The legislators were guilty of the same problem that the regents were, namely, that one or two were purporting to speak for the whole. The Governor can speak for the entire executive branch, but Becky Kelso couldn’t speak for the legislature. I very much doubt that [Senate Majority Leader] Roger Moe or [House Speaker] Phil Carruthers were of this view. Generally speaking, the legislature is pretty good. They don’t want to stick their neck out, but they tend to understand the University pretty well. Better than most other constituents. Better than the business community, better, in some regards, than the faculty.”

Feeney also thought the faculty influence was significant. “I would say one of the big things was that the University faculty interactions with the newspapers had the newspapers convinced this process had gone awry for a lot of the wrong reasons. There were other letters of support; I got copies of letters sent by groups of legislators to selected regents. There was one sent to Becky Kelso, and one sent to another regent, and one sent to the Board of Regents. That’s where the political influence came. I can claim no credit for that. I don’t have the political savvy or contacts to do that. But I think there were people who did, and I don’t think those people who came out of the woodwork would have done so without the efforts of people like Craig Swan and Ellen [Berscheid] and Ed Fogelman and Virginia Gray. It was the influence of people like that that made a big difference. It was an education process; you had to bring these people up to speed, and get beyond the political rhetoric of ‘the University’s going to die because tenure is going to kill it.’“

Feeney agreed that the faculty felt they were completely

alone, fighting this battle, before the April Senate meeting, but after the Morris process, the tide turned against the Board in favor of the faculty, and a lot of that was because the faculty started to work actively. "That's right. There are people out there with contacts and influence, that until the wolf was at the door, probably didn't realize that if they did something, they might have some influence. [There were] calling committees that were arranged by Virginia, and Frank [Cerra] sent out emails to get hold of people, get letters written."

"The underlying political muscle of the University began to come out. The University is a political entity, in the sense that there's a lot of politics within the University. But it is not a political action group. When you take any entity, individual or group, and threaten it, it will find a way to respond. They found out it was a mad pit bull in the corner, and the pit bull had a lot of other people who would side with it, including the newspapers."

Murthy agreed. "I distinctly remember talking: 'we can't sit here and stew, we've got to take our case to the public.' We laid down who would speak to legislators, who would speak to the press, who would speak to which press, what do we do with public radio, what do we do with TV, the cell phone numbers of reporters. We faxed material. We may be dummies, but we're not that much dummies!"

Sturdevant agreed that the faculty were much more active in working with the press than were the regents. But she said that "the administration was very good. I had frequent conversations with Nils Hasselmo, most of them off-the-record, where he would privately let me know what was going on. And good conversations with some of the people on his administrative team. I remember way back in the spring, he called me at home one evening, and we had a good, long talk about this issue. So he was always available, and always helpful. And he sought me out a few times; it wasn't that he was just responding to my inquiries. So I felt like he and I had a good relationship on this."

Purple provided an elaborate analysis of the faculty role. "Everybody was talking about tenure; I said the real problem is finances. If this University were financially secure, nobody would be talking about tenure. This is a lifeboat survival issue. Right now faculty are guaranteed to be part of the lifeboat; what the regents are saying is they want the ability to throw faculty out of the lifeboat. It's survival finance is what it is; everybody's fighting for their own. That's one reason why morale is low -- we're so under-funded. You can talk about mismanagement, it's there, but for God's sakes, arguing about internal mismanagement at this point, when the University has lost its percentage of funding to this level, is like fighting for deck chairs in first class on a ship that's sinking. And don't punish the University because Nils Hasselmo or somebody else

has made some bad decisions. Get rid of those people if they've made the bad decisions, but don't financially punish the University. That's what they're doing."

"We used those arguments. We had meetings with legislators. All the St. Paul legislators met with a group of 30 of us, half of whom were the Gang of 19. I knew Lou Gelfand down at the [Star-Tribune]. Gelfand runs a Tuesday afternoon session, meet the editors, where they bring in citizens. I got Chuck Campbell and Carol Wells and myself and Bob Miller [Physiology Head] and Roberta Humphreys and Judy Garrard and I don't know how many others [to go] through those sessions with him, so they got to meet the editors and talk with them. That makes a big difference."

"Jim Dawson is one of the better science reporters. Jim is a young rebel; Miller spent two hours with him on this [financial] data and perceptions of the University. Bob Miller is an incredibly forceful spokesperson. We got him to spend two hours with Jim Dawson, and all of a sudden, the editorial staff, the reporters down there, were siding with us. After all, those reporters are unionized. But it wasn't a pro-union argument; it was anti-regents."

"I sent an email to Phyllis Kahn, saying my view of what was happening, and it is a train wreck, and 'legislature, either you step into this or you're going to have a train wreck.' You know what Phyllis did; she went public with 'let's fire them all.' Phyllis organized a set of legislative meetings. All of the suburban legislators who had faculty in their districts met with faculty, and there is no question but what the faculty told them. I know Virginia and Vic were doing the same kind of thing, but they weren't the only ones. We had large groups of faculty meeting with these people. All of a sudden, these people saw us as people, and constituents, and sympathetic, fairly bright people."

"Jim Dawson walked away one time and said 'University professors can make hellishly good arguments, they can be really persuasive!' That's what Sandy Pappas said at the end of this meeting we had in a St. Paul restaurant with the St. Paul legislators. They promised us right then and there, Regent Kim is not going to get re-elected. They went after her with hook and tongs. And that was one of the things we tried to do, as legislative strategy: go after those regents we can go after."

Purple added, with respect to Keffeler, that "it's too bad; she understood that Hasselmo had to go before the rest of them did, but her role in this tenure thing is such that she was the prima donna spokesperson. Pat Spence and Tom Reagan, during this period, ran for cover; they basically disappeared. Reagan had one article in the [Star-Tribune]. Fennell Evans, Bob Miller, Finnegan, Gillmor, article after article, letters to the editor, solicited and unsolicited. For the first time in years, the faculty spoke."

“I think it had an effect, because people like Phyllis Kahn weren’t just telling these regents they had to resign. They were promising . . . they’re going to change the way the regents are selected. Regent Kim was told she was not going to get re-elected.”

“It was a campaign. We were out to change things around, and we did. Everybody was doing everything they could. That’s the way this University community was doing it. We may not be united on anything else, but Virginia was doing her part, Vic was doing his part, we were doing our part, the union was doing its part -- there was an enormous blitz. All of a sudden you started hearing legislators saying ‘tenure isn’t the issue, the University is really under-financed.’ It finally began to become clear. [Purple’s article] was passed out to all the legislators, and it wasn’t by me. I gave Lyn Carlson and Phyllis Kahn copies, and the legislative financial analyst for the higher education committee looked at the figures and said ‘yes, they’re true, there’s nothing wrong with these figures, it’s kind of what people are saying but hadn’t seen them in this form before.’ And all of a sudden legislators said it was a question of under-funding. While other people were campaigning against the regents, there were a lot of us who were campaigning on the financing.”

“While Nils, I’m sure, will take all the credit for what happened in the legislature last time, I think the tenure campaign and this campaign had an enormous impact on that. Maybe that’s just my ego speaking. But I know that the Bob Millers and Fennell Evanses and the rest of the people have been hammering on that. We also hit them on [the fact] that 12% of the total University budget is faculty salaries; depending on how you evaluate it, 9-11% is administrative salaries. 51% of the University budget is going to non-academic departments.”

Bland suggested the several roles the faculty played, similar to her colleagues. “Certainly the union effort made it clear to the regents that they were not going to have ‘at will’ employees if they did away with the tenure code. That was important; that was a useful effort. I think how shocked the faculty were, and it showed up in the papers in their language, probably made a difference. I honestly don’t think a lot of the regents knew what was going to come out in that draft, and I don’t think they understood the reactions the faculty were going to have. When I think about when I’m on a board of directors, if you have the whole faculty totally upset with you, it’s a sobering event. It makes you wonder if you are really doing the right thing. It seems like faculty got more active in talking with the press. I remember the meeting at Fred Morrison’s house; people systematically decided what they were going to do in talking to the press, what they were going to do in talking to the legislature.”

Marshak agreed that the faculty played a significant role,

but pointed to another strategy. “One of the contributions I thought I made to this whole thing, and I guess I was surprised before by the way it went down. One day I went on the noontime show on MPR with Becky Kelso. I actually thought about that, and talked with some people, and I went on that show with a strategy; the strategy was that no matter what Becky Kelso said, I wasn’t going to answer her. What I was going to do was talk about what a good university the University of Minnesota was. From that show, I think we learned that that was a viable strategy. There was a communications strategy, that involved not engaging Becky, but essentially ignoring her. Even if you were on the same show with her. Not attacking her; letting her say whatever she wanted, and just going on. And coming back, over and over again, that the University of Minnesota is a great university, talking about the quality/access issue, that upper Midwest populism was a strength of the state, that the University and the state were connected, and saying this until you were blue in the face. Which is what I did last year for the whole year, over and over and over again. I think that actually started having some effect. And we also played it in the media.”

“I’m not saying that the faculty push on tenure didn’t have an effect, because it certainly did, especially with some legislators in districts where there are large numbers of faculty.”

“But one of the things that was accomplished last year was that there was a reasonably turn-around in the public perception of the University. At least in the political perception. And I think it helped get us out of the tenure mess. It came from selling our own philosophy and position, rather than debating with Becky about whether the state could or could not afford the University, and talking from the dividends in past investment in education, and about the existence of an intergenerational compact, and whether we were going to betray the trust that our parents and grandparents had invested in us, and now we were going to be the generation that didn’t invest in our children and grandchildren. I think that had some effect. I know it’s self-serving for me to say too much of that, and I’m not really in a position to judge, but nonetheless for a large number of reasons -- and I’m not going to say the basketball team wasn’t part of it, because it was part of it, too -- but for a large number of reasons, we were able to turn around the whole perception of the University. From being sort of a beleaguered beached whale to something that was pretty good and going somewhere and worth investing in. Then you didn’t need to take potshots at it.”

Sturdevant commented that “it surprised me how the regents seemed to be circling their wagons and not seeking out press attention very much. I knew that the regents were not happy with what we were saying, editorially, but they weren’t working hard to counter it, particularly, either.”

Sturdevant maintained that “I felt as though, and still do feel, that I have otherwise fair and open working relationships with any number of those regents. But on this issue, they seemed to fall silent, and didn’t seek me out. And when I would seek them out, it would sometimes be hard to catch them. There seemed to be an unwillingness on their part to talk. Although I did meet with Jean Keffeler, more than once.”

“I think there were some interesting dynamics going on on that Board, apart from this issue. There was the lead regent, and there was everybody else, it seemed. Although Tom [Reagan] is not a weak person.” Sturdevant said that she and Reagan once again had a good relationship, “but he didn’t want to talk much about tenure, and I knew only through the grapevine that he was plenty unhappy with the way we were writing. It was strange. I think most people in Minnesota public life know that the antidote to bad press is more communication, not less. Tom has certainly been around enough to know that.”

Sturdevant also said that “the faculty was very effective, I thought, in working its personal networks around town. They weren’t just doing their thing with the press. They were good at that, I thought, but they were very effective in that invisible, personal networking stuff that works on the opinion leaders in town. The faculty should come away from this exercise feeling some sense of power within the community. They have some significant civic role, and they just demonstrated how significant it can be, with this issue. They rallied their troops, their friends, in the community to their side.”

“I think that happened. To the extent that the likes of Ken Dayton and Luella Goldberg saw the regents as wrong in this, it’s not because of anything I wrote. It’s because of the contacts with individual faculty members whom they trusted.”

Gerald Fischer, like Swan and Berscheid, attributed to the newspapers responsibility of part of the problems the University faced. He commented that “I think it’s fair to say that the public at large, not just CEO’s, had the perception that tenure protected many non-productive faculty, and there should be reform of tenure, to be sure that faculty are accountable. There needed to be effective mechanisms for dealing with faculty who are not accountable and productive. But I think most people who were engaged here, donors who have made gifts to endowed chairs and scholarships and who are involved here at the University, know faculty, they respect faculty, they know that the number of bad apples is a rare exception.”

“Parts of the community made sweeping generalizations based on the newspaper stories investigating academic misconduct. Some people reacted very strongly to non-ethical behavior, such as a professor who held two full-time tenured positions at two universities. That was perceived as such a core violation of integrity and the value system. The entire

panoply of negativism on the front pages of the press toward the University contributed to an aggregate sense of cynicism and distrust, which was evidence to that element of the community that felt tenure was the root of real problems.” Provost Brody contributed to that perception, Fischer noted. “It confirmed a kind of suspicion about tenure in the mind of the community. So the University faculty were on the defensive throughout the entire process.”

Fischer pointed to other factors that eventually led to a turnabout in views. “I think the change in attitude was partly based on a sense of what good governance is among the influence leaders in the community, most of whom are on multiple boards. That created a certain credibility issue for the regents -- they had put the University at risk. They had fractured the relationship that they had with the President. ‘Were the regents out of touch with what the long-term implications of pushing this so hard could be?’”

He also gave some credit to the faculty. “I think there was some awareness, through Nils’ public statements, that the faculty had made a genuine, substantive effort at proposing meaningful change to tenure, so that there would be longer probationary periods and there would be on-going performance reviews, and there could be reductions in salary and other actions taken to address poor performance on the part of a faculty member. There was a genuine effort to remove what I would say were the more liberal aspects of the Minnesota code, meaningful streamlining. It didn’t go as far as what some Regents wanted, but it was a major step.”

* * *

Associate Vice President Farber wrote immediately to Hasselmo with an analysis of Reagan-Spence. He noted that it moved toward the Senate proposal but problems remained. He concluded that the programmatic change provision departed from AAUP principles in several ways; that there could be one-time reductions in pay; that the bases for discharge were broadened; that the Judicial Committee would “lose control over its own proceedings” and its decisions would require less deference; and that administrators “will gain power to punish faculty members severely without any prior right to a review of the decision.”

The three provostal FCC chairs wrote to the regents on October 10 (with email copies to all faculty) urging that the Board avoid precipitous action the next day in considering Reagan-Spence “when trust is very low, and rumors flourish,” because they might worsen the situation and “create more distance between the faculty and the regents.”

The press caught on to the letters from the external leaders; the articles appeared the morning of the day the regents were considering Reagan-Spence.

“Proposal of tenure revision rejected” (Minnesota Daily, October 11). FCC announced at a press conference that it did not support Reagan-Spence, but said it was “progress,” and Gray welcomed the reconsideration of the Morris proposal. Fogelman said “adopting the faculty proposal would be a signal of hope. . . . This would demonstrate that the regents are trustworthy.” Gray was not certain what the regents wanted the faculty to do with the new proposal.

“Alums urge tenure cease-fire” (Minnesota Daily, October 11). Former Alumni Association president Friswold is “sick at heart” about the tenure debate, and said it is “tearing the University apart.”

“Carlson names members of tenure mediation panel” (Minnesota Daily, October 11). Governor Carlson named two individuals to serve on a panel “to try to ease strained relations between the Board of Regents and University faculty members.” The first meetings may not be public.

“U’ groups press regents to end tenure dispute [;] They say faculty fight puts ‘future excellence’ at stake” (Star-Tribune, October 11). The article reported on and published the letters from past presidents of Alumni Association and the chair and vice chair of Foundation urging a solution to the tenure crisis. This was the “first major third-party pressure to hit the regents after a month of opposition, mainly from faculty, and no major outside support” for the regents. The regents will have a discussion on Reagan-Spence, which faculty leaders rejected the previous day at a news conference. The Foundation and alumni are “formidable forces” and “neither letter offered recognition or praise” for the regents’ objectives. The article noted that what the two groups urged could only be done for the Law School. Fogelman said “thank God for the Law School” at the press conference, said regents should pass the faculty proposal to regain faculty trust, or the faculty might opt for collective bargaining. Gray said Reagan-Spence was a positive step but unacceptable since it included layoffs and pay cuts without due process. Even though labor law prohibits influencing union elections, the Law School exception appears to be permitting the regents to do so.

“U foundation urges regents to back faculty” (Pioneer Press, October 11). The article also reported on the two letters, and that from Friswold, and said they “urged the [regents] to stop playing hardball and accept the faculty’s position on tenure reform.” The letters were the “latest battle in the ongoing war of words.” Spence said the regents could not adopt the faculty proposal because the BMS order prohibits it, but can revise the policy for Law School; she reiterated the view that the faculty proposal was insufficient. At their press conference, the faculty said they would “rather unionize than accept a layoff policy that allows the regents to fire unpopular or controversial professors” by closing programs. Sara Evans said the faculty need the legal status of a union, and that “it could work”; Dempsey said a union would cause problems with research, but the faculty would

protect themselves if forced to.

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THE EXTERNAL COMMUNITIES AND THE REGENTS

In addition to the letter, Luella Goldberg recalled that she had spoken with the regents “a lot. Jerry Fischer [President of the Foundation] and I had a meeting with Tom Reagan and Steve Bosacker, [probably] before the October regents’ meeting. We talked to Tom about the importance of a positive compromise on the regents’ proposals regarding tenure, some sort of -- we didn’t phrase it as compromising, but that’s what we were trying to get across -- the importance of being more flexible on that final point that meant there wasn’t going to be any tenure in their set of proposals. That there wasn’t the kind of job security required to have a tenure code.”

She also recalled that “on behalf of the Foundation, several trustees, myself included, spent hours talking on the telephone with many members of the Board of Regents. We tried to convey to them the damage that so many of us felt was going to take place at this great university by their insistence on moving forward with these proposals that simply were not going to be accepted by the faculty.”

Fischer agreed. “There were many efforts by individual Board members to communicate with regents. This was not highly orchestrated. I remember one Executive Committee meeting when the members were volunteering to call regents they knew personally. They did call, to express their view, their concern, and the importance of resolving the issue constructively, in a way that wouldn’t hurt the University.”

Asked how the regents reacted to the expressions of opinion by the donor community, Fischer said that “some regents saw it as non-supportive and threatening. It was not intended to be that way; it was intended to be constructive. Part of the feedback was that there were a couple of regents who were pushing very hard, but there were other regents who either disagreed with the thrust directly or who, perhaps, did not fully grasp the long-term implications of both the process and the specific changes being sought beyond the ‘Sullivan’ proposal. On the surface, [the Morris proposal] seemed reasonable compared with employment agreements one would have in the business world, but the provisions being pursued did not recognize what academic freedom means in the best sense, of pursuing controversial research and solutions to controversial problems.”

Gray said the actions by the alumni and donors were “very important. And these were, by and large, things people instigated themselves. They would call and say ‘we’re going to do this’ or they’d send me a copy of something. I didn’t have to

do anything.”

Asked about the apparent change of mind on the part of legislators, Gray said “the strong legislative support [for changes in tenure] was Kelso and Kelley. I don’t think the whole legislature wanted changes. I don’t think they paid much attention. It was really two people who pushed it, who were instigated by Brody to push. I don’t even think they personally cared, but Brody put them up to it. Therefore, their sentiment turned itself off fairly fast, after Brody left the scene.”

“I did talk to legislators. I called some. I called [Senate Majority Leader] Roger Moe at home in September. Others called me. [Representative and University faculty member Thomas] Huntley organized his delegation to write a letter; he informed me, but that was all Huntley. Cohen led the ‘dump Kim’ movement. Most of this was their doings. We would meet with them, but legislators didn’t really need to be convinced. They would make sure they were doing what we wanted done and going about it the right way and that sort of thing, but they were ready to move.”

Gray also recalled the meetings with legislators from Regent Kim’s congressional district. “We [the faculty] laid it on the line, what damage was being done by the Morris code, and what legislators could do to stop it. We were just telling them what needed to be done. Namely, a certain regent was up for re-election, and they should look at her record. And they did.”

Another of the faculty who was present at the meeting of Regent Kim’s congressional district legislators recalled it. “[Several legislators] had met with Regent Kim that morning, and they reported that Regent Kim said ‘we’re all in this together, we’re looking for a solution,’ and some other pouring oil on the waters. The faculty let them have it, and said that is not the way the Board has been acting.” As for the notion that it was very emotional for the faculty and that legislators were taken aback by the depth of the reaction, “I think it was. I think that’s true. There was also a subsequent meeting with his own district people with Dick Cohen. Dick became a spokesperson. But other people had been lobbying the St. Paul legislators about Regent Kim, because beyond the tenure code, it was a mistake that she had been selected regent. There was a combination of things coming together concerning Regent Kim. She was in over her head and behaved inappropriately for a public official.”

Morrison’s view of the legislative reaction was simple. “Why did they turn around later? Because their constituents were talking to them.”

Swan agreed with Morrison. “Why did legislators turn around? Certainly the metro area people were being lobbied heavily by faculty, and I think they became convinced there was a disaster about to occur. And some of this stuff in the Morris document was just outrageous. How many of them read that, I

don't know, but certainly the 'Chairman Mao' phrase encapsulated faculty concerns for some of the legislators."

Murthy said that "there were an enormous number of contacts with the legislature." Before the turning point in the legislative reaction, he said, "the legislators were just as bad as the regents!" They saw the University as "this is a funky organization that doesn't know how to run itself. And of course, nobody knew what good it was doing for the state. I would say the faculty, through direct means and indirect means, put it out in the public."

Murthy and Williams affirmed that many of their colleagues were talking to legislators. Murthy also perhaps summed up nicely the general (at least initial) faculty reaction to the Morris draft. One example was a "big formal meeting, a lunch meeting, with four legislators, a couple of regents' professors, a couple of faculty members, in a public place. They were all supportive except for one. It was meant to be educating the legislators. It was late September, after Morris. After Morris we were all lost! We didn't know what the hell to do! We invoked help from anywhere we could."

Shively reported that he had conversations "with several legislators about tenure, usually at their invitation. None of the conversations would surprise you. I had a conversation with Becky Kelso, in which she disagreed with what I was saying. I had a conversation with Lyn Carlson, in which he agreed very much with what I was saying. I had conversations with several others; I can't remember who I talked with. None of them would surprise you or had dramatic outcomes."

Shively suggested that the legislature changed its position "because they're realists. They're used to political give and take in something, and to judging how much political cost you give up for a certain thing, whether or not you think the thing is good. They could see this was just a dumb bargain."

He agreed that they heard from their constituents. "But there were a lot of legislators who didn't have very many faculty constituents who were very important in this. Roger Moe, Lyn Carlson. That was probably more important. Their real concern was the good of the University. They recognized 'what's the University? It's the faculty.'"

"I think other than [one issue of personnel], the faculty grass roots involvement didn't have a big impact on legislative opinion. But I think that legislative leadership -- again responding to the business community, the [Star-Tribune], former chairs of the Board, and others, and also to their own good instinct -- could see that the amount of tearing apart of the University that was being gone into, whether or not they thought the change was a good one, and that the cost was way out of line with whatever you accomplish."

Vik Vikmanis, whose responsibilities long included lobbying for the University at the legislature, and who once

worked as a legislative analyst, offered an assessment parallel to that of Shively. Whether the faculty played a significant role in the turnabout of the legislature, Vikmanis said, "I would certainly think they would want to believe that they did, and I have no doubt that individual faculty members did contact their legislators as constituents. And I suspect there were parties or other venues where this was discussed. It's very difficult to assess whether that played a key role."

"Let me put it honestly, without in any way detracting from what the people involved did: [the faculty] probably [played] less of a role than they think. I think that when all this hit the media, when the Governor came out and said 'cease fire,' even when Becky Kelso said 'cease fire,' and articles appeared in the paper saying 'this is nuts, what the hell are these people [the regents] doing?' In reality, it was a host of things, rather than just the faculty dealing with legislators. I'm sure it helped to bring their case forward with individual legislators, but I don't think you can say that was extremely instrumental in bringing about change."

Sturdevant thought the faculty played a role with respect to the legislature -- but that it was not a central factor in the debate. "The legislature, blessedly, wasn't a big player in [the tenure issue]. Becky Kelso did the wrong thing, and the Governor went along with it, in pushing through the language on that Academic Health Center funding. But most of the legislators didn't know what they were doing; they hadn't given it much thought. Then, when the tenure thing blew up, the legislature was not in session. I think a lot of legislators wouldn't have minded if that issue had come their way. Others would have hated it. But they were willing to wait their turn, and their turn never really came. The tenure issue was a done issue by the time the legislature reconvened. I think that's a real blessing. I think legislators are the wrong people to get involved in this sort of policy issue."

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Chapter Twelve

A Resolution Appears: The Law School Dean Offers the Regents an Exit, the Faculty Contemplate It, and the Collective Bargaining Machinery Moves Forward

In what was to become a significant development, Law School Dean Sullivan wrote to the regents on October 10 (Thursday), responding to the letter on October 9 to the regents transmitting Reagan-Spence, on which Sullivan (and Gray) had been copied. He recited his academic experience and said he understood regental concerns about the need for flexibility and change as well as “faculty concerns about academic freedom and due process,” and that the debate was harming the entire University and the Law School. He wrote that “there is a need to get beyond the present impasse and avoid brinkmanship,” that Reagan-Spence suggested “the parties are coming closer together,” and that there would be no winner if the debate continued as it had; he told the regents he already faced recruitment and retention problems.

Sullivan submitted a new proposal [subsequently termed “Sullivan I”] for Board consideration and reviewed the changes he proposed, including sharing the risk of programmatic change, the potential for pay cuts when there was a financial emergency, addition of a “gross misconduct” standard for removal, and addition of a provision for lesser sanctions; he called for the study of other procedural issues later. Sullivan enclosed a draft revision of the code language for the Board’s consideration.

About the Sullivan proposal, Walsh wrote that “in my view, there had coalesced by this time a small group of less than a half dozen faculty and probably a couple of administrators who desperately wanted to avoid collective bargaining and wanted to strike a ‘deal’ with the Regents in private. I think that is why the ‘Sullivan’ code appeared. To my mind it was an absurdity -- a tenure code for 33 faculty, written by a senior administrator, the Dean of the Law School. It was a ploy -- the only person who I think was not in on it was Tom Reagan, to judge by his subsequent behavior.”

FCC members exchanged messages the day before the regents were to take up Reagan-Spence, the day Sullivan prepared Sullivan I. On one side, there was concern that the two new proposals (Reagan-Spence and Sullivan) invited negotiation at a time when labor law said it should not occur and that FCC said in September the regents could not act and FCC would not consider proposals. The other view was that FCC should consider them inasmuch as they were labeled “for the Law School only,” the Law School was not under a cease and desist order, that refusal to consult might be construed as a waiver or consent, and that the September FCC statement suspended but did not terminate consultation, pending a request from regents. The regents had now asked for

consultation, and this was a major positive development.

On October 10 Carol Wells again suggested to colleagues that if the regents acted on tenure at their October meeting, the Senate should adopt two resolutions on October 16. One would be a “a vote of confidence in Nils Hasselmo’s position in supporting the faculty in their opposition to the Regents’ lawyer-drafted tenure code”; the other would be a “vote of no confidence in the Board of Regents for various reasons that will not be too difficult to enumerate -- we can merely take the Regents own stated policies and tabulate how they have violated their own policies.”

Also on October 10, Carolyn Williams emailed to colleagues that “one hypothesis that has been suggested as to why the regents are taking the action of trying to adopt a modified version of the H & H [Hogan & Hartson] code for units of the University not covered by the maintenance of status quo order (which until yesterday included Morris & Crookston, and today is just the Law School) is so that the regents will be able to argue that the slightly modified H & H code is an official policy of the university, even though it is for only one unit now. If there is a successful collective bargaining election, then the modified H & H code will have some official status at the start of contract negotiations, according to this hypothesis.” Is this plausible, she asked?

At the meeting of the Committee of the Whole on Friday, Reagan introduced Reagan-Spence. He noted that in the discussion since September, the regents had been said to be “an enemy of tenure” and intent on eliminating academic freedom; “this is ridiculous. For anyone to suggest that this Board would take any action that might diminish this institution in any way is either misleading or deceptively self-serving.” Their intent was to “stimulate modernization of tenure,” and he repeated his view that the existing code did not provide the needed flexibility. The only unit about which the regents could talk was the Law School; Spence then said the new proposal accepted 75% of the Faculty Senate proposals and identified the areas where there remained differences.

In his comments, Hasselmo again urged the Board to adopt the Faculty Senate proposal, in order to restore faculty trust and respect and to “demonstrate that governance shared with the faculty is still live and well. . . [and] that the principles of academic freedom and responsibility are live and well at the University.” The Senate recommendations made a number of significant changes, and that tenure has not been a bar to change. “Sometimes I hear statements to the effect that ‘the Board can’t back down.’ Back down from what? The Board has made no decision concerning any changes to the tenure code. Clearly, the members of the Board have different views as to how to proceed.” After a few additional comments, he concluded by saying “Mr. Chairman, I request permission for Dean Thomas Sullivan to speak at some point this morning. He is the Dean of the Law School, the school for which a revised tenure code can still be considered.”

“After consultation and an opinion from the General Counsel relating to protocol, Reagan ruled that Sullivan could address the committee.” Sullivan said his proposal was his own, that he had not had time to consult with his faculty, repeated the views he had expressed in his letter, and a draft copy of his proposal was provided to Board members. Reagan pointed out that the only proposal before them was Reagan-Spence; Keffeler and Spence suggested sending both proposals to the faculty for consultation, and the Board did so.

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THE SPARRING OF HASSELMO AND REAGAN

The newspapers, again, offered front-page headlines and a perspective on the events, especially at the meeting.

“A surprise voice breaks ice in U’s chilly tenure flap” (Pioneer Press, October 12). The reporter wrote that “an unexpected troubleshooter appeared from the packed crowd on Friday” and that “the troubleshooter, who almost didn’t even get to speak, . . . calmly sat before the board in the midst of a super-charged atmosphere . . . and proposed a more faculty-friendly compromise than what regents have been considering.” The article reported that “under intense pressure to resolve the controversy, the regents voted unanimously to send the so-called Sullivan proposal to the faculty senate along with the latest regents’ proposal for the law school.” When Hasselmo asked that Sullivan be allowed to speak, Reagan spoke privately about protocol with the General Counsel while others stretched; the General Counsel ruled that Reagan had the authority to let Sullivan speak. Sullivan outlined his proposal; when he was done, “Hasselmo made a comment about the presentation and Reagan snapped ‘I thought I just said that.’ The tension between the two men was obvious.”

The article described the meeting: “the afternoon’s tenure consideration began when Reagan made a statement that produced guffaws from the faculty, particularly when he said the ‘hailstorm of reaction’ the board experienced had put a ‘dent’ in their expectations about compromise. The crowd’s laughter unnerved Regent Patricia Spence. . . . After making a motion to send her proposal [Reagan-Spence] to the faculty senate, Spence said ‘I would like to request that I not be laughed at when I speak.’ That silenced the restive crowd.” Spence reviewed the reasons the regents wished layoff authority; only one regent, William Hogan, opposed “playing hardball” and urged consideration of the Sullivan proposal. Walsh said the regents’ action was “a transparent attempt to subvert collective bargaining”; other faculty welcomed Sullivan.

“Law School dean offers plan to end tenure feud” (Star-Tribune, October 12). The article reported Sullivan “stepped forward at the last minute Friday at the Board of Regents’

meeting” at the request of the President with a proposal that did not include layoffs.⁹⁸ Hasselmo and Gray liked the proposal. At least some regents still wanted layoffs, but faculty leaders said the Senate would not approve a code with them and that academic freedom would not be protected. Walsh said it was a subterfuge to say the proposal applied only to the Law School. In describing the meeting, the reporter wrote that “when Spence began introducing her latest revision of the tenure code, several people in the audience laughed. She stopped, trembling, and requested that ‘we not be laughed at while we’re in this room.’” Reagan said that it “is ridiculous” to say regents wanted to end tenure and academic freedom. Spence said she was relying on Chait in developing recommendations; “asked whether Chait might be wrong, she said ‘No.’”

“Law profs get mild tenure proposal” (Minnesota Daily, October 14). The article reported Sullivan was viewed as a compromise between faculty and regents, and that Reagan-Spence was less objectionable to faculty but did not close the gap. “Faculty members packed the Regents’ Room, . . . and many more spilled into the hallway to hear the regents try to salvage what they could of the tenure reform process.” Many described it as a “process gone bad,” but Reagan said the regents should not be seen as an enemy of tenure for trying to change; “for anyone to suggest that this board would take any action that might diminish this institution in any way is either misleading or deceptively self-serving.” The article reviewed the contents of the proposals, and cited Rabinowitz: “coming at the moment it did, it is an attempt to throw a monkey wrench into the union drive.”

Hasselmo said he “really had to force Sullivan’s appearance against heated original protest by Reagan -- who the day before had invited a member of the audience who was not even a U employee to speak.” Morrison recalled that Sullivan made a very short presentation -- he essentially read his October 10 letter -- and that the dispute about whether or not Sullivan could speak at the meeting lasted longer than his presentation.

Morrison cautioned that one should not “underplay the tension at the October Regents’ meeting. Reagan originally ruled that Sullivan couldn’t speak and then was talked out of it by [Regents Wendell Anderson and William Hogan] and some others. The scene was carried on TV and gave the impression of Reagan ‘stonewalling.’ I think Reagan’s demeanor there was a major starting point in the Regents’ loss of credibility.”

Regent Wendell Anderson, it was reported, was one Board

⁹⁸Four days later, the Star-Tribune carried a letter to editor from Law School Dean Sullivan about this article, denying Hasselmo asked him to provide an alternative tenure proposal. He said Hasselmo did not make a request or discuss the matter beforehand, and only asked the regents to permit him to speak at the Board meeting. Hasselmo subsequently affirmed that he not spoken with Sullivan.

member who pressed for Sullivan to be heard. In Humphreys' recollection, "Wendy Anderson got some backbone at that meeting. He turned to Reagan and said 'what the heck is the matter with you? We've been asked to let the Dean of the Law School speak to us. What's the matter with you? You won't let the Dean speak?' And Reagan was turning red."

Dempsey described the meeting as "very strange. Reagan treated Nils disrespectfully, and Nils wanted Tom to speak. I think Reagan got wind of what was coming, and wasn't going to let him do it."

Bland described the meeting as "amazing! The body language with Hasselmo and Reagan was amazing. Their chairs literally kept moving further and further and further apart. They literally couldn't sit next to each other. Reagan wanted it to not happen, and had one of the attorneys running around trying to see if it was legal or illegal or what." Bland also recalled that Regent Wendell Anderson "swung it. He spoke out, and said Sullivan should be allowed to speak." He "spoke good old boy kind of talk about 'well, why wouldn't we let somebody speak? We hired this dean of the Law School, and he's certainly someone we want to hear from, and blah blah blah.' What could Reagan do then? The tension in the room was just amazing. And Sullivan was just as cool as could be. Reagan was so angry. Hasselmo . . . appeared cool. So you had Hasselmo being cool. And you had Sullivan cool. So it made Reagan look bad. Sullivan clearly had been in that position before; the judge will decide and life will go forward. I thought it was maybe the fall of Reagan, because it was clear he wasn't in control."

One faculty member said "I don't know if Reagan ever knew what Sullivan was going to do when Nils asked Sullivan to talk before the Board. Had there been any informal communication with Reagan in advance? The stories I heard suggested that Reagan thought this was a breach of protocol and dammit, he wasn't going to allow it, he was the chair of the meeting."

Walsh commented that "it seems not to have occurred to anyone to wonder why Reagan was so angry at Hasselmo at that meeting. It became clear to him that Hasselmo had gone behind his back with some of the other Regents and sandbagged him in public."

Fennell Evans and Ellen Berscheid agreed with this assessment by Walsh. Evans said that "the whole business of getting Sullivan on to the floor was very dicey." Berscheid believed that "by that time, Nils was desperate." Evans said that there had been "negotiations on how to thrust this down Reagan's throat. He didn't want it." Evans also did not believe that Sullivan's appearance was pre-arranged. "That wasn't his [Reagan's] behavior at that meeting. He didn't want that brought in."

Marshak thought otherwise. He commented, later, that

with Sullivan II [the later version], he wanted something nailed down fast. "You asked me before, why did I want to nail it down? That was the kind of thing why [the dispute between Hasselmo and Reagan at the meeting over Sullivan's appearance]. Because there was such bad feeling that there was always what we physicists call this random noise in the system. Something would let go somewhere, and people would mix it up, and then you'd have to run off and put out another fire. And we were all exhausted. From my point of view, there was too much of that going on. It was carefully orchestrated; it was all agreed. The presentation from Sullivan -- Tom had agreed to that before. I don't know what [annoyed him]; something happened. I'm not sure what happened. There was this undercurrent of random stuff that would happen, and people would mix it up, and then you'd have to go off and try to fix it. There was a bunch of that. Mike did a lot of that fixing. He deserves a lot more credit than he gets. He was constantly on the run, trying to put out fires."

One thing that struck a number of observers of these events was that the relationship between the President and Regent Reagan appeared to break down almost completely -- evidenced, perhaps, by the tension between the two when Hasselmo wanted Sullivan to speak at the regents' meeting. What caused this, and what resulted from it, were of interest.

In Morrison's view, "I think it broke down because Hasselmo was standing up for academic values and all these things that Reagan didn't understand. And he [Reagan] wanted him to be like a good city clerk, the way they do it up on the Iron Range."

Gray said one reason was that "Nils was very stubborn on the tenure issue after Morris. He really drew a line."

In Feeney's view, "all you have to do is watch the shenanigans that went on in the Board meetings, and how Hasselmo was treated, and the commentaries that were made in the newspaper articles by selected members of the Board. I don't know how Hasselmo resisted telling them [off], in public. Had it been me, I would have. You're talking about individuals, many of whom, I don't think, had the credibility to make any criticism of the President, the institution, or anything else. All of sudden we have these instant, self-proclaimed experts, who know how to solve all these problems."

One faculty member recalled that at "the September meeting, with faculty and Nils, someone asked Nils what went wrong. He said that the relationship between himself and the chair of the Board, in terms of Jean Keffeler and Tom Reagan, had broken down. I think his view was 'I'm not doing anything different, I've gotten along with previous chairs but could not work effectively with them (i.e., Keffeler and Reagan).'"

Bennett said the breakdown was "a puzzle to me. It really is. I know why the relationship between Jean and Nils broke down," and Bennett suspected Keffeler was arguing her

views to Reagan. “But Tom, with all his experience, should have, on paper, been able to work well with Nils. I never did understand why Tom didn’t respect Nils and get along with him. Because Nils is not a hard guy to get along with. He’s a gentle man, an intelligent man, a wonderful man. He’s not going to compromise on principles. They had a darn good president. I think Nils was a good president; I think he could have been acclaimed as a great president if the regents had backed him. Tom didn’t do that, and I’ve never known why. I have to think Jean had a lot to do with it, because of her own agenda. She had her own agenda. She’s articulate and she’s bright, and she was talking to the Governor and the legislators an awful lot, until she got into real trouble. Then they started to distance themselves. But she was spending an awful lot of time on the phone with the leadership of the legislator and the Governor. She certainly was putting a lot of time on the issue. I think Tom Reagan probably figured he couldn’t control her more than anybody else could. He surely can’t be very proud of his term on the Board. You like to go through life hoping you made some place a little bit better while you were there, that’s the idea.”

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After the meeting, Sullivan wrote to the Law School faculty to report he had addressed the regents on tenure. He told them he had been presenting his personal views since he had not consulted with them, and had developed his proposals as an alternative to Reagan-Spence. He repeated that the views were coming closer together, and that the regents, in sending both proposals to the Senate, gave faculty and regents time to review their positions.

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THE ORIGIN OF THE SULLIVAN PROPOSAL(S)

The origin of the Sullivan proposal intrigues many. To some extent, Virginia Gray’s reaction typified that of a number of faculty. “I don’t know. And I prefer not to know. I do not believe Mike Bognanno was behind Sullivan, I do not believe Ellen and Fennell were behind Sullivan. I don’t know about Marvin’s role. I do not believe anyone who might have been behind it viewed it as a union-busting tactic. That was obviously the charge of the union, but my best guess that it came from some persons in the Law School, possibly including Farber and Fred, as well as Sullivan. Sullivan is a busy man; I doubt that he could have written it all by himself.”

Marvin [Marshak] knew about Marvin’s role. None, apparently; he didn’t know who wrote Sullivan. “I don’t think

Tom Sullivan wrote it. You ought to ask the people who wrote it; it wasn't Tom Sullivan. I don't actually know; if you had asked me at the time, and ask me now, I believe Fred wrote it. It wasn't Farber, it wasn't Sullivan -- I know who didn't write it. It wasn't Michaelson. It wasn't Chait. After you eliminate all the obvious suspects, there's only one left."

Most faculty involved in the process were also certain that Morrison was the author. Carolyn Williams, for example, reported that "I've always heard that Fred authored them. I wonder if Fred, Ellen, and Fennell were the group that wrote them. Those were used as a signal to the faculty. What was troubling was that at some point along there, the AAUP and UFA said 'we will negotiate on the tenure issue; we'll waive the cease and desist order.' The Board just ignored that. The people who were pushing Sullivan ignored it as well."

Humphreys agreed that the collective bargaining advocates did not support the Sullivan proposal, "because it was a union-busting tactic. That's obviously what it was for. Sullivan I was a construct of central administration to try to undermine [the union effort]."

Campbell related his view that "by then I was in Austria, so was just reading emails -- when I read the Sullivan code, it's so transparent that it's a code for the whole University. It's written in terms which include 'college'; if it were just for the Law School, why would it have those terms? Intentionally or unintentionally, the communication was that it was for a larger organization than a college. I consider that to be prima facie evidence that it was intended to communicate to a larger group."

Humphreys attributed the Sullivan proposal to several individuals. "Don't tell me the central administration didn't know about Sullivan I. Bognanno was behind it. It was Bognanno, Ellen, Fennell, Fred. [Marshak], knew about it, I'm pretty sure." Morrison, she said, must "officially defend the historical record, which is that it was all the idea of the Dean of the Law School. And it didn't fool anybody."

Campbell maintained that "anybody around this place who knows anything about it -- and maybe the Dean of the Law School is not one of those people -- who tried to write a tenure code who didn't have Fred's full cooperation would be crazy!"

Dempsey believed that "Nils knew it was coming. That's probably true. It was a ploy, I think." Not union-busting, she said, but "to get around what the regents were trying to do. It didn't have anything to do with the union. It was a way to steer away from the Reagan-Spence document; it tried to put things in there that gave a little to Reagan and Spence." As for claims that Sullivan may not have been the author, Dempsey said "that's OK. He was willing to stand up for it, and present it to the regents." She added that "I'm sure Fred had a major influence on that, but Sullivan is his own man."

Hamilton shared the general view. "I have strongly felt that Fred Morrison wrote it, and that Sullivan agreed to become the nominal writer because it would take any heat off Fred. I said at the time, and others said it at the time, and we all agreed, that Fred Morrison wrote that, but I don't know Sullivan. He might have been able to do it. Fred would certainly have the easiest time doing it."

Morrison's quick quip to the question of the authorship of the Sullivan proposals was "they came from Sullivan!"

Morrison demurred to the allegation that he wrote it. "Sometimes people have their own ideas. The [October 9] letter was signed by Kim Isenberg; it was not a letter to Sullivan, it was a letter that was cc'd to Sullivan. I think it may be one where Kim Isenberg circulated [the Reagan-Spence proposal] to all of the regents, cc'd to Virginia [Gray] and Tom Sullivan, 'this is what is going to be presented to the regents in October, for your information.' It was dated the 9th. It was on Wednesday, and it was delivered over here [to the Law School] on Wednesday afternoon."

"The Sullivan proposal was dated the 10th, but nothing was done [it was delivered the 11th, which was when Tom Reagan and Nils Hasselmo had their public disagreement at the meeting about whether Sullivan would speak.]"

Morrison affirmed that Sullivan had only been written after Reagan-Spence had been prepared. "Only after Reagan-Spence was delivered over here. Tom had been very aware of what was going on; he'd been interested in the tenure debates, this was all a mess, and so on. Dan Farber was involved, and I was involved, and [there was talk] in the lunchroom and so on. Suddenly, this letter arrives on his desk; Virginia got one, and my recollection is that Virginia sent one over to me almost instantly when it came."

"Tom came down and said 'what's all this about?' We said to Tom, 'this is going to affect only the Law School, you ought to propose a solution.' He said 'if that will get us out of it, then I'll propose a solution.' He did draw up the general lines of the solution. He wrote the letter, which is dated the 10th and was delivered on the 11th, which had a couple of sections attached to it, just pieces, because that's all he could do in one afternoon. Then he presented it on the 11th."

With respect to the regents, "they had not seen it. I think Tom had talked to the President about being able to present it, and my understanding was that Nils had talked to Reagan, and Reagan had said no, he can't present it. But Reagan had not seen it; it was contrary to what he was pushing, so he was going to rule it out of order. Then he got himself in that box."

"The full text of Sullivan I was put together at the beginning of the next week. I will say that I had a role in that. He [Sullivan] had to go out of town for his brother's funeral, and

his secretary integrated the proposals he had prepared into a complete text, like we'd been using for everything. Dan Farber and I helped her convert it, but we didn't change any of the substance he had proposed on the 11th. And it was sent over at that point."

"I put together an analysis of Reagan-Spence, Sullivan I, and the Faculty Senate proposals that went to the Senate."

Told of Morrison's explanation of events, Humphreys responded "I'm willing to go along with that. But I know the other manipulations that were going on behind the scenes. I know Fennell and Ellen and Bognanno and probably Fred were [involved] -- maybe Sullivan II [a revised version of the Sullivan proposal that appeared later] was the result of their manipulations. But it was this idea to get that passed for the Law School, with the moratorium, and that would put an end to the whole tenure thing. They were working [on this] -- Fennell and Ellen -- that's when it became clear they were separating from the activities of AAUP, UFA, and the old Gang of 19, and going off in their own direction. It seemed to me that every time I talked to them, they constantly quoted Virginia Gray and Fred Morrison. So it was obvious they were working with those two, and Mike, to do either Sullivan I or Sullivan II as it evolved."

* * *

Later on that Friday, Dempsey emailed to all faculty to report that the Senate committees would consider the two proposals for the Law School, as requested by the regents, and they would be brought to the Senate on October 24.

Two Minnesota faculty representatives who attended a meeting of Big Ten faculty leaders October 11-12 in Iowa City (Gray and Bloomfield; the former came late because she stayed for the regents' meetings in Minneapolis) were told by Michigan State representatives that the MSU president told members of his faculty that a meeting on tenure at MSU with Chait was arranged long before the Minnesota events and that he had no thoughts of making changes in MSU tenure. Gray and Bloomfield were also told Chait reported to the MSU faculty that he (Chait) had advised the Minnesota regents not to propose the changes that appeared in the Morris revision.

Swan emailed to the national AAUP staff on the Friday of the October regents' meeting to tell them that "many of us were caught completely off guard. You may know that the Regents held two closed meetings last week. The word from those meeting was of an angry and fractious meeting. Votes for the faculty June proposal looked to be in a clear minority and there was a suggestion that the Regents would damn the torpedoes, full speed ahead. At one point it looked as if some Regents might try to force a resignation out of the President." Swan reported on the pressure on the Board and distribution of Reagan-Spence; he said "there is real question how and why the Regents would be

proceeding to hone any document in view of the cease and desist order.” He told of the events at the regents’ meeting when Hasselmo asked to permit Sullivan to speak, said the two versions of the code had been forwarded to the faculty, and that the committee chairs had “said that they would consider these documents. It certainly looks like negotiation to me.” Swan sent along a copy of Sullivan’s letter to the Board and the Sullivan proposal.

On the Friday afternoon after the regents had adjourned, and presaging a debate that would take place between faculty leaders over the next few weeks, particularly between those who supported collective bargaining and those who were lukewarm about it, Swan also emailed both to FCC and to the UFA/AAUP leadership to comment on the regents’ actions. He said that “I am absolutely unfamiliar with the proposed changes that the Regents and Dean Sullivan want us to discuss. I am however concerned that a process of negotiation has begun when under Minnesota labor law it should not. We had taken the position that we had one tenure code for the University, albeit a code that recognizes the special situation and mission of particular units, e.g., criteria for tenure.” Swan recalled that “in September we took the position that since under the cease and desist order, the Regents couldn’t act, we wouldn’t consider their proposal. How is the most recent request any different?”

One FCC member agreed with Swan, and cautioned that “Craig raises some very important points that we did not discuss yesterday. I do think we need to proceed very cautiously so we do not give the Regents a chance to say they have consulted with us.”

Fred Morrison wrote, apropos Reagan-Spence and Sullivan, that “I believe that we should consider them. The Board has labeled these as tenure drafts ‘for the Law School only.’ The Law School is not under a Status Quo Order. Any refusal to consult might be treated as a waiver or as consent. I would not want to authorize Regential action [presumably to adopt the Reagan/Spence draft] without faculty comment.”

Morrison maintained that “this is different from the situation in September in several ways. In September, we had a policy for the whole University, part of which was under Status Quo. This is a policy only for the Law School, at this time. In September, we only suspended (did not terminate) consultation, pending a further request from the Regents. (We said we would go ahead if they asked.) This time, they have asked that we go ahead.” He concluded that “this is a major positive development for all of us” and urged FCC members to “read the document [i.e., Sullivan] before you interpose procedural obstacles.”

Sara Evans wrote to her FCC colleagues the same afternoon to follow up. Notwithstanding Morrison’s assurances, she said, she wondered, first, “should we be willing to consider a tenure

policy for the law school only??? Do we want a situation in which there are different policies for different parts of the University?” And second, and “more important, do we, by consulting, essentially give the Regents license to do whatever they want to?? They are under no obligation to follow any recommendations we make and they have unfortunately already demonstrated their willingness to exercise power arbitrarily.”

Mike Korth from Morris (which was seen as another unit that might well vote against collective bargaining, were any acceptable tenure proposal made), responded to Evans. As to the first question, he said that it “seems to me the implication is that we are discussing the tenure policy that will apply to any unit of the University that does not unionize. Technically, it is aimed only at the Law School at this time. But if those of us covered by a cease-and-desist order choose not to unionize, the tenure policy that may come out of this process is the one that will be applicable. I think this is what makes the consultation process of much broader interest to everyone at the University.”

With respect to the second question Evans raised, Korth pointed out that “yes, but our failure to consult might do the same.”

Tom Walsh wrote to the committee chairs (Dempsey, Feeney, Fogelman, and Gray) late Friday afternoon as well. “I encourage you not to proceed with an examination of the new Hogan-Hartson-Spence tenure code and the proposals of the Law School Dean. If you will look at page 6, you will see the words that this applies to the entire faculty of the University of Minnesota. On page 45 it even mentions Crookston. The proposal is a rather thin subterfuge to evade the intent of Minnesota labor law. It would be really embarrassing to have faculty representatives discussing this document.”

“At the Regents meeting, the Law School Dean was placed in the peculiar position of negotiating on tenure on behalf of the faculty. He represents only 1% of the faculty and is management to boot. Of course, nobody thinks that this is a proposal for the Law School.”

“As I see it, the reasoning of the Regents lawyers is simple. They can use this in an effort to cause a collective bargaining election to fail. Once it fails, they have a year to enact whatever they please, with no recourse on the part of faculty. Politically this is the hottest sort of hot potato.”

On October 11, the president of the Minnesota Student Association wrote to Reagan, Hasselmo, and Gray transmitting a resolution from MSA about criteria the students believed important in any tenure code, and asking that those criteria be incorporated in any revisions.

Gray reported to her FCC colleagues on the Monday after the regents' meeting, after she

and Bloomfield were back from the weekend meeting of Big Ten faculty leaders. She told them that “Nils asked that Dean Sullivan be allowed to speak; after a legal wrangle (since he wasn’t on the agenda) the chair ruled rather testily that he could speak. Sullivan produced a document, that in our hasty and preliminary readings, seems to preserve the faculty position rather well but has the advantage of being advocated by a third party, rather than by the faculty or the administration. Regent Spence, who had made a motion to refer her revision to the faculty senate, accepted as a friendly amendment the idea of also referring the Sullivan to the senate. Then the regents voted unanimously to do this, all of which I found rather amazing, since the Sullivan document is unfriendly to the regents position. I can only conclude that they are ready to compromise if the right package is presented in the right way. We know that we have several regents supporting us; if we can pick up a few more votes from the middle, then I believe we can pass something. All of the above refers only to the Law School obviously.”

Gray then reported on the impact the Sullivan proposal had on faculty leaders present at the meeting and able to assess it. “The FCC/committee chairs who were in attendance went out into the hall and were immediately surrounded by reporters. After a while we extracted ourselves and decided to have a brief meeting. One member had already left the building but everyone else, about 7 members, met and decided that circumstances were sufficiently different than the day before that the order of business should be changed, i.e., that Senate committee consideration should precede Faculty Senate deliberation. Our reasoning is as follows:

- practical: the regents docket deadline is Oct 24. . . . the only way we can meet the deadline is have the committees meet first and then have the Senate meet. The Senate can always refuse to consider the matters, I presume.

- the proposal appears to meet our goal, which you will recall is to defeat the regents’ proposal and get a faculty proposal adopted. The Sullivan proposal, though it still has to be carefully analyzed by the relevant committees, appears to be a solid one, which deserves our careful consideration.

- the committee chairs want to consider the Sullivan proposal: unlike Thursday, when they expressed reluctance to convene meetings to consider the new [Reagan-]Spence proposal, they actually want to consider and comment on the Sullivan proposal.

- this time the regents have formally directed us to consider the 2 proposals, unlike Sept when they didn’t direct us. According to Fred if we ignore them, then we have waived our right to consult. So we would rather the active approach, trying to structure the regents outcome, rather than the passive, do nothing approach.

-- public opinion. Right now we have significant public support. Seeing a solution in the offing, the public expects us to responsibly consider it. If we refuse to consider it, I believe that we will lose that support very rapidly.”

“We also considered the downside of proceeding with Senate action. Does our consideration violate the cease and desist order? We think not because the proposal comes from the law school, affects only them formally. We are thinking of asking the law school faculty for their opinions in our deliberations. By the way, if the law faculty signs cards, then I assume we can’t continue the deliberations. The other risk is that our colleagues leading the union will be upset; early indications bear this out. We will need to try to communicate our reasoning to them, and hope they will understand. I hope they do not take us to court because I believe that sends a bad message to the public, faculty fighting among themselves.” Gray predicted accurately the reaction of the collective bargaining advocates.

Walsh and Rabinowitz sent an email noting regental action on the two tenure proposals and said Reagan-Spence still contained a layoff proposal. The claim that it applies only to the Law School “violates or evades Minnesota labor law and the status quo order,” and it was a fiction that Sullivan applied only to the Law School. They maintained the Senate could consult on Sullivan and the regents could enact the original proposal; the new president and the regents could argue that the proposal without layoffs means they do not intend to close the Law School. They said it was “amusing” that ten Law faculty could decide whether process continues (10 equaled the 30% required for a cease and desist order for Law). They said the secret regents meetings reflect need for faculty to protect themselves.

The governance committees moved apace after the regents’ meetings. An all-faculty email was sent on October 15 notifying them of a special Faculty Senate meeting on October 24 to consider the proposals from the regents. On October 14 Reagan formally transmitted the two tenure proposals to Hasselmo (as Senate chair) and asked for comments by November 1, saying the regents would act in November on a tenure policy for the Law School. Feeney emailed to Faculty Affairs members to inform them they would meet to consider the Reagan-Spence and Sullivan proposals, and would meet jointly with the Tenure Subcommittee on October 17.

A notice was sent to Faculty Senators that there would be a Senate meeting October 24 to consider tenure amendments for the Law School, per the request of the regents. Faculty Senators were provided copies of both Reagan-Spence and Sullivan I.⁹⁹

⁹⁹This prompted one faculty member to request that a message be sent to all faculty asking Senators not to participate in the October 24 meeting, because it would violate the cease and desist order and would be illegal,

October 10: The chair of the Faculty Senate at the University of Pennsylvania wrote to Reagan to convey an executive committee vote to “express its profound opposition” to the Morris proposal. The author described the “reasons underlying our dismay at your assault on the basic elements of the tenure system” and suggested the regents did “not wish to eviscerate the great University of Minnesota.” The changes would remove Minnesota “from the ranks of the nation’s great universities” and “the ranks of the nation’s premier research institutions will be diminished by the loss of one whose character cannot be replicated elsewhere.” He urged reconsideration of the proposal.

October 13: The regents received a five-page letter from the chair of the Senate at Indiana University urging them not to change tenure.

October 16: The University of Pennsylvania AAUP wrote to Reagan on the Morris proposal, saying they were “alarmed at tone of the entire document, and object strongly to virtually every aspect of its content,” said it was a threat to academic freedom and that the regents have “erred seriously,” that they did not understand the “risks to the university and especially to society,” and that the regulations “are an insult to the integrity of the faculty” and “appear as tactics of intimidation and harassment.”

Walsh and Rabinowitz had emailed to the faculty, on October 10, and said both the AAUP and UFA were committed to collective bargaining. “We see no other way out of our present impasse on tenure and many other issues. Both organizations understand very well that many faculty are concerned about taking the collective bargaining path. We intend to meet these concerns before a collective bargaining election is held.” They noted the cease and desist order that had been issued for the AHC, and described what would happen as a result of it. They wrote that “the main goal of our meetings at the BMS is to set up the final collective bargaining election, to determine the election process and to decide who will vote,” including heads and chairs. They said that the merger with the AAUP would take place, even though the BMS had not approved using a name indicating the merger had occurred. They also explained that “before there can be a collective bargaining election, the AHC has to vote on whether or not it will join the collective bargaining unit. It is currently outside the unit because of a vote to that effect in 1981.”

“Once we know whether or not AHC will participate, there still cannot be an immediate collective bargaining election. The faculty must first have an opportunity to shape the outcome.

and asking that no Senate meetings be held on tenure until the order was lifted. The message was not sent. Another faculty member wrote to the four committee chairs requesting them to have their committees ask the Faculty Senate to table any discussions because the proposal (Reagan-Spence) “is an insidious attempt on their part to circumvent the . . . cease and desist order.” The fear expressed at the time of the April 18 meeting recurred: “Can we be sure that such discussion [by the Faculty Senate], even though it is ostensibly limited to a proposal affecting the Law School only, would not be used at a later time by the Board of Regents to claim that the results of the discussion form a precedent which applies to the entire faculty?”

The law allows us great flexibility in forming a collective bargaining unit. If we do go this way, we will be the first large research university to do so. AAUP and UFA will be doing something entirely new. We will have to involve the faculty in the process of developing proper principles for research university collective bargaining. We will depend heavily on the national AAUP for help in doing this. Only when this process is done will it be possible for all of us to make an informed decision. AAUP and UFA will be setting up the mechanism for consultation in the next few weeks, as well as holding public forums on shaping collective bargaining at a research university.”

Walsh subsequently described the reason for the proposal for elimination of the election and solicitation of new cards. “We did this in consultation with our lawyer. We felt that we had to move towards a resolution of the tenure issue, despite the Regents’ uncooperative attitude so far. It was plain that with the ‘Sullivan’ document something was up and if there was a private deal, the faculty would suffer. We wanted to get this out in the open.”

The lawyer for the AAUP/UFA wrote to the University attorney on October 10 to propose using the option, provided by state law, of collecting new collective bargaining authorization cards. The AAUP/UFA would seek to obtain card from over 50% of the faculty who would be in the bargaining unit, after which an election would not be necessary and the union would be certified as the bargaining agent. Use of this process required consent of the employer (the regents).

The AAUP/UFA lawyer wrote again to the University’s lawyer a week later, in exasperation. He recalled that he had, in response to a request from the University, had gone to some trouble to put in writing the proposal for collecting authorization cards from over 50% of the faculty in the unit, in order that it could be considered by the regents at their October meeting. But the regents never discussed it. He also expressed great concern about the regents’ action in forwarding tenure proposals for consideration (Reagan-Spence and Sullivan I) by the Faculty Senate, which violated the cease and desist order. The lawyer maintained that the proposals clearly did not apply only to the Law School, and that the regents were attempting to negotiate via these proposals. They reserved the right to take legal action.

Walsh emailed to the faculty on October 15 that meetings with legislators had been arranged to discuss the University’s role in the state and tenure and academic freedom. The message prompted a retort from Carole Bland. “There is also a bit of propaganda for the union going on here. I was appalled that one of his previous messages said that he and the union is the only organization doing this [i.e., meeting with and talking to legislators]. So as not to give the impression that this is correct and that the senate has been falling down on doing this, it would be appropriate to note

in future senate messages and FCC minutes that Craig [Swan, the legislative lobbyist for FCC] has in the past organized these sessions and that senators and others have been participating in them.” Bland wrote that “I am delighted that he is facilitating contact between the faculty and legislators. But, I wonder how active he was in the past when these were going on and we needed faculty participation but at that time it did not also facilitate the image of the union?”

“Notable quotes from U debate” (Pioneer Press, October 15). “Two notable quotes from the tenure debate last week at the University of Minnesota:

- University general counsel Mark Rotenberg was quoted in the Minnesota Daily, the student newspaper: ‘The regents can do what they want with their tenure proposal in the law school. They can leave it on the table, they can take it off the table or they can deal under the table.’
- If university professors form their own labor union, Ed Fogelman, chairman of the political science department, said he might wear one of those zip-up-the-front jackets with ‘Ed -- Poli Sci’ embroidered on it. ‘And I’ll have to put up some bowling trophies,’ he deadpanned.

“Law professors meet to discuss tenure” (Minnesota Daily, October 16). The article reported on a private meeting of “about a dozen” Law faculty with union and FCC representatives to consider the Reagan-Spence and Sullivan proposals. Gray told of Senate committee work on the proposals; Walsh urged faculty to sign union authorizations. He said the “tenure proposals are a subterfuge for the regents to evade the cease and desist order” and asked faculty not to debate the proposals.

Fred Morrison wrote to FCC in mid-October to explain labor law in Minnesota. He explained that it “divides relations between employer and employees into three categories. (1) ‘terms and conditions of employment,’ [T&C] (2) ‘inherent managerial prerogative’ and (possibly) (3) other.” The first consists of “hours, compensation (including fringe benefits, but excluding retirement contributions, group insurance contributions, severance pay, and a few other things), and the personnel policies of the employer. . . . ‘Inherent managerial prerogative’ (IMP) are discretionary decisions about the functions and programs of the governmental unit (here, of the University), its overall budget, its use of technology, its organizational structure, the selection of personnel, the direction and number of personnel. On these questions, the employer may make unilateral decisions. . . . There may also be some things in between. If so, they would be bargained only if both sides agreed. The union has a right to bargain only with respect to the T&C. It has no right to bargain on IMPs.” But even then there are complexities, he noted.

“Some things may involve both T&C and IMP. An example might be the semester conversion. The decision to switch to semester is a ‘discretionary decision about the programs of the employer’ and thus could be made unilaterally by the Regents. The impact of that decision on the T&C would be bargainable, but the basic decision itself would not be.”

Morrison went on to note that “the major issues about which a union could not bargain, but over which we currently have some influence (although not a controlling one) would include:

- functions and programs of the employer. The regents could decide to close programs, that would be an IMP.
- selection of personnel. Hiring decisions (and, after the Duluth case, perhaps also tenure-granting decisions, are IMP)
- number of personnel. Clearly the public employer can choose to reduce the number of faculty. (Some of the implications of that, e.g., who would be laid off, might be T&C, but the decision about the "number of employees" is clearly IMP.)

And finally, to make it all clear, he added that “even on the IMP issues, however, the employer may have an obligation to ‘meet and confer,’ i.e., listen but not necessarily agree, to professional employees (like teachers) about issues within their professional competence.”

As indicated in the following exchanges, at this point the faculty were not of one mind about what to do: they were divided about whether they should even consider the two proposals. The union advocates opposed debate, arguing that it was a subterfuge to say that the proposals applied only to Law (they maintained that the proposals were simply ways for the regents to tell the faculty at large what they might do if the union were voted down, and were a way to avoid the cease and desist orders). Others maintained that the faculty owed it to the Law faculty to debate the proposals, because the regents could legitimately take action on tenure for the Law School.

Dempsey, recalling this divided opinion among faculty, said it “was very hard. Even a lot of my colleagues on the Tenure Subcommittee, the two who worked the hardest, were gung-ho on the unionization business, and yet we had to make revisions. But they did it.” She herself believed they should; her thought was “why don’t we do our job? Why should we be blocked from doing what we should be doing?”

On the Monday after the regents’ meeting, Feeney forwarded to FCC emails from Purple to Murthy and Walsh and to Faculty Affairs and UFA. Purple said he wanted to take the regents and faculty governance (as a “self-proclaimed ‘de facto part’ of the administration”) to court to bar them from dealing with the tenure proposals. He maintained that this was negotiation, barred by law, and

that neither document was what faculty asked for. He said the regents “snookered” the faculty and administration in the summer, that they still used Hogan & Hartson, that the regents ignored the President’s recommendation to adopt the faculty proposal at their October 11 meeting, and that the regents could adopt whatever they wished for the Law School no matter the consultation. He said there was not enough time to consider the proposals and that he did not want to be considered a “Neville Chamberlain” of the faculty. Purple was responding to a message from one Faculty Affairs member who questioned Morrison’s statement that Sullivan was a “positive development” and who recalled Faculty Affairs’ position that there should only be one tenure code for the University.

Fred Morrison sent a 13-page memo to the Tenure Subcommittee, Faculty Affairs, the Judicial Committee, FCC, and the Senate, outlining the differences between the three proposals (Faculty Senate, Reagan-Spence, and Sullivan). He also pointed out that in September, the regents made no request for consultation, and faculty declined to take up the Morris proposal because of the cease and desist orders. In October, however, the Board formally asked for consideration of the proposals for the Law School.

The staff to FCC reported in mid-October to Virginia Gray what he had been told about the situation. The Gang of 19¹⁰⁰ supported the Sullivan proposal; the collective bargaining advocates did not. According to Berscheid, when Hasselmo asked if the Sullivan proposal could be on the agenda of the regents’ meeting, Reagan refused; Regent Hogan did want to consider it, but could not get seven votes in favor of doing so.¹⁰¹ Hasselmo took a chance at the regents’ meeting, Berscheid maintained; Hasselmo said Sullivan was in the audience and asked if he could be heard. The procedural wrangle then occurred. One of the human resources consultants to the University, who was also a confidant of the Governor, believed the regents simply wanted to get out of the situation because they were getting a black eye. The coordinating group of eight faculty (from FCC, the Gang of 19, AAUP, and UFA) probably could not work effectively because they were split over collective bargaining, and the Gang of 19 could work more effectively with FCC. At the same time, the union supporters could not be treated badly, because the Gang of 19 recognized that if the regents adopted Reagan-Spence, the faculty would want a union.

UFA/AAUP representatives (Murthy, Rabinowitz, Walsh) wrote to FCC chair Virginia Gray (a message distributed subsequently by email to all faculty) to note the regents’ request that the

¹⁰⁰As made clear by commentary, the Gang of 19 at this point had dissolved, and in fact what the staff to FCC (I) heard was the viewpoint of Ellen Berscheid and Fennell Evans. But the original message to Virginia Gray said the Gang of 19.

¹⁰¹Morrison said he recalled “something like that, but that may be too strong. I think the question was, could he get a majority of the Board to overrule Tom, which is a different question.”

Senate consider the two tenure proposals and said “the Regents are attempting to circumvent the Status Quo order by using the law school to negotiate a University-wide tenure code.” They wrote that “the Faculty Senate has a distinguished history, the hallmark of which has been its integrity and independence. It would be unseemly for it to permit itself to be used by the Board of Regents to assist a violation of law. By participating in the Board of Regents’ request for review, the Faculty Senate puts its imprimatur on a cynical and improper attempt by the Regents to violate the law. We do not believe that elected Faculty leadership should permit themselves or the institution they represent to be used or manipulated in such a fashion.” Everyone acknowledged that the tenure issue is critical and needed to be resolved quickly. “The AAUP-UFA made a proposal to the Regents to expedite the representation process and the tenure issue. The Regents have not responded to our proposal. Instead they have [tried to] undermine the AAUP-UFA efforts to secure collective bargaining rights for the Faculty -- rights that will give the Faculty a more equal footing with the Regents and will eliminate the power of the Regents to unilaterally implement any policy or decision.” They called on the Senate to reject the regental effort to violate the law and defeat collective bargaining. Gray responded later; first the reactions to the letter.

Carol Wells wrote to Walsh on October 16 about the letter they had written to Gray. “Is it possible to get this position presented as the legal opinion from Steve [AAUP/UFA attorney Gordon] and possibly Pat Shaw?” If so, “such a letter is what it might take to firmly squash the meetings of the 3 committees. Fogelman is a good guy, but he is desperately looking for a way out of unionization and I believe he might tend to hold the Judicial Committee meeting in spite of your letter to Virginia Gray.” She had talked about this with Fogelman, who told her that the Judicial Committee would respond to such a document.

Wells noted what Purple had written the same day. “As I understand it the first legal step to be taken to halt such considerations is the requirement that the UFA/AAUP attorneys deliver a letter to the Senate leadership asking them to please cease and desist on the grounds that they are participating in an unfair labor practice. I understand that such a letter may be delivered to the chair of the FCC today or tomorrow. If the Senate then proceeds to deliberate the documents, the UFA/AAUP can file suit in court to have both the Regents and the Faculty Senate, of which I am a member, declared violators of fair labor standards and subject to fines and penalties.” Wells told Walsh that “I think faculty are waiting for a letter from an attorney.”

On October 16, Purple also emailed directly to [Faculty Affairs]. He charged that it was necessary to “consider whether [Faculty Affairs] and the Faculty Senate is willing to obey the law.” He said the regents’ document violated the cease and desist order and clearly applied to more than the

Law School. He identified the legal steps that AAUP/UFA might take to bar consideration of the Sullivan proposal, and asked “does the Senate leadership really wish to risk such a stigma?” He also asked who the Faculty Senate leaders trusted more, “a rogue band of regents who have unethically attempted to deprive faculty of their rights for more than a year and a half, or an ethical, faculty-led, democratically run collective bargaining agent that wishes to see the faculty’s rights retained.” Purple wondered if “faculty leaders who fear a union so much that they are willing to put their trust in the tender mercies of the present gang of regents have not thought this problem through,” and if that fear was not “for their own status as faculty leaders.” Those involved in collective bargaining are ethical and trustworthy and have no aspirations to be “faculty dictators.” Purple repeated his sentiment that he did not want to be labeled, by later faculty generations, as “‘Neville Chamberlains’ who negotiated their rights away.”

Philosophy Professor Naomi Scheman also wrote to [Faculty Affairs], on which she served; she endorsed Purple’s views, and said either Sullivan was a violation of the BMS order, because it was a promise to the rest of the faculty, or it was a “bait-and-switch con.” She also reflected, however, that “the situation resides in the ambiguous space between these two readings: not an explicit enough promise to clearly violate the order, but enough of one (backed up with enough of an implicit threat) to lead us to think we must or ought to deal with it.” As a firm union supporter, Scheman said she would prefer to be told either by the union or the Senate that the Tenure Subcommittee should not take up Sullivan, but that “the situation is fraught with risks, which ought to be examined and decided democratically.”

Walsh later opined that “Purple was right. It was a mistake not to sue the Board at this point. The ‘Sullivan’ proposal was an effort to evade Minnesota law, and we should have made that point forcefully. But we failed to do that and I now see this as a blunder. I should have pushed hard to take the Board to court, whatever the outcome. At the very least, it would have forced the process out into the open. General Counsel Rotenberg’s comment about ‘dealing under the table’ was perceptive.”

Feeney also wrote to Faculty Affairs members on October 16, the day before a meeting of the committee, and noted the commentary from Purple and others. He posed a series of questions to committee members, such as “will failure to deliberate on [Sullivan or Reagan-Spence] result in our loss of further consultative opportunities,” “will failure to deliberate on the [two proposals] be viewed by our legislative supporters and private sector advocates as obstructionist behavior deserving of the Regents’ dictatorial behavior?” “should [Faculty Affairs] refuse to discuss the [two proposals] on the grounds that this is a bad faith effort on the part of the Regents and that it has gone well beyond legislative request to permit AHC flexibility?” “should [Faculty Affairs]

not consider the [two proposals] because the proponents of collective bargaining don't want us to consider it?" "will deliberating on the [two proposals] foster 'camps' or 'feuds' among the faculty outside [the committee] because deliberation on the proposals is viewed as 'anti-collective-bargaining'?" "is the conduct of regular [Faculty Affairs] business (which includes consultation on Tenure regulations as specified in the current Code) to be considered (by the members) an unfair labor practice during the collective bargaining 'status quo order'?" and "would having [Faculty Affairs] stop its regular activities be an [admission] that our future is in the hands a Board of Regents with an agenda at odds with those of the faculty and that faculty governance/consultation, as we currently practice it, is impotent and should yield to collective bargaining?" He told his colleagues that "we need to chart a course through some rough waters over the next few months."

One Faculty Affairs member wrote back immediately to Feeney. "My inclination right now is to support your position and to consider the 'Law Dean proposal' [Sullivan]. I feel every bit as strongly about the Regents as anyone else does, but I think we need perspective. The fate of tenure will be decided not by the Regents and not by the Union but by the people of the state of Minnesota who will make their wishes known. If the people perceive the faculty to be unresponsive, they will support the Regents. With public support the Regents will be able to challenge a unionized faculty to strike over a contract offer that includes *their* tenure code. The strike will fail. If the public believes the faculty to be responsive, they will flood the Regents in the future just as they did in the last few weeks to get them to back off as far as they did. If a variant of [Sullivan] is accepted by the Regents and the Law School, then any attempt to make a different code for other units will fail in the court of public opinion. With all allowances for how bad results sometimes happen to good people, this is how democracy works."

The Committee on Faculty Affairs and Tenure Subcommittee met together on October 17, with Morrison, Gray, and Farber also present. Chair Dan Feeney noted the two tenure proposals for the Law School and said consultation on them could cause problems: faculty would oppose faculty because of the cease and desist order; it could lead to several tenure codes for the University; it could violate Senate policy by addressing an issue affecting only one college; and failure to respond could waive faculty rights to consult. Morrison described the situation with respect to the law and consultation and proposed a resolution. He also said that he had provided information to Dean Sullivan but that the draft was Sullivan's.

The committee held a long debate about whether to consult. Gray informed them some regents favor the faculty proposal, some are "swing votes," some want radical change, and there were

efforts underway to gain support from the swing votes. The two committees acted on two resolutions. One, approved by Faculty Affairs but not Tenure, said the Senate wanted one tenure code for the University so could not consider a proposal only for the Law School. The second also affirmed the principle of a single tenure code, endorsed the Faculty Senate proposal, urged the regents to reject Reagan-Spence, and said the Sullivan proposal was a possible compromise that should be considered “at an appropriate time.” This was approved by both committees, and both resolutions were forwarded to the Faculty Senate. Morrison emailed FCC later in the day to report on the two resolutions.

Feeney emailed to the members of the two committees the day after the joint meeting to thank them for their effort. He said they “did a splendid job debating” and “incorporated issue objectivity, concern for our institution, sensitivity to compromise and consistency, and understanding of differing viewpoints” and that the two resolutions would indicate the difficulties they faced. He said he worried that the outcome would be “viewed as obstructionist by those outside the process . . . recalcitrant by the Board of Regents, insensitive to advocates of collective bargaining, or uncommitted by our academic colleagues” and concluded that “we made the best of an impossible situation.”

The page-one Daily headline about the meeting was “**Indecision reigns at faculty meeting.**” The article reported that the two committees “could not decide to take definitive action” on consulting on tenure. The committees did not discuss tenure issues, but whether consultation would violate the law or Senate policy.

Gray emailed to FCC on Friday the 18th. She asked for an FCC meeting the following week to construct an agenda for a Faculty Senate meeting the following day, in light of actions coming from the two committees. She also reported that “the union is trying to stop this process; I received a letter from them” (which she forwarded). She reported that she had also asked for an opinion from the General Counsel about proceeding. She told them that “I believe it is our responsibility to call of meeting of the Faculty Senate and its committees so that these bodies can take or decline to take whatever action they wish. Otherwise we have no voice until whenever a union is elected. But they may go to court seeking an injunction so I thought you should know this.” She added that “on a personal note I am finding the rhetoric of some union leaders . . . offensive.” The constant reference to ‘Neville Chamberlain’ that pushes me over the edge. Anyway we had a heated exchange at yesterday’s [Faculty Affairs] meeting, following an exchange at Wednesday’s Assembly meeting, following an email exchange earlier in the week.” She closed by saying that she did not know what would be coming in the future but “I am not looking forward to faculty attacking faculty

when what we need to be doing is fighting the regents.”

On October 18, Carol Wells wrote to Gray, Fogelman, and the members of the Judicial Committee about upcoming meeting of the Faculty Senate. She inquired if “the Faculty Senate established that it is appropriate for the University of Minnesota to have different tenure codes for different units? If affirmative, then I respectfully request reference to this specific policy. I assume this policy does not conflict with the concept of university-based tenure. If the answer is no, then any consideration of a tenure code written for one university unit (e.g., the law school), carries the clear implication that this code applies to the university as a whole. (Any consideration of a tenure code to be applied to only one university unit is incompatible with the concept of university-based tenure, and thus violates the current tenure code as well as the current Cease and Desist Order.)”

Walsh commented on this later. “We did not seriously consider legal action against FCC, although it was clear that a group of faculty leaders were trying to maneuver around the cease and desist order in pursuit of a deal with the Board. We should have taken the Board to court, even though many of them had, in my judgment, no idea what was going on. The group around FCC had a lot of freedom of action because we were determined to work together with faculty governance, and that meant working with the FCC leadership. They did not have to cooperate with us except in a limited way due to their low credibility. They could not risk further loss of face; that was why so much was going on in private. We did finally send a letter to the FCC chair objecting to their actions and stating plainly that they would be supporting an effort to evade Minnesota labor law.”

FCC Chair Virginia Gray was sufficiently worried about the legal issues that she contacted University General Counsel Mark Rotenberg. He wrote to Gray on October 17 responding to a question from her about whether the Senate and its committees could consider tenure code changes for Law School, and if she and Senate members would be defended by the University if legal claims were made against them. He advised her that Senate action would not violate cease and desist orders, and that while Hasselmo determined eligibility for legal defense, Senate members would qualify if legal claims were made, particularly since the request for Senate action came from the regents and with the advice of his office.

This letter provoked commentary from Walsh. “What this meant was that the Administration would legally support the FCC effort to evade the law. We never threatened legal action against FCC, but the General Counsel’s letter makes it clear that some faculty leaders were working with the Administration and very worried that we might. (Such legal action would have made no sense, but that seems not to have occurred to anybody.) The General Counsel never intervened in any other matter, so far as I know. My personal view now [October, 1997] is that there was panic over whether

the nonpublic ‘Sullivan’ strategy would work, and this letter was a reflection of that mood.”

“**Hasselmo gives last address on State of U**” (Pioneer Press, October 17). The article reported on the President’s address; he said the regents must solve the tenure dispute because the impasse would harm the legislative request, and that they must settle it “in a way that shows trust in and respect for” the faculty. Only one regent (Sahlstrom) attended; many regents were said not to be happy that Hasselmo sided with the faculty on tenure. The Board is “said to be deeply divided” on layoffs.

The November 7-8 Regents’ docket was distributed on October 17. One item for the Committee of the Whole was action on a tenure policy for the Law School.

The Star-Tribune offered an analysis of the Sullivan proposal. In an article entitled “**Dean’s tenure plan breaks little new ground,**” it reported “like an oracle, [Sullivan] walked into the tenure fight” with a compromise proposal that “broke the ice” on the tenure debate. On close examination, it gave University “slightly more clout” on layoffs but was compatible with the faculty position and it would be a “surrender” for regents who wanted more flexibility; Spence saw little new in it. The October regents’ meeting “was so tense that Sullivan’s appearance gave him an aura of savior” that was increased by “parliamentary wrangling” over whether he could speak at the meeting. The provisions in his proposal are largely what are already in the code (e.g., a regental right to reduce salaries for a short period was similar to existing code provisions). But for most regents, the issue is long-term “reshaping,” which raised the question of whether the regents were willing to make big cuts. The debate raised suspicions they may have a secret plan, but there is no evidence for it, and their lawyer described it as insurance. Without Hasselmo’s support, the regents had no staff support, so they turned to outside consultants, and they have been unwilling to discuss issues publicly. It is difficult to tell what the regents want; they had the opportunity to abandon the layoff provision but did not do so even in the face of opposition from the Foundation, alumni, and faculty.

Hasselmo took issue with the proposition that the regents were not provided staff support. He noted that the regents had hired outside counsel in the spring, before the impasse developed, and that Farber worked only on tenure, and that other senior officers also provided staff support.

Wells wrote to Berscheid, Fennell Evans, and Hamilton on October 16 reporting that a summary of Chait’s comments were being prepared for distribution. She also had learned some things about Keffeler, and summarized it in a letter she prepared for one of the newspapers. “Regent Jean Keffeler is seen by many faculty members as the driving force behind the tenure proposals drafted by the law firm of Hogan and Hartson and sponsored by the University of Minnesota Board of Regents. . . . According to staff writer Gregor Pinney (Star Tribune, June 12, 1993), Keffeler’s

trade is management analysis and she sells herself as a business consultant. Over 21 years, she had been employed by four different major organizations, most recently (1989) the western division of Health One where she was senior executive officer. At that time, Health One consisted of the newly merged Metropolitan-Mount Sinai Hospital in Minneapolis. Pinney described Keffeler as “captain of a sinking ship” because most of the hospital closed by 1991 when Keffeler left claiming “her job was done.” She then became president of her own consulting company, called the Keffeler Co., described by Pinney as “a one-woman firm with a shared receptionist.”

“As documented in this newspaper, many leaders (both inside and outside the university) have questioned the Board’s wisdom in proposing changes to tenure that put the University at a competitive disadvantage for attracting and retaining high quality faculty. Curiously, Regent Keffeler strongly supports adoption of these policies even though she admits (September 25th Star and Tribune Metro Section) that ‘the tragedy is there isn’t a plan’ to implement these policies.” Wells inquired “if anyone has considered the possibility that a labor consultant, instrumental in crippling tenure at a major university, might become a sought-after consultant for other academic institutions interested in similar attacks on their faculty.”

On October 13, UFA had sent an email to all faculty announcing two collective bargaining forums, for October 17 and 18. The Daily reported on the first of the two sessions. “Governance with teeth” was the headline; the article reported that the union advocates supported keeping faculty governance but avoiding “the ‘blue-collar’ stigma” of a union. It would be something new; Walsh said he wanted “a union that creates ‘faculty governance with teeth’”: keeping a democratic Senate but with a union negotiating on working conditions. The article reported on the union at Rutgers (which was considering a strike at the time). The possibility of a strike may lead to research funds shrinking. Union supporters said a union would give faculty greater power, but that a union and a senate would have to work together. Gray said she would be willing to work with UFA, but Walsh and the UFA lawyer were unhappy the Senate and its committees were going to consider the Sullivan proposals, thus assisting the regents in breaking the law.

Gray emailed to all faculty on October 18, responding to the letter from Murthy, Rabinowitz, and Walsh, to say she had a responsibility to convene the Senate “so that its elected faculty representatives have an opportunity to discuss the new tenure proposals applying to the Law School. To deny this opportunity to elected faculty representatives would be fundamentally anti-democratic. The Faculty Senate as a body will decide what it wants to do with the proposals. The Senate is the only representative body we have until a union is elected; I do not believe we should abandon our only voice at this critical juncture. Counsel has advised us that faculty

colleagues talking to faculty colleagues is in no way a violation of the cease and desist order. That order applies to the administration and the board.” Gray also maintained that “the regents have asked us to consult under Section 19, with respect to the proposals affecting the Law School. Counsel has advised us that failure to consult may be taken as a waiver of that right, and then the regents may go ahead as they please. By providing consultation we hope to achieve a better outcome for the faculty, surely a worthy goal. Since that consultation is with respect to documents affecting the Law School, which is not under a status quo order, I do not see how that action is a violation of an order affecting other units.” She concluded that she could not agree to their “request to stop the deliberations of the elected representatives of the faculty.”

Events rumbled along as the faculty moved toward their October 24 Faculty Senate meeting.

- **“Schools keep a cautious eye on U”** (Minnesota Daily, October 21). “The University’s tenure troubles have caused a commotion among college faculties nationwide, leaving the school’s reputation in an indefinite limbo.” The chair of the University of Pennsylvania faculty senate wrote to the regents that the proposed changes “would remove Minnesota from the ranks of the nation’s great universities.” The article also cited the letter from the Berkeley sociology department saying they would caution students about taking jobs at Minnesota. Both learned of the debate from the Internet. Chait agreed faculty have “responded to the . . . situation with alarm. However, Chait added that this reaction came because outside faculty members thought the University might completely eliminate tenure, a proposal the regents have never considered. ‘In my judgment, there is ample good will (from all interested parties at the University,’ said Chait. . . . ‘Everyone wants to act in the best interest of the University.’” At Florida State, tenure review “went relatively smoothly. . . . [According to an official] ‘The faculty were involved every step of the way.’”
- **“Voting-list discussions continue”** (Minnesota Daily, October 22). The University and the AAUP/UFA did not agree on who would be permitted to vote in a union election, and held a third meeting. The major dispute was over inclusion of heads and directors.
- **“Regent selection under review”** (Pioneer Press, October 22). In a small article, the paper reported that the Alumni Association had appointed a 21-member panel to review the regent selection process. It noted that four regents were up for election by the legislature.
- On October 22 the BMS again denied a UFA request that the petition for a collective bargaining agent be considered joint with the AAUP. The administration had opposed the petition.
- On October 22 Morrison reported to FCC on the latest BMS conference. Crookston and

Morris would vote on November 20; the AHC would vote on November 21. He said there were a variety of disputes yet unresolved, especially for the Twin Cities campus, largely having to do with who would be included in the bargaining unit. The AAUP/UFA had delivered a letter to the regents “objecting to further consideration of tenure,” and questioned whether such issues as a code of conduct, an early retirement plan for the Medical School, semester conversion, biological sciences reorganization, and AHC re-engineering [all being considered by various Senate committees] were “terms and conditions of employment” under the law.

-- Swan forwarded to the AAUP/UFA leadership on October 22 an email from Mary Burgan. She wrote that “my silence does not mean that I’m not thinking about Minnesota -- every day, as it seems! I’ve been travelling a great deal, and Minnesota comes up at every conversation I have. Indeed, this weekend in Colorado, talking with the chair of the Colorado Commission on Higher Education, I was told that ‘if Minnesota goes, so will the other research universities across the country.’ This guy, a not unsympathetic person and a former academic . . . confided that the Legislatures and boards around the country are waiting for the first domino to fall. They are also hanging on the word about what happens to the union movement. In other words, the only thing that is protecting the tenure system now is 1) the uniformity of practice in all of the substantial schools, 2) the argument about becoming uncompetitive without tenure, and 3) the threat that the faculty will unionize or otherwise unite (there is no enabling legislation in Colorado, where the legislature is insisting upon changes in the tenure system). Just to give your situation a national perspective!”

-- **“Committee adds idea to existing tenure proposals”** (Minnesota Daily, October 23). The Judicial Committee adopted a resolution asking the Faculty Senate to request the regents not to act on tenure for the Law School until union elections have been held for the remainder of the University. If the regents do not do so, they should reject Reagan-Spence and Sullivan and adopt the Faculty Senate proposal. The resolution was proposed by a Law professor. Chair Fogelman said “the regents must provide a better solution before the union election” and that Sullivan was “a step in this direction.” The committee said, however, that Sullivan “should not be accepted as it is.”

Walsh said “this was very important. It meant that there was not unanimity that the Sullivan Code was an acceptable compromise. Many wanted to wait for an election and see what happened.”

-- On October 22 Wells wrote to her AAUP/UFA colleagues to summarize actions of the

Judicial Committee on the two proposals forwarded from the regents. Like Faculty Affairs and the Tenure Subcommittee, “the Judicial Committee did not discuss the relative merits of either proposal in detail. . . . A general consensus was that the Regents new proposal is nothing new -- just minor cosmetic changes of a proposal that was already blatantly unacceptable; the Sullivan proposal might hold some promise and seemed to contain nothing very objectionable, but it was incomplete and thus difficult, if not impossible, to consider. It was argued that the Sullivan proposal was even more unworthy of consideration in view of the fact that the faculty had (after much time and effort and many meetings) presented a compromise proposal in June and Judicial members saw no need for further compromises. It was stressed that the June proposal was indeed a compromise because the faculty felt that the 1985 tenure code adequately served the University needs, and saw no need for revisions; however, after many discussions (with administration and Regents) the faculty drafted the compromise proposal of June 1996. Many Judicial Committee members are loathe to put forward a new proposal that might end up being a compromise of a compromise.”

The result was that the Judicial Committee deliberated at length over a resolution of its own, rather than take up either of the ones from the other two committees; “FCC will then look at the three resolutions and make a recommendation as to how the Senate activities will proceed -- at least this is how I interpret what Virginia Gray said will happen, given the three resolutions now being sent to the Senate via the FCC.” The Judicial Committee recommended that “the senate recommends that the Regents take no action regarding tenure revisions for the Law School until all collective bargaining has been resolved and appropriate consultation with the faculty has been conducted; and that, if despite this recommendation, the Regents insist on taking action with respect to the Law school, that they “reject Reagan-Spence and not deal with Sullivan because it was incomplete, and “adopt the June 1996 proposed tenure code amendments.”

-- Keffeler wrote to Reagan on October 23 to express concern that they were coming to the end of month and “still do not have the faculty profile and turnover data” required for the review of tenure. She itemized the list of data requested, and recalled that Hasselmo had said their objectives could be met through attrition. She said the Board “is entitled to know, and probably ought to approve, the strategic and policy basis for this assertion,” and that the analysis would let the regents know if incremental changes were enough or if a “more focused realignment of our faculty resources” would be required. She maintained that without information “rational and accountable examination of the issues is virtually

impossible” and asked for the information before the November meeting. She said it should be available; “if not, the assurances we have been provided are more a function of wishful thinking than accountable assessment.” Reagan forwarded this memo to Hasselmo and asked that the information be provided to each regent before the November meeting.

- Regent Reagan wrote to Hasselmo on October 23 requesting a chart of the differences among the tenure proposals that were being considered, to be provided to the Board by October 28, along with Hasselmo’s recommendation on each item.
- Wells reported to colleagues on October 23 that she had heard that “the clinical chiefs at the AHC have asked the BMS if they can petition to get out of the bargaining unit. The reason they wish to do this is to protect their clinical income which they believe may be taken from them and redistributed by a union. The rumor continues that the BMS told the clinical chiefs that they are permitted to ‘opt out’ and a campaign to accomplish this has begun.” Wells said this rumor had to be stopped and a clear understanding of what the BMS had held made known.

Wells followed up the same day by relating a conversation she had overheard, and emphasized that their lawyer should check on the rumor and “head it off (if possible) before any secession effort can gain momentum.”

She followed up later with yet another message, this time conveying commentary from Bob Morris about the provisions of the statute governing collective bargaining at the University. According to Morris, “no single part of the AHC has the option of splitting off from the rest of the AHC. . . . It is highly unlikely that anyone at BMS has told the clinicians that they may opt out.” There was an issue with part-time employees, and perhaps clinicians whose income came mostly from practice revenues might be classified as part-time, but the BMS decides that, not the employees.

October 24: Hasselmo received a letter from the treasurer, AFT Local 1904 (Montclair State Faculty, Professional Staff, and Librarian Association), at Montclair State, transmitting a resolution that “condemns this assault by the [regents] on the traditional and essential freedoms of the academy, and asserts its support for the faculty of the University of Minnesota” and opposed the regents’ actions.

October 24: Hasselmo received a letter from the chair of the Board of Directors of the American Council on Learned Societies, transmitting a resolution expressing “dismay” at the regents’ tenure regulations and urging the regents not to violate AAUP standards and not to adopt the revisions proposed. The letter was also sent to regents’ Executive Director and to Fred Morrison.

FCC met on both October 23 and 24. Both meetings were closed discussions of strategy. On the 23rd, Morrison also reported on the hearings at the BMS. FCC also considered the various

actions that might be taken by those favoring and those opposing a faculty union as well as resolutions from the Tenure Subcommittee, the Committee on Faculty Affairs, and the Judicial Committee. They paid attention to the possible interaction between the request of the Regents that the issue be taken up and the response of those favoring collective bargaining. FCC favored the Judicial Committee resolution.

On the 24th, FCC again took up the question of a Senate resolution, and discussed meetings with legislators and with Hasselmo. FCC also discussed pursuing a faculty seat on the Board of Regents, because the president, as head of the faculty, is pulled in too many directions to represent the faculty. Gray reported on what she and Bloomfield had been informed by Michigan State faculty at the Big Ten meeting -- that Chait told them he did not support the Morris proposal and advised the regents against presenting it. She was also told that other Big Ten presidents had assured their faculty that there would be no changes in tenure along the lines Minnesota was proposing, which cast doubt in the minds of some FCC members about the proposition that Minnesota was only the first domino.

Chapter Thirteen
The October Faculty Senate Meeting and Its Aftermath &
The Halloween Surprises

THE OCTOBER FACULTY SENATE MEETING:

A DIVIDED FACULTY FACES ITS CHOICES

The Faculty Senate met and adopted a 3-part resolution, after being presented with the differing resolutions from the joint Faculty Affairs-Tenure Subcommittee meeting. The Senate statement noted the cease and desist order, that Law was not included, that the Law School situation did not require tenure revisions now, that union elections would be held, and that it could not discuss tenure for Law until the Law faculty voted whether to join the Twin Cities bargaining unit. The resolution recommended (1) the regents not act on tenure amendments for Law until all elections were held (approved 121-1); (2) that if the regents acted, they should reject Reagan-Spence and adopt the Senate proposal (approved 95-25-4), and (3) the Board should not adopt Sullivan, which, although it might provide an alternative solution, has not been reviewed (approved 57-51-5).

The minutes of the meeting record that Dempsey and Feeney reported on activities of the previous months and the issues the committees had debated, that Morrison reviewed the three tenure proposals and reported that the Morris proposal was apparently no longer being considered, and that Gray presented a motion from FCC, adapted from a Judicial Committee proposal. The FCC resolution was divided into three parts (noted above), and part (2) "produced considerable discussion with a wide variance of opinions expressed," primarily about the appropriateness of the Senate taking any action at all. Gray forwarded these resolutions to Reagan the next day.

One faculty member who supported the UFA/AAUP commented that "I don't think that Tom Walsh and Naomi Scheman were especially effective in the Senate that day. They did more damage to their own cause."

Walsh's view: "The senate was split almost down the middle on Sullivan. UFA opposed both the Reagan-Spence proposal and the 'Sullivan compromise' and had hoped to win on both. But the important thing was that the Senate was split on the Sullivan proposal. An administrator cornered me after the Senate meeting and asked why we had opposed the Reagan-Spence plan rather than just keeping quiet -- that plan would help us in the election. I had to reply that we just weren't that clever. It made me wonder how many people were

reading Machiavelli by flashlight under the bedcovers at night.”

Participants commented later on this division of opinion among the faculty. One argument, iterated previously, was that the faculty should take up Sullivan and Reagan-Spence (because the Faculty Senate owed it to the Law faculty to debate them); the other was that the faculty should not (because they were simply attempts to dodge the cease and desist order and there was no reason to act now).

One of the AAUP leaders, Carolyn Williams, took the latter view. “I think that was such a betrayal of the faculty. And at that time there was the legitimate offer to discuss this in a rational way with the faculty. I think the process was so bad that that was the crucial factor. Once again, the faculty governance system was undermined.”

Humphreys agreed. “I don’t think the Senate should have acted on either one. Or discussed them. And you can see in that Senate vote that was taken that there was strong feeling that they shouldn’t be doing this.”

Swan also agreed. “I think we should have had a representation election first. That wasn’t what Virginia wanted, and in the end that wasn’t what a majority of the Senate wanted. And there was this funny notion about how there were some parts of the University where they might have acted, and could they have some help? That was essentially the argument that carried the day.”

The leadership group of FCC favored action. Morrison did. Gray said, “I thought we should take it up, if we wanted to get our two cents’ worth in and do our consultation in a timely fashion. I believed that the counter-view, that we shouldn’t take it up, is a union strategic position. I understand why they take that position, but I don’t think the Faculty Senate ought to let itself be governed by the political imperatives of a potential union.”

Bloomfield agreed completely with Gray. “I clearly felt that they should [be taken up]. I thought the most important thing was to come to a solution, rather than just saying ‘we can’t do anything,’ which would have landed us with a union. Again, I don’t think that the union would necessarily have been the worst thing in the world. I just don’t think it’s the best solution for us. But I think without doing something like this, we would have had a total stalemate and inevitably ended up with a faculty union. And since I felt that Sullivan was a pretty good tenure code, I was quite comfortable with it.”

Bloomfield agreed that some of his colleagues felt very strongly about how the process seemed to have faltered, and that Sullivan’s provenance was bad. “I think that those who wanted a union saw that this was the way to get it. That if they could keep Sullivan from being considered, sending a signal about what would happen, then there would be no choice but to unionize. Nobody was coming out and saying it, but that was

clearly in the backs of all of our minds.”

Bland sided with her FCC colleagues. “I thought they should” take up the Sullivan proposal. “For the basic reason that they’re part of the faculty. It’s pretty simple. I can see why folks who were supporting a union effort would [oppose the Senate doing so]. Which they clearly did. But I wasn’t of that persuasion. Even if that hadn’t been going on, I still think ‘how could we not?’ Our option was to let the Law School faculty sit out there without it being consulted on.”

Was there any doubt that Sullivan was a signal? Swan’s reaction probably represented the views of most of his colleagues who supported collective bargaining: “no, no, no.” And perhaps the understanding of even those who did not.

* * *

The news media, as usual, were attentive.

“‘U’ faculty pans regents tenure plan in 121-1 vote” (Star-Tribune, October 25). The article reported Senate rejection of Reagan-Spence and “tepid support” for Sullivan, and that the “gulf between the faculty and the regents was about as wide as ever.” The faculty said they wanted their own proposal, and the regents should wait on the union elections. “The next move is up to the Law School,” which had to decide by November 1 if it wished to be part of the Twin Cities campus bargaining unit; in the meantime, the regents and faculty could continue to discuss tenure because they “can cast all of their talk as if it is directed solely at the Law School, although some critics say that loophole is being used illegally.”

“U faculty flirts with tenure compromise” (Pioneer Press, October 25). The article said faculty moderates prevailed when the “Senate held its collective nose and gave tepid support to a tenure-reform compromise” in the 57-51 vote on Sullivan, saying it should not be considered now but “might provide basis” for solution. The article reported the other votes, and that Morrison and Fogelman urged compromise. Fogelman supported it ““on the remote chance that they (the regents) will act in a reasonable way. . . . If I were more enthusiastic about unionization, I would feel differently. I am frankly not. This may enable us to have some other option besides unionization.”” The moderates won over others who wanted “stonewalling”; the article quoted History professor Bernard Bachrach as saying ““this board of regents is a cancer on the university”” and that they should resign. If they did not, the faculty should unionize.

“Law School proposal rejected” (Minnesota Daily, October 25). The Faculty Senate rejected Reagan-Spence; the article reported on the resolution adopted, which Gray said would be sent to the regents. Morrison said it was “a positive step. ‘The senate expressed a willingness to

remain open.” Hasselmo was positive about the action. “I have supported the faculty since their proposal in June. . . . And the Sullivan proposal, from my perspective, points in the right direction.”

“Criticism arises over tenure consultants” (Minnesota Daily, October 25). Faculty see the consultants, two law firms and Chait, as “too far away and too far removed” and critical of the costs. They are also “‘hired hands’ without a long-term interest in the University” and won’t reap the consequences of change. Spence said Chait was “‘extremely helpful’” in talking about tenure. The two Hogan & Hartson attorneys were being paid \$246 and \$212 per hour. Hy Berman (History) said “‘the consultants ill-served the regents by giving them what they wanted. . . . They did not get a national perspective, they got a mirror.’” Berman said they knew what they wanted but “‘needed someone to tell them the changes were not outlandish.’” Faculty and the AAUP disputed the view that the tenure changes were “‘in the middle of the fairway.’” Marshak said there are times when consultants are needed, but “‘they should have been hired by the president.’” The administration did have Judith Gappa as a consultant, but Reagan said “‘the regents were dissatisfied with the breadth of Gappa’s presentation and set out to more clearly express the Board’s objectives.’” Reagan also said the regents’ hiring their own consultants “‘may have impaired the relationship between the regents and the administration. ‘Real problems developed when the regents stopped having confidence in the administration’s ability to solve this issue.’”

Various things occurred as October wound down.

- On October 25, Reagan and Hasselmo sent a joint email to all faculty about collective bargaining. They informed them of the petitions that had been filed, and said that “the question of union representation is of utmost importance” to every faculty member, that everyone had freedom of choice in the election, and they urged faculty to become knowledgeable about the issues. The University would not campaign for or against unionization, but individual administrators and others were free under the First Amendment to express opinions on the matter.
- Swan emailed to his UFA/AAUP colleagues on October 25 to suggest that they needed to deal with “things in the air.” That is, “none of our competition is unionized. To say one will preserve the Faculty Senate is all well and good, but the law says the bargaining agent is the exclusive agent on issues that concern terms and conditions of employment. In essence the Regents don’t have to and won’t deal with the Senate on a range of important issues. We need to know what the union will stand for, what it will do before we can decide to vote for it.”
- Senator Ellen Anderson wrote a two page letter to each regent. She told them that “the

legislature is not of one mind on the issue of tenure,” and that the proposal went farther than what was wanted in the AHC appropriation. She was aware of faculty concerns, and believed them justified. She knew of students being warned away and faculty not being recruited, and asked how the University could compete with “practices so far out of the mainstream.” She said budget considerations did not justify imposition of a corporate model for downsizing and expressed concern about the growth of the administration. Society needed the University as a source of unbiased information, and academic freedom for faculty to think freely. The election of a union would be a wise choice for the faculty, she concluded.

- Swan emailed to his colleagues at the end of October about the problem with cards from the two different organizations. He began by saying that “that this is likely an issue about which there will be differences of opinion. We need to discuss the issues openly, come to a decision, and then move on.” There should be only one collective bargaining alternative,” Swan maintained, and while “there is no assurance that having AAUP on the ballot means that collective bargaining will win a majority of the faculty,” if not, there could be a large group who would hesitate to support it. The effort to collect AAUP cards should be an activity designed to generate support for collective action, Swan said, and pointed out that “Tom Walsh has been very forthcoming about saying that if UFA wins the election it would melt away in favor of an AAUP collective bargaining agent. Having Tom endorse AAUP cards clearly demonstrates that the UFA and AAUP have come together.”
- On October 29, about 30 faculty met with legislators from the 5th Congressional district (Jean Keffeler’s district). The discussion focused on the damage being done to the University by the Regents’ tenure proposal.
- **“Carlson rips U regents, administration on tenure [;] Angry governor calls for ‘cease-fire.’”** (Pioneer Press, October 30). The front-page article described the Governor’s speech at a trade association meeting as blasting the administration and regents and asking for “the university to cease fire on the topic of tenure.” He said ““our university is being ripped apart, and we’re told as outsiders to stay out. . . . Well, it’s not their university. It’s our university.” “Apple pie was left untouched at many tables by stunned listeners as Carlson’s passion rose. ‘We’re trying to attract a new president. . . . Who wants to come here during a civil war?’” Carlson said the legislature might delay funding, that the University would lose its best faculty, and emphasized the need for recruiting outstanding faculty. Carlson also “took a swipe at university regents” when he said there must be “a stronger way of selecting

regents.” Regent Kim, in the audience, was “visibly shaken” and said later “‘it’s a slap in the face,’” that she felt bad, and agreed help was needed; the article noted she was up for re-election, and “was taken aback by the governor’s suggestion that she is not qualified to be a regent.” The article recounted events and concluded that the “brinksmanship is not over” because the Law faculty can sign union authorizations; the Sullivan proposal “may be the regents’ last chance to avoid unionization.”

- In mid-October, one of the members of the House of Representatives (who subsequently became Speaker) had written to Hasselmo inquiring about the University retaining Hogan & Hartson. He asked how much in fees had been paid to them, and if there were any connection between the firm and the General Counsel’s office. Hasselmo responded that the University hired Martin Michaelson of Hogan & Hartson to advise regents on tenure changes; “given the nature of this particular issue and the administration’s position on it, it was deemed appropriate” for the regents to have own lawyer. Hasselmo noted that Michaelson was a former counsel for Harvard and had a national reputation.
- Hasselmo sent the regents, on October 30, 23 pages of data and information on faculty attrition and demographics, as Reagan and Keffeler had requested.
- In late October, Hamilton wrote to his colleagues in the AHC to quell rumors that he said were circulating about the cease and desist order. He told them that the Medical School family practice organization would be formed, and that clinical income would not be included in any collective bargaining negotiations, that the sale of the University hospital to a local HMO would occur, that the AAUP/UFA made it clear that they wished retention cases as well as new hires and promotion and tenure to continue as usual, and that a new voluntary early retirement plan could be implemented.
- **“Kelso will seek release of AHC’s embargoed funds”** (Daily, October 31). Kelso said that she will propose legislation to release the funds. “‘To have that money be held in suspension until all this turns out is unfair,’ Kelso said.” She approved the Governor’s speech attacking the regents, but “blasted faculty members for the role they have played in the tenure reform troubles. ‘I have lost my trust in faculty. . . . Faculty behavior has been destructive to the University by sending word that no one wants to come here.’ But Kelso did not align herself with the regents either.” The article also reported, about the Governor’s speech, that Regent Kim said “‘I did thank him for his speech.’”

* * *

THE IMPACT OF GOVERNOR CARLSON

The Governor spoke publicly several times about the tenure debate at the University. Did his statements, or any of his activities have an effect? Gray said that he “turned around at the end. He’s a mercurial guy.” She said he did not know anything about the intricacies of tenure, but “he was distressed about the bad headlines. He had Wayne Simoneau call me; he was going to have this cooling-off period and this group to mediate. He was just concerned that we were in the headlines; the Governor doesn’t want us to be in the headlines. Which is fine.”

Morrison thought the Governor’s actions eventually had an effect. “I think early on the Governor was viewed by everybody as not a terribly significant player. The Governor was off on the side, didn’t appoint regents. As this got sharper, he tried his commission; the commission never went anywhere. My impression is that Reagan said “go away, we’re in charge, you’re not.” Maybe in response to that, maybe in response to general sentiments, he made that speech in St. Paul, in which he said we needed a better way to pick regents. The one where Kim was in the audience. That’s one of the precipitating events, I think, for Keffeler’s resignation. She thought that she was on board with him, and now he was going to stab the people who were taking this tack, so she wanted to be out of the way before the stabbings took place.”

Feeney took a harsher view. “I think that [the Governor’s actions were] perceived as the village idiot trying to say something about something he didn’t understand. I’m not saying that Carlson is an idiot; he’s not. But in this sense, he was. Politicians and academicians don’t mix well. And don’t come in and say you’re going to intercede. Because first of all, the University is a constitutionally independent entity; he couldn’t do anything. Could he call some task force together? Yes, and that could be damaging. I viewed it as entirely negative. I don’t think it had any positive influence on anything. I think if you’d taken that whole thing out of there, the course of events would have been exactly the same.”

Sturdevant said she believed “the Governor’s public statements were important, and the timing was important.” As for whether he had changed his views, she recalled that “we had always heard, through the grapevine, that he was sympathetic to the idea of revision of tenure. He certainly was a fan of Bill Brody’s. He was not a fan of Nils Hasselmo. That goes back a long time. So there was a sort of an assumption -- maybe, but not based much on public comment, probably because he signed that bill with the language in it about tenure -- that he was supportive of the regents’ position. At first he was toying with the idea of appointing some sort of blue-ribbon panel to try to mediate this. That was an idea, early on, that we liked, too. I think we might have foisted it on the Governor, because we

thought it needed resolution, and it might not be something that could be resolved neatly with the regents simply backing down. That maybe to give the regents some kind of cover, it would be good if someone the likes of Walter Mondale called on them to back down. Arne was preparing to go that way, but he had a hard time putting together the right slate of folks. Then he became aware that maybe that wouldn't be necessary, that maybe getting the regents to simply lose this was feasible, and I think Arne's comment then about how wrong-headed this was, was more significant and more timely. It came a week before Jean resigned."

* * *

October 30: The president of the Senate at Iowa State wrote to Hasselmo transmitting a resolution and said that many were watching Minnesota, "in hopes of seeing a return to a rational and cooperative approach to maintaining one of the best educational institutions in the United States." The resolution declared "solidarity" with Minnesota faculty, expressed alarm at the Morris proposal, and asked the Board to "pledge its devotion to academic freedom," and asked the other two Iowa public institutions to support Hasselmo and the Minnesota faculty.

Halloween of 1996 was a cardinal day for tenure events. (1) About mid-day, Law Dean Sullivan sent to the regents a revised tenure proposal (subsequently dubbed "Sullivan II") that responded to criticisms made by the Senate and committees. Unlike the first Sullivan proposal, this one carried the endorsement of President Hasselmo. (2) About mid-afternoon, a sufficient number (it was supposed) of the Law faculty filed cards petitioning for an election on whether to join a Twin Cities campus bargaining unit, thus closing off the last avenue for the regents to have even a pretense of talking about tenure (and thereby forestalling action on Sullivan II). (3) At some point one of the most outspoken regents on tenure, Jean Keffeler, resigned unexpectedly and without explanation. This action (page one, large-print headlines reporting widespread amazement and surprise) was generally seen as positive by the faculty.

On (1): Sullivan wrote to the regents transmitting a revision of his tenure proposal. He noted the Faculty Senate comment that "continuation of the controversy" would harm the University, so withdrew his earlier proposal and substituted this one. The only changes were in the discipline provisions (only minor penalties for minor discipline), Faculty Senate provisions concerning the Judicial Committee legal officer had been added, and suspension without pay would be permitted for cases that continued for over a year, but only if the department faculty concurred with the dean in seeking removal and if the University did not cause the delay. Sullivan concluded by asking that "as the chief administrative officer of the only unit currently involved, I urge you to adopt this proposal and to consider that we not reopen this controversy within the next few years."

Morrison recalled the Senate action of the 24th and the tripartite resolution, including the

language that Sullivan I might form a basis for some further discussion. “Then, it’s been my understanding that Tom [Sullivan] entered into some discussions with various people, not including me, about changes that might be made that might make Sullivan palatable to the regents, and to the faculty -- addressing some of the issues raised by the faculty at the Senate meeting. My impression was that he talked to somebody in the administration about something. He then put together Sullivan II. He came forward on the 31st with Sullivan II.” In Morrison’s view, Sullivan’s intent was to leave nothing open for further debate; he wanted the matter settled. Morrison later wrote that “you might ask Tom Sullivan or Dan Farber where Sullivan II came from. I had no role in that.”

On (2): On October 31, the AAUP/UFA issued a press release which was distributed to the faculty. It reported on the filing of cards by the Law School faculty, and that the BMS had issued a cease and desist order. It said that this action “demonstrates and enhances collegiality” at the University. The release charged that the “action of the Board of Regents in considering a tenure code allegedly for the Law School was a subterfuge to evade Minnesota labor law. This accompanied actions by the Board that will delay a timely resolution of the collective bargaining issue and the tenure controversy.” It noted the proposal that had been made to negotiate the tenure code, and said the proposal “was rejected by the Board.”

The next day, the AAUP Executive Committee and UFA coordinators sent out an “update” to the faculty telling them that the UFA and AAUP had affiliated and reporting on how and when a collective bargaining election would take place. It said that “our goal is to win the final election by convincing faculty that collective bargaining through AAUP is the best way for us to protect our interests as faculty at a major research university” and that UFA would “continue to exist for legal reasons until after the election. UFA will then legally transfer its bargaining rights to AAUP and will dissolve itself.” The University had opposed the affiliation, and the BMS agreed. “We regret the actions of the Board of Regents in attempting to prevent an accurate representation of the AAUP-UFA affiliation.” It also reported the proposal to collect authorization cards from a majority of the faculty, which “would have been both more democratic than a ballot election and would have required a more rigorous demonstration of support from faculty for collective bargaining.” The regents also rejected this proposal. Moreover, the regents indicated they would oppose inclusion of department heads in the unit, which would require a BMS hearing, and further delay. “Based on these actions by the Board of Regents and their lawyers, we have to regretfully conclude that this process will be both more adversarial and slower than we had hoped.”

On (3): The news coverage of Keffeler’s resignation was on the front pages, again in large print.

“U regent quits over tenure flap” (Pioneer Press, November 1). “In a surprising move that may signal a big faculty win in the bitter tenure war,” Keffeler, “the prime mover behind an effort to weaken the tenure code,” resigned. Her resignation letter to the governor said “unfortunately, the values I hold as an individual and the beliefs I hold about responsible governance are inconsistent with the situation that has developed at the university, a situation of which the current tenure crisis is symptomatic.” The article reported that “pressure has apparently been building” for her resignation; she had been “called before the 5th District caucus . . . and political leaders told her to back off from her tough tenure position.” Other regents were “shocked” and she had told no one of her decision.

Spence (“who has taken the lead on the board’s get-tough position since Keffeler stepped back from the issue several months ago) said she “just did not understand” the resignation. Morrison said it “will remove one of the lightening rods of faculty criticism” and that she sought to bring a management approach that did not work in a university. She did not understand that the approach would destroy academic freedom. Representative Kahn said “the faculty have absolutely no confidence in the regents. . . . There is a total crisis of confidence. Jean [Keffeler] is a good friend of mine, but I think this is a good step. . . . I think all the regents should resign.”

The article also reported the Law faculty had filed cards and the BMS had issued a cease-and-desist order, which meant the regents could not act on tenure in the Law School. The Law faculty had until November 30 to vote whether to join the Twin Cities bargaining unit; if they did, “the game is over” and the regents could take no action until after union elections. If not, the regents could act in December. Hasselmo the night before had come out in favor of a moratorium on tenure revisions and supporting Sullivan II.

“‘U’ regent Keffeler resigns” (Star-Tribune, November 1). “Jean Keffeler, the most controversial regent the University of Minnesota has seen in a long time, resigned Thursday in a move that left her colleagues sad and baffled.” Keffeler “saw her views slowly gain support by what now appears to be a majority of the board -- to the thorough resentment of the faculty.” The article cited her letter to Reagan urging that the tenure debate be stopped, and said Keffeler “said Hasselmo has not helped the board deal with the issue.” The effect of the resignation would not now be known because of the BMS order concerning the Law School, but Regent Kim said tenure was not only Keffeler’s issue and that it would not make a difference. Keffeler did not respond to calls.

“Regent Keffeler steps down” (Minnesota Daily, November 1). The article reported people were shocked and mystified at Keffeler’s decision. Representative Kahn said “I have privately told people that all of the regents should resign. . . . It’s the only way to dramatically show how bad they’ve botched things up.”

* * *

WHY DID JEAN KEFFELER RESIGN?

Those who participated in events did not -- and do not -- know why Keffeler resigned. That does not mean they were unwilling to speculate.

One said "I assume that she resigned because she was smart enough to see, in October, that the battle had been lost, and that was her way out of a losing situation, and then she could become the outside critic. That's consistent with her history in other positions, where she's gone and mucked up things. But in October she was smarter than Reagan and Spence, and saw it was a losing battle, and said 'I'm not going to be brought down any further and I'll get out.' Then she could go around the country and speculate what went wrong. She had a leading role in what went wrong."

Sturdevant surmised that the lack of a majority on the Board in favor of firing Hasselmo played a role in Keffeler's decision, but also that "the timing of her resignation had as much to do with personal exhaustion as anything else. She had gotten to the point of personal burnout on the issue, near to nervous collapse on the whole thing, and for personal reasons needed to back away. Having said that, she's also politician enough to know that she was losing. I think she always regarded the Governor as her closet ally, and about a week before, the Governor had given a speech, and he directed some pointed remarks at the regents about being on the wrong track. The regents were surprised at the Governor's remarks, having been led to believe by Jean that he was their closet ally. I think that also, the sense that support that she hoped would be there for her side, was evaporating. I don't think she ever really counted on our support, because in the previous year, when she and Nils tangled on some other matters, we tended to give Nils the benefit of the doubt. And she was unhappy with us on that."

Russell Bennett said that "I think she was close to a nervous breakdown. I think she was shattered. Despite all her tough talk and her verbal skills, Jean is fragile. To this day, she blames the Foundation for her troubles, because they wrote a very strong letter to her, years before the tenure thing, saying 'shape up, and let Nils Hasselmo run the University; you're not doing what you're supposed to do.' She resented that very much, and never got over it. Everybody likes to have the feeling they're doing a good job. She realized that if you go to the Minneapolis Club or the Athletic Club, 100% think she did a lousy job."

Sturdevant also reflected on the different pressure that different Board members may have felt over the tenure issues. "When the Board isn't in session, [the regents] are scattered around the state. My sense is that the pressure the Board

members experienced varied quite a bit by geography. I know that outstate newspapers were not near as negative on this as we were. Some of them were silent on this, some of them were quietly supportive of it. I think the outstate regents were a bit shielded. I think Jean felt the full stormy blast, and that was part of her exhaustion on the issue. People who she hoped would be allies turned out not to be. Likewise, I think Becky Kelso's switch from higher ed to K-12 funding, in this last go-round of legislative appointments, reflected her exhaustion on this issue." Sturdevant recalled speaking with Kelso on this issue; Kelso "had already indicated to me before the election that she thought she, too, had become too much the dragon lady. So for people like Becky and Jean, there was a full-force storm."

One faculty member maintained that "she wanted to control things. I think she's crazy. I felt sorry for her. I felt, when I used to observe her at the meetings, she was so uptight. Even saying hello to her. I just felt sorry for her by the end of it. I don't know what her problem was. She's obviously a very smart woman, but she has some disorder of some kind. As I thought back, I thought 'poor Nils! Having to deal with a person like that.' I don't know how he lasted as long as he did. I just thought she was crazy."

Fogelman offered a surmised. "My personal feeling was that it came right after the Governor made the dramatic statement that 'the civil war at the University must end' or words to that effect. She had the support of the Governor in this, from the beginning, I'm sure, and that's all part of this process of restructuring the University into a more corporate-like organization. The Governor was supportive of that; then she lost the Governor's support. I was absolutely flabbergasted when she resigned. It's true that we were in this battle, but she's been in battles before."

Another faculty member wrote that "the story I heard was that Jean was under significant mental strain. Presumably the mental strain was from the turmoil at the U as well as anything in her own life. . . . During the spring and into the early fall, more than one person commented that during meetings Jean would seem to have a tremor of some sort in her hand and looked to be exerting great efforts at person control. I always thought Jean loved controversy. She certainly found herself in the middle of a lot of it."

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"Wall of silence likely to appear as Law School seeks bargaining" (Star-Tribune, November 1). The article reported "the last brick slid into place Thursday afternoon in what probably will be a wall of silence on the tenure issue." It was not clear if "there was any connection between

the law faculty's action" and Keffeler's resignation. This action closes the "escape hatch" of continued discussion of tenure so long as it was about the Law School.

In Walsh's view, this was a critical moment. "The Law School signing 30% cards was for the moment the end of the hope to manipulate the way out of the crisis. It looked as if we might have a fair and untainted election."

"Law School makes it official" (Minnesota Daily, November 1). The article reported the filing of union cards, that this closed off the tenure debate, and quoted a Law faculty member as saying there were divergent views. Morrison did not sign a card and Walsh is "delighted" because he felt regents were using the Law School to avoid the cease and desist order.

Walsh said "it was clear that even the other Board members did not understand that they were in a swamp that was going to claim their reputations. Keffeler understood and got out, as had Academic Vice President Infante even earlier. I think that Keffeler resigned after the Law School signed cards."

* * *

REGENTAL MICROMANAGEMENT: TWO OUTSIDERS' VIEWS

"To settle for mediocrity at 'U,' simply unionize the faculty" (Star-Tribune, November 1, editorial by Edson Spencer, former Honeywell CEO and advisor to Governor Carlson).¹⁰² Spencer said faculty unionization would make it impossible for the University to be one of the great research universities, because faculty would leave, fund-raising would go into eclipse, and the legislature would not support increased funds. Flexibility may be more difficult to achieve with a union. The regents were correct to examine tenure, but wrong to reject the Faculty Senate recommendations. He maintained that the governance system had broken down and the regents were micro-managing, the faculty had no trust in the Board, there must be trust between board and president, and the Board could not run the University. The breakdown in governance "has left the regents with a massive problem" that must be solved to avoid mediocrity, and the best chance to avoid unionization is for the regents to adopt Sullivan II.

The issue of micro-management by the regents hovered as a theme deep in the background of this debate, as suggested by the opening paragraphs of this volume. It prompted an anecdote and commentary from Russell Bennett.

"I had never met Pat Spence before. When I got on this committee [of the Alumni Association] looking at how to better

¹⁰²And, as noted earlier, chair, in the late 1980s, of a blue ribbon task force -- the "Spencer Commission" -- on University financial management.

elect regents, John French -- a lawyer, one of the smartest and nicest guys you'll ever know -- asked her 'Ms. Spence, how much time do you spend on being a regent?' She said 'I spend probably 60 hours a week.' He said 'then you're saying you have to be unemployed to be a regent.' She said 'yes, I guess that's right.' I said 'Pat, what in the world do you spend 60 hours a week on?' She said 'it takes me three hours to answer my mail.'"

Bennett recalled that "I was sitting next to my classmate John Simonett, a Supreme Court Judge. I said 'John, you're on the Minnesota Supreme Court, how much time do you spend answering mail?' He said 'I don't answer my mail. I figure when you're a Supreme Court Judge, you're supposed to call them the way you see them. I'm not running for Congress; I don't even answer my mail.' I said 'that's a good message you ought to get across to your compatriot Pat Spence.' I don't know what her goal was."

"Those [regents] are not bad people; if they were sitting here, you'd think they were decent people."

Bennett said he told his colleagues on the Alumni Association committee that "having watched this now for 30 or 40 years, the biggest problem in the last 20 years is micro-management by the regents. My advice to the new president, whoever he or she may be, is to cut that Gordian knot. The only way to do it is not meet monthly, just quarterly, and you should have just three items on the agenda that are strictly policy matters." Eisenhower insisted that the entire D-Day invasion be reduced to one page. There was back-up that would fill this room, but he wanted a one-page timetable and summary so he could take the overall view. Don't give them an agenda three pages long; give them three major policy issues, and if they don't get them decided at that meeting, put them off until the next quarter. The world isn't going to stop. That's the only way I know to get them out of this micro-managing mode."

One individual involved in the events contended that the micro-management began in earnest after the Spencer Commission report. The commission report basically said there needed to be some hard-nosed business people on the Board of Regents who can manage the University better. Bennett agreed; "they did say that, but the micro-management started even before that." Bennett remembered an interaction he had with a regents' chair in the mid-1980s; Bennett had been serving as chair of a private school. The chair of the Board, Bennett recalled, "asked me 'how often do you meet with the headmaster?' I said 'I only meet with him once a month.' He said 'don't you meet with him every day?' I said 'no, you shouldn't be meeting with [then University President] Ken Keller every day. You shouldn't be meeting with Ken Keller even every week. You've got a good president. Let him do the job. If he's no good, fire him. Your job is to get a good president, but once

he's there, get out of the way.' He said 'I can't believe you did that at [the school].' I said "my job was to hire a good headmaster. I'm not an educator. My job is to get out of the way, and monitor his performance, and see if he's meeting the goals, but not tell him how many math teachers to hire or whatever."

Bennett said that "I think Ed Spencer and Ken Dayton and that Commission had the right idea, and the reason that committee came down so hard, was [because the people] who were being selected as regents for the last twenty years had no experience with governance. Ken Dayton has written a very good paper on what governance is, and the difference between governance and staff. Most of those regents don't have any experience with governance. You look at their records; none of them have been chairman of the United Way or the Art Institute or the Orchestra or Red Cross -- any profit or non-profit, it doesn't matter which. It's the idea as chairman and directors you're supposed to do certain things and you're not supposed to do other things. They don't get that at all. I feel bad for them; they're really nice people, but they just don't get it."

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"Keffeler resignation may have little effect on tenure fight" (Star-Tribune, November 2). The article reported "the puzzle of Jean Keffeler's resignation remained" a day later, and that she had refused to be interviewed. Spence said Keffeler had "heard the faculty would ask for her resignation" but Keffeler said she would not do so, and that Keffeler had not been a barrier to discussions about resolving the tenure issue.

"U tries to get beyond tenure [;] Time to put issue on back burner, Regent Wendell Anderson says" (Pioneer Press, November 2). Anderson, a former governor of Minnesota, said "'our tenure code should be same or as good as Harvard's or Yale's or Northwestern's. . . . In a competitive environment, why would we want to have something that is different or even perceived to be different from our competitors?'" The "fire may have gone out of" the regents on seeking major tenure changes; Anderson said the majority of the regents are "no longer interested in being on the cutting edge of tenure reform." The article related the history of events, and said that faculty and regents "never sat down together and talked over their ideas." That was now not possible, with the cease and desist orders; one regent (Peterson) said he would vote for Sullivan II, and Kim, one of Keffeler's allies, said she wanted a compromise.

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FACULTY VIEWS OF BOARD CHAIR REGENT REAGAN'S STANCE

“Keffeler’s move [:] Seize opportunity to make peace” (Star-Tribune, November 2, newspaper editorial). The editorial said Keffeler “served the University . . . well, but never so selflessly as when she resigned Thursday.” The paper said it was a “timely peace offering” that allowed the debate to focus on the health of the University, and that everyone should take advantage of the opportunity. The regents should withdraw their proposal when possible, “condemned in academic circles far and wide,” and faculty and regents should jointly agree with the BMS on negotiations. “Several of the remaining 11 regents should follow Keffeler’s lead,” because observers “are concluding that the real key to a better university isn’t a new tenure code, but a wiser Board of Regents.” The paper said the regents didn’t understand the University was not a corporation and faculty “not mere employees” and replacements should have an “understanding of what constitutes excellence in a university.”

Several faculty members believed that Reagan was one who did not understand this point, and who saw faculty members as employees. One recalled a meeting where Reagan spoke. “His whole attitude toward the faculty just enraged me. The employee-ization of the faculty. He was really condescending. He really set me off. I was shocked. I don’t usually react that way in meetings like that.”

Pick agreed. “I think that’s absolutely clear. There are statements, quotes from him, in newspaper articles to that effect. Not too long ago, in some article about [Responsibility Center Management], he said something about he thinks it’s a very good thing because it permits the employees -- that is, the faculty -- to have some say in how resources are used. I think he’s very clear about that.”

Another agreed with the proposition. “I think that’s true.”

One faculty member, echoing what appears to have been a widespread sentiment, commented that Reagan “must have a monumental ego. A lot of his behavior seemed to designed to show who’s boss here, who gets to make up the rules.”

Another faculty member said “I just think he’s a politician with little academic credentials or appreciation of a large institution like this. He was way out of his depth. He wanted to treat the faculty like they were just employees. I don’t know whether he knew what was going on or not. I wonder if he really read some of the things that were attributed to him in the Reagan-Spence document. I thought he was totally inappropriate as a regent.”

One influential observer of events recalled a conversation with Reagan about the tenure issue. “It was by far one of the most discouraging conversations I had ever had. I felt I had encountered a chair of the Board of Regents of our University who had no idea whatsoever what a university was all about, and what faculty participation in the university was all about, what

faculty participation in governance was all about. I felt that for him it had become a power struggle, and by gosh he wasn't going to back down, and the people with whom he was talking were certainly in support of the regents' stand, and nobody should have that kind of job security. I was so unbelievably dismayed at the kind of understanding and appreciation of the way great universities work that this guy had, that I could hardly believe it." The conversation, it was recalled, focused "primarily on how the regents' proposals seemed to be pushing the faculty toward unionization," and that those proposals were "going to do worlds of harm to the quality of the University." It was "a very disappointing conversation."

As for whether the conversation had an effect, the individual recalled "feeling I had gotten nowhere. In retrospect, having seen the regents' meeting where some compromises were finally suggested, and in the end accepted, one never knows whether a little bit of that might have sunk in over time."

Several commented on what they perceived to be obstinacy on Reagan's part. Marshak did not think that was necessarily bad. "From my point of view, his perceived obstinacy was in some sense an advantage. One of the things about Tom was that you knew where Tom was. Again, I'm not saying that people were not mad at him, because they were, but in terms of coming to a resolution on this, the fact that Tom's position was fixed was an advantage, not a disadvantage. It would have been harder with someone who was ducking and weaving; it would have been harder to work the dynamic. At least with Tom, we knew where he was."

"The other thing about Tom was, when he agrees to something, it sticks. That's not true of everybody else in this business."

"If Tom had been different on those two things, it would have been much harder -- if he had kept changing, or if he had not stuck to what he agreed to, I don't know how you ever got to any resolution. At least with Tom, you sit down and you yell at each other, and the language isn't very nice, but when you agree and you shake on it, it's done and it doesn't get unstuck. In a complex arrangement like this, with everyone moving and shifting and bobbing and weaving, it's nice to have a few things that stay fixed."

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On November 2, Carol Wells reported on a speech she had heard at a symposium; the speech was made by Win Wallin. Wallin was serving on the presidential search advisory committee, and Wells reported that Wallin said "he completely disagrees with the Chair of the Board of Regents (Reagan) who has stated that the slate of candidates look good. Wallin does not believe that slate looks good."

Wallin was, according to Wells, “happy Keffeler resigned and believes that ‘a few more should retire.’ He believes that the Board of Regents selection process should be revised to get members that are more oriented to academia and/or have more experience governing an academic institution. Wallin disagrees with those who think the University is not governable. He believes our administrators just do not know how to delegate.”

Two members of the UFA apparently wrote to colleagues objecting to having Murthy and Walsh meet with Bloomfield and Gray about the negotiating team. Swan disagreed with them. On November 2, he wrote that “I encourage Tom and Rama to meet this afternoon. The UFA-AAUP were the ones who put negotiations over a new tenure code on the table. We have also argued that formal collective action, i.e., a union, is not meant to replace the Faculty Senate but rather is a means for strengthening the Faculty Senate. Here is a particular opportunity to show in very concrete ways how that proposition can work.”

Williams wrote the same day to her AAUP/UFA colleagues to agree with Swan’s view. She said that “we (AAUP-UFA Executive Committee, on the advice of Steve Gordon) made what I believed was a good faith offer to the Regents. The FCC responded to our offer. Tom and Rama hold elected offices, and are empowered to discuss our position. They sought input via e-mail and telephone.” She noted that the AAUP Executive Committee held weekly meetings, “where decisions are made thru a democratic, representative process. The meetings have been held since the beginning of fall quarter and are open to all faculty who want to attend. My experience with both Tom and Rama is that they would not agree to any conditions with the FCC until they had been ratified by our executive committee. I don’t think it efficient for members of any organization to be able to unilaterally block actions of board members using the call of ‘democracy.’ We need trust in our colleagues and a representative governing process. Otherwise, we have anarchy and will never solve our problems. We should not lose sight of our goals (protecting academic freedom and faculty governance at this university), nor forget who are the major opponents to academic freedom and faculty governance -- it’s certainly not our colleagues on the FCC!”

“Resignation sends unfortunate message [;] Attempting to promote serious change at the U of M is a lonesome, punishing endeavor” (Pioneer Press, November 3, newspaper editorial). The resignation “will delight militant” faculty, but will cause concern whether the University can seek excellence with fiscal restraints. For seeking a layoff provision, she was “extravagantly vilified by the faculty.” The resignation would make it hard to recruit a good president. The regents made mistakes, but there could have been compromise had the faculty been willing and the regents supported. The Governor criticized the regents now, but had earlier rejected the faculty proposal as

insufficient.

In Walsh's view, "this talk about 'militant faculty' was a relapse and it was silly. We were genuinely desperate -- we were looking at our institution being destroyed by irrational action by the Board and its friends."

FCC submitted an editorial to the Pioneer Press two days later taking issue with the November 3 editorial asserting that change at the University would come from the regents. It maintained that the faculty had led and sought changes for many years, some controversial (including closing units). The best hope for changes is the faculty, and the regents need to work with the faculty on making them.

"Will Keffeler's departure end stalemate? The resignation by Jean Keffeler from the Board of Regents defuses the emotionally charged confrontation over tenure that has been called one of the most damaging controversies to hit the University of Minnesota." (Star-Tribune, November 3). Some see the resignation "as a victory for the faculty and the administration" but it may not end the controversy. The regents appeared to be split into three groups; the faculty are "divided into at least two camps" on unionizing, and "administration officials remain staunchly behind the faculty, even though they work for the regents." Senior Vice President Marshak said the resignation was significant because Keffeler was a symbol, but it didn't change the Board makeup much. A compromise might be possible now, but the cease and desist orders prevent discussion, even when many faculty find Sullivan II acceptable. The UFA's "main agenda is forming a union, regardless of the tenure fight." The Governor, alumni, and Foundation have attacked the Board, creating pressure on it. Efforts are being made to identify some faculty not covered by the cease and desist orders, such as tenured academic administrators, for whom the new code could be adopted, to permit the regents to enact Sullivan II (theoretically, such a unit existed under Minnesota labor law). Or there may not be enough union authorizations from the Law School. Spence and Reagan met with Hasselmo three days earlier; Spence may change her position. Walsh said Keffeler's departure would stop the fight, but Berscheid said the faculty did not want to wait until the December meeting, when a cease and desist order might have been lifted for the Law School (should Law faculty vote not to unionize); "if the regents have any opening at all, they need to do it [pass the Sullivan II proposal] as rapidly as possible. Each day we delay, the university is losing more blood."

"Tenure: no end in sight" (Minnesota Daily, November 4). The article reported new developments; Regent Neel said the Law faculty action "would probably close tenure discussions." A search for faculty not covered by the BMS orders is under way, and the BMS would hold a hearing to discuss if such a unit exists; if not, union votes will have to be held before discussions could

resume. Four regents oppose layoffs; the views of others are uncertain. Keffeler's replacement, if appointed by the Governor before the vote, could have an impact on the outcome.

Swan forwarded an email from Sara Evans on November 4 expressing concern about the lack of information about what the UFA/AAUP was doing. Evans acknowledged that people were busy, but "for those who are not in the eye of the storm AAUP-UFA seems awfully quiet and this appearance of inactivity is a problem." She said that she was "very glad to see the AAUP-UFA update on e-mail and disturbed (but not surprised) by the evidence that the Regents are playing hardball with us. This needs to be publicized!"

Evans said that faculty would like to become involved, if they knew how, and that "we still need to frame the discussion and find a way to pursue it even in the face of all this uncertainty. Personally I don't even think the possibility that the Regents will find a way to offer up a compromise should slow us down one bit. Even if the compromise were reasonable, we all know that this crisis can come back to visit us again at any time. They have broken the unwritten rules of collegial governance and we need a new, legally defensible, place at the table to guarantee that they can't do it again."

Another colleague had written that after being out of town, he had returned to learn that "Keffeler has resigned and that Berscheid and others are talking about a compromise that does not include collective bargaining and that apparently the law school is now also under a status quo order. The rest is silence. Are we still working toward trying to win a collective bargaining election and if so how?"

On November 4, Murthy send an AAUP membership appeal to the faculty. It pointed out that the Minnesota chapter was once very large, but "in more recent years, many us may have been lulled into a false sense of security" and the chapter had declined in strength. But "suddenly we are caught unaware by the unprecedented attacks on academic freedom, due process and tenure that have emerged from authoritarian forces in academia, politics, and industry. These threats to academic freedom have come less from political ideology than from practices in the managerial and corporate structure such as 'downsizing' in the face of economic competition and 'restructuring.' Our own present tenure crises should be a potent wake-up call for all the faculty at the University of Minnesota."

The appeal called for a strong chapter, and said that "if we seek collective bargaining rights on this campus, we will certainly need a bargaining agent that adheres to the standards and principles of academic freedom and shared governance advocated and championed by AAUP over the years. If we do not go the route of collective bargaining, we will still need on this campus an independent

watchdog faculty organization.”

Morrison wrote to the Tenure Subcommittee, Faculty Affairs, Judicial Committee, FCC, and Faculty Senators about Sullivan II in early November. He said it addressed concerns about previous proposals (it ensured due process, eliminated academic freedom challenges, and used the Senate approach for programmatic change and base pay, although it would allow temporary cuts by formula for a college or the University, with agreement by the regents, President, and Faculty Senate).

November 5: The President of the Virginia Tech Faculty Senate and a former Minnesota faculty member sent a letter to Reagan saying the Minnesota events affect all of higher education, protesting the regents’ proposals, and urging adoption of the Faculty Senate proposal. They said talking about tenure only for the Law School was not acting in good faith.

Walsh and Murthy wrote to the regents on behalf of the UFA/AAUP on November 6 and proposed waiving the cease and desist order and proceed with negotiations on tenure if any proposal would then be submitted to a faculty-wide vote, including heads and chairs. AAUP/UFA would select a team of negotiators (from all colleges, the FCC, UFA, and AAUP). They also sent an email copy of the letter to the faculty.

Walsh later wrote about this effort. “By this time, after Keffeler’s resignation, we felt that things were desperate. We needed to move towards a solution. If we won the election it would be vital to have the tenure issue out of the way quickly. It was just doing too much public damage to the reputation of the University. We also felt that we would win at least some support by making it clear that we did want to find a solution soon. We knew very well that we were, on the other hand, risking losing some support by trying to solve the very problem that had got us this far. But we decided to move ahead. The reaction to our initiative was bizarre -- some of our supporters suspected our motives or our political sense and our opponents thought it a cynical maneuver. This shows how far things had got out of hand. Even rational action was suspect.”

In the meantime, however, the administration and regents, which seemed at this point not to be able to agree on anything, did decide to challenge the union authorizations submitted by the Law faculty.

Late in the afternoon on November 6, the BMS issued an order revoking the cease and desist order for the Law School, on a finding that the petition lacked the 30% of the signatures required for the “showing of interest.”

It was widely thought that the BMS found that there were 34 Law faculty, and signatures from 30% of them required 10.2 signatures; the BMS had received only 10 authorizations.

* * *

MORRIS, MORRISON, AND WALSH

ON THE EVENTS IN THE LAW SCHOOL

Bob Morris, of the Law faculty, clarified what occurred. "There was a question of the size of the law school faculty. Arguably, it was 34, but it might be fewer. Bob Stein was both a tenured professor and Dean. When he left the deanship to become executive secretary of the A.B.A. [American Bar Association, in Chicago], he did not resign his professorship. . . . If he were counted, it was argued, there were 34. But he was not functioning as a professor and probably had no continuing responsibility for its governance. Hence, it was argued, there were only 33."

"There was also the question of how many valid cards had been submitted. Under the statute, academic administrators are in their own bargaining unit, statewide; they are not in the faculty unit and they are, therefore, not eligible to file cards concerning faculty affairs. One of the cards came from Karen Brown, who was an associate dean."

"The BMS held that only the second question was dispositive of the matter. There were only 9 valid cards [that is, not 10, since one of the 10 was signed by Brown], and the faculty was large enough so that that was short of 30%. The BMS found, therefore, that the first issue was moot and did not rule on it."

"This explains, for instance, the statement in Murthy's editorial in the Minnesota Daily on November 13. He had read the BMS order. Walsh's comments concerning 'two tenths' simply shows that he had not. In other contexts, Walsh chided the law faculty that it could not count. The proponents of joining the bargaining unit were not content with the number of cards they obtained; they simply could not get any more."

Morris also recalled why it was that he had declined to sign a card. "The unionization movement started in the early 1970s with a group of people in CLA organizing a branch of the American Federation of Teachers. I was active with the AAUP, and AAUP was going to be one of the contestants, and I was very much for us participating in the union election. Many of my [Law School] colleagues were against it; they said the union would be a leveling influence. Our salaries are very high, and a union would not allow that to continue, and we would be hurt by that. We're very small, and we don't have much influence or power. My position was that we may be small, but we have talents, and we will be very influential. We have the kind of talents that run the chapter; we could almost capture it if we could work on it. Certainly we could do a good job."

"They didn't believe that. I was one of only two people on this faculty who were against us not being in there. Then he died, and I was alone. In those days, the statute was not the way it is now. An organization of the faculty of the Law School was formed, by and large under the aegis of Fred, to ask that we

be a separate bargaining unit. That's the way it went, because of the desire of this faculty."

"We've got a lot of new people now who are of the same mind that I am. So I'm not alone on this position anymore, although I found myself alone at this time, on another basis. There are only ten or so of us that would be interested in joining with our colleagues. It's fear of a loss of perks, I think. 'We are not in jeopardy, by and large; the regents are not going to give us a lot of trouble. So we don't need this kind of thing. And we certainly don't need the leveling influence a union would have.'"

"Now, of course, we have the statute, that allows us to vote ourselves back in if we want to. The partisans of our rejoining thought there might be an extra card, and I hadn't signed. So I was approached by one of my colleagues on the Law School who had signed a card, who said 'we may be short a card.' I said 'are you crazy? I don't want a cease and desist order. I'm looking for an unfair labor practice. I want the regents to at least have the opportunity to do something that would make some sense.' If I signed, which would have furthered my principles generally, it would have closed the door on the regents; they could not enact something for the Law faculty. I wanted them to do that. It might be an unfair labor practice, but it was arguable that it wasn't, and I was willing to let them try."

Morris affirmed that he didn't specifically want an unfair labor practice. "I called it an unfair labor practice. I didn't realize how fast it was going to happen or the mechanism that would be used. But I was looking for Sullivan II. I had nothing to do with it, except that I kept the door open. But I couldn't close it for very long, because in six weeks we would have a vote, and there would have been 11 for joining and the rest would have voted for not, and the cease and desist order would have been lifted, and we could have had Sullivan II then." But, Morris concluded, that "would have prolonged it, and I didn't see any sense in prolonging it. So here I am, again, alone! I was the only person who both wanted us to join the rest of the faculty and wouldn't sign. I said 'what you're doing is bad lawyering. Very principled, but bad lawyering.' It was probably something I shouldn't have said, 'you're guilty of bad lawyering.'"

Morrison recalled that he had been "instrumental in getting the Law School 'carved out' of the general bargaining unit in the early 1970s. That was a long process that involved hearings before the BMS, and the PERB Board, and a judicial proceeding in Ramsey District Court. After we won, the Regents tried to get the Legislature to change the law, so we had to fight it again in the Legislature. We won there, too. So I have a long history of trying to keep the Law School a separate bargaining unit."

"Throughout this process, it was my view that the Law

School should remain separate, even if the rest of the University found it desirable or necessary to form a union. Thus I was opposed to the ‘filing of cards’ in the Law School, and was somewhat dismayed when they were filed. I anticipated, however, that there would be some formal proceeding on definition of the Law School unit, schedule for election, etc., at which we could contest these issues, so I was waiting for a notice of a hearing. Instead, we got the notice that the filing had been found insufficient.” Affecting events, yes, but Morrison appeared not to be controlling them quite to the extent that Marshak had perceived.

Walsh had a different view of the votes. “My recollection is that the decisive issue was whether or not Bob Stein would return to the faculty. If not, and if Karen Brown was even arguably in the unit, we had 30%. And it was clear that there was no reasonable expectation that Stein would return. As to Karen Brown, it had not by this time been settled whether associate deans were in the unit or not. She was clearly in the unit, since she had mostly faculty responsibilities. In fact, the administration later agreed that most associate deans could be in the bargaining unit. If we had been allowed a hearing on that with the Law School, there is no doubt in my mind that Karen Brown would be in the bargaining unit by the same argument that we advanced for faculty elsewhere. There is no way the BMS could make such a decision without a hearing, which is exactly what they did. Why is this important? The reason is that the ruling came out very near close of business one day and the Regents had been primed to appear in Minneapolis the very next morning. This was not a coincidence and not the result of any normal process of challenging authorization forms.”¹⁰³

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The AAUP/UFA lawyer wrote to the BMS on November 12 to argue that Karen Brown, in the Law School, should not have been excluded from the Law School bargaining unit. He maintained that even though she had the title associate dean, she did not exercise responsibilities that qualified her as a “supervisor” as that term is defined in Minnesota law. He also maintained that Dan Farber, acting associate vice president for academic affairs, should not have been included as a bargaining unit member, because he did have such responsibilities (the University agreed). With Ms. Brown included, there would have been a sufficient number of cards -- and, he argued, even if others were

¹⁰³The issue remained alive until the end of the month. In late November, the BMS issued a statement reconfirming its November 6 dismissal of the Law faculty petition to join the collective bargaining unit. It held that the original list of 33 faculty included both a dean on leave (Robert A. Stein) and an associate dean (Karen Brown). Without those two included, the number of signed cards was 9, not 10, so there was less than a 30% showing of interest in having an election.

included, and a 30% showing of interest arithmetically required 10.2 cards, that result should be rounded to the nearest whole number.

Chapter Fourteen

The November Regents' Meeting: The Board Adopts a New Tenure Code

Late in the day on November 6, regents' Executive Director Steven Bosacker sent a memo to the regents notifying them that there would be an emergency meeting of the Board the following morning at 9:00 to "consider amendments to the [tenure code], but only insofar as they may apply to the Law School."¹⁰⁴

Regent Reagan wrote to Hasselmo on November 6 directing the administration to prepare an analysis of the flexibility that would be provided to the University by faculty attrition; he said that "persuasive evidence to support this conclusion has not yet been presented to the satisfaction" of the regents. Once the information has been presented to the new president, the administration would have up to a year to make recommendations to the regents.¹⁰⁵

"Regents likely to drop 'U' layoff plan" (Star-Tribune, November 7) The regents "are expected to give up today" on layoffs for reasons of programmatic change and end the tenure debate, which "rose to battle strength this fall" after the regents issued the Morris proposal, "confronting the faculty with what had been hinted at all along." Sullivan II preserved lifetime faculty employment except in a financial emergency but authorized the University to grant temporary pay cuts across the board. The action would be a "victory for the faculty and a defeat for the regents." Reagan said this takes layoffs off the front burner; Spence also supported layoffs, but "this is as far as we can go with tenure reform" because of faculty upset and no administrative support; she said talks with other regents made it clear they wanted the issue settled. Walsh said the faculty will unionize anyway and do not trust regents, that this is the fourth "secret" code developed. Other faculty said enacting Sullivan II would allow a cooling-off period; Berscheid said a moratorium on discussions of tenure was essential; Fennell Evans said "most faculty do not want a union if there is a viable alternative," which, he said, Sullivan II was. Representative Kelso said the proposal was good news and a step forward.

¹⁰⁴One faculty member observed that meeting at 9:00 meant the regents could act before anyone could get to court to obtain an injunction.

¹⁰⁵Later in November, Morrison wrote to Senior Vice President Marshak about Reagan's request for a report on "how change can be accomplished on the basis of expected resignations and retirements" that the current administration was to prepare and the new president to review. He said the report should be prepared with care to avoid raising the layoff issue again, and identified the elements that should be in the report, including expectations, how money would be used, and performance measures. It will be difficult report, but must satisfy Reagan and get the University on course.

“Go with Sullivan” (Star-Tribune, November 7, newspaper editorial). Sullivan did a “great service” in proposing a compromise; the regents should adopt it and set aside tenure for the rest of the decade. The faculty and regents can be creative to get around the cease and desist order to end the debate. Sullivan II “gets rid of the worst remaining feature” of the Morris proposal, layoffs for programmatic change, which would put University at a disadvantage, and ends the harm to the University. It also gives the regents more power in discipline. “The importance of quick action cannot be overstated”; the regents should halt the presidential search if they do not enact Sullivan II.

“U trying for truce on tenure” (Pioneer Press, November 7). There could be a “truce in the tenure war”; Reagan said the regents would meet to adopt a new Law School tenure code, which gives “the regents a chance to tell the faculty indirectly” what they would do for the rest of the University. This may be the last chance to avoid a union; Hasselmo says many faculty will support Sullivan II if there is also a moratorium, which Reagan opposes. The faculty want a moratorium because if the union vote fails, the regents could then adopt a Morris proposal. The article reported on the events that led to allowing regents to act; Walsh is “infuriated,” said the process discredited the regents, and that the regents should respond to the UFA/AAUP proposal to suspend the cease and desist order to discuss tenure. Berscheid said Sullivan II plus a moratorium was the “last hope to restore trust with the faculty and save academic freedom. She emphasized the importance of the moratorium,” and said without it the debate would begin anew with the new president.

In Walsh’s view, “this [article] makes it plain that the Sullivan code was a subterfuge to defeat a union election. It falls under the category of illegal promises made to influence an election. Clearly the Pioneer Press thought so, although they approved of it.”

“Law School is fair game: Reform likely to pass today” (Minnesota Daily, November 7). Reagan said “I have every indication that this will pass -- big time”; Walsh said it was “outrageous that [BMS] lifted the order over two-tenths of a signature” and that the BMS is “working with the regents to subvert the status quo order.” Spence doubted retirements would provide sufficient flexibility; the new administration will study the data and report on the issue. Reagan said the regents’ lawyers had advised them that action for the Law School is legal; Walsh said the UFA/AAUP will probably appeal. Gray said that if the proposal is like the faculty’s, she “will be pleased” and hoped the action would end the tenure debate.

“Regents get correspondence” (Minnesota Daily, November 7). At a press conference the day before, UFA/AAUP representatives announced they had proposed lifting the cease-and-desist order to discuss tenure, with a team including FCC and representatives from every college. Because the BMS lifted the order for Law, “the regents might now ignore the letter.” Murthy said that rather

than acting on tenure for Law, the regents should ““deal with our suggestion, which would make the tenure issue open and make the decisions more democratic.”“

On November 7, Murthy, Rabinowitz, and Walsh notified the faculty that the regents would be acting on tenure, because “we have learned that the Bureau of Mediation Services (BMS) at the close of the business day today [Tuesday] rescinded the Status Quo Order for the Law School. We do not believe that the BMS is acting impartially and free of political influence. We will appeal this decision and we are considering legal action against this decision of the BMS. We are told that immediately after the BMS decision, the Board of Regents set up an emergency meeting for” the next day, “reportedly to pass a tenure code referred to as ‘Sullivan II’ for the Law School.” The message invited faculty to attend the meeting “to see how they conduct business.”

Williams notified UFA/AAUP colleagues that “a faculty presence is needed at an emergency meeting of the Regents called by Chair Reagan for 9 am tomorrow. The BMS has rescinded the maintenance of status quo order for the Law School (apparently, the regents were able to argue successfully to the BMS that the necessary 10.2 signatures rounds up to 11 people). Reagan has called an emergency meeting of the Regents for 9 am tomorrow to pass the Sullivan II proposal (the Tenure Code de jour) for the Law School.”

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THE CONTROVERSY OVER THE BMS ACTION

Walsh’s views on these incidents were as follows. “The events surrounding the revocation of the Law School cease and desist order were amazing. We later learned from someone who had been in the regents’ office that night that Tom Reagan had tried to call a Regent’s meeting for the very night the BMS ruling on the Law School came out. The Regents meeting was to be literally hours after the close of business at BMS at 4:30 p.m. I was told that Reagan failed to set up this meeting because some regents could not catch planes to the Twin Cities. He had to call the meeting for 9:00 the following morning. It makes me think of ward bosses on election night, trying to figure out how many of the dead would have to vote. Faced with such events, any logical person would make a first assumption that there was advance knowledge of the BMS ruling. There simply had to be too much communication going on behind the scenery for everyone to be primed even before the BMS offices closed. I never learned anything to make me change my assessment. After this affair, I was certain that BMS was not impartial.”

Williams agreed with Walsh. “I think [the BMS person responsible for the proceedings] was getting a fair number of calls from the Governor’s office, so none of that would surprise

me. He would come in kind of harried to meetings and say he was getting lots of phone calls from places like the Governor's office. I have that vague recollection. That's where my impression came from, at the BMS hearing."

Morrison doubted there were shenanigans. "They counted the tickets. The tickets weren't there! I am sure the University was doing on these what it was doing on all of these, saying 'make sure that you have the right tickets there,' since we were right at 9 or 10. If we'd had 15 cards, it wouldn't have mattered what was going on. There were some issues about who was a supervisor in the Law School. That affected two things. It affected what the gross number was, and it affected who could sign. Throwing her [Associate Dean Brown] out brought the gross number down, but also threw out a card. She is the person who assigns classes. It seems straightforward. Is she more like a department chair? They had taken the position that deans and associate deans -- we're a kind of different case -- are out, and department heads are in; she's an associate dean. I think this is one of the places where the labor law doesn't fit well with the academic world. But you have to have some application of the labor law."

"So the BMS dismissed it and the Board called a special session. I was first called and told it would be at noon, and was then called again and told it would be at 9:00 in the morning. It was a very peculiar session. It reminded me of the signing of the armistice at Versailles. There wasn't any discussion, there was this funny proclamation of public emergency at the beginning."

One of the supporters of collective bargaining said that "one interesting thing is that Bob Morris, a member of the AAUP, didn't sign a card. That allowed Sullivan II to continue. That was a puzzle, why he didn't sign a card. I imagine his answer would be that he didn't think a union was the answer. But tactically, that would have stopped all the Sullivan stuff."

Marshak's view did not coincide with those of the faculty who supported collective bargaining. "The BMS is a very political outfit, and Mike Bognanno clearly knows these guys, and he was also talking with Wayne Simoneau, commissioner of something. And Rotenberg also had ties into the labor DFL. And the University's lawyer that we hired from Briggs and Morgan -- so did those guys. Everything at the BMS was political, but I don't know that it was one-sided political. Because those guys had a lawyer who was a political guy who did BMS stuff, too."

"I was not involved in the details of that. What I knew was that there is a small group of people in the state who hang around the BMS. A bunch of them work for us and a bunch of them work for them. My own view, and this is not based much on knowledge but more on perception, was that both sides were playing politics. Who won one day or the next day -- it just

seemed to go back and forth. I never had the perception that the BMS was in our pocket; that may be their perception, but I never thought that. I thought that some days we won, some days they won, but everybody was playing politics as best they could.”

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As Bosacker had announced, the regents met on November 7 at 9:00.¹⁰⁶ Reagan said the emergency meeting was justified under Minnesota law and moved a resolution adopting Sullivan II for the Law School. Regent Keffeler, whose resignation had not yet taken effect, questioned the process, “piecemeal” action on tenure, the faculty assumption that Sullivan II represented what the Board would do later, and whether Sullivan II addressed the serious issues. Three other regents spoke briefly in favor of the resolution; the Board voted 11-1 to call the question (Keffeler opposed it), then voted unanimously in favor of the resolution. They did not adopt a moratorium, but Reagan’s November 6 memo to Hasselmo was understood to be the Board position (information gathering until June, study for a year by the new president and administration). Early in the afternoon, the full text of Sullivan II was emailed to the entire faculty.

Roberta Humphreys emailed to her colleagues reporting on the regents’ meeting. She reported that the regents’ lawyers had made the argument with the BMS that former Dean Robert Stein should be counted, and repeated the claim that this increased the number of faculty in the Law School, thus requiring 11 cards. She said that “it sounds to me like the BMS was manipulated.” Humphreys had been at the meeting; “Keffeler made an emotional speech about how this confirmed the faculty fears that the regents would someday use a legal loophole to pass a tenure code. The faculty in the audience said a resounding ‘YES.’ The regents didn’t like that.” Humphreys also reported that the regents had not adopted a moratorium, and called for a study instead. She noted the memo from Reagan, and that it said “persuasive evidence has not been presented that attrition will be sufficient for the desired flexibility. (The same old stuff).” She concluded that “it was clear from the comments from key regents that they intend to come back to the tenure code and the issue of layoffs again and probably fairly soon. The last sentence in Reagan’s memo gives the story away. Reagan writes - ‘Once this analysis is presented to the new President, the administration will be allowed UP TO one year to assess and suggest policy changes and/or other recommendations to the Board. So if the faculty votes down collective

¹⁰⁶One faculty member recalled that “there was even some suggestion about whether the President knew when the Board meeting was. I first heard it was scheduled for noon, and then it was at 9:00 in the morning. There was some suggestion that at 8:00 a.m., the President didn’t know the meeting had been changed.”

bargaining we could be right back in the same place as soon as this time next year. But next time I bet they will be cleverer and they will have their President, one that most likely agrees with them.”

Carol Wells wrote back to Humphreys to ask a few questions. She said, of Reagan’s memo, “I interpreted this to mean that we are likely to go through this disruption again very soon.” She wondered about the impact on the presidential search: “Who would want to come here knowing that a discussion (fight?) with the Regents/faculty over tenure is coming quickly down the road?” She speculated that “the current Board of Regents seems very determined to have lay-off power, and it is likely that the Regents will ask each presidential candidate where he/she stands on this issue.” There was also a procedural issue: because Sullivan II did not exist at the time of the most recent Senate meeting, and since the code requires consultation before the Board can change it, “it is unclear if Sullivan II can be legally voted upon by the Regents because Section 19 of the tenure code [the provision requiring consultation] has not been properly fulfilled.”

Humphreys maintained that “part of the deal, I believe [was that] Nils and Bognanno had worked on certain regents, like Hogan, and Sahlstrom, and Wendell Anderson, to allow them to get this dean to make this presentation. Part of the deal was that they would eventually adopt Sullivan with a moratorium. They didn’t. Reagan [betrayed them]. I was sitting next to Fennell at that regents’ meeting. He was furious. He thought they had a deal for the moratorium.” It was said that Hasselmo had double-crossed Reagan on introducing Sullivan; if so, Humphreys said, “Reagan returned the favor. They thought they were going to have the whole tenure crisis done with. And that would end the AAUP’s [collective bargaining campaign]. Fennell was furious. He just stormed out of the room.”

Although Dempsey had favored committee review of Sullivan, she did not support regental action on Sullivan II. “That I thought was wrong. That was after the Senate had met and asked them not to adopt this until after the union vote. I thought that’s what they would do, but they didn’t, of course. I was surprised they would act. I thought that was not the thing to do.”

Dempsey recalled having spoken with Spence. She surmised that Spence “must have thought she was right. I know that by the end, she was terribly hurt. She came up to me and said, the day it was finally all over, ‘well, Mary, now it’s all right.’ I said ‘it’s all right, but it never should have taken so long, Pat, and all those consultants and all the pain we went through; it should have been done a year ago.’ I thought she really felt bad. I think she meant well. I don’t think she had any evil intentions. I’m sure that Jean Keffeler had a strong influence on that

group. It's too bad other regents couldn't have stood up earlier. In the end, I think they started to. But they just let it go. Of course, Regent Sahlstrom always tried his best. So did Regent Hogan, but they were a minority. I don't know if there were evil intentions. I think they thought they were doing the right thing. Probably Jean thought she had the Governor's support; probably she resigned because he said 'this is it.'

On the day of the regents' meeting, following the regents' action, the AAUP/UFA issued another press release critical of the Board. It said that "at a hastily-called 'emergency' meeting this morning" the regents had adopted Sullivan II for Law. It said that the Board "passed the so-called Law School Tenure Code after only 30 minutes during which they described their feelings, admitting that 'mistakes were made,' and praising each other for many 'behind-the-scenes' efforts, but never discussing the content of the Code. This continues a long tradition of Regent action without open or substantive discussion of the issues or input from constituency groups, including the Faculty." The release warned that the tenure debate was not necessarily over, because there was no moratorium; it also cited Keffeler's concern that the faculty "would perceive the Regents' to be acting on a 'technicality'" and her statement that the faculty "would feel betrayed when, assuming the tenure crisis had passed, the Regents revisit the tenure issue in the near future." The release did note the odd juxtaposition of views. "We find it ironic that we agree with much of Regent Keffeler's assessment of the Regents' conduct in this matter. When Regent Keffeler asked rhetorically whether this move would further undermine faculty trust in the Regents, the audience spontaneously yelled 'YES!' in response." The release also noted that there had been no discussion about the AAUP/UFA proposal of the preceding day about negotiating about tenure.

FCC met later in the day in closed session and discussed the regents' action on Sullivan II. They adopted a resolution welcoming the "positive steps to reduce the tensions resulting from their recent proposals regarding tenure" and commended them for protecting due process and academic freedom in adopting Sullivan II for the Law School. They thanked the people of Minnesota, Dean Sullivan, and President Hasselmo, and urged "that attention be turned to repairing the tattered relationships at the University" that arose because of a lack of "respectful discussion," and called for consultation before the new code was further amended or extended to other units. The statement was emailed to the entire faculty.

Carolyn Williams emailed to Gray on November 8 to ask how FCC members had voted on the statement on adoption of Sullivan II. "Is it possible for faculty to learn more about the vote for the statement on tenure? Who was present, how was the vote taken (Voice/show of

hands). I am interested in how my representatives voted.”

Yet later in the day Faculty Affairs met, joined by Rabinowitz and Walsh for part of the discussion. “The group expressed distinct concern with Regents’ actions regarding the tenure issue.” Walsh said the regents’ lawyer intimidated the BMS. The committee discussed the benefits of collective bargaining.

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FACULTY VIEWS ON THE REGENTS’ ACTION

As with Faculty Senate action on the original Sullivan proposal, the faculty were not of one mind on the acceptability of the regental action on Sullivan II. Some liked the result but were upset at the process; some thought the result (getting the battle essentially done) was more important, at that point, than quibbling about the process.

Virginia Gray was clearly on the side of the latter. “A long time ago, someone said if your only argument is process, then you’ve lost the war. I always think substance is more important than process. We had the substance, by and large, that we wanted in a tenure code. I was so relieved that we didn’t have Morris that I wasn’t going to start quibbling. If we hadn’t had a union battle going on, I don’t believe there would have been much argument over the process. There would certainly be some, but it wouldn’t have been a huge deal.”

Gray agreed that some of the AAUP/UFA leaders were upset. “Yes, but the union had had a meeting, and that was their strategic position, and that was fine. I was more concerned about the tremendous black eye the University sustained on a daily basis; it was urgent that we bring this terrible chapter to an end as soon as possible.”

Fred Morrison was blunt. “I liked the result. It seemed to me we were at one of these stages in which the niceties of the procedure were way outweighed by the necessity for accomplishing a result. I’m quite squarely in that camp.”

Even Gorham, one of the stronger supporters of the AAUP/UFA, agreed that a solution was essential. “Some liked the result but were upset at the process, and some thought the result was more important. There was a mixed feeling about Sullivan. There were some people, Tom Walsh among them, who thought Sullivan II was unacceptable. In the long run, it was probably the best we could have hoped for. I don’t think the regents would have consented to go back to the old code; I think would have felt they would have lost too much face.”

Gorham also allowed that going back to the 1985 code would not necessarily have been desirable, and that at least some faculty saw Sullivan II (reflecting the Faculty Senate

position) was an improvement. “I have some sympathy with that point of view. I know a lot of my colleagues don’t like the idea of post-tenure review, but I think the Senate proposal, to have it in cases where there was a consensus in a department that someone was not performing up to snuff, would allow a more effective approach to it without unilateral intervention by department heads or deans. That made a lot of sense to me. I think we’ve neglected our responsibility to deal with people who are not performing adequately. It’s the obverse of tenure, and we’ve always neglected it. We’ve done it, in terms of salary, which is more punitive. We’ve never made the effort to help folks improve; I thought that was the beauty of the Senate proposal, that it could be rewarding, that it could be helpful to the faculty as well as punitive, so that you’re giving the person the option to improve. This would have been a formal mechanism to do that, which I think would have made it more effective and applied more even-handedly.”¹⁰⁷

Bland said “I’m in the camp that thought it was good to get it done. Quite honestly, I think the Board knew what it was doing with regard to the impact it would have on the union vote. They weren’t naive about it. The union was accurately perceiving that it was hurting their chances of having a union.”

Others, however, disagreed. Swan said that “some people think any process is OK as long as you get a reasonable result.” The point was that some thought it was doing such damage that it almost didn’t matter how it got resolved.

Pick said “my view is that the process is important. It insults the faculty to ignore the process deliberately.”

Swan said that there were “two different questions. I think that the process that was followed is going to lead to a certain level of mistrust and ill-will until we get a little further away from this, and there are some other cases where we can see where behavior is fundamentally different. That’s a longer-term cost of what happened.”

Sara Evans said that she recalled the FCC meeting after the regents’ action “quite vividly. I remember Mary Dempsey saying this proposal had most of what was in the original Faculty Senate proposal, and that it was sort of a victory. I

¹⁰⁷ Gorham went on to add that “I also had the feeling that if we could have this kind of post-tenure review for people who were not doing very well, we might also institute it for people who were doing exceptionally well, and that might provide a mechanism for departments to reward people who were not being rewarded. If you look at the University budget, you know there are people who are being rewarded because they are getting lots of outside offers, and some of them are actively seeking them. I don’t object to that, as long as they think ‘I might actually go.’ I thought that this post-tenure review might be modified to allow cases of people doing exceptionally well but not being rewarded for it because they’ve not been out on the market. This might provide a way for departments to get a little extra leverage for those sorts of folks.”

remember feeling kicked in the stomach. The process by which it happened was one in which the faculty was basically excluded. It was all behind doors. And there were things in there we did care a lot about and were not happy with. But mostly it was the process, it was a feeling that this was rammed down our throats, that the Board, for the first time in the history of the University, adopted a tenure code that had not come forward from the faculty.”

Hamilton dismissed Sullivan II as “an end-around by Hasselmo. It was a real push by Hasselmo to solve the problem, period. I was mad, and I think a lot of people were mad about that.” He disliked Sullivan II even though it represented what the faculty wanted. “Sure, because it was another end-around. I was upset about it. There were provisions in it that I thought needed to be worked on.”

Purple said that “for those of us in the AAUP, it was what we expected. It was unfair campaign practice. It was the administration coming through with a bribe.”

As for those who wanted a solution above most else, Purple identified Gray and Berscheid as two of the leading advocates of that view. “A lot of faculty were of that opinion. Just solve the problem. I didn’t want to solve the problem that way, because Sullivan II weakened what the faculty passed. I didn’t want to back down one inch. I really believed that sometimes you have to draw a line in the sand. You don’t smudge the line. That’s how the chipping has occurred. If you allow the chipping to occur on big issues, the chipping is going to occur on little issues. Phone modem charges, cancellation of summer classes, health benefits, parking rates. You don’t want to negotiate little things like that with a union, you want to negotiate policy. But the union can use those to make you get back to policy.”

Marshak put an entirely different light on the urgency of the meeting to adopt Sullivan II for the Law School. “The administration wanted Tom to have a meeting right away. It wasn’t Tom so much as the administration. This was a nailing down. We wanted Sullivan II nailed down. We wanted no doubt that the Board had given up Morris or Reagan-Spence or Chait-Michaelson. I urged them to move quickly. We took heat for it. We were trying to show good faith, and it was taken as a plot. From my point of view, it was an attempt to show good faith, and to nail it down before anything else got away. I think that was just misread.”

Marshak recalled that “at one point I was convinced that it would be good to get status quo orders covering the entire faculty. I think Fred Morrison deserves a lot of credit for realizing that keeping the Law School out of the status quo orders was a good idea, because it allowed for some movement which Fred could carefully control. If we had indeed locked everything up, it would likely have been more difficult to

proceed to a solution.”

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The press had what was by now the usual spate of page-one articles.

“U regents blink first on tenure, hastily OK code for law school” (Pioneer Press, November 8). The regents “waved a white flag on Thursday and dropped its fight for the power to lay off tenured faculty” and board took “hasty advantage of a strange legal loophole” to pass a new code for the Law School; the action puts tenure “to rest for at least 20 months.” The meeting “was billed as a quick vote-and-flee” action, but Keffeler “tried to stir up a lively discussion and had some harsh words about the board’s process,” said the regents were acting “in an atmosphere of crisis” and voting because of a technicality (the BMS order). She said it was wrong to act on expediency and that Sullivan II was flawed because it did not address how the regents would cope with declining resources. Fogelman was “cautiously optimistic” about faculty support but worried the regents would reopen the discussion; Reagan said the regents would not take up tenure until a year after the new president is in place. Berscheid said “realistic faculty members will conclude that having tenure off the table for 20 months” is the best they can do; Walsh said the faculty would not respond positively and would vote for a union.

“‘U’ regents vote unanimously to set layoffs aside” (Star-Tribune, November 8). The faculty will “continue to enjoy virtually lifetime employment.” The Board action allowed for review after the new president is appointed, but Reagan says “it’s the sense of this board, as I see it, that we will not be revisiting the tenure code for at least a year and a half -- and probably never”¹⁰⁸; the possibility of revisiting the issue could be a factor in union voting. Gray was “pleased” and “doubted if the board wanted to bring up layoffs again. ‘Certainly, the faculty doesn’t want to go through this again.’” The article noted the directive from Reagan to the administration to study flexibility and that the regents made no promise on a moratorium; “it was not clear how such demographic information could be used to determine if attrition is sufficient, unless officials publicly say what units they want to cut. They generally have not been willing to reveal such plans in the past and haven’t made many closings.” The UFA/AAUP said “there is no guarantee the tenure discussion is over.” “In the heaviest of ironies” the UFA/AAUP agreed with what Keffeler said at the meeting, including that the Senate wanted no action on tenure until the union elections were done and that the faculty might confront the tenure issues again if

¹⁰⁸ Reagan’s prediction was accurate. At least as of 2001, there had been no review or even discussion of a review of the tenure code, except for minor and routine amendments.

regents cannot deal with pressures. The tenure vote “was probably the final solitary defeat of Keffeler’s seven-year career” as regent. Regents said Keffeler’s resignation did not lead to the resolution, but some faculty did; “Keffeler said ‘I have no idea. But if we come to a resolution that will benefit the University of Minnesota, I’m perfectly willing to accept all the credit.’”¹⁰⁹

“Faculty should accept regents’ truce offer” (Pioneer Press, November 10, newspaper editorial). The regents have backed off loosening tenure, “yielding to a growing consensus that further prolonging the traumatic tenure dispute would serve no good purpose,” but the pressures for change will not disappear. The layoff proposal, something to which virtually all others in society are vulnerable, “triggered a virtual uprising among faculty.” The action signals a compromise for the University, and the study rather than a moratorium is reasonable; unionization would end lifetime employment, “level salaries and work loads,” and hurt the University’s reputation. The faculty should accept the compromise.

“Regents pass tenure plan” (Minnesota Daily, November 8). “Despite a last-minute appeal by Jean Keffeler to hold off on tenure reform,” the regents acted. “‘I’m concerned about what such action might say about how we as a collective board conduct our business,’ said Keffeler, who was silent and visibly shaken as the other regents voted unanimously in favor of the new plan.” Some faculty welcomed the action as “a much-desired reprieve” because there was no provision for layoffs; others said the action “will add to an ever-increasing distrust of the regents.” Morrison said “‘As a member of the University community, I would recommend this document to other faculty because it protects academic freedom, provides due process and deals with programmatic change in the same fashion that the Faculty Senate recommended.’”

“Several regents gazed solemnly at Keffeler as she presented her case. Faculty members were surprised by the new friend they had in Keffeler, who just months earlier was pushing for harsh revisions to the code. ‘It was a shock to me,’ said . . . Tom Walsh.”

“Regents Chairman Tom Reagan said ‘the need to resolve these tenure issues as soon as possible,’ in addition to Wednesday’s developments, was enough to warrant the emergency meeting. ‘When I found out at 5 o’clock (Wednesday night) that we had a window of

¹⁰⁹In an editorial later in November, about the presidential search, the newspaper characterized the outcome as “capitulation” by the regents. “‘U’ president [:] Regents must hire with great care” (Star-Tribune, November 17). The three finalists had been identified. “The regents must realize that the faculty’s lack of confidence in those who lead the university has reached crisis proportions, and is draining the vitality of the entire enterprise. This fall’s tenure battle ended on Nov. 7, when regents capitulated to faculty objections to their own plan and accepted a compromise.” A new president must support the faculty and repair the damage. The impact of the tenure debate on the presidential search had been a worry all along, both to the faculty and the regents.

opportunity, I said “good, we’re going to call a special meeting tonight,” he said. ‘Logistically, we couldn’t do it (Wednesday), so I said “let’s do it as soon as we can (Thursday) morning.”’ Walsh speculated that the regents feared a Law faculty member would deliver a union card to reinstate the state order if the regents didn’t act as quickly as possible. Reagan and Regent Patricia Spence said this was not the case.”

Keffeler said acting quickly “would send the wrong message to faculty. . . . Faculty members, throughout the tenure reform process, feared that the board ‘may take action faculty oppose through some clever technicality. Will voting on a tenure code today confirm that fear?’ Keffeler asked the other regents. ‘Will it add to the atmosphere of distrust?’ Several faculty members in the audience shouted ‘yes!’”

Fogelman thought that Keffeler’s objections were “strategic,” an attempt to persuade the Board “not to adopt it. I was at that meeting. All of a sudden she became the great defender of faculty procedure, when I had direct personal experience of a somewhat more cavalier attitude toward dealing with faculty procedures at other times. I don’t underestimate her; I came away with a great appreciation for her skills. It’s too bad that it was in the wrong cause, from my point of view.”

Walsh said ““this is the most momentous thing they’ve done and they did it in about 30 minutes. . . . The only discussion was about their emotions, and they didn’t talk about the substance of the issue.”” Walsh expressed concern the regents would adopt other changes, taking off on Keffeler’s comment that faculty might assume the action means ““they no longer need to fear other versions of the tenure code, at least for the time being.’ Reagan would not say whether the proposal passed for the Law School would be applicable to other faculty members if regents were allowed to act on the tenure code of other units. Nor would he deny if other changes were possible. ‘There’s no guarantee in life; there’s no guarantee for anything,’ Reagan said. Walsh suspected the changes for the Law School are meant only for that unit. ‘They are not going to close the Law School; there is no reason to have a layoff policy for the Law School,’ he said. ‘There is a reason to have a layoff policy for the Academic Health Center.’”

Keffeler criticized the new tenure code as “inadequate. ‘It specifically and explicitly avoids serious issues that as regents we agreed must be addressed.’” Hogan disagreed, and said the proposal lets the regents begin to address the problem.

The irony of Keffeler taking a position that coincided with that of the union advocates was not lost on the observers.

Gray agreed it was ironic, but said “she was totally strategic. She’s just very smart. She

came up before the meeting and asked me ‘was I authorized to say anything different?’ I said ‘no, since we hadn’t had a meeting.’ She kept trying to put me on the spot. It was totally to manipulate the situation.”

Morrison agreed that “yes, it was ironic. I think Jean Keffeler was no more interested in the consultation than in anything else, but it was the only roadblock she could see.”

The Daily also reported that both FCC and UFA would meet later to discuss the action; Walsh said UFA may take legal action, and might also appeal the BMS ruling on the Law School, which he described as “a highly politically influenced move.”

“**Protesters disturb regents’ meeting**” (Minnesota Daily, November 11). The article reported that “about 50” students, faculty, and staff gathered outside the University’s administration building protesting the regents’ action on tenure; the group included the Progressive Student Organization, (about which Wells had earlier inquired).¹¹⁰ The group then marched into the building, and one disrupted the regents’ meeting after promising Marshak they would not. One of the group was allowed to speak after the regents finished their business, and criticized a number of their actions.

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THE “MORATORIUM” ON TENURE DISCUSSIONS: THE (LACK OF) ACTION BEHIND THE SCENES

Walsh commented later. “The importance of the ‘moratorium that did not happen’ was this. There had been a private deal. Some of the faculty leadership would support Sullivan for the Law School, if there was a moratorium on tenure changes. The moratorium would freeze the code with Sullivan. That would be a signal to the rest of the faculty, and would hopefully kill the AAUP/UFA chances in the election. At least one person who I think was in on this ‘deal’ stormed angrily out at the end of the regents’ meeting when it became clear that there was to be no moratorium. The faculty leaders who were very active behind the scenes had been double-crossed yet again. As later events showed, they kept trying to get a deal. In some respects, you can understand them. We all wanted this tenure issue gone from the table in an acceptable way. The problem was that this group was doing all this in secret -- just as the Tenure Working Group had done months earlier.

¹¹⁰One suspects that many faculty would be surprised to learn that the PSO had demonstrated in favor of tenure. The PSO had for years demonstrated on campus in support of a radical leftist view on whatever the issue of the day happened to be. Paula Rabinowitz was the faculty adviser of PSO.

Absolutely all the principles in dealing with tenure had been thrown out the window. There was to be no public consideration, no due process in the Senate. (The Sullivan document for the Law School was sent to faculty just hours before the Board's fait accompli. And it was a terrible code, despite the propaganda.) The principle was now established that the regents could ignore due process. They could deal in secret with whatever faculty group suited them. We could have different tenure codes for different units. By its secrecy this group of faculty leaders had helped make the mess even worse -- they were not at all pointing us to a solution. When AAUP and UFA asked for an open process, we created a chance to do all this the right way. Eventually we forced the process partially out in the open again. But this [penchant] for subterfuge and secret deals caused endless trouble. Whatever the election outcome, it was sure to leave a bad taste."

Shively maintained that there was never any agreement on a moratorium. "Some faculty leaders thought that Nils could deliver a moratorium with the Board. Some of us within the administration tried very hard to. But there was never an agreement. The Board certainly never agreed there would be a moratorium."

Walsh's comment provokes speculation that the Board, or Reagan, had assurances from some faculty (immediately prior to the Board meeting when Sullivan II was adopted) that the faculty would accept adoption of Sullivan II, even though the process was suspect.

Gray was emphatic. "Reagan had no such assurances. Nils knew that the leadership of the faculty accepted it in principle, compared to the alternative of Morris. But we could only advocate for it, we couldn't adopt it ourselves. He [Hasselmo] knew I thought it was acceptable in principle, Fred thought it was acceptable, whoever he talked to. I don't know who all he talked to. I don't think anybody who read Sullivan II said to Nils, 'this is just horrible.' When Nils said 'I think I could get this passed instead of Morris, what do you think?' I think people said 'gee, Nils, that's really good. If you could make that happen, you've had a good day at the office.'"

Gray also maintained, apropos a moratorium, "there was never an explicit agreement. But they all said they'd be crazy to start it up again. Implicitly, we have a moratorium, a political stalemate."

Others of the formal leadership group were of the same view as Gray. Morrison said he had offered no assurances. "He did not have those from me. I suspect it's the game of telephone. I suspect that there were some communications to him from somebody else, who talked to somebody else, who talked to somebody else, who said 'gee, if Sullivan II is passed, this will take care of it, and we'll have to unwind all this stuff, but it's OK.'"

“I know, in the other direction, there was some hope, at least, that there was going to be a two-year moratorium. That didn’t happen. My guess is that both of those communications sort of missed. What faculty members may have said may have been re-interpreted by the time it got to Tom, and what Tom said may have been re-interpreted by the time it got back to the faculty.”

Bloomfield said the same. “I certainly never gave any [reassurances]. I have no idea to whom he may have been talking, and by what channels. I think that people didn’t like the process, and some people didn’t want them to do it, because if they didn’t do it, we’d have a union, but there didn’t seem to be any serious, widespread disagreement that Sullivan II was acceptable. Whether that was sufficiently in the air that everybody understood it, I don’t know. I think it must have been.”

Bland asked “who could have given an assurance?” Reagan may have heard that Sullivan II was acceptable, “but there would have been no guarantees. There wasn’t a guarantee. If he would have asked me, I would have said ‘sure, it increases your odds considerably.’ But I don’t think he needed anybody to tell him that.”

Pick said of Reagan that “I don’t think he cared. None of his behavior seemed to be designed to diminish faculty hostility. People were urging -- all the faculty who had any contact with them -- were urging them not to act.”

Swan thought not. “I don’t know if that’s entirely true. I wasn’t in contact with any Board member at that time. There certainly were some public statements by some of those people that Sullivan II isn’t all bad.”

Dempsey recalled that “Nils came out very strongly for Sullivan II. He asked the faculty to support him. He sent an email. I think I wrote him back that it was fine, but that I preferred the faculty version. I think he was disappointed in that. Any signals would have to have come from behind the scenes; I don’t know who was talking to Reagan, because we never met with him. The people who were meeting with him were Nils and Mike and Marvin; maybe they told him that. Maybe Nils was just hoping that.”

Sara Evans said, of reassurances to the Board, that there was nothing “that I know about. Obviously there had been some kind of negotiations. I didn’t have a sense that there was any formal negotiations -- I’m sure there were no formal negotiations, but obviously there was some conversation, because this is the thing Tom Reagan referred back to, over and over again -- that he was promised that if he would let this pass, which he considered a defeat for him, that that would be that. Who in the world could have promised him that? I don’t know. And I doubt that anyone ever said that. I can’t imagine anyone knowledgeably saying that;

someone may have argued to him that this was just necessary.”

Berscheid believed that Reagan or the Board had assurances beforehand about Sullivan II. “Yes, yes, yes. They did. They did. They were told.” Marshak corroborated Berscheid, weakly. “There were indirect faculty assurances all along. But we knew that those things were always chancy; even if Virginia -- I’m not saying Virginia is one who gave them -- even if Virginia was the one who gave them, as chair of the FCC, that was Virginia and maybe two other people you had. You didn’t know exactly what you had.”

Provost Cerra recalls that he “was asked by a few members of the Board of Regents what I thought about Sullivan II. There had been a lot of questions about ‘how about flexibility in remolding the work force.’ I said ‘look, I do not need the layoff provision to work with that. I have modeled it out, I’ve got plenty of flexibility, I just don’t need layoffs.’ I actually thought Sullivan II was a pretty good proposal. I thought it was a great starting point. I put my faculty hat on and said ‘yes.’ Then I put my administrator’s hat on and said ‘I can live with this.’ It’s fair.”

Shively said any assurances were “at most, indirect. Quite frankly, I gave my opinion that I thought Sullivan II would be OK. And that was not based on direct consultation with faculty on my part, but on my general having an ear close to the ground. I gave my judgment that I thought it would be OK. I couldn’t guarantee it.”

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Keeping track of events by email from Europe, Chuck Campbell emailed to Wells on November 8, with copies to colleagues, about the presidential search. He said that “given the high-handed behavior of the Regents, I wouldn’t be surprised if they (or some of them, including Reagan and Spence) have already decided who the new president will be, and have a back room deal with that person concerning tenure and other matters. Remember, when we say that their present handling of the tenure code and cease-desist order will make the Presidential search very difficult, it means that it is difficult for us to imagine that someone WHO IS ACCEPTABLE TO THE FACULTY would be willing to accept the position. But the Regents themselves are prime examples of people who would accept such a position, and we have heard of other universities . . . where that might describe the new president and the relationship of the new president with the regents.”

“If my memory is correct, the Regents have the right to bring in someone for President at the last minute who has not been considered by the Search Advisory Committee. But it doesn’t

matter, since they have established that they will act in important matters without following their own rules, and without even bothering to suspend them. And the possibility that the search/advisory committee find no one acceptable to them who will accept the public position of finalists makes it even more likely that the Regents will act on their own.”

“Of course these scenarios are outrageous, but are they any more outrageous than the actions of the Regents over the last year? It seems to me that we must assume that the Regents can and will do anything, and those in control want nothing more than a final victory over the faculty and micro-management of the university.”

Campbell followed up the next day with another email to the AAUP/UFA and others about the search. He expressed concern about the statement in a newspaper article “that there will be ‘interviews by the board, alumni and other groups allied with the university’ raises the question of whether any faculty or student groups will be permitted to have interviews.” He wondered why there was a rush on the search, and speculated that the real reasons were not a breach of confidentiality or potential loss of candidates, but rather “it could be that the interaction of the timing of the appointment with the timing of the final collective bargaining election is of concern to the regents and the administration.” Campbell urged that his colleagues “give very serious consideration to approaching the faculty and other members of the search/advisory committee with these concerns. Perhaps they should be asked to go public with similar concerns (especially the provision that faculty and student groups be given the opportunity to interview the candidates), and that it be suggested to friendly committee members that they take delaying action to postpone the Regents’ action until January at the earliest, after classes have begun” rather than conducting interviews over the holiday break period. He also commented that he hoped the newspaper reporters “as well as the media attorneys who are concerned about doing the public’s business in public, will take an interest in this process.”

Campbell emailed again two days later, to Hamilton on November 11, after the Board had acted on Sullivan II and requested a study. He wrote that “in my distant paranoid mode, I note that this directive gives the new administration ‘up to one year to assess. . . .’ Timing is crucial, since a defeat of collective bargaining would give the Regents a one year window to run amuck. But, with this wording, a new administration that is more cooperative with the Regents will not need to take a year, and action against the faculty will be possible during the one-year union hiatus. Those who have suggested that the Regents effectively accepted the moratorium had better pay careful attention to the wording. Not that the Regents would feel particularly constrained by their own decisions anyway.”

The Washington Post carried a long page-one article about the Minnesota tenure debate. Titled “**Minnesota Faculty, Regents Put Tenure to the Test [;] Campus at Center of Growing Battle over Job Guarantees and Power in Academia,**” the article began “The last stand of the angry professors here at the University of Minnesota has begun. They are fearful, angry, and convinced they are fighting to save the soul of American higher education.” Walsh said the debate “has the potential to decimate this place”; Fogelman said “the very idea of a university is at stake.” The article said so are faculty jobs, and that the debate is part of a “national battle” about tenure, and a sign that downsizing is affecting academe. The AAUP’s Burgan said if these changes could happen at Minnesota, they could happen anywhere. The article reviewed the hiring of Hogan & Hartson and the inclusion of the “proper attitude” language; “the regents . . . quickly scrapped the [phrase] after faculty denounced it as “the Chairman Mao provision.” The union movement was noted, and the article reported the debate “has been the subject of furious conversation among academics on computer e-mail nationwide,” the Foundation and alumni were “irate,” and universities were “courting” Minnesota faculty. The regents said the faculty were “overreacting to their proposal, refusing to negotiate sensibly about it, and spreading misinformation to colleagues”; Spence said the goal was “only to enhance quality.” The pressure may be working because the regents adopted a compromise proposal for the Law School. Chait says “what’s at the heart of this is not academic freedom -- every regent believes in that. This is fundamentally about how power is distributed at a university”; at Minnesota, tenured faculty can only be dismissed when departments or colleges are closed, “which is not common” [and this statement was not correct]. The regents want layoffs when “programs” closed and to be able to cut salaries for “adequate cause,” but the faculty say those terms are too vague. The faculty worry about the threat to faculty in sensitive areas where research has an impact on business, but Spence said the faculty proposals were “very cumbersome.” Fogelman said “they want to corporatize academia. Universities have always insisted that isn’t an appropriate model for them, and have quite self-consciously tried to avoid it. Not any more.”

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WHY THE ABRUPT REGENTAL CHANGE OF COURSE?

Bob Morris confessed to confusion about why the Board did what it did. “I have no idea of what anyone wanted. The speed with which the regents folded their tent and stole away after the Sullivan proposal came in, was so fast and quick. It was as though ‘we didn’t really care much about any of this stuff!’ Maybe they were just worn down. After all, there was a

lot of steam in this.”

Why the regents “folded up their tent” was a question that prompted commentary from a number of those involved.

One faculty leader said that “my own view is that if what the regents had wanted was a ‘layoff clause,’ and that was the only thing they wanted, they could have gotten it if they had gone about this in a very different way. But the way they did it, they lost everything. Who knows what they really wanted? They so overplayed their hand that they were no longer in a position to be able to say ‘we want this and this and this.’” Did the regents lose the whole ball game? “I think so. I actually think there are some important changes in the tenure code that came out of the Sullivan process, but if you’re going to talk power politics and things like that, yes.”

One reason was the role the business/alumni/donor community played, in Sturdevant’s view. “I was told, for example, that Luella Goldberg, when asked by Bryan Neel for support for his re-election by the legislature, turned to him and said ‘not unless you back down on tenure.’ That took him aback, because he had had a long-term relationship with her. But people the likes of Ken Dayton and former regent David Lebedoff and John French, and some of the CEOs in town, were pretty unhappy with the Board. I think the CEO community was probably privately mixed. People like Roger Moe, who also sees the need long-term for flexibility in this area, said this is a fight that didn’t need to happen, it didn’t need to happen this way, it didn’t need to happen now, why are we doing this at this delicate time for this university, when we’re also trying to hire a president? There was that kind of a sense, that this is a stupid fight to be waging now. Even Win Wallin, who was one of the fomenters of all this, I think in the end thought that it wasn’t a battle well-waged. And that all came down on the regents.”

As to whether or not they heard the message, Sturdevant again suggested the pressure may have been felt differentially. “I think Jean did. The people in town heard it. I think the people outstate were shielded. I’m not even sure how much Tom [Reagan] himself was getting the full force of that kind of public opinion in the Twin Cities.”

Ultimately, however, Sturdevant believed the regents adopted Sullivan II because “the Board knew it was whipped. Tom Reagan is many things, and one of them is a fairly shrewd politician. He knew when he was whipped; then you declare victory. They started to behave, suddenly, like politicians, which they should have had a little more sense of all along. When you’re a political candidate, and you’ve been whipped on issues, you somehow put a happy face on it, declare some sort of victory, and move on to the next thing. That’s what the regents became very eager to do. They wanted to get out of the hot seat. They wanted to get in a

new president whom they felt good about, which they admirably succeeded in doing, and they wanted to back out of the headlines. They were sick of being whipped. I think that's what happened."

"And Jean's departure was, I think, internal to that Board, very significant. She was such a force on that Board -- a divisive force, but a real force, and I think the Board could not have graciously backed away from this with her feeling as she did."

Berscheid agreed. "They couldn't stand the heat any more." Fennell Evans said that "they were politicians, and what we'd managed to do was get the political climate hot enough where they couldn't tolerate it." Moreover, in Berscheid's view, "it was a national heat. They brought disgrace on this place." She is convinced the regents felt that pressure. "Absolutely! It was even on the local TV that universities were telling their new Ph.D.s not to come here. It was horrible!"

Bennett, asked why the Board appeared to retreat, said "I think they realized that they had a tiger by the tail, and for whatever reason, it had not been well handled, and that they were running the risk of doing terrible damage to a lot of people who they should respect and care about. I think they were embarrassed by the limb they had gotten out on; they were scared, frankly. They were aware of the fact that 90% of the people in the state thought they were idiots. That's pretty strong, but I really think that the people I see, people at cocktail parties and so on, were saying 'these regents are bad, and they're getting worse, and now they've taken on a job that's going to get us all in trouble.' I think the regents sensed that, so they were like a turtle sticking their neck back in the shell. They were glad to let Pat and Jean take the heat; that was fine with most of them; 'they started it, let them take the heat.' I didn't hear Tom Reagan coming up with any great leadership speech that I ever heard. I think they realized they blew it. They had to know they blew it."

Fogelman made an interesting observation, one that coincided in part with one of his colleague's comments. "One of the things that most helped the faculty, is that those members of the Board -- Keffeler and others -- overplayed their hand. I think if they had been more reasonable about it, they could have gotten a tenure code more in line with what they wanted. But they overplayed their hand. By presenting us with this Morris proposal, it united not only the faculty, but it was the basis for turning the tide, although it did not turn overnight."

"I'm the one who termed that the 'Chairman Mao' provision, and that was just indicative of what was going on. That kind of a provision incensed everybody, and not just in the University but outside. Everybody could see it."

“Now you have to ask, why did they overplay their hand? What kinds of motivations lead people to do things that are really not strategic for them? Perhaps it’s personal, perhaps it’s ideological. But if what they were trying to do was get the code revised and the place reorganized, they did not proceed in their own best interests.”

Asked if the regents could have obtained some changes in tenure, one observer said that they could have; he agreed they overplayed their hand. “If it had conducted itself properly, there is no reason that a Board could not have achieved some tenure reform. But some regents were told, at the time, that the issue isn’t whether tenure should be reformed. The question is, ‘who should do it?’ The faculty should reform it. If the regents’ professors wanted to change tenure, you could get a lot of changes in tenure. The regents didn’t understand; they asked ‘what different does it make who does it?’ This is how little understanding of the governance process there is. How do you answer that?”

“That was the problem. It’s fine to re-evaluate tenure at a certain point, but the role of the faculty was not known; it was not just misunderstood, it wasn’t known. A group of regents should have met informally with the FCC leadership and talked about this. ‘Look, there’s so much pressure to make some changes, can you please hurry up?’ Or Hasselmo should have done this. But it could have been done. And maybe there should be changes in tenure. It isn’t tenure that’s the major issue, it’s the capacity of the faculty to govern itself on all matters of academic freedom that was the issue. There’s nothing the matter with changes in tenure; maybe there should be some.”

Marshak had similar views on why the Board went for Sullivan II. “By Sullivan II Jean was on her last legs, and her power was waning. A number of the regents felt that they had been betrayed, too. They recognized the Morris draft as stupid. I remember sitting next to Bill Peterson at lunch in Morris; Bill thought the draft was stupid, but felt he had to go along, that something had to be done. I remember saying to him, ‘Bill, this language about attitude; would you agree to a labor contract that had that?’ He said -- I won’t say what he said. It was basically ‘no way’ would he agree to that. He knew it was stupid.”

“I think that what happened was that Jean overplayed her hand. When Dick Chait and Marty Michaelson screwed up, she left them in an untenable position. Once they realized they were in an untenable position, then they were looking for a way out.”

“They were pretty beleaguered, and they wanted out. They found that they were now stuck with something that most of them had never wanted in the first place, had no idea what it was they were getting. They don’t know the nuances

of all this. So Jean says 'look, we can't trust the administration and we can't trust Rotenberg; here are these national experts. We'll hire them, they'll tell us.' The national experts come in and say 'here's what you guys need.' OK, sure, I'll go along with that. People like Julie Bleyhl say 'OK, these experts say this is what we want.' You go to the doctor, he prescribes something for you, you take it. When you break out in hives, all of a sudden you start wondering, you say something to the doctor. The doctor says 'this is just a small side effect, it will go away in a few days, don't worry.' OK, but in a few days, the blisters break and there's pus all over the place, eventually you start saying 'what the hell have I gotten myself into?' Then somebody says 'here's Sullivan II, this will get you out of this.' Besides, it's blessed by the esteemed dean of our Law School, and if you ask quietly, you'll hear that it's blessed by some other people, too. Or even written by some other people, too. This starts looking pretty good."

Morris elaborated on his lack of understanding. "The regents just suddenly folded their tents and took Sullivan II. I was hoping they would do so. I was hoping that something like that could happen. But I don't know why it did. Because I don't really know, and they don't know; I don't think the regents knew what they wanted," as Marshak had suggested. Morris agreed that it was probably not appropriate to describe the Board collectively, noting that the same was true of the Gang of 19, and then recalled that "Keffeler was constantly saying we need flexibility, and she said, at one of these meetings with John Adams and Dan Farber, that 80% of the University's budget is personnel. If you freeze the personnel picture of the University, we had no flexibility at all. Of course, only 14% of the University's budget supports tenured professors, but she didn't know that. The regents were surprised to hear that this was a very old faculty, and retirements were going to come in like mad. I think Spence said 'that makes an entire difference in what we've been worried about!' She said that, and then they continued to worry about it anyway! As though they didn't assimilate the information. They must have known that in the Waseca closure, where they had 152 employees, we had to find special places for only 8 of them. And some of those were not long-term places, only a year or two. There did not seem to be a rational basis for this, except for Brody's special. Maybe there was something special over there. If we don't know what the dynamics were, then why did it come out the way it did? I don't know, because I don't know what was driving it."

Sara Evans remembered that she had spoken with Keffeler the previous summer, when FCC members were assigned to contact individual regents about tenure. "Her view was that the faculty was immature. She was very, very

harsh about the faculty. The conversation started off in a friendly way, then there would be these zings at the faculty. She said all the things that she said in more public settings, about how she was asking for more information and nobody would ever give it to her. Her refrains. My goal in that conversation was to establish some communication, and see if I could communicate what was at stake for faculty and what this meant to us. But I wasn't at all sure it was possible."

Did Evans think she had made any progress in her conversations with Keffeler? "I didn't. I had had very friendly relations with her earlier, but very superficial. I didn't know her well, but I was a woman professor and she was a woman regent. When she first came on the Board, I gave a presentation on the Center for Advanced Feminist Studies. She was very friendly, and said she would like to hear about issues. But I never worked with her enough; everything I say would be pure speculation. One of the things that puzzles me all along was that I did not understand what was driving her. And later, I did not understand what was driving Tom Reagan. Although the issues were different; there was a kind of rigidity or something that was different in him. An authoritarianism. That was in both of them, but they took gender-specific forms."

Bennett said that "Tom Sullivan, it seemed to me, figured out a way for all of them to get off the limb. They were out on a limb, and there was going to be a disaster. My impression was that he came through at a good time, with something that would save face, and get them off a limb they were out on with something they could live with."

Goldberg commented on why the regents appeared to give up. "I think that from every quarter they began to feel tremendous pressure, that somehow they were doing the wrong thing, that they were going to damage in an irrevocable way the quality of the institution they were charged to take good care of. I think also there were enough of what probably became the silent majority who were going to outvote the ones who were pushing so hard. Basically, I think those who were behind these tenure reforms realized they were going to be outvoted in the end. A few on the fence may have seen that it was really not going to be good for this university to be out there in terms of tenure reform in a place that no other great university in the country was. That probably helped persuade some of them." Some individual Board members may not have paid close enough attention to tenure, she agreed, but in the storm afterwards "then they had to focus on it, and try to understand what it was they were or weren't doing." And those regents, "in the end, realized this was not something they wanted to be part of."

Goldberg also recalled that "in my conversations with Jessica Phillips [the student regent], I think what conveyed

some of the points most persuasively to her was when she started discussing the issue with some of her own faculty members, and some people who meant a lot to her as individuals. That sort of took it away from the principles the Board was discussing and the influence of these eloquent articulations of the reasons for abolishing the tenure code, and some of us encouraged her to have conversations with her own faculty members. I think that helped persuade her that perhaps this wasn't such a great idea after all."

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"Group supports tenure compromise" (Minnesota Daily, November 12). The article reported the FCC statement; Gray said it was not intended to persuade faculty to support Sullivan II, but to underscore "the importance of rebuilding relationships between faculty and regents that have been shredded in the past few months. . . . Gray said this won't be easy."

Carolyn Williams emailed to Virginia Gray on the Monday after the regents' action (and the issuance of the FCC statement) to express concern about the breakdown in consultation on Sullivan II. She understood the FCC statement, but FCC should not congratulate the regents on bypassing governance and regretted that Reagan would not let Gray speak at regents' meeting when the Board adopted Sullivan II. (Gray had not asked to speak.) Williams described how the UFA/AAUP proposal to the regents to negotiate on tenure was developed and pointed out it had been delivered before they acted on Law School tenure; the regents "ignored it and worked towards getting BMS to lift the status quo order at 5pm to stage their emergency session on 11/7."

Two faculty emails to FCC also suggested that not everyone thought the FCC action was appropriate. One individual wrote to ask "why all the groveling? The [Board of Regent's] recent actions you refer to appear to be at best outrageous and, at worst, beyond contempt. One wouldn't guess that your position on this matter reflects that of the majority of the faculty, would you think?" Another wrote that "I think they [FCC] are getting sucked into a position which they will regret. I don't think that the Regents have made a commitment to even stick with Sullivan II for 18 months." The author noted Reagan's comment that there are no guarantees, recalled the years without salary increases, and said "I can't believe how such an intelligent group of folks, the faculty, can be so dumb about their self interests."

Another faculty member, dismayed at the FCC resolution, wrote an email to Gray (with copies to the AAUP/UFA leadership) which irritated her considerably. Her colleague wrote "I was absolutely appalled by the FCC message . . . and the article on the Daily's front page today

claiming that the FCC ‘supported the Regents on its recent tenure code revision.’ Further, that the “. . . FCC will work to bring the regents and faculty back into the shared governance model.’ What do you mean BACK? Shared governance has always been a myth here. What was the purpose of the letter to the Regents? What relationships between the faculty and the Regents over the past 12 months are worth restoring? Why is the FCC meeting in ‘closed session’ over anything as important to the university as the tenure issue or the search for a new president? There is simply no excuse for pursuing the secrecy and flagrant dishonesty that our administration and the Regents have abetted over the past few years. Who wants to live and work in an institution that harbors and even rewards deceit? Jean Keffeler had the decency to resign when she saw the damage she was doing to the University. As I read the message from FCC, perhaps you and some of the others in the ‘closed session’ should consider following Keffeler’s example.”

Gray wrote back, venting her accumulating distrust of those advocating collective bargaining. “Thank you for your comments. You are certainly entitled to your opinion. However, I also think you have a responsibility to be collegial, informed, civil, and fair. If you were being collegial, you would just write me individually instead of copying so many people their addresses don’t fit into the field provided. This is just grandstanding. An informed person would take the time to find out that the recent FCC meeting had a closed part in which we talked about the regents and an open part at which we talked about the presidential search, among other things. An informed person would note the many efforts of FCC to resist the regents in their efforts to impose an awful tenure code and would applaud the fact that what the regents did enact was Sullivan II, not Morris I. . . . A fair person would not call for a resignation on the basis of one act while ignoring the rest of the record. Finally, as a political scientist I cannot help pointing out that if the union wants to win an election, it should be modelling the behavior we can expect after the election. What your intemperate letter tells me is that if the people who are resisting the regents choose different means -- traditional faculty governance versus collective bargaining -- then they will be trashed. What kind of academic freedom is this? The union says it wants ‘faculty governance with teeth.’ Your letter indicates it will be all ‘teeth’ and no shared governance.”

One FCC member thanked Gray for writing as she had. Usually it is wise to ignore these kinds of outbursts, “but occasionally people do need to be called on this behavior or others start to believe the inaccuracies or worse, think that this is an appropriate means of dialogue. Sara [Evans] is also right, that people are angry. . . . Nevertheless, whatever we can do to maintain a

civil community will preserve some basis for carrying forward as a group no matter what the outcome of the union vote.”

Naomi Scheman (chair, Senate Committee on Equal Opportunity for Women) emailed Dempsey, Feeney, Fogelman, and Gray to report an EEOWC resolution expressing concern at the way the regents adopted a tenure code for Law School without it having received Senate and committee discussion. This was an example of how decisions would be made in the future; the regents were under pressure because of the union effort, which might not be the case in the future. The UFA/AAUP proposal protects faculty governance and “the right of the faculty to have an effective voice in shaping the future of the University,” and the committees should support it.

Faculty Affairs chair Feeney responded to Scheman (with his personal view, not that of Faculty Affairs) about the EEOWC resolution. He said her concerns were shared by most faculty and the UFA/AAUP proposal was positive. The question was, who could conduct the negotiations. He preferred to ask the Senate to approve the process and slate of negotiators because it was the elected body; an ad hoc group would not have any authority, and any proposals must be submitted to the Senate.

“Board of Regents thwarting shared governance” (Minnesota Daily, November 13, editorial by Rama Murthy, Carolyn Williams, and Stephen Gudeman, the three top officers of the AAUP chapter). The regents’ adoption of the Law School tenure code, in an ““emergency”” meeting, was a breakdown of shared governance. The code did not violate academic freedom, but the action did “not reflect effective governance.” The union threat made the regents want to appear to compromise, but they still exercised arbitrary power. They found it ironic they agreed with Keffeler’s concerns; governance is based on the goodwill of faculty, administrators, regents, and that is not achieved when one signature on a BMS petition is challenged. They wrote that “the Sullivan II proposal, the latest entree in the tenure codes du jour, was not available to faculty members until 2:30 p.m. on Nov. 6, when an electronic version was accessible from the Internet,” and Reagan “could not respond to a reporter’s repeated request for a plain-English description of the advantages of this version of the tenure code.” The regents had the UFA-AAUP proposal before their meeting to negotiate tenure, but ignored it. It was “sad” that Gray was not allowed to speak at the meeting, and the regents did not accept Hasselmo’s proposal for a moratorium. They asked again that the regents respond to the proposal.

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THE PROCESS OF GETTING TO SULLIVAN II

As these entries suggest, some faculty saw the entire process as marked by procedural irregularities: the Board never voted on the Morris proposal, and then, to all appearances, did not consult on Sullivan II (or discuss it) before adopting it unanimously in October for Law.¹¹¹

Morrison agreed that this had been a problem, although he was not as concerned as others. “The Morris proposal was never formally proposed, Sullivan II was not formally consulted on. I think the early procedural irregularities were reflective of Reagan’s desire to railroad something through. Sullivan II was reflective of many people’s desire to get this out of the way, that it was causing so much damage -- [it was] the act of a desperate Board. But also the act of a desperate faculty. For the good of the University, we had to get this behind us. Some of would have said waiving consultation might be a good thing, if we’d been asked to waive it.”

Bloomfield shared Morrison’s general tolerance about the technicalities but also had concerns about the larger issues. “Getting Sullivan II was a good thing to have happened, so I didn’t object to the procedural irregularities. But I think a really fundamental part of what went wrong here was that we were never at all trustful of what the regents were going to do, because there was no clear procedure for what we could expect from them. It seemed that we had set this thing in motion, the faculty worked to get a good plan in place by the end of spring quarter. We then expected an orderly procedure, in which the regents would consider it and take some action on it. Presumably they wouldn’t agree right off the bat to everything, but they would formally decide their position on the faculty recommendations over the summer and come back to us in the fall. That all broke down. That, I think, is where we really lost trust; that’s why we panicked. The regents’ claim wide-eyed innocence and that they never understood why faculty were reacting like this: ‘We’re just putting this out for discussion, we’re not going to do anything with it.’ We had no trust in that whatever. That was a breakdown in procedures that led to bad consequences.”

“Likewise, I think that the Gang of 4 lawyers -- that was a little bit of an excursion into irregular procedure. That led to mistrust.”

Bloomfield said that “one of the conclusions I’ve come to out of all this is that we do have well-developed paths for getting things done. They’re cumbersome, but it’s probably wise to follow them. Until we rebuild a level of trust, we need

¹¹¹One interpretation offered by those who liked the result (albeit not the means) was that the Faculty Senate had talked about the original Sullivan proposal at its October 24 meeting, offered criticisms, and that the regents were now simply adopting a revision (Sullivan II) that responded to those criticisms.

to play by the rules.”

Virginia Gray was also less concerned about the procedural irregularities, and explained her position. “I have to preface this by saying I’m a political scientist. I look at what a legislature passes, not how it did it. So, to me, when Sullivan II could be passed for the Law School -- which, you’ll recall, is basically the Faculty Senate proposal massaged -- when we could have that, instead of Morris, I think that’s a wonderful victory. I don’t go around carping about this, that, and the other. The FCC, the day after, said Sullivan is a good document.”

“We had discussed Sullivan, with the administration; Sullivan was acceptable in principle. I could advocate its adoption. Again, compared to Morris -- you have remember what you’re comparing it to, you’re not comparing it to the ideal world, but compared to Morris -- any faculty member would say Sullivan I or II was a good deal. Remember, too, the sense of urgency: faculty members were threatening to leave, graduate recruiting was hurting, donors were drying up -- we had to stop this hemorrhaging as soon as possible.”

“But certainly Nils knew there was a Senate process to be gone through, here. I don’t think Nils ever thought that just because we said this was acceptable, that it meant it was a done deal -- it was written very fast -- and that there wouldn’t be things, when we went through it with a fine tooth comb in the committees, that wouldn’t need to be fixed. I never talked to Tom Reagan about Sullivan. Nils did all the talking. Somehow, later on, Reagan started telling people we had ‘agreed’ to this, and we were now renegeing when we wanted to negotiate over the fine points. I don’t know why he thinks that. We had a Senate process, and we always intended to follow it. I’m sure that Nils and Mike never thought that.”

“On the other hand, the administration didn’t particularly like it that we spent a lot of time [during the first part of 1997], and it took awhile, and they had to go talk to the Board again. To them, it was ‘oh God, more of this.’ They weren’t pleased about it, but I think they understood.”

Gray saw no danger from the precedent. “What precedent? In the winter we went back through the document, because I thought, ‘if people are going to be that upset, we want to go through and retroactively bless and fix any problems in this before they extend it to any other units.’ I think in normal times, people wouldn’t worry as much about process, because the trust of the Board would be there.”

Fogelman emphasized the process at the Morris meeting. “No vote was taken; that’s the point. This document, as it were, emerged, but looking at it from the standpoint of any kind of appropriate procedure for adopting a new tenure code, it just is the fact that no vote was ever taken.” It was difficult to tell how much support there was,

because “there was no vote. Yet that was the document that was presented to us. And that is what allowed Reagan and others to say afterwards that the Board was just making suggestions and this was not really it. The fact is that no vote was taken, and that put us in a peculiar situation: is this a formal response, or what is it? But it was then transmitted, so it had, you might say, a ‘clouded’ birth. It was a very peculiar thing, procedurally. No regent objected, but no vote was taken, so we don’t really know officially how many of the members of the Board favored it and how many opposed it.”

“It doesn’t give you a lot of confidence in how this whole process was being conducted. There were a lot of points in the process, like the appointing of the ad hoc committee (the source of its authority remained ambiguous), this adopting of the Morris code (never officially voted on). These were peculiarities, from a procedural point of view.” Fogelman noted that the Morris proposal “infuriated the faculty, whether it was voted on or not.”

Fogelman also believed that these procedural issues were “something we need to look into; what counts as consultation? What is the relationship between the Board and the faculty?” Like Morrison, Gray, and others, Fogelman said that “at the time, I agreed that the settlement was worth it; we needed to get this thing settled, but we shouldn’t let it rest. There is now an issue of what should be the proper relationship. The faculty would have good reason to question the good faith of the main protagonists there.”

Shively agreed with those who downplayed the procedural irregularities, and questioned whether there really was one with respect to Sullivan II. “I don’t think that’s important.” He maintained that the Board “did consult, in that the Senate acted, didn’t it? I think that the Board consulted on Sullivan II adequately. After all, they are not required to have a resolution from the Senate supporting something before they do it. It’s required that the Senate have discussed it and given the Board their reaction. The Senate gave the Board their reaction on it. It was a wishy-washy reaction, but they gave the Board their reaction. The Senate could have voted adamant opposition to it; it could have voted ringing endorsement. It did neither. But the Senate was consulted on it. I don’t think the Board was required to hold a public discussion before voting on it. And they didn’t do so. I don’t think that’s an irregularity, and I don’t think it was necessarily impolitic. Some people wanted to see the Board have a public discussion on it. But the Board decided not to. As far as I’m concerned, that’s all that happened.”

There was a clear division among the faculty, and in some faculty members’ own minds, about the compelling need for a resolution and the perceived failure of the Board to

consult on Sullivan II before it acted. Shively inquired what that consultation might have consisted of; it could have been votes by the committees and the Faculty Senate. In Shively's view, "the Faculty Senate did discuss and vote on Sullivan II. They concluded that they didn't have a conclusion. But the faculty could not hold up action by the Board of Regents by never coming to a conclusion. I'm not playing games on this; I think that the process was followed. The process was screwed up in all kinds of ways, by having this Morris proposal out there, purportedly being a regents' position but never having been voted on. And being treated by various regents as a Board position, when it wasn't. Nils certainly never treated it as a Board position, nor did I."

Humphreys also articulated faculty concern about the precedent, while agreeing that something had to be done. "I would agree, we did need a resolution, and maybe this was the way out. But I was scared to death of what this meant as a precedent. Because the next time this comes up, you may not get Sullivan II. And we've established a precedent. They could always look back on this, a new Board, an activist Board, and say 'well, look what happened in 1996 and 1997. We can do that again.'"

Gorham thought the irregularities were important, because they "led to serious distrust of the Board of Regents. I think that Sullivan II needed more discussion than it got. I think there were other irregularities in procedure, some of them having to do with unionization, that might not have affected the Board directly. The whole procedure of the Board was mistaken, in that they never did seek sufficient faculty input through this whole process of developing their Morris proposals. Had they done so, they would have never come out with those sorts of proposals in the first place. That may not be procedural irregularity in a legalistic sense, but it shows a lack of common sense about procedure."

Williams agreed with Gorham. "That was the whole point of the email message I sent to Virginia Gray about the Sullivan proposal. Here she was, in the meeting, representing the faculty, and she wasn't asked for the opinion of the faculty. I think it was also interesting that she didn't try to give the opinion of the faculty. From the very beginning, with the appointment of the task force and the Gang of 4, procedures were violated one after the other."

Pick also thought the irregularities were important. "It furthered mistrust of the regents and what they were trying to do and how they view the institution and maybe the faculty."

Morrison concurred with the proposition that in the eyes of a significant number of faculty, what the Board did in fact reflected what many faculty wanted: "to adopt the damn thing, and it's OK."

* * *

In mid-November, following the regents' action on tenure, the University again received attention from the national press.

“Touching the Tenure Button” (Washington Post, November 14, newspaper editorial). The “barest mention” of tenure “brought cries of alarm and warnings that faculty autonomy and intellectual freedom were about to be trampled”; when the regents took up issue at Minnesota, to make tenure “more ‘flexible,’ they got the full explosion.” After the debate, they may have achieved a compromise, but the situation is not resolved. The faculty sought a union, but regents imposed a modified code on the Law School. The compromise provides “the basis for an experiment on a manageable scale in what tenure might look like if it were to become less than absolute.” Academics do not believe the debate released “useful energy,” and the AAUP still opposes even “the weakened provisions” that were proposed. Budgets are changing faculty hiring practices, and tenure, so “the traditional guarantees afforded by tenure are not working so well as to be beyond tinkering.”¹¹²

“Minnesota Regents Change Tenure Policy for Their Law School” (Chronicle of Higher Education, November 15). The regents “finally managed to adopt a new tenure code,” but only because the union drive in the Law School failed. The regents “backed away” from earlier changes, including layoffs. Reagan said the new code “‘absolutely protects academic freedom’ [and] ‘is absolutely not a destruction of the tenure code. It has made it more flexible, more pliable, but with all the guarantees it should have.’” Reagan said “‘we had reached an impasse’” on layoffs. The new code was “cobbled together” by Sullivan. Morrison, who had not supported unionization, supported the new code; the AAUP field representative said “‘the board has passed a tenure code without meaningful faculty input.’”

“University of Minnesota Regents Drop Effort to Modify Tenure” (New York Times, November 17). “After months of protest by faculty members,” the regents “abandoned a plan to make it easier to dismiss tenure professors from most of its campuses, but it passed such a measure for the law school.”¹¹³ The Reagan quote was reported again: “it’s the sense of this board . . . that we will not be revisiting the tenure code for at least a year and a half, and probably

¹¹²Later in the month, a Post editorial about tenure erroneously reported that “the tenured faculty at all but one University of Minnesota campus have unionized to forestall cost-cutting measures by that university’s regents.”

¹¹³This statement, of course, was incorrect. Sullivan II had no such provision.

never.” The faculty and Hasselmo opposed the plan; Hasselmo said “serious, unnecessary, and lasting damage” would result. [The sequence of comments in the Times article was confusing; it appeared that opposition was to Sullivan II.] The article then reported the events in the Law School union drive and the compromise developed by Sullivan, which did not include layoffs. Morrison was quoted approving Sullivan II as protecting due process and academic freedom. Hasselmo also approved it.

Chapter Fifteen
The AHC Collective Bargaining Campaign and Vote
Faculty Negotiate with Faculty on Negotiating with the Regents
The Faculty Senate Responds to Adoption of Sullivan II

At the same FCC meeting when it had endorsed the Board action on Sullivan II, Gray reported the proposal for faculty seat on the Board had not been well received. Instead, FCC approved seeking ex officio seats on regents' committees instead; Gray also reported she had asserted the faculty right to interview presidential candidates under a Senate search protocol.

As noted earlier, AAUP/UFA had proposed, on November 6, to waive the cease and desist order, "to select a representative group of negotiators," and to negotiate on tenure, provided that the regents agree that any agreement must be submitted for a faculty-wide vote. AAUP/UFA would select the negotiators, including representatives from every college, from FCC (including Gray), and from AAUP/UFA.

In the week after the regents adopted Sullivan II FCC members had a lengthy exchange of views on what response FCC should make to the UFA/AAUP proposal to negotiate with the regents; they provide an illumination of the FCC perceptions about the relationship between the governance committees and the AAUP/UFA.

Bloomfield outlined the options. One option was "do and say nothing. This runs the risk of appearing irrelevant and unresponsive." FCC members agreed. Another option was "support the proposal," which would show solidarity with a significant faculty group, take advantage of a (slim) chance that the Board would negotiate, and increase opportunities for communication; the drawback was that it would undermine elected faculty governance representatives because they would have no say in the choice of negotiators.

A third option would be to issue a statement "defending/explaining the actions taken. Point out that our statement re Sullivan II asked for proper consultation on subsequent tenure actions" and that the governance committees have been actively working to resolve the conflict. The fourth option would be to issue a statement but also to propose a negotiating team consisting of the "duly elected representatives (rather than the group proposed by AAUP-UFA), and then ask AAUP-UFA" to seek to have the cease and desist order lifted. This would show that the governance committees were not ignoring the situation, would reassert "the proper role of elected faculty governance," perhaps the regents would negotiate and resolve the problem for the whole faculty, and waiving the cease and desist order would increase the possibility of communication

with the regents and administration.

One FCC member expressed support for the fourth option because “it reasserts primacy of faculty governance while recognizing that the AAUP/UFA is the only group that can agree to lift” the order, and “gives us the chance to talk to the Regents and find out whether they are sick of this (as some of us think) or being devious (as others think). If they don’t agree to negotiate, the blame is squarely on them.”

Sara Evans suggested supporting the proposal from AAUP/UFA after clarifying who would serve as negotiators. She reported that she had spoken with one of the AAUP/UFA leaders, who had agreed that those most involved (that is, the committee chairs) should be included. She suggested collaborating with AAUP/UFA on identifying the negotiating team and then endorsing the proposal. “Doing nothing would be a major mistake.” The regents might not negotiate, but “they may see this is an opportunity to really put the issue to rest. I think we have to put ourselves out there in defense of faculty governance no matter what.”

Gray was more cautious. She said that at first she had assumed would be superseded by events once the regents had acted on Sullivan II. But she said that “I fear this is a direct challenge to Senate governance, substituting the union prematurely for the Senate.” She said that if consensus could not be reached by email the FCC would have to discuss it the following week. She added that “I definitely do not support the proposal. I believe it puts the union in charge, instead of the Senate; it usurps the regents so I assume they will ignore it; it omits the administration which seems unwise; also I think it is impractical because it calls for a group of 30-40 people.” She preferred Bloomfield’s third option “because it is an established process of representative gov’t which did work. . . . UFA proposal would start the whole process over again, which seems like a tremendous waste of time.” She agreed, however, that option four would be acceptable “because it is creative but keeps faculty governance in the forefront. I certainly don’t mind putting my fate in the hands of Ed, Dan, Mary, and Fred who I assume would be the team.” But since the Board enacted Sullivan II, “I don’t quite see what the team would negotiate.” She concurred that the proposal would be “in the spirit of the union’s proposal. I don’t think they would agree but we could try it.”

Another FCC member posed a series of questions about the options. “Did AAUP-UFA ask our opinion? Have the Regents asked for our consultation on the proposal? To whom should we address our views? The Regents? The AAUP-UFA? The faculty at large as a clarification of our prior statement?” He maintained that the FCC statement “was well constructed in principle -- We don’t like the process that went on, we understand the need to enact Sullivan II, and any

further discussion” must go through established mechanisms. It was also pointed out that there were very important elections on collective bargaining coming up that would determine the form of governance at the University. He expressed a preference for clarifying the earlier FCC statement and calling for focusing on the choice that faculty face in the next few months.

Bloomfield reported to his colleagues that no one favored doing nothing, one favored supporting the proposal, two favored issuing a statement, and six favored the fourth (a statement plus proposal to AAUP/UFA for a negotiating team). He suggested, however, that Sara Evans’ advice to combine accepting the proposal and discussing a negotiating team with AAUP/UFA made sense, although the team proposed would be “too large and unwieldy. And submitting the result to a vote of the full faculty bypasses the designated committees and the full Senate (which is fully representative of the groups AAUP-UFA wishes to include).” He suggested a team of eight people, the three Senate committee chairs (Feeney, Dempsey, Fogelman), Morrison, Murthy, Walsh, and Gray and Bloomfield as FCC chair and vice chair. Any agreement with the regents would go to the Senate committees in the defined path.

Sara Evans followed up on Gray’s comment: “I don’t know that we can settle this without a conversation in part because I think we need to be as clear as we possibly can about what is at stake, and we approach this from somewhat different vantage points.” (At the end of this message, she told FCC that “you should know I have now joined the board of the AAUP and I find myself explaining FCC to them and AAUP to FCC. Within FCC we certainly have to do what we can to continue to strengthen faculty governance. . . . My involvement with AAUP is based on a commitment to ensure that collective bargaining -- if it wins -- will validate and strengthen faculty governance. I do not see these as mutually contradictory positions, and since I know that others disagree I look forward to talking this through.”

Evans went on to try to smooth the situation. She agreed that “we certainly don’t want to substitute the AAUP for the Senate.” But, “without the cooperation of the AAUP there is no possibility of lifting” the BMS order. “Rather than seeing their [the AAUP/UFA] offer as a challenge to the senate, I think we need to see it as a good faith effort to end the impasse by reasserting the importance of faculty governance.” She noted that many faculty remained concerned about the process after the regents’ emergency meeting; “we are too, though the FCC response downplayed that point in order to smooth over the feelings among the Regents. That leaves us looking like we don’t really care about the insult to governance and think that there are no real power dynamics to the future threat that it implies.”

Evans argued “that we would be mistaken to attack AAUP/UFA as usurpers whose goal

is to substitute themselves for the Senate.” Only they could get the order lifted and to ignore the offer means “we could undo an opportunity for resolution -- and for reclaiming the right of faculty to participate in such a fundamental issue as tenure policy.” She said FCC should not assume AAUP/UFA did not intend to involve the Senate leadership; they did. “If we take them at their word, we can shape the process in collaboration with them and in a way that validates and honors the incredible work done by our committees in the last year.” She concluded, in considerable if unintended understatement, that “there is a delicate balance here, but we need to strive for mutual respect.”

Gray again responded and said she supported Bloomfield’s proposal -- but agreed with Evans that the issues needed discussion. She worried, however, that the regents were already preparing a response and they might be too late; she said she had spoken with both groups to alert them that FCC had a proposal coming.

Evans replied and said she could support Bloomfield’s proposal if it were talked through with AAUP/UFA “before going public. That would maintain the united front of faculty on the issue of tenure.” The alternative was to present the appearance of two proposals and a divided faculty -- with the FCC perhaps looking “like spoilers to boot” since it had not come up with an offer until after AAUP/UFA. She also maintained it would not be a bad idea to have a vote of the entire faculty; It would give us an opportunity to make the case for Sullivan II more broadly and to reassure an understandably skittish faculty. It would certainly strengthen ANY future faculty governance system against accusations of sell-out, and, in fact, it would give current leadership an opportunity to receive the strong endorsement of their colleagues.”¹¹⁴

Another FCC member agreed on the need for joining with the AAUP -- and apologized for being “so ignorant of the subtleties of all the communications. . . , but I have a very difficult time keeping up with all the changes in stances and attitudes among all of us (not just us on the FCC).

They finally agreed to propose a negotiating team of eight, six from the governance system (Bloomfield, Dempsey, Feeney, Fogelman, Gray, and Morrison) and two that UFA/AAUP would select. FCC Chair Gray invited Walsh and Rabinowitz to meet with FCC to discuss how to proceed.

The same day that all these FCC exchanges about cooperating with AAUP/UFA were completed, Gray also wrote to her FCC colleagues to report that she had met with Regents’ Executive Director Bosacker “to begin the process of improving our relationships with the

¹¹⁴There never was a faculty-wide vote on Sullivan II.

regents.” One topic was the presidential search, which continued to annoy the faculty. Bosacker promised that FCC would have its usual interviews but that any other faculty access was not certain. She said that Bosacker appeared to be relieved that the faculty were seeking non-voting positions, not a faculty seat, and suggested that there was hope such representation could be achieved.¹¹⁵

Gray then wrote that “I talked about the general problem of distrust of the regents, esp. stemming from the lack of a moratorium and the quick process followed last week. I found out that while we think the regents need to change their behavior and attitude, some regents think it is the faculty that needs to shape up. Apparently some faculty told regents they were actively telling colleagues and graduate students not to come here . . . and the regents think this is disloyal. I tried to explain the concept of loyalty to one’s professions, but anyway they didn’t like the behavior of some faculty. So I expect this feeling will limit how far they are willing to go in making gestures of goodwill toward us.”

Also on the same day the regents acted on Sullivan II, Walsh sent an email to his colleagues setting out a draft of four goals for the collective bargaining campaign and a set of “talking points.” He asked for responses. Walsh also argued that “we need to shift gears now. Tenure is an issue, but it cannot be the only issue. That debate is now established as too negative for us. We have to be positive and show why the faculty need a collective action plan that includes AAUP collective bargaining.”

Walsh’s four “Faculty Collective Action Goals” were “collective bargaining through the AAUP . . . , rejuvenated faculty governance with a legal right to be heard and the resources to develop positions on important issues, independent faculty communications with the legislature on issues of importance, and independent faculty communications with the citizens of Minnesota on both a local level and a statewide level.”

The commentary included raising the possibility that they “anchor some basic principles for collective bargaining in a constitution (e.g., a minimum assigned to merit raises) that cannot be changed without a 2/3 vote of faculty? . . . Can we by constitutional formulation make it so that dues income goes to action plans, not to bureaucracy? The more I talk to people, the more I feel that there has to be a constitution which is difficult to change and which incorporates protections against a union ‘going bad.’” Another point was that “if faculty governance is fully democratic, the bargaining agent can designate it as the ‘meet and confer’ party.” Under state law, the Board would have to meet with it every four months. There would also be a need for a

¹¹⁵It never was.

“professionally run lobbying campaign,” the intent of which would be “to get at the Regents through the people who appointed them” as well as to “help the legislature -- coordinate contacts between the legislature and faculty expert on particular issues. This could gain us great credibility.” Also needed would be more public relations for the faculty.

Walsh reported that “a lot of this flew very well with the membership of [Faculty Affairs]. If we cannot win over the committees officially, we can think of getting their membership to endorse us. If we move quickly, they will still be thinking about how they were had when the Regents passed Sullivan II but not Hasselmo’s 2 year moratorium. That should make them more receptive. Also, the news that a new president will be chosen by mid December should make the membership of those committees nervous.”

Bob Sonkowsky, one of those active in AAUP/UFA, wrote to a large group to raise questions about Walsh’s proposal. He asked why there was no proposal that the bargaining agent meet directly with the administration, rather than reviewing their performance. “We should face off with them from the beginning, not go whining around after they make their mistakes. Long ago I served on the FCC, supposedly the most significant of committees, and found that it was in those days nothing but a rubber stamp after all was said and done. That could happen again if the leverage of the bargaining unit is not positioned at such key contact points as FCC. . . . I would view direct positioning as one set of executives (AAUP-UFA) negotiating with another set (our Administrators). No, we don’t want to ‘replace’ the present governance system, but figure out a way to infuse it with the power which recent and less recent events have shown to be missing.”

Beginning on October 31 and continuing through November 18, AHC Provost Cerra’s office sent out communications to AHC faculty about unionization. These messages, in whole or in part, later provoked an unfair labor practice charge by the AAUP/UFA.

On October 31, Cerra wrote that he “watched with concern as events of the past several months have unfolded,” and noted the petition to join the Twin Cities campus bargaining unit. He said the elections “are very important and may have far-reaching, long-term effects on the institution and each faculty member’s professional life,” and urged faculty to be informed. He then raised a series of questions about how bargaining would affect the AHC and its faculty.

On November 4, he wrote to inform them of a website with information on unionization.

On November 7, the message was a series of questions and answers on how the election would take place. It said that if there is a union, the University would negotiate “all terms and conditions of employment,” and “negotiations would begin from a blank slate.” It said, among other things, the existing tenure code would “not necessarily” be continued because it would be a

subject of bargaining; there could be a strike, during which faculty would not be paid; that all eligible faculty will be subject to a contract whether union members or not, and that faculty who were not union members would have to pay a “fair share.”

On November 8, there were two memos, one on how to obtain an absentee ballot and one instructing faculty to learn whether they were eligible to vote.

On November 11, the deadline for absentee ballots was reported.

On November 12, there were more questions and answers. If the vote was in favor of a union: the Duluth Medical School faculty would immediately become members of the UEA while the Twin Cities AHC faculty would then vote with the rest of the Twin Cities faculty later on whether to have a union; negotiations with individual faculty members about wages and working conditions would be prohibited unless the union agreed; wages and benefits would be negotiated by bargaining; how merit evaluations and raises would be dealt with could not be predicted, but usually “faculty union contracts negotiate raises on an ‘across the board’ percentage basis”; the union could not prevent layoffs (and most contracts provide for them); the tenure code might “stay the same or change dramatically”; “the role of faculty governance is likely to diminish and the role of union leaders will likely increase” and the University would not have to negotiate matters that have traditionally been discussed with faculty governance; and there would likely to be some changes in the roles of deans and department chairs.

On November 14, the message was that faculty could submit questions about the vote that would be distributed to all faculty, and the Provost’s office would answer strictly procedural questions but not those that were non-procedural.

On November 15, Cerra wrote a message to “express my concerns regarding the decision you will make next week as you vote on unionization. . . . I am very troubled about the possible outcome of next week’s vote and all that it may mean for the future of the AHC at Minnesota. There is no top tier research university in the country that has a unionized faculty. A decision by the AHC faculty to unionize will set us distinctly apart from our peer institutions. It is not a decision to be taken lightly.” Cerra wrote that he had been working with the faculty “to set a new direction for the Academic Health Center that can respond to the challenges we face while preserving the best in our institution. Those challenges are significant, but we can solve them if we work together in an environment of open dialog and cooperative decision making.” He urged that the vote to rejoin the Twin Cities be a vote on unionization, because the AHC faculty would be in a minority on the actual union vote if they joined the rest of the campus. Cerra said that he saw “several issues that seem to be motivating faculty to consider unionization. Much of the

energy to push for unionization has come from the issues surrounding possible tenure changes. I see three key issues in the debate: 1) the preservation of academic freedom and the intellectual autonomy of faculty, 2) the possibility of faculty layoffs, and 3) the issues of faculty governance. While none of us can assure what future actions the Regents might take, I believe the Regents have signaled their intentions in passing Sullivan II for the Law School. In Sullivan II, faculty layoff provisions from earlier drafts have been removed, academic freedom is reaffirmed, and the role of faculty governance processes is sustained. The Faculty Consultative Committee has also supported Sullivan II.”

Cerra emphasized that “no guarantees made and no assurances given during this election campaign are legally binding promises for a subsequent union contract. If we unionize, a union contract will set the compensation and working conditions of faculty. That contract will be negotiated from scratch between the union and the Regents and would cover such issues as your salary, pay raises and how they are apportioned, layoff provisions, grievance procedures, minimum and maximum teaching workloads, and a host of other issues. Once negotiated and agreed to by both the union and the Regents, the contract would be binding on all faculty. By law, the administration cannot negotiate with any group or individual regarding these issues other than the union.” Cerra also pointed out that “virtually all union contracts, including AAUP contracts, contain provisions for faculty layoffs, both of tenured and non-tenured faculty. Generally, these layoff provisions provide for unilateral action by the administration for a wide variety of reasons, not just financial exigency.”

Cerra also made a point echoed by Fogelman. “Concerns have been voiced about the corporatization of higher education, concerns which I share. As part of those concerns, I wonder about the effect of trying to work with faculty on the basis of industrial labor practices.”

He concluded by saying that “as faculty, we are used to operating in an open system that encourages individuals to be creative and to take the initiative. I worry that a union might blunt the possibilities for individual faculty to be rewarded for outstanding individual achievements. . . . If we unionize, what will it do to our individual fates when much of that negotiation happens between a central university negotiation team and the union?” He asked faculty to be well-informed, and to “ask yourself whether your life and career as a faculty member would be better under a union contract or under our current governance system. I personally prefer to move forward in an environment that is both collegial and consultative.”

On November 18, Cerra wrote that promises made during union election campaign were not binding, that a union might choose to seek control over the doctors’ practice plan and clinical

income, that other unions have tried to do so. He said he could work best with faculty without a third party, and pointed out that medical school union contracts have layoff provisions and that a contract could set minimum teaching loads.

In the midst of the messages from the AHC provost, on November 6, David Hamilton wrote to the AHC faculty about the pending election to decide whether to rejoin the rest of the Twin Cities campus bargaining unit. He apologized “for the long silence about what is going on with respect to the upcoming election. Things have been rather chaotic and facts have changed rapidly, particularly in the last few days.” He reported that there would be faculty forums about questions raised by Provost Cerra.

Hamilton then related the history of bargaining elections at the University with respect to the AHC. “An election was held in 1980-81 wherein the [AHC] faculty . . . voted to remove themselves from the Twin Cities” unit. By state law, “once a group has removed itself from a bargaining unit, that group may file a petition to rejoin the unit only between September 1 and October 31 of a given calendar year.” The AHC faculty had filed enough cards to ask the BMS to hold an election on the question once again. The election would be held November 21; Hamilton informed the AHC faculty about the specifics, and pointed out that “on November 21st, you will NOT be determining if the AHC faculty are to be unionized” but only “if the AHC faculty wish to rejoin the Twin Cities” unit.

Hamilton wrote that if the AHC faculty voted not to rejoin the Twin Cities unit, the cease and desist order would be lifted for the AHC (but not the rest of the campus) and “the Regents will be free to immediately make their proposed changes to the tenure code, applicable to the AHC faculty, but not to the faculty on the core campus.” By so voting, the AHC faculty would not participate in a subsequent election on the rest of the campus, and could not form their own unit. Moreover, the AHC faculty would have to “wait until September 1, 1997 to again file authorization cards requesting” another cease and desist order to permit reconsideration of the question; “in other words, the Regents will be free to adopt any and all parts of their proposed tenure code amendments for a period of approximately one year.”

If the AHC faculty voted to join the Twin Cities unit, they would then remain under the cease and desist order and participate in the election deciding whether to choose a bargaining agent.

Hamilton received a pat on the back from one member of the Nursing faculty for his efforts in early October. “Many thanks for the hard work on behalf of the faculty in the School of Nursing. I think we have the attention of the Regents and the Governor, especially if the morning

[[Star-Tribune](#)] is correct. I also appreciated the Hard Nose attitude of the faculty response, enough of being pushed around.”

A colleague wrote to Hamilton on November 12 to ask if an AHC faculty vote to join the Twin Cities campus were irreversible. “Could the AHC faculty vote to decertify the union at a later date even if the rest of the university retains that union?” He explained to Hamilton that “this is more than just an idle question. Many people in the AHC are concerned about irreversibly linking ourselves with the [rest of the Twin Cities campus]. They worry that those people will largely run the union and will impose work rules, salary restrictions, etc., that the AHC faculty won’t like. This may or may not be true. However, in the election, it will be perception which is important, not reality. Many members of the AHC would be swayed by an argument stating that we could pull out in the future if we were not satisfied. In that case, there would be little to lose by voting for the union. However, if we can’t pull out once we’re in, people will have to choose between two unknown and frightening options.” Upon learning from Hamilton that the AHC faculty could, for the AHC, annually make a decision to decertify the bargaining agent, he told Hamilton to make that fact widely known to AHC faculty.

One of the concerns in the AHC was the treatment of the significant amounts of private practice funds that were part of the base salaries of tenured clinical faculty. The Dean of the Medical School emailed Hamilton on November 12 to inquire if he was “absolutely certain” that these funds would not be governed by a collective bargaining agreement. He noted that “this is a crucial issue.”

In response, Hamilton sent out an email to his colleagues on the subject. He noted the concern, and reported on the status of clinical income at various institutions with collective bargaining agreements (it was excluded). Hamilton sent along excerpts from the Cincinnati agreement, where the AAUP was the bargaining agent, which distinguished between compensation for academic work and that received for clinical work.

Also on the 12th, Hamilton felt compelled to send an email to his colleagues about his own status. “The Provost’s Office has received inquiries from some of you as to who I represent, and some have even suggested that I am part of the administration!” Hamilton reported that “first, I am not part of the administration. I am a Professor of Cell Biology & Neuroanatomy and thus a full fledged faculty member.” He also noted that he was on the AAUP/UFA executive committee and responsible for cards and information in the AHC, and that he was not working by himself; “a group of about 15 people in the AHC have been meeting over the past few months on various aspects of the election. What I send over e-mail is written both by me and by others in

the group, with the concurrence of those who can be present at our meetings, and is shared with the leadership of the AAUP/UFA.”

On November 15, the AAUP/UFA began responding to the messages from Provost Cerra’s office. They sent a long email to the Twin Cities campus faculty about the upcoming election in the AHC. It said that “there is a great deal of activity on the part of the AHC Provost, opposing collective bargaining. Much of this has taken the form of emails to the AHC faculty posing and then answering questions. Many faculty both inside and outside the AHC may be interested in these questions and in how AAUP/UFA responds to them. For that reason, we are sending this and a following email to the general faculty. We hope that it helps you form a better idea of what collective bargaining might mean.” They reported that “approximately two-thirds of the AHC faculty returned cards, which is consistent with the numbers submitted by the rest of the campus. With the credible threat of collective bargaining from the faculty, the Regents appear to be softening their position on the tenure code, and the AHC Provost’s Office has been disseminating information about unionization, including some inaccuracies we’d like to correct.” They noted that UFA and AAUP had merged, but that only the UFA would appear on the ballot. They commented on the collective action the faculty had already taken in communicating with the legislature and the people of the state, and said “that more collective action by the faculty, in the form of collective bargaining through the AAUP . . . is essential for restoring effective faculty governance at our institution.”

Their goal is “to rejuvenate our system of shared governance so that faculty governance has legal standing with the Board of Regents and administration. They urged the AHC faculty to vote in favor of rejoining the Twin Cities unit, which would “keep the Regents from adopting a separate tenure code for the AHC or in any other way change the terms and conditions of employment for AHC faculty” and allow the AHC faculty to “participate in the debate about the pros and cons of collective bargaining with the rest of the faculty, and vote in another election that will be set for the future by the BMS.” A vote against rejoining the rest of the Twin cities “will result in the lifting of the Maintenance of Status Quo Order and the Regents will be able to change the terms and conditions of employment for AHC faculty.”

The message then set forth a series of questions and answers about collective bargaining. Among other points, it said that “there is not likely to be a single scale of salaries with annual steps, since the differences in market salaries in the various fields are too great for the U of M to have a single salary scale.” “Merit pay continue, with merit pay being allocated annually by a merit pay committee of peers in each department,” and that “we would not propose to be involved

in the setting of income augmentation from clinical practice.” “The tenure code will continue as in the version passed by the senate this past Spring after long deliberation. The Judiciary committee will continue to hold its present role.” “Initial salary and office and lab space are currently negotiated individually, and will continue to be that way.”

There would be a bargaining committee to deal with “base wages, merit pay increases and fringe benefits etc.” and “we would prefer to maintain the present faculty governance structure. If the Regents or the administration attempt to circumvent the Faculty Senate, then we could designate the present Faculty Senate Structure (or depending on faculty input, something very similar to the present Faculty Senate) as the ‘Meet and Confer’ unit. The Regents and Administration would then have to meet and confer with the Senate much as it does now, with one great exception: They could not arbitrarily implement certain policies over the objections of the faculty.” In terms of the AHC, “never again would a small committee or cabal of administrators have the legal power to meet secretly and spring upon an unsuspecting faculty such draconian changes as proposed under last year’s ‘re-engineering’ scheme.”

Although a stand-off in negotiations on a contract would be “extremely unlikely,” the faculty could strike (although would not do so without majority vote of the members), but “we advocate that clinical departments would be excused from any such strike and would operate as normal.”

In terms of “the selection, promotion, and professional development of faculty,” “we anticipate no changes,” and the same is true of programmatic impact of collective bargaining.

On November 13, Wells sent an email to Hamilton with AAUP/UFA responses to the second set of questions and answers that Cerra’s office had distributed the day before. A long message, it took issue with several of Cerra’s assertions, beginning with the statement that “much information in these e-mails is incomplete, misleading, and/or erroneous.” A major source of information was Dr. Ernest Benjamin, from the national AAUP office.

The message began by noting that “each university is unique and that each state has different laws governing collective bargaining agreements. Of the 34 research Universities most comparable to ours, none is covered by a collective bargaining agreement. Thus, no model for collective bargaining exists that would be perfectly applicable to our institution. The most comparable universities that have bargaining agreements under AAUP are Wayne State, the University of Cincinnati, and UMDNJ (affiliated with Rutgers).”

The nine questions and answers from Cerra were itemized and addressed. (1) “The Provost’s office is incorrect in stating that Twin Cities faculty will be represented by the UFA”; it

would be the AAUP, even though the BMS had not allowed them to merge before the election. (2) Not all terms and conditions of employment would have to be reached through agreement with the union; individual negotiations with faculty would be permitted at the time of hire, for augmentation, and for retention. Moreover, “the AAUP believes in recognizing merit and in recognizing market value for many reasons, including the fact that AAUP members would find it unacceptable if the university held salaries down.” (3) The AAUP would represent the faculty, not the UFA, and would follow the principles in the AAUP red book. (4) Faculty salaries and benefits would remain the same after an election, and negotiations would be over increments (which could not be predicted). (5) Merit raises would be negotiated, rather than across the board salary increases. (6) Any layoffs would be negotiated in accord with AAUP principles, and through the Faculty Senate; they would not be made in the way set out in the Morris proposal or as implemented in K-12 education or community colleges. Some institutions with NEA or AFT contracts have lay-offs; those with AAUP contracts do not. (7) The tenure code would be a subject of negotiation, and could change, but the presumption would be that existing policies would remain in force until negotiated, and, importantly, the regents could not unilaterally adopt a new code. (8) The AAUP would seek to strengthen faculty governance, not weaken it, and Minnesota law “does not permit negotiation of academic matters.” (9) In terms of the role of deans and department chairs, AAUP wishes them in the unit, and “AAUP policy is to seek to continue the traditional role of faculty committees at departmental, college, and university levels. AAUP collective bargaining agents have negotiated systematic faculty roles in review and selection of chairs, deans, etc. Some change is for the better when faculty are represented.”

On November 18, Sonkowsky wrote to object to language in the responses to Cerra’s questions. “I would like to ask where the hell did such things as the following come from?”: “Terms and conditions of employment: The tenure code will continue as in the version passed by the senate this past Spring after long deliberation” and “the AAUP would seek to strengthen the role of the faculty in governance by negotiating to protect existing procedures.” Sonkowsky said he was “concerned primarily with the fact that a few of you are presuming to predict negotiations without asking the faculty what it wants to do. In any such “negotiating to protect” I would certainly want the faculty to be heard on “existing procedures,” including the very procedure by which the senate is constituted. Please do not permit the fine hands of those members of the FCC and the administration who are adept at union-busting to manipulate you into stances that are divisive of our membership.” Sonkowsky said a referendum by the faculty on these questions was needed.

On November 15, Carol Wells suggested another memo to the faculty concerning additional questions from Cerra that same day. (1) In terms of union contracts setting work rules, “while traditional labor unions negotiate such intricacies, associations representing research universities typically do not,” but if one were a problem, a body such as FCC could ask the AAUP to negotiate about it. (2) Union membership would have no effect on grants and contracts, although the impact on federal funds “could be substantial” if Sullivan II were adopted for the AHC. (3) In the event of a strike (unlikely), AAUP policy exempts clinical faculty, and does not call for closing laboratories or halting research, and “each individual faculty member is free to do whatever he/she wishes without restraint (even teaching your class if you wish). In all practicality, at other institutions, a strike has had the effect of curtailing undergraduate education with little other global effects.” (4) A question not raised by the Provost, but of concern to AHC faculty, is whether a vote to join the rest of the University would be irreversible; it would not be, and could be reconsidered annually (if 30% of the bargaining unit members petition for a new election).

In mid-November, Purple responded to one of the memos from Provost Cerra. First, he wrote that “for each question, the reader should also ask of themselves [sic] the following. Without the pressures for collective bargaining that have been exerted this Fall, what position would you be in now? If you vote not to rejoin your colleagues in the Twin Cities Instructional unit, where the vote on collective bargaining will be held, what is likely to happen to your position, your department, your tenure, etc.? Will you have more control over your fate by remaining separate than you would if you rejoined your faculty colleagues? Would they be in a better position to come to your rescue again in cases of new re-engineering incursions, Regents arbitrary decisions on tenure etc., if you went your way independently from them?”

Wells worried about the campaign in an email to Walsh and Hamilton on November 16. “I hope everyone is learning from our mistakes. I would start your campaign today, getting out info in a steady stream of small communications. We were caught unawares here, and I fear all our communications are too long to be carefully read and digested. We have been trying to play catch-up and I do not believe it has been effective.” She suggested that the national AAUP should be able to help with strategy, given its experience elsewhere; “we have been entirely reactive and never proactive. AAUP should have helped more, rather than merely sending folks who can answer questions (during the last week) and who can help us execute what WE want to do. The problem is: WE have never done this before, and we have not known what to do -- we have merely followed our instincts. We have learned a lot in the last few weeks, but AAUP

should be experienced in these matters and should have been more helpful by providing a game plan.”

Again on November 16, Wells forwarded to Walsh and Murthy questions from an unnamed individual distributed to AHC faculty. She urged that answers be provided. The questions were whether or not the faculty could see the agreement between the UFA and AAUP, would the union negotiate curriculum redesign or be involved in strategic planning, would there be a minimum or maximum teaching load across the University, would the union negotiate outside consulting, and would it have to negotiate a retention agreement?

On November 19, the AAUP/UFA sent out a third message, again responding to questions and answers posed by Provost Cerra. In terms of “work rules,” it said that “while traditional labor unions negotiate such intricacies, associations representing research universities typically do not,” but if one were to become an issue, a faculty group such as FCC “could vote to ask the association (AAUP) to negotiate the matter with the administration.” There would be no effect on research contracts, but “the effect of clinical income on federally derived funds could be substantial if the Regents adopt the Sullivan II tenure code for the AHC.” It emphasized that a strike would be unlikely, and that “AAUP policy is to exempt clinical faculty from strikes. In addition, AAUP does not close laboratories or stop research.” A concern expressed by some AHC faculty was the irrevocability of the decision to rejoin the rest of the Twin Cities campus in a bargaining unit; under Minnesota law, the AHC could opt out the following (or any subsequent) year. “Curriculum changes and other issues which have been decided by the Senate or existing departmental structures can remain in place. The AAUP aims to strengthen democratic faculty governance, not replace it.” “Contracts covering faculty at research universities typically do not establish specific teaching loads. These contracts usually operationalize professional responsibilities which were in place before collective bargaining. The AAUP would oppose unilateral or unwarranted administration changes to existing practice.” “AAUP will oppose any change in intellectual property policy which aims to turn faculty into ‘employees,’ with intellectual property rights belonging to the ‘employer.’” And finally, the AAUP would not bar counter-offers for faculty who are being recruited by another institution; “these do not have to be negotiated by the association.”

Also on November 19, all AHC faculty were provided a strongly-worded memo from Jonathan Ravdin, Chair of the Council of Clinical Sciences, that had been approved by the Council, and which opposed collective bargaining. Ravdin reported that “at that meeting I took the opportunity to enjoy my First Amendment Rights and share my opinion with the faculty. I

did so because I believe most sincerely that the vote on November 21st represents a life or death decision for the Department of Medicine and was, therefore, obligated to share my views.”

Ravdin expressed concern about base salaries and research grants. He also wrote about “stability, which is of concern to all faculty in this time of rapid change in the healthcare market and AHC re-organization. Given the medical school’s financial position and the lack of available reserves, I believe that unionization will increase logarithmically the probability of there being faculty layoffs -- unionization does not protect against layoffs, nor would it ever prevent such action during financial exigency.” Collective bargaining would also bar work on development of a unified practice plan.

Ravdin also maintained that collective bargaining would have an adverse effect on “competitiveness in the clinical and research marketplace, and in recruitment and retention of faculty.” He said that “among academic health centers that have departments of medicine working under unionized conditions, not one even approaches 50% of our level of NIH funding. . . . There is simply no precedent for a school of medicine or a department of medicine of our academic quality and size to flourish under such a unionized setting. . . . All of this will make us less competitive for recruitment and less likely to retain our most talented faculty.”

Another issue was “academic culture. Working under a system of joint university work rules will cause us to lose our independence, self-determination, and the unique culture of the AHC. I don’t believe that Department of Medicine faculty share all aspects of job description and culture with faculty based in the University Bargaining Unit. Yet the non-AHC university faculty would have the majority of votes regarding leadership of a faculty union.”

“The last issue is the issue of academic freedom. I presented at the faculty meeting a letter (which has been circulated) that the Council of Clinical Sciences presented to the Board of Regents. The Chairs unanimously supported the tenure proposal as defined by the Faculty Senate. We indicated our collective opinion that retention of the tenure code as defined by the Faculty Senate is necessary for us to be competitive in the clinical and research arenas, and that unionization would equally result in a non-competitive situation. Regent Reagan responded positively to us and indicated strongly that the Board of Regents would not re-visit the issue of tenure until the new university president has been in place for over a year and that they would be guided by the president’s actions.”

Ravdin concluded by saying that “I firmly believe that if the AHC faculty and their leadership stand together, there is no group or individual that could push us into an unfavorable and unacceptable situation. We do not need a union or additional bureaucracy to represent us.”

The same day, Williams forwarded to her AAUP/UFA colleagues a message from four faculty in the Medical School, distributed by the provost's office, that had been sent to all AHC faculty. The four urged a "no" vote on collective bargaining because a "yes" vote would mean a union would be elected "(non-AHC faculty sentiment is for unionization)," and "by joining their bargaining unit we, ultimately, will have joined their union." They said that "major issues regarding your salary, benefits, and work rules will be decided by a bargaining group in which AHC faculty will have only minority influence" and that "it is highly unlikely that bargaining unit negotiators would consider AHC interests as their top priority. WE FORESEE A NEGATIVE IMPACT ON CONDUCT OF RESEARCH AND TRADITIONAL PATTERNS OF RESEARCH MERIT RECOGNITION." In addition, they argued, with Ravdin, that "unionization would entail a loss of NIH income that would have catastrophic effects on departments that depend on significant NIH dollars to support faculty salaries."

Provost Cerra's office sent out an email to the AHC faculty on November 19. "Unfortunately, we seem to have entered that phase of campaigning where the union appeals to your fears, rather than presenting facts. In a letter sent to faculty yesterday, the AAUP claimed that the tenure code passed for the Law School (Sullivan II) would prohibit total faculty compensation, including clinical compensation, from use in preparing NIH research grants. THIS IS NOT TRUE. The calculation of salary for grant purposes would be no different under Sullivan II than under our current tenure code."

This email prompted a response to all AHC faculty from another faculty member in the AHC, who wrote that "voting to keep us out of the collective bargaining unit will increase the split between the AHC and the rest of the University to an uncrossable chasm. For 26 years I have happily collaborated with clinicians within the AHC on a multitude of research projects, but as a basic scientist, I have no interest in being a member of a separate university dominated by clinicians. I thought we all belonged to the same community of scholars dedicated to advancement of education, truth, and knowledge rather than to our individual pocketbooks. So, keep us together and VOTE YES."

Hamilton responded to the message from the provost. "I am not dealing in 'fear,' as alleged. I quoted from Sullivan II (repeated below). What can be more factual than the fact? And, by the way. We are not a union. We are voting to join bargaining unit 8, not a union." The Sullivan II language provided that "THE UNIVERSITY MAY ALSO FROM TIME TO TIME PROVIDE A FACULTY MEMBER WITH ***ADDITIONAL COMPENSATION THAT IS NOT PART OF BASE SALARY***. THE ADDITIONAL COMPENSATION MAY BE FOR

SPECIAL AWARDS OR FOR ACTIVITIES IN ADDITION TO REGULAR FACULTY RESPONSIBILITIES ***SUCH AS CLINICAL PRACTICE***, ADMINISTRATIVE SERVICE, OVERLOAD DUTIES, SUMMER SCHOOL TEACHING AND SUMMER RESEARCH SUPPORT AND SIMILAR ACTIVITIES” (caps in original).

* * *

HAMILTON ON THE AHC CAMPAIGN

Professor David Hamilton provided an overview on the campaign and these emails in the AHC. He recalled that there was a small group in the AHC who served as the nucleus for the collective bargaining campaign, including himself, Judy Garrard, Carol Wells, Rick Purple, Carolyn Williams, and others. “I had just unbelievable cards all over. I was the organizer of the cards. I think it was October, we had collected over 50% of the AHC faculty cards. Part of my role in that was to validate them, and make certain they actually were valid faculty, that they fit into the classes that we assumed we were going to be included, and to mollify those who were rabid and wanted to join who didn’t fit. There were a lot of them who were P&A who felt disenfranchised by this whole process.”

“We had to show our intent before October 31. There was something that triggered my going over to BMS in early October. I had [collective bargaining authorization cards from] over 50%, and all I needed was 30%. BMS immediately sent down the cease and desist order. That meant the whole institution, with the exception of the Law School and Morris and Crookston, were in.”

“Then we had until November 22 to gather all of our ammunition. We used email as much as we could without offending people. Email is viewed badly by a lot of people, and I got some angry people who said ‘don’t send me any more email on this crap.’ Then Frank Cerra started wading in. [His email messages] were inflammatory. Frank is very, very good at writing things like that. When I read them, and I stepped back from my role, I realized that these were going to be very appealing to a lot of people. But I didn’t have that much ammunition that I could bring to bear against him, because a lot of his statements were rather broad, and you couldn’t focus on them. Some of it was motherhood and apple pie.”

“The UFA, with Tom and Rama’s help, actually drafted some replies and sent those replies out. Those weren’t too effective. It was to AHC faculty and anyone else. The problem that we got into was that I got a pretty large number of hate mail emails about Tom. People in the AHC who said ‘we consider this man to be a liar and a horrible person.’ Interestingly, most of them said ‘Dave, we’re not talking about

you, we're talking about him.' I could have sent them out and we wouldn't have had that response. So it was a negative response, in that respect, because Tom was associated with it. That was a big surprise to me."

This came as a surprise to Hamilton because faculty generally hadn't heard of Walsh before the organizing campaign. "We had him over to speak at a forum, which was well-attended. We had him, and Rama, and others, Fred Morrison. People really liked what he said. I think it's a matter of he has a sort of incendiary way of writing that belies him. When you speak to Tom Walsh, you get a completely different view of him than when you read what Tom has written. I think that had an effect."

With respect to the email from Ravdin, Hamilton described it as "a heartfelt plea to people not to change the status quo. He sent this out only to the faculty in his department, but it got out, and was then sent out widely. That had an effect, and that was actionable also. Because he was viewed as a manager, and that was something he should not have done. Legally, he shouldn't have done it. Steve Gordon and Tom and a lot of other people -- most of the people who comprised the Gang of 19 and AAUP all meshed together -- wanted us to pursue this very aggressively from a legal point of view. I was dead set against that, and the reason is that we were being torn apart as an AHC by Brody [and by re-engineering, which has continued], and just by all of the uncertainty and pain that existed here. We, quite frankly, couldn't take any more. No matter what we think about Frank Cerra, it was my judgment we had to rally around to save the AHC, because if we didn't, it would disappear. We may not have saved it even now. But at the time, that seemed the only reasonable thing to do."

Hamilton explained that "my sole reason for becoming active the way I did in the unionization effort was not to unionize, but to bring the AHC into the bargaining unit. Because there are so many things breaking us up as an institution. In 18 years as a department head, I worked to try to bring us together as an institution. I wasn't that successful, but I worked at it."

"When I came here as a department head, it was clear that in order to build my department [he had to do certain things]. It's been very important to me to have a university, not to have an AHC -- that's less important than a university. The unionization effort was really a card-signing effort to get people to vote to be in it. If we had joined it, the margin would have been much greater against the union, so in some ways it was a blessing that we didn't get in, in terms of the message that was sent to regents and administrators. But that was my intent."

"I don't think I'm going to have worry about it the next time it comes up, because there won't be any clinical faculty

left to vote. It will be only basic scientists.”

* * *

An email on November 14 informed all faculty that there would be a forum on collective bargaining on November 25, sponsored by the National Association of Scholars.

Meanwhile, the dispute among the faculty on the regents' action on Sullivan II continued unabated. On November 15, the Professional Studies provostal FCC wrote to FCC “to express our concern” about the FCC statement following the regents' action. They said it diverged from the Senate directive of October 24, which asked the regents to take no action on tenure until the union elections were held and asked them not to act on the Sullivan proposal.¹¹⁶ The “overwhelming majority of the faculty” did not want action before the elections. They understood that circumstances changed after the October 24 meeting, but there was a divergence in the actions. They applauded the call for a return to shared governance, and asked FCC to urge the regents accept the UFA/AAUP offer to negotiate.

Gray and Bloomfield emailed to the provostal FCCs, FCC, Faculty Senators, and the three committees; they applauded the UFA/AAUP proposal to negotiate on tenure, but said that the “existing faculty governance structure should be central to the process”; they proposed to AAUP/UFA a negotiating team of eight people (Dempsey, Feeney, Fogelman, Morrison, Gray, Bloomfield, and two representatives to be selected by UFA/AAUP). Any negotiated agreement would go to the committees and then the Senate.

Gray wrote to Reagan about the UFA/AAUP negotiating proposal, and informed him that FCC had proposed an alternative to better represent the faculty governance system. The proposal was being considered by UFA/AAUP. She expressed hope the cease and desist order could be amended to permit consultation on the tenure code and told him that “the faculty remains interested in and committed to the principle of consultation over tenure code revisions as permitted by the legal situation.”

On November 19, Murthy and Walsh again wrote to Reagan and recalled their November 6 offer to negotiate tenure. They said the regents “unilaterally adopted” a new code for the Law School, which was seen as a way to communicate what would be an institution-wide code. Their

¹¹⁶When the Senate acted on October 24, it may be recalled, it had before it the first Sullivan proposal, which was incomplete, and which called for further study of some of the procedural issues with respect to discipline. It was after the Senate meeting that Dean Sullivan fleshed out his proposal, and that was the one (Sullivan II) upon which the Board acted.

attorney advised that the action violated the cease and desist order; they said it “impaired the conduct of a free and fair election,” and regretted the regents chose “to evade the law and improperly influence” the election. They said they had received no response to their November 6 letter and again asked for one. Reagan responded a few days later (after the outcome of the union elections at Crookston, Morris, and the AHC), and told them he would not take action on their request for negotiation pending reaction to the proposal from FCC, about which he had been informed.

Gray also emailed to FCC to report that FCC would have an hour with each of the three presidential candidates, as would the regents’ professors; there would also be an open forum with each candidate. She also reported that she had learned “that if any of the 3 campuses this week votes no on unionization (i.e., Morris, Crookston, or the AHC on severance) and a status quo order is lifted, the regents will wait until their Dec. 13 meeting to take any action re Sullivan II.” So there should be time to negotiate, she thought.¹¹⁷

The first voting on unionization occurred in late November. Two days before those elections were to occur, Hasselmo sent an email to all faculty about the November regents’ action on Sullivan II. He said it “strongly adheres to the principles of academic freedom, due process, and peer review” and that the regents have affirmed those principles. The union election will “in many ways determine the future of the University,” and said he knew faculty would consider carefully implications of adopting a model not found in any universities with which Minnesota competes. He asked what the best way to ensure that “the principle of shared governance will remain alive and well -- as is absolutely necessary.” He said the faculty governance system has served well. “I believe the ‘tenure wars’ are over,” and Hasselmo asked faculty to consider, in their union vote, “how we can best turn the armistice into a lasting peace.”

Also two days before the AHC election, Vice Provost Furcht sent an email to colleagues in his own department reminding faculty of the election. He wrote that “in my opinion, the nature of this whole institution and the professional climate and collegiality we have enjoyed are up for a vote this Thursday, November 21st. . . . PLEASE RESERVE TIME OUT OF YOUR DAY TO CAST THIS MOST IMPORTANT VOTE THAT COULD DECIDE THE NATURE OF OUR WHOLE WORKING RELATIONSHIP” (caps in original).

On November 20, Carol Wells emailed to David Hamilton with suggested editorial changes in a final message to the faculty, but then threw up her arms. “ON SECOND THOUGHT, I AM REALLY READY TO QUIT. IF THE FACULTY DO [NOT]

¹¹⁷How mistaken she turned out to be.

UNDERSTAND OUR REASONED FACTS (VS THE PROVOST'S BASELESS STATEMENTS), THEN WE ARE LOST AND LOGIC WILL NEVER PREVAIL" [the "not" was not in the message, but it makes no sense without it].

The day before the AHC election, Wells emailed to Hamilton that he "'rose to the occasion"! I am not certain how many people realize this right now, but in my opinion, everyone at the AHC owes you a debt of gratitude."

"2-day vote on 'U' faculty unionization starts today" (Star-Tribune, November 20). Voting would take place at the Crookston and Morris campuses and the AHC. Union supporters were "hopeful but not confident." A faculty member at Morris said many signed the forms "just so the regents could not use us as an example." The article recounted events; Rabinowitz said "this was the fourth tenure code that was developed in secret," was not discussed by the Senate, and there was no bar to the regents developing another one. Hamilton in the Medical School said "an awful lot of people realized that the regents back-pedaled, slapped something on the Law School and didn't follow their own rules. And for them to do that is just another indication that you can't trust them."

FCC member Michael Korth (from Morris) reported on November 20 that the Morris faculty had voted 69-37 against joining the union. The same day, the Crookston campus faculty voted 16-16 on being in the bargaining unit; the cease and desist order remained in place because an appeal (concerning unfair labor practices) was filed before the election was held.

"Morris, Crookston faculties vote against unionization" (Pioneer Press, November 21). The article reported the votes.

"Outstate union support weakens" (Minnesota Daily, November 21). The article reported the votes. Twin Cities faculty "speculated that a possible reason Morris faculty voted against" a union "because the regents became increasingly conciliatory toward the faculty" and because of the adoption of Sullivan II. Morrison said "'one reason may be that, like many other faculty, they prize their freedom.'"

On November 21, the Morris vice chancellor for academic affairs wrote to the regents noting the Morris faculty vote and urging them to demonstrate confidence in traditional faculty governance by consulting with the Morris faculty before taking any action on Sullivan II for Morris.

Rabinowitz, Murthy, and Walsh wrote to Gray on November 21 responding to the FCC negotiating proposal. They agreed the Senate committees should be represented, and said they would not allow the cease and desist order to be suspended unless there were a clear

understanding that anything that resulted from the discussions and that was “ratified by the faculty” would become University policy. “None of us wish to allow another opportunity for the Regents to do as they wish after the faculty have spoken.”

FCC met the same day, joined by Murthy, Rabinowitz, and Walsh for about half the three-hour meeting. Gray distributed copies of the memo from Reagan¹¹⁸ (received at the meeting) reporting the termination of Chait and Hogan & Hartson, which elicited cheers. FCC members discussed with their three colleagues the arrangements for a joint FCC-UFA/AAUP effort to work with the regents on tenure. Gray said there was a need for two tracks, one for units that remained under the cease and desist order, another for consultation for units that had voted against collective bargaining.¹¹⁹ Walsh said Sullivan II was a union-busting effort by the regents and there were inappropriate promises made in the AHC. Rabinowitz said the University had been stalling, not the union; Morrison agreed. There was discussion of how a union would work with the Senate structure to get faculty governance “with teeth.” Murthy reported the national AAUP had no model of bargaining it wished to propose for Minnesota; the faculty must decide. Discussion of tenure led to the observation that the regents had not asked for consultation on Sullivan II; Walsh said Sullivan II was tainted “because of its provenance,” but the Morris and Crookston campuses, according to their FCC representatives, want governance consultation on Sullivan II. FCC was not of one mind about how to proceed, but unanimously adopted a statement objecting to the administration/regent position that heads/chairs were not in bargaining unit. It also voted, following debate and email exchanges the following day, to continue to work with UFA/AAUP and to ask the Faculty Senate if it wished to take up Sullivan II on December 5 and 12 -- if, in effect, the Senate had changed its mind about the October 24 statement calling for no action on tenure pending the outcome of union elections.

Bland later observed that “it’s an interesting phrase, a ‘union-busting tactic.’ It was a tactic to get something in place that would be acceptable and workable, in a timely fashion, that

¹¹⁸The day before, Reagan had sent a memo to the regents notifying them the Board had ended its consulting arrangements with Chait, and that the General Counsel’s office had ended its contract with Hogan & Hartson. He sent a similar memo to Gray the next day.

This action was reported by the Daily, as was the reaction of FCC: “Regents dismiss consultants” (November 22). The article said the actions were “a possible signal of the end of tenure reform.” “‘They don’t need consultants,’ said Marvin Marshak. . . . ‘Tom Reagan told the media and everyone else that the board won’t be returning to the tenure question until at least July of 1998.’” Gray reported relaying the news to FCC, “‘and it was greeted by a round of applause.’”

¹¹⁹This meeting was occurring on the day that the AHC faculty were voting whether to join a possible Twin Cities campus bargaining unit; the outcome of this election, of course, was not known as the meeting was taking place.

would make it unnecessary to have a union. Is that a union-busting tactic? Then yes. But union-busting tactics are often bad, unconstructive things. This was a constructive outcome that we wanted.” Some wanted, perhaps, but not all? “In the beginning, we all wanted to have a tenure code that would work. It wasn’t like they were going out and breaking people’s kneecaps or threatening to have people lose their jobs. Those are union-busting tactics that I think are reprehensible. But continuing to strive for a workable arrangement, which was our original goal, doesn’t seem to me to be up there with terrible, bad things.”

On November 25, Swan urged his AAUP/UFA colleagues to accept an FCC proposal for the tenure negotiating team. “It shows how a collective bargaining group can work with the Senate. It shows how we can accomplish things as we are the ones who initiated the proposal and can lift the cease and desist.”

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THE CONTRIBUTION OF RICHARD CHAIT

The FCC reaction to the termination of the contracts with Chait and Hogan & Hartson leads to views about Chait’s participation in events and his contribution to the debate. As to the latter, Bloomfield said it was “not much.” He added that “I’m not sure he ever said anything inconsistent with what we thought he was going to say. I thought he was a fairly pragmatic person, from what little I could judge of his statements. Which was something along the lines of ‘it might be reasonable to have a slightly looser code than Minnesota has, but it’s not worth the fight you’re going to be in to do it.’ That seemed to me the message he was conveying.”

Gray thought that “FCC met with him, early in the summer or late in the spring. I remember that he was quite negative about system tenure; he just thought this was an oddball thing we had and did we know that no one else had it. We explained why we had it. Other than that, he seemed reasonable and very knowledgeable. We talked faculty to faculty; I don’t think it raised anyone’s hackles, particularly. I just don’t remember that we thought he was Darth Vader or anything like that.”

John Adams had a distinctly more negative view. “I thought he was just going through the motions [in terms of his meeting with us]. I don’t think he was very interested in what we had to say. He certainly didn’t strike me as a person who was paying close attention. He asked questions, and listened, but there were no follow-up questions, no attempt to penetrate or find out. I was not impressed with him. I thought he was working for himself. Once he has a big reputation as a specialist, then these are opportunities for

him to continue to develop as a celebrity and add another university to his list of places that he's worked with. Irrespective of whether he does any good or bad at the place. I wasn't impressed."

Morrison also thought Chait had not much of an impact. "Actually, Chait is a kind of almost irrelevant figure. The Board hires him, he prepares a report in early July that contains some factual inaccuracies. I think he did try to convince the Board they shouldn't do anything radical unless they intended to use it. Which was a message the faculty heard that I'm not sure the Board heard."

Morrison recalled that he had made one point clear to his colleagues: the faculty had to assume that if the regents wanted something, they intended to use it. "And I got that from Chait. Because Chait kept telling them, don't take this unless you want to use it, because it's going to cause something to blow. And they decided to take it, so I have to assume they wanted to use it, because that's the only condition on which their advisor told them to take it."

Morrison recollected some of what Chait did. "At the August retreat, he laid out the issues that he had perceived from the Board; he put them up on a chart. This was scheduled for two hours, it went on for three, and we never got to the last issue. He's the one who brought up the body bag language, which I think he did to scare the Board from doing silly things, and there was at least one member of the Board who found that an attractive analogy."

"I had the impression that he was being a good consultant. He was giving them some information, he was cautioning them about what they wanted, but when they said they wanted to go ahead and do it, he was as defensive as he could be within professional integrity of what it was they were doing. I never have thought of him particularly as an antagonist in this. I've thought of him as somebody who played a totally ineffective role with the Board, and probably contributed to the downfall, but not by action but rather by not becoming more actively opposed to the regents and trying to counsel them out of what some of them apparently wanted to do."

Feeney, by contrast, agreed more with John Adams. "I would say Chait is the type of consultant the regents should not have been hiring. What you have is these seemingly self-made experts; if you really sat down and looked at the data yourself, you could come to the same or better conclusions, and you're the one who is going to have to make the judgment anyway. We seem to be willing to hire people to come in and help us with our opinion. When you have a consultant like that, unless you're hiring an information firm to provide you with stuff, what you're hiring is people to give you an opinion. I don't like that."

“I read some of the stuff that Chait had. Some of it was wishy-washy; some of it was kind of minimally scholarly. Was it the sort of stuff I’d have paid more than fifty cents to hear? No. As far as the role that he played, I think he played into the hands of the regents for awhile, and then played back out of them again. There were certain things he was saying up front that the regents wanted to hear, the concerns about flexibility and moving into the 21st century, blah blah blah.”

“The stupid thing he said is that the Morris tenure code was in the academic mainstream. That was just bull. Later, the one sage piece of advice that I know was given to the regents by Chait was [when he said the regents] have to decide how badly you want that lay-off privilege. Because if you are in a situation that doesn’t have it, everybody’s going to know that you want it because you’re going to use it. What kind of political capital do you want to expend to get that privilege? That was wise. He didn’t come across then as pro or anti; he did what a consultant should do, which is appraise you of the upside and the downside, and leave the opinion stuff out of it. You have to decide how much you want to risk. I think what he was sort of telling them is that there is a union out there. He didn’t say that in so many words, but it was one thing that, if I were in his shoes, would have weighed heavily on my mind.”

“He met with representatives of [the Faculty Affairs committee] and some others met with him shortly after he was hired, when he made one of his visits here. The only productive thing that was said in that meeting was that Chait asked ‘what do you think the regents should do in this situation?’ [One Faculty Affairs member] said ‘they should resign.’ In the hour meeting we had with Chait, that was the most productive thing.”

Feeney concluded that “I think he played a role that reinforced the regents’ credibility more than they deserved, and I think he looked at the issues and played some of the fiddle that the regents wanted to hear.”

Dempsey’s view was similar to Feeney’s. “I thought he was making money. He was unnecessary. I thought at first that maybe he would help us, because he seemed to be leaning toward an academic way of looking at the whole problem. But that’s the way he made his living. I don’t respect him.” She concluded that “he didn’t know the culture here. That’s a big detriment.”

Bland thought that Chait “may be painted more of a black sheep than he should be. He claims that, and so does Gene Rice [at AAHE, with whom Chait has worked]. He claims that Dick [Chait] wasn’t the villain that we make him out to be. But I’m afraid Dick fed things to the regents that supported their position, and the regents didn’t hear that he fed them other information also. They probably selectively

took what supported their position.”

“Dick was at the University of Maryland before, and now he’s at Harvard, and you’d think he’d understand this, but I honestly think he didn’t have much of an understanding of us. AAHE is a lot of institutions. I remember talking to him at FCC. I remember saying to him ‘why do we need to let people go? We’re a huge place. We can retrain, we can reposition. Maybe other institutions do, but I know we don’t need to.’ He couldn’t conceive of that. My sense is that he didn’t help us.” Bland wondered if it would be possible to see all the information Chait provided to the regents.

Fogelman recalled that his “first contact with Dick Chait was at the [August regents’] retreat. He was there, I was there, as were a number of other faculty people. We came away, a number of us commenting to each other, that he seemed to understand the situation and somebody who will help.”

“One of his dramatic things -- this had to do with firing people under certain circumstances -- ‘if you’re just looking for bodybags’ was his phrase -- was that ‘if you’re not going to use this power, don’t put it in there.’ The fact is, he was implying, ‘you’re not going to want to use it very much.’ We thought this was exactly the right thing to say, particularly in this atmosphere, where everyone was so excited. Why push for provisions which in the end you’re not going to use, and which are just going to incense people? So it seemed that he was saying reasonable things.”

“But in the end. . . . I have heard him since. He is not, how should I put it, a friend of faculties. He was at a program in New York; I saw a video of it. Essentially his view was that tenure may be all right for places like Harvard, where he happens to be, but you guys, you don’t need it. I won’t tell you my response to that.”

One faculty member said “I never met or talked with him. What contribution did he make to the debate? Not much, I would say. There was this issue about consultants, too. It came out at either the March or April meeting that the regents were going to hire a consultant; that it was Chait was the month after that. But it was sort of done very much at the end. If they needed a consultant, why didn’t they have one at the beginning?”

“When the regents hired Chait and Hogan & Hartson, it was at the ‘last minute’ and without preparing others that they were going to act in this fashion (the importance of informal communication). In the case of Hogan & Hartson in the summer, the Board didn’t even have the courtesy to tell the administration. No wonder there was mistrust.”

“Even worse, the Board didn’t have the ability to tell when they were getting bum advice. The regents vastly overplayed their hand in September when they released the

Morris document. Almost anyone with a modicum of experience in academe could have told them what to expect. I asked one regent why they hired Hogan & Hartson. I was told that they had to because Chait could not draft tenure code language. My response was that ‘he damn well should have been able to read it.’ There are some suggestions he tried to tell the Board ‘don’t do it.’ I don’t know whether that’s true.”

“And you want to think about the role consultants play. At one level, we’d be better off with some joint faculty-regent committees, where regents sit in on those. But a consultant could serve a role like that, where you might not expect a regent would. You might need some help like that, but you could have someone come in from the beginning. That the idea of the consultant came up at the end seemed like the regents had their own agenda. The hiring of Chait seemed to be a minor point of contention.”

“His commentary on the faculty drafts in June were not worth \$25,000.”

The comments were generally positive, but “they were also fairly superficial. There was one place where a couple of his proposals were off the wall, and would have delayed and diverted effort. He had some other suggestions that were quite positive.”

Gorham offered that view that Chait “encouraged the regents to pursue the issues, perhaps farther than he would himself have wished. It’s difficult to figure Richard Chait. At one time, he seems more benign; at other times, he seems really malign. It seems to vary with the circumstances.”

Another faculty member offered the simple observation that “Chait turned out to be a real fink.”

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On November 21, the AHC faculty voted 478-299 not to be included in the Twin Cities bargaining unit.¹²⁰

Law professor Bob Morris offered a clarifying comment about these votes. He said the votes at the AHC, Morris, and Crookston were often described as “union votes. Many faculty members may have also seen them that way, and in some instances they were tantamount to union votes; but technically they, too, were votes whether to join a bargaining unit or remain aloof. Of course, if a faculty joins a unit it must abide by the desires of the unit members. The statute

¹²⁰A few days later, the BMS issued an order reporting the AHC election results and certifying “that the faculty at the [AHC] shall remain severed from the” Twin Cities bargaining unit (and Duluth bargaining unit in the case of Duluth Medical School faculty) and that the cease-and-desist order was lifted. It issued the same order for Morris and Crookston.

requires Morris and Crookston to join Duluth; they cannot join the Twin Cities. Duluth already has a union, so their joining unionizes them. But the AHC can only join the Twin Cities faculty, whose union status was yet to be determined.”

“**U health faculty votes against joining union**” (Pioneer Press, November 22). “The threat by some faculty members . . . to organize a union was dealt a setback” when the AHC voted against joining the Twin Cities bargaining unit. Cerra said the result “was a great example of the democratic process in action” and that the AHC must work to become one of the top ten centers in the country. Walsh said there would be an unfair labor practice charge and that there were threats made that faculty would lose research funding.

“**Health sciences, Duluth medical school reject unionizing at ‘U’**” (Star-Tribune, November 22). The vote was reported, as were Cerra’s and Walsh’s comments. Cerra disputed Walsh’s claim; “our position was one of neutrality. . . . Our thrust was to get people out to vote.”

“**Health Center says no to union**” (Minnesota Daily, November 22). The AHC election results were reported; Carol Wells said a reason for the outcome was the message from Provost Cerra about the impact of a union. Walsh said the AHC administration warned faculty could lose research funding if they were unionized. The UFA lawyer said there would be an appeal, because adoption of Sullivan II was an unfair labor practice, making a promise to the rest of the campus.

* * *

THE AHC VOTE

The UFA did subsequently file an unfair labor practice. They charged that the regents violated the cease-and-desist order in adopting a tenure code for the Law School that nonetheless referred to the entire University, and they made statements (reported in email communications and in the media) to the effect that Sullivan II would eventually be adopted for all units. They also charged that the AHC administration had made threats about future research income, salaries, and other benefits.

Walsh commented on the AHC election. “There was a lot of email from the AHC administrators. It varied from the merely alarmist to outright lies. Some of it had an impact, much like negative campaigning in general. But it was pretty unsophisticated and appeared to be culled from business campaigns against industrial unions. Maybe it worked on clinicians, I cannot tell. I felt that our loss in AHC came mainly from votes by clinical faculty. Many of them had virtually been led to the polls by clinic directors. I had been

warned that the style in the AHC and particularly the Medical School was rather authoritarian. I felt that we had carried the nonclinical fields, and I was optimistic about the core unit election.”

Williams, the AAUP vice president, agreed with Walsh, perhaps not surprisingly. “I do think there were unfair labor practices [in the AHC]. I think Cerra’s email messages were unfair. We decided that it wasn’t worth pursuing, after the election.”

One faculty member, involved in the collective bargaining effort, offered a criticism of what was done. “Given the division of labor on this, this was not something I was deciding. But I don’t understand, if you’re going to charge unfair labor practices, why you don’t do it when it happens, why you wait until the outcome. Some people think that the lawyer hired by the UFA was a real traditional labor lawyer; I don’t know why he wasn’t down on this right away, when that happened.”

Was there an unfair labor practice? Morrison took a different view of the charge against what happened in the AHC. “That’s a technical matter. That’s a technical legal term; you either do it or you don’t do it. The unfair labor practices that are alleged are a Frank Cerra letter and some other stuff. If you read the labor law books, those are right on the edge. My impression is that probably every one of those was vetted by the labor lawyer, to say ‘you can go this far and not any further’ and ‘you have to take this word out’ and ‘you have to use that word’ and so on. Some of them use language, if you go back to the labor law books, [that] is the exact language that was found not to be an unfair labor practice in specific cases. You just take the word ‘laundry worker’ out and put ‘professor’ in. I guess my reaction is that there probably wasn’t any unfair labor practice, but they were aggressively pursuing their rights under the labor law. What was controversial about it was that it departed from the practice the last time around, where there was no comment whatsoever. That’s what made them controversial.”

Bloomfield did not believe there was an unfair labor practice. “There was this business about ‘your grants are going to be in trouble’ or something like that. That might have come close to the edge. One of the things that really struck me about this was how little opposition there was to the union. Outspoken opposition. Among the faculty. The administrators in general were doing a very neutral job; they were all saying ‘vote’ and we all knew what that meant, because they assumed, as we assumed, that a majority of faculty didn’t want the union. But I was struck that until the regents’ professors, at the very end, changed their mind, there was almost no thoughtful argumentation about what a union might mean. . . . I didn’t think there was anything going on

that was remotely grounds for a serious legal challenge, as far as I could tell.”

Cerra, perhaps unsurprisingly, said “I don’t think I ever committed any [unfair labor practice], to be honest about it.” He also reported, confirming Morrison’s surmised, that everything that went out from his office was carefully vetted. “It was all done through the legal team that had been set up in central administration. I think they had an outside counsel, too, from a St. Paul firm. It was very carefully reviewed. I was pretty comfortable with all the stuff that went out. Basically all I wanted to do was to get people to think about what they were doing.”

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In email exchanges the day following the meeting with Professors Murthy, Walsh, and Rabinowitz, FCC members were requested to vote on whether the Senate should meet on December 5 and asked if it would allow consideration of Sullivan II. The 121-1 vote on October 24 was noted, but the circumstances had changed since then: units have voted not to unionize and expect Sullivan II to be applied to them, and they want analysis and Senate action. After an exchange of views, FCC agreed to ask the Senate if it wished to reconsider the October 24 resolution. FCC said it would not violate the direction of the Senate, but Sullivan II had not been written then and a number of faculty said Sullivan I, as revised into Sullivan II, was acceptable.

After the meeting, Gray transmitted to Hasselmo and Reagan the two statements FCC had adopted. One called on the administration and regents to drop their opposition to inclusion of heads and chairs in the Twin Cities bargaining unit; the other called for a Faculty Senate meeting on December 5 and action on whether to take up Sullivan II.

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TAKING SULLIVAN II TO THE FACULTY SENATE THE ROLE OF VIRGINIA GRAY

In Walsh’s view, “there was, of course, no reason at all why the FCC had to act on tenure for Morris and Crookston and most certainly no reason for haste. Why do anything, since the Senate had voted 121-1 to recommend that the Regents not act on tenure until all elections were held? This reminds me of the Quebec independence referendums -- the proponents clearly intend to hold referendums until they win. Once that happens, further referendums on the issue will not be necessary.”

Gray outlined her views on what happened after Sullivan II was adopted. “It was the aftermath of the Board

adopting Sullivan II that showed was what really going on, because what I was working toward -- and what I thought all the faculty were working toward -- was stopping the Board from adopting this horrible document. The adoption for the Law School of Sullivan II showed that we had stopped them from adopting a horrible document, and that their clear intention was, as soon as legally possible, to adopt this good document. They weren't going to adopt a bad document is what this action showed. They had been brought to their senses."

"For the union, if a good code is adopted, they have no organizing issue. So they just criticized the hell out of Sullivan II, and the process, and everything about it. I think that's all totally strategic, and it's understandable from the point of view of that organization. They needed the crisis to win their election. At one of the forums, an organizer admitted that. They said 'unless we have a crisis, unless we have an issue, we won't have a union elected.' That's exactly why they were complaining."

"You also have to remember that the national AAUP [had] sunk \$175,000 in this. This is a huge amount of money to this organization. I don't know how many members it used to have, but nationally it has lost many members since they went on the collective bargaining kick; they now have 44,000 national members, I have read. That is not many. For them to put \$175,000 on the line, naturally they're going to want the tenure issue to continue, so they can keep talking about it, so they can possibly win their elections."

"Then the faculty has a big parting of the ways, between the people for whom a decent tenure code was the end, versus those for whom the tenure code was the means to their end, which was getting themselves a union. From November on, it got personally very nasty. It was much easier to go out and fight the bad guys on the Board than fight each other."

"That's the way I look at it, as a political scientist. I don't think you can ignore the organizational imperatives of this national organization, to keep things stirred up. They had two organizers here for months, plus their lawyer. They don't want the tenure issue to go away. They wanted to keep the crises going, and they're very good at keeping it going."

"What was interesting was that I would go off campus, and our supporters would say, 'has everything died down now? I guess the faculty is happy.' I'd think 'oh God, if only the faculty were happy.' You just couldn't explain to anyone off campus why we weren't happy. Because we had the Board passing essentially what we had passed the year before; why wouldn't we be happy? Any rational person looking at this would say 'you've achieved a great victory.' But no, the union didn't want that to be defined as happiness, so on campus it wasn't defined as happiness."

Sturdevant volunteered an assessment of Gray's performance in these events. "I always regarded her as a sort of stable, sane, cool head in all of this, sort of admirably representing the voice of senior faculty committed to this place, this institution, and wanting a good and reasonable outcome. Which is not to say that she wasn't occasionally impassioned, but she was most of the time a pretty steady voice. I don't know the internal dynamics of faculty politics, but I hope that she got credit within the faculty. I know there are people with whom she would disagree on the unionization question, who might not see her in those terms."

Sturdevant recalled that "we had two groups of faculty come to see us. One was clearly a pro-union group, and one was Virginia and her buddies. As we talked for 15 or 20 minutes, [during] the initial part of the session with the Virginia group, we were struck with the level of mistrust and animosity and alienation from the Board; the rhetoric was pretty hot. I remember turning to [one of her colleagues] in the middle of the meeting to say 'and these are the moderates!' At that moment -- and this was maybe a month into the Morris plan -- even moderate, gray-haired voices were pretty hot. Virginia could do that, too, but I think on balance she was a calming force. In the end, she comes away more or less as someone who, even those Board members who remain on the Board and who were opposed to her on this, probably still see her as approachable and a faculty voice that is pretty steady and pretty dependable. She didn't burn bridges, herself, either with the pro-union faculty forces or with the regents. That's not a bad thing to have accomplished."

Berscheid offered a similar appreciation for Virginia Gray. "I thought Virginia was very effective, particularly in shepherding the revisions through the Senate. Many people tried to derail her, but she was unflappable and undeterred throughout the Senate discussions. Every time a motion started to unravel, she'd calmly pick up the loose string and weave it back in. I also thought she did extraordinarily well in her TV appearances, and her tenure article was just excellent. Virginia received criticism from some that she was too 'low key,' uncharismatic, too laid back, wasn't 'leading' the faculty, and so forth. But I think Virginia's style was just what was needed: articulate but non-emotional. Virginia also kept in touch with us (at least with me) to trade information and advice. There aren't many who could have done as good a job as she did."

Carolyn Williams took issue with Gray's characterization of the AAUP. She said that these "were misinterpretations of what was happening within the AAUP-UFA organization. . . . There has been a decline in AAUP membership nationally, but I doubt the major reason is because of collective bargaining. Other important trends that likely accounted for declining membership is the increasing

specialization of faculty and a long period of relatively good times at research universities. . . . I think you need ask a national leader” of the AAUP about this.

Williams also said that “Gray’s ‘political scientist’ interpretation about the relationship between TC-AAUP and the national attorney and two organizers is based on stereotypes about outside agitators coming in and stirring up local employees, and suggests that local AAUP and UFA leaders were simply followers, not independent thinkers or leaders. It’s amazing how naïve this interpretation is, and how counter to the facts. The national AAUP staff were technical experts for the organizing campaign, the policy decisions were made by the Executive Committee of the organization. We were not a single-minded organization who’s goal was ‘unionize or bust.’ We were not only concerned about getting a reasonable tenure code, but strengthening faculty governance, so the Sullivan II debacle demonstrated to many of us that the regents continued to bypass the principle of shared governance.”

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On the Monday after the AHC election, Hamilton wrote to his colleagues to thank them for their efforts and to seek their advice. He reported that “Steve Gordon, AAUP/UFA lawyer, feels strongly that we should pursue unfair labor practices violations against the administration and some department heads. There certainly were unfair labor practices, but I wonder whether pursuing them will yield anything of value. As I understand it, if Steve can prove his case the least that would happen is that a new election would be held. The most that could happen is that an administrative law judge could declare the AHC to be part of unit 8 without a further election. I am concerned about the effect of either outcome on the AHC. In both cases I fear that the xenophobia I saw in some clinical departments would be heightened, would split us more than we are split now and would not help the rest of the University during their coming election. I have said this to Tom Walsh and he agrees. Do you?”

Carolyn Williams wrote back to say she believed “we should give Steve Gordon’s advice very careful consideration. If Steve believes we have a strong case for unfair labor practices, then I worry about not proceeding with a complaint. If we don’t proceed, and there is a strong case, aren’t we saying to the administration, that there is no need for you to play fairly and by the rules, for when you start throwing your weight around, we’ll just fold and move on?” She urged the group to talk about the matter and hear from the lawyer before deciding.

On November 25, Roberta Humphreys emailed to Wells and other colleagues about the AHC election. “I think if some complaint is not filed the admin will try the same tactic for the general election. One of my colleagues said that the letter from Hasselmo last week was a

violation of the status quo order. Right now it looks to the admin. and their legal counsel like the collective bargaining agent will let them get away with anything. I do not want a repeat of the AHC election but we have got to get some kind of legal ruling against the kind of activities that went on in the AHC.”

Wells wrote to David Hamilton about Humphreys’ message. She thought an unfair labor practice charge might hurt the AHC, but she also agreed with Humphreys. She suggested that the “BEST THING would be to approach the administration, and get them to agree to behave. In turn, we would agree not to pursue a complaint about the previous unfair labor practices from the AHC Provost’s office. This would be the best scenario, and perhaps the best outcome we could hope to achieve. To pull it off would be a little like playing poker.”

Wells wrote to the UFA attorney Steve Gordon, and copied Walsh and Hamilton, about filing an unfair labor practice charge against the University over the AHC election. She asked Gordon to remove reference to comments by Vice Provost Furcht at a department meeting, because it would do “more harm than good at this point. In addition, it is time for all of us at the Academic Health Center to begin working together, rather than continue emphasizing our differing opinions.”

Williams also reported, on November 25, that she had spoken with Virginia Gray about the base pay and federal funding issue. The existing code did not define base pay. However, Williams wrote, it appeared that “at those universities where base pay is defined (as in a tenure code like Sullivan II or the June faculty proposal, but not our 1985 code), the base pay amount must be used when calculating faculty salaries. So, for example, if a faculty member has a salary up to \$125,000, but only \$25,000 is defined as base pay (because clinical income is excluded from base pay), then the grant can only cover a portion of the \$25,000 figure. Obviously, this will have a very problematic impact on research funding in the AHC.” She asked if Provost Cerra’s message, with “false claims” that Sullivan II would not affect federal funding of salaries, did not “warrant some kind of response from faculty governance?” She also reported that Morrison believed “a simple wording change may fix the problem,” but Williams worried that he might not be correct, and urged that a federal government opinion be sought.

Vic Bloomfield emailed to Murthy, Rabinowitz, and Walsh on November 25 transmitting an FCC proposal for a tenure negotiating team, to include “3 representatives of AAUP-UFA, 3 chairs of Senate committees that deal with tenure (Tenure, Faculty Affairs, Judicial) [Dempsey, Feeney, and Fogelman], 1 Fred Morrison, 2 representatives of severed units (Morris, Crookston).” (Subsequent discussion led to the conclusion that the team should be composed

only of Twin Cities members, since they would only be negotiating for the Twin Cities.)

On November 25, Williams wrote to her colleagues that “I am very encouraged by some of the recent FCC actions,” and specifically the proposal for a negotiating team. She questioned whether the two smaller campuses at Morris and Crookston should be represented. She also said that “I was quite pleased by the FCC unanimous resolution about chairs and department heads being part of the bargaining unit. These actions show faculty governance working with AAUP/UFA cooperatively. If we are to win a collective bargaining election on this campus demonstrations like this will be necessary. I believe we need a united faculty response to Regent Reagan’s letter ASAP. We need to demonstrate that ours was a good faith offer, now that others are taking it seriously.” She added that “to the best of my knowledge this is the first time in over 12 months that Regent Reagan has responded to a communication from the faculty. It shows the strength of AAUP/UFA willing to work together with the FCC and Senate. I believe we need to respond affirmatively and quickly to the FCC proposal.”

Walsh circulated to the AAUP/UFA Executive Committee a proposal for FCC that they might present to the regents; he also responded to emails and outlined possible problems. He said that “the objective of our proposal is to negotiate with the Regents on a level playing field, which has not been the case to date” and to achieve “a consensus among the faculty on what is an appropriate tenure code for the entire faculty.”

The principal elements of Walsh’s proposal were that the Board would agree that “no new tenure code will be adopted, nor will discussions outside our venue take place,” and that “the basis for negotiations will be the 1985 tenure code and any agreement reached must be legally binding for a term of not less than three years and be put to the entire faculty for a vote”; the Board and administration would no longer object to inclusion of heads and chairs in the unit; AAUP/UFA would include faculty governance, by having the three committee chairs on the negotiating team, in addition to two from AAUP, two from UFA, and one from the Duluth agent.

Walsh commented that “the purpose of anything we do at this point should be to advance our prospects for winning the collective bargaining election. We should not get involved in any environment that risks that. He also said that his first two points were critical, because without regental agreement on them, “we are moving into the same trap that has discredited faculty governance over the last year. That is: no ground rules the Regents have to abide by.” Walsh also argued that AAUP/UFA should have a majority: “What I really want on the list are the three chairs directly connected to tenure issues (not FCC) and four of us. How you justify this is not so important to me. But we have to be seen as having a majority. In fact, I think that we can work

very well with the 3 chairs. But it is, after all, our Status Quo Order.” Walsh argued specifically that “Fred Morrison has disqualified himself for membership by working with management (his dean and the regents) to evade the Status Quo Order. . . . He and the law dean belong on the other side of the table.”

Murthy transmitted Walsh’s message to his AAUP colleagues. In lieu of a meeting, he asked for a response, “since I believe we should not be too tardy in responding to the FCC proposals.” Murthy said that “my personal feeling is that we should seek parity in membership. Thus, if 3 committee chairs and Fred Morrison are from FCC we need to have 2 AAUP and 2 UFA folks in the group. Note that Tom makes the same composition for AAUP+UFA, but does not include Morrison. Excluding Fred Morrison from any tenure discussions on this campus will require an awful lot of explaining to the overall faculty here.” Murthy also suggested that the other issues, such as a moratorium and faculty-wide vote, could be discussed with FCC.

Carolyn Williams responded to Walsh’s proposal, commending it, but proposed two changes. She said it was “counter-productive to talk of AAUP and UFA as separate organizations at this point in time. We’ve been telling the faculty that we’re AAUP-UFA, and that UFA is remaining in existence only because the Regents won’t recognize our official merger. To talk of 2 reps from AAUP and 2 reps from UFA sends a very confusing message to faculty.” She also said that it would be “very unwise to exclude Fred Morrison from this process, and suggest including him with the 4 from the Senate.”

Humphreys said she believed the plan was “reasonable.” She pointed out that the cease and desist order “only applies to the Twin Cities non-AHC faculty. I am no lawyer, but it seems that we (AAUP-UFA) can only lift the status quo order for purpose of negotiating the tenure code with the regents with respect to this group. Unfortunately, the others are on the their own. And even more unfortunately the regents have been allowed to establish the precedent of a tenure code for a separate unit - the Law School - with the help of the admin. and concurrence of FCC.” She observed that “FCC will see things differently because they want to speak for the whole faculty. But I do not think we can legitimately do that. If we negotiate a code with the regents, all we can do is then urge them to adopt the same code for all the units.” Humphreys agreed on the composition of the negotiating team that Walsh had proposed, and agreed that “I am also opposed to Fred Morrison. I like Fred and respect his insight into the nuances of the tenure code, but I think we all know that Fred is the principal author of the various Sullivan documents. He is apparently now working on another version to get around the base pay problem for AHC researchers. So I feel that he has too strong a vested interest in the ‘Sullivan’ codes.” Finally,

Humphreys predicted that “the demand that the negotiated code be legally binding for three years will probably cause the regents to refuse to negotiate. This will send a very clear message to the faculty. If they refuse that condition we have to broadcast it VERY LOUDLY.”

Naomi Scheman from Faculty Affairs wrote as well, responding to various comments she had seen from Murthy, Williams, and Sara Evans. She agreed with most of Walsh’s points, but differed about the role of Fred Morrison. “I also agree in principle about Fred’s ambiguous (at best) role in all this. But I also agree with those who have argued that we need (for reasons of credibility with significant numbers of faculty) to acknowledge both the Senate and Fred as important players.” She urged he be included as a non-voting member of the team.

She also reported that “I’m planning to argue, as a member of the tenure committee, at the Senate meeting on Thursday strongly against the Senate’s asking us to consider Sullivan II -- as undermining of this effort and as violating the status quo order -- does this seem right to people? (My present inclination is to resign if we are asked to review it.)”

Sonkowsky wrote to his colleagues on November 30 to agree with Scheman’s views, and said that “I support your plan to argue to the Senate that they should not consider Sullivan II on both of the grounds you mention. I suggest you quote again Regent Keffeler on the issue that Sullivan II got on the senate agenda through a subterfuge. The senate should not aid and abet an attempt to circumvent the law.” He went on to comment that “whatever happens with regard to Fred Morrison, it is very clear at last where he stands. I trust others also saw the comment of his in the [Star-Tribune] in response to the question why Morris and Crookston voted negatively: he said it was because ‘they value their freedom.’”

Murthy wrote to his Executive Committee colleagues on the same matters. He said that “now that we have a truly merged AAUP-UFA committee, the urgent task before us is to respond to the FCC proposal. For reasons that you all understand (i.e., credibility and good faith operation that the faculty at large will be expecting from us) we have to do it quickly. So, the first order work is to settle on the membership of the negotiating committee.” He alluded to the email exchanges about the make-up of a negotiating committee and asked for an expression of views from everyone. He said that “the second most important thing to do is to lay a framework of baseline understandings for negotiation with the Regents, if we ever get that far. This requires first of all reaching a common agreement between us and the FCC and then dealing with the Regents,” and Murthy thought they were close.

Murthy also reported that “just so that we are not perceived as stalling, after talking with Tom this afternoon, I have set up a meeting with Vic Bloomfield, Virginia Gray, Tom, and

myself” on December 2.

Sonkowsky wrote back to Murthy to ask if “some others might attend the meeting you mention since we aim to be a democratic organization. I do not think we should ‘do’ anything ‘quickly’ if it means that a few will meet with a few and decide.”

“How do observers elsewhere view the Minnesota tenure struggles?” (Pioneer Press, November 26, D. J. Tice editorial). Tice described tenure and reviewed the arguments made for and against it at the University, reports on five interviews with “respected experts.” Morton Schapiro (USC): Minnesota is the “poster child” of tenure discussions and the impression is held that Minnesota wants to eliminate tenure; Minnesota is not alone in considering programmatic change and post-tenure review; the faculty must identify the advantages of tenure; Minnesota recruiting will be hurt, but it is a great place that will do well. Robert Diamond (Syracuse): people believe Minnesota wants to eliminate tenure; the process was probably not managed well; tenure needs to change, but that must come through cooperation with faculty. Jordan Kurland (AAUP): he approves Sullivan II; there is widespread discussion of programmatic change; he was disturbed by the Morris proposal for administrative discretion in salary reductions and easier layoffs; there will be an “easing up” of tenure tensions and he hoped the debate would not harm Minnesota. Jack Schuster (Claremont Graduate School): he sees a concern that the Minnesota events could lead to a move to abolish tenure; the need to protect academic freedom remains a valid concern; layoff authority is “unsettled” in higher education; any place that tries changes like Minnesota could become “a pariah.” David Breneman (Virginia): he is skeptical about tenure; economic pressures are reducing job security in all fields, and higher education cannot be a “privileged economic environment” where people keep jobs even with nothing to do; the need is to change tenure without worsening it, but a union would be “worse”; the debate should not harm Minnesota, but there could be raids.

One of those active in collective bargaining emailed to colleagues in early December that “the situation seems promising; it should reinforce in people’s minds that the union has some teeth in it, and that the administration (and FCC/Senate) can’t simply run away from the threat of an election.” He said that “I’m inclined to tighten the screws on FCC and remind them that they are under the cease and desist order, and are not completely free to do as they wish. They currently give the appearance of behaving as they have in the past, which is unfortunate. Today’s Trib says that Yudof was not even asked about firing tenured faculty because the faculty chose not to ask!!!! I can’t believe that! I have to assume that these were Regents Professors or FCC who met with him and didn’t ask. How can they claim to represent the faculty and NOT ASK

THAT QUESTION??? What else do they have that they think is more important? Or do they buy the illusion that Sullivan II is an improvement? In the latter case, they certainly don't represent the most informed opinion among the faculty."

This prompted a tempering response from Williams. "Is it possible to remember that our colleagues who have been elected to FCC or who have been recognized as Regents' Professors are not our enemies? In fact, many faculty hold joint membership in the current faculty governance system, AAUP, and UFA. I would also suggest resisting holding judgement on a colleague based on what is in the newspaper. This problem we're trying to solve is complex and requires all our efforts. I for one do not want to 'put the screws' to any faculty colleague."

Sonkowsky responded to a long list of faculty by asking "how were our colleagues 'elected to the FCC' exactly?"¹²¹ Have you considered that? You have a point in that not all of them are the same. It's only their leaders who seem to persist in administration-regents leaning."

On November 27, in a special meeting, the regents accepted the names of William Muse, Judith Ramaley, and Mark Yudof as finalists to succeed Hasselmo. Within the next few weeks, both Muse and Ramaley withdrew from the search.

In a letter dated December, 1996, to "Dear Minnesota Colleague," the AAUP's Mary Burgan said it had "been a year of unprecedented attack on the bedrock of academic freedom. . . . Nowhere has this assault been played out more dramatically than in the state of Minnesota." She said the conclusion to the debate was not known and that there was "no assurance the regents will not continue their attempts to undermine faculty governance." She said AAUP involvement led the regents to change their proposals and was committed to collective action. She noted Minnesota membership had grown from 90 to 300 in the preceding six months, and appealed for faculty to join.

The dispute among the faculty about how to treat Sullivan II continued. Fred Morrison made his views known in a Daily editorial on December 2. In "Time to move beyond tenure debate," Morrison maintained that Sullivan II met the demands for academic freedom, due process, and the need for change that any great university required. Faculty must now attend to the activities that make a university great (teaching, research, service). Adoption of Sullivan II permitted the Law faculty to do so, and it would be "a model for the rest of the University," and

¹²¹The Twin Cities campus members (8) are elected by written ballot, campus-wide. If there are two open positions, a nominating committee (elected by the Campus Assembly) identifies a slate of four faculty candidates; the top two vote-getters in the election would be elected to FCC. The Morris and Crookston faculty elect their representatives by means they choose.

the regents had cut the ties with Chait and the law firm; “we won’t see anything like that again.” Morrison itemized how the new code protected academic freedom, due process, and allowed the University to change. Faculty activities had suffered because of the tenure debate; Law faculty could get back to their work, and Sullivan II should be approved by the Faculty Senate and regents for the rest of the University, as the law permits.

On the other side, the next day Scheman emailed to Faculty Affairs and others saying that as a member of the Tenure Subcommittee, she would argue at the December 5 Senate meeting that Sullivan II not be referred to committees. She maintained the dispute could not be settled piecemeal before the elections, and that the alternative is to use the UFA/AAUP (with FCC) negotiations, which should start from the existing code, not Sullivan II. The only way action on Sullivan II would help is if the action “lulled” faculty into voting against union. Acting on Sullivan II would be union-busting.

This point of view was also carried in the Daily. “Tenure proposal and supporters are suspect,” an opinion piece by C. Wade Savage, took issue with Morrison’s assurances and the support of Faculty Senate leaders and Hasselmo. Savage maintained that the Senate proposal “was drafted under intense pressure from the administration and was quickly passed by the Senate under the threat that the regents would do something worse (which they nonetheless did),” and that Sullivan II contained provisions for “temporary layoffs and punitive terminations” that threatened academic freedom. Savage analyzed the code and argued with Morrison’s conclusions.

Gray sent an email to FCC on December 3 to suggest that the Senate discussion would be helped by having a specific resolution; she proposed one that referred Sullivan II to the three committees and calling on them to report back to the Senate on December 12. “One potential problem that has emerged is that the union may try to pass a resolution about its negotiating team, effectively halting consideration of Sullivan II and action for Morris and the AHC. I feel strongly that Morris and the AHC have voted against the union and therefore the union should not be trying to represent them.”

Gray also reported on a discussion she and Bloomfield had had with Murthy and Walsh about the negotiations with the regents. “They have considered broadened their discussion to other issues, including starting with the 1985 code and throwing out every version since then, no extension of Sullivan II to AHC and Morris.” Murthy and Walsh also insisted on a majority of the negotiating team and rejected some of the FCC nominees. Gray said she and Bloomfield could not agree and the four agreed to defer further discussion until after the Senate meeting, at

which time presumably the wishes of the Senate would be known vis-à-vis Sullivan II.

The same day Gray reported on the negotiations to FCC, Murthy sent a long dismayed email to his AAUP/UFA colleagues on the same subject. He noted that there had been conversations with Gray and Bloomfield about “conditions which we would impose on the Regents before we commence any negotiation with them” and “the creation of a joint negotiating team.” Had they agreed on a team “it would have sent a clear signal to the faculty that collective bargaining can work with existing faculty governance, thereby increasing the strength of the role of the faculty in University affairs. It would have allayed faculty fears that unionization destroys faculty governance. It would have made us credible with respect to information we have given out in the forums that AAUP strives to strengthen faculty governance.” It would have helped in the campaign to persuade undecided faculty. “But we never even got to discussing the ‘team’ -- primarily because of the obstacles concerning Fred Morrison’s inclusion and keeping Morris and Crookston reps out.” Murthy agreed that Morrison’s editorial in the Daily cast doubt on whether he should participate, “but nevertheless, these are small issues compared to the big gains on faculty perception of collective bargaining that we could have had.”

Murthy said that the perception at the Senate meeting would be that “collective bargaining folks cannot work with the elected governance bodies” and, about faculty who harbored doubts about a union, that the disagreement “would confirm their worst fears. We may have unwittingly shot our collective foot in causing this perception!” He said that “we cannot afford to project the image that we are at odds with the Senate, even before we have fully begun our collective bargaining campaign.”

Murthy went on to recommend that “we need a well thought-out strategy at the Senate meeting on Thursday. We cannot be seen as shooting at anything that moves. We cannot be seen fighting the faculty governance. We have to convince the Senate that the best thing for the institution is to stick with their resolution at the Oct 21 [October 24] resolution.”

“Union voter eligibility still undecided” (Minnesota Daily, December 4). The UFA and the University were debating about faculty who also have administrative responsibilities. One possibility was sequestering the votes of faculty in dispute, and then determining if they would make a difference after the election has been held.

FCC met on December 5, before the Senate meeting, and agreed on a resolution to be offered to the Senate authorizing the three committees to review Sullivan II for Morris and the AHC and to make recommendations at another Senate meeting to be held December 12. FCC also discussed how negotiations on tenure would be conducted with UFA/AAUP and the regents.

Marshak joined the meeting and said it was his view the most difficult part the tenure debate was over; he would not defend the process, but the result was a good one. In his view, Sullivan II slightly shifted authority from the individual faculty to the faculty collectively. He said the regents would probably adopt Sullivan II for Morris and the AHC on December 13, but would be open to further discussion. Marshak also said he had never believed there were any secret plans to impose the Morris code or any other version, and that the regents wanted to show that there was no such plan. FCC took him to task for the administration's position that heads and chairs should be excluded from the bargaining unit.

Marshak later amplified on his remarks to FCC. "I couldn't defend the process because the process was bad. But the result was what I wanted; I wanted this stuck down, nailed down. I knew that there would be some ratcheting, but that would go back toward the 1985 code. I wanted this as the high-water mark, stuck in the mud, and the whole Morris thing wiped out. To me that was important, and it was important to get that before anything else got out of hand."

"Just as I said before, Tom's obstinacy was, in the eyes of the faculty, terrible, [but] at some level it was an advantage. The whole problem here was that there were so many players, that you were dealing with this n-body problem. In physics the 2-body problem is solvable, the 3-body problem is not exactly solvable. Here we were dealing with a 25-body problem, and you just can't let these people get out of the corral."

"And some of it was just exhaustion. Just keeping everything together was just draining us. The amount of time we could keep it together was not very long. So it was important to get action. I know that in the usual deliberative process of the Senate and the faculty, this was viewed as bad, so I wasn't defending it. The real politics was that I needed to get it nailed down."

The Student Senate met on December 5, before the University and Faculty Senates, and passed a resolution asking the faculty to vote against unionization because it would create a new governance structure that could undermine the Senate and reduce student voice.

At the (University) Senate meeting, the President was questioned about tenure: the faculty were concerned that the regents will not "leave tenure alone" after adopting Sullivan II, making faculty recruitment and retention difficult; would the Board state it will not return to tenure for some time? Hasselmo said Sullivan II was acceptable to all and "there is absolutely no indication from any Board member that the Regents intend to take up the Tenure Code again within the foreseeable future," and he pointed out that Reagan had already made a public statement to that effect. In her chair's report, Gray echoed the President's assurance that the regents would not be revisiting tenure.

At the Faculty Senate meeting, Gray moved and spoke on behalf of the resolution requesting the three committees to review Sullivan II (they had tentatively scheduled meetings); she said FCC was seeking Senate guidance on what to do. She recalled the October 24 Senate vote calling for no action until after the union elections, but the situation had changed with the appearance of Sullivan II (which responded to criticisms of Sullivan I), the regents had enacted Sullivan II for Law, and two units had voted against collective bargaining. She explained the two-track strategy, and said FCC believed the most democratic way to proceed was to ask the Senate for instructions. Sullivan II had been positively received by the faculty. She reviewed the reasons for voting the resolution up or down. The debate lasted for about an hour; major issues were: responsibility of the Senate to the faculty who voted against bargaining, inappropriateness of Senate action before the union election, inappropriateness of acting on tenure for individual units, the need for modifications in Sullivan II, the need for a regental commitment not to take up tenure again once Sullivan II has been reviewed and adopted, and the unreasonable schedule and the need for delay in regental action. The motion requesting committee action was approved 47-37.

Chapter Sixteen

More Negotiating on Negotiating, More Campaigning, and the Faculty Senate Acts on Sullivan II

On December 6, Sara Evans wrote to her AAUP/UFA colleagues to say that there was a need for “a fresh start. As I see it, we lost some momentum this time and should notice that we need to be able to move very quickly but we can’t do that as long as we haven’t sorted through the different visions and strategic perspectives among us. Now that we have a unified executive committee, I think it is very important that we do some of that sorting and begin the campaign in January with a shared vision. To this end, I would hope we could find a half day in the next two weeks for a longer meeting on strategy and vision. . . . We also need to wrestle together over questions having to do with Sullivan II (do we stake out a position in opposition? What would that gain or cost us?), etc.”

Sonkowsky agreed with Evans’s suggestion, and also reported an upcoming meeting of the campaign committee. The principal issues were their own procedures (what should they be like “in order to exemplify to the faculty what an AAUP Collective Bargaining Chapter would be like?”), what should be the campaign platform, and what other issues should be raised, such as “the presidential search, the unreliability of the regents, new computer charges, tenure, etc.”

Professor Carol Chomsky (Law, member of the Tenure Subcommittee) wrote to Dempsey shortly thereafter to submit the response of the Tenure Subcommittee to Sullivan II, including amendments, interpretations, identification of language in Sullivan II different from the June Senate proposal but on which the Subcommittee did not recommend changes. The Subcommittee expressed concern at the speed at which it had to deliberate, so its review was not as thorough as it wished. The Subcommittee was also “troubled” about advising the Senate on a code for only parts of the University and its “participation in a process that appears to interfere with the choices to be made by faculty currently under a status quo order.”

Faculty Affairs met the next day, to receive the report from the Tenure Subcommittee; Professor Chomsky presented the recommendations. Faculty Affairs adopted a lengthy resolution noting the sequence of events since Sullivan I was proposed and the upcoming regents’ vote on December 13, identification of issues in Sullivan II that required further attention and more time, said there was no compelling reason to act on tenure changes now, and asked that the regents defer action on Sullivan II until February so the Senate committees could provide advice and recommendations.

A summary of the regents' professors lunch of December 11, the day before the Senate meeting (author unnamed) indicated that they were "strongly opposed to unionization (some under any circumstances, some for the present, but want it in reserve through a strong AAUP chapter), several believe that unionization is more useful as a threat than as a fact, as in the tenure debate, several (most) believe that Sullivan II is a victory" and the regents won't take up tenure again. Most thought AAUP/UFA should negotiate to get Sullivan II if there were a 2-year moratorium, and if so, it should "declare victory" and build a strong AAUP chapter. Some thought a continued union effort, given Sullivan II and a new president, "may alienate support for the faculty."

Virginia Gray had not given up on a moratorium, despite the fact that the Board had declined to agree to one at its November meeting. She wrote to FCC on December 9 to report that "some people have asked about the wisdom of the Senate passing a resolution on Thurs. asking the regents for a moratorium (I have independently redoubled my efforts to get them to do this, by the way) on tenure after passing Sullivan II. I think this might be a good idea." She asked what an appropriate length of time would be and suggested two or three years. She asked for responses.

One FCC member wrote back to express reservations. "While I understand the faculty interest in a moratorium, I am concerned about the wisdom of raising that point at this time. We have in essence been through a way with the regents. We seem to have achieved a victory in the battle concerning tenure. While it is difficult and painful to make 'war' it is even more difficult to make 'peace.' The essence of the process is trust building. This entails taking risks. Without risks you can't build trust. It is a two way street. We (the faculty) feel that the regents took actions that undermined our trust of them but from their perspective I am sure that actions were taken that they felt were inappropriate. Trying to bind them to positions that they may not even be able to take may not be a very positive signal from their perspective. It may even seem like an unseemly attempt to exploit the advantage that the faculty may currently enjoy. Is the issue worth the risk? I think that we need to try to build a collegial relationship. Others I know may believe that we must follow a more confrontative approach and conflict based model. If we do choose the conflict approach, I would hope that we would wait until we are unionized to push such issues. It may be worth noting that in this state, I believe that no collectively bargained agreement can extend for more than two years."

Gray wrote back later in the day, alluded to other responses from FCC members about a moratorium, and asked someone to draft a resolution.

Gray went on to raise the issue of the negotiating team to talk with the regents about a tenure code for the part of the campus still under a cease-and-desist order. She reported that the AAUP/UFA had proposed a committee of 4 appointed by AAUP/UFA and 4 by FCC. Gray recommended that FCC accept the offer, even though it had stipulated before that FCC should have a majority. "If we are just talking about the main campus [with Morris and the AHC out] where no vote has taken place, then 50/50 is probably a fair guess about union strength."¹²² She asked for FCC members' opinions, and opined that the four from FCC would probably be Dempsey, Feeney, Fogelman, and Morrison.

On December 11, Williams submitted to the Star-Tribune an opinion piece, in response to an earlier editorial. "Sunday's editorial suggested that a faculty union at the University of Minnesota would harm us since no other major research university has a unionized faculty. However, a more compelling argument for a faculty union appeared in the news section of Sunday's paper in a description of who directly controls the University. Those listed in direct control were the Board of Regents, President, and EMPLOYEES WHO ARE UNIONIZED, like hospital workers. Faculty were mentioned only as a source of indirect control, like the alumni." Williams maintained that the day of shared governance was over, and authoritarian corporate models were being imposed on the University -- some of which "have been resoundingly discredited in the business sector." She wrote that this would harm the quality of the University, that faculty numbers were in decline while administrators were increasing, that there was too much reliance on outside consultants, and that "the real purposes of the institution, producing and disseminating knowledge through faculty research and teaching, are not adequately understood by the new decision-makers. Indeed, at a meeting this quarter at the Bureau of Mediation Services (BMS), the Regents' attorney, failing to understand academic priorities, suggested to a professor that she reschedule a doctoral student's final oral examination so that the professor could attend another BMS conference at a time more convenient for the attorneys and administrators."

Williams took issue with the proposition in the newspaper that the faculty had strength without a union. She agreed, but pointed out that "the faculty accomplished this without the level of support readily available to the Regents and administrators" and that "it has taken enormous faculty time, and for us to continue at this level of effort, without the financial and legal support of collective bargaining, is bound to lead to decreased research and teaching productivity (which is why we are professors in the first place)." She noted the loss of faculty arising from the debate,

¹²²Little did Gray know how close to the mark she was.

and concluded that if “Minnesota wants to continue to have a nationally-ranked research university, a strong faculty governance system, protected from arbitrary actions of the Regents and others, is necessary. The Minnesota faculty will have to agree to, and then invent, a model of collective bargaining that is unique to a major research institution.”

On December 12, before the Senate meeting, Walsh reported that he had learned that “the BMS will hold hearings on our claims of unfair labor practices before and during the AHC election. The surprise is that they reinstated the AHC cease and desist order, effective this morning. We need an urgent discussion on our reaction, before today’s Senate meeting. Since the committees want to tell the regents to do nothing, I see no inconsistency between a new Status Quo Order and that. It also seems to me that if the senate committees want to discuss tenure in a more general context and without the present hectic atmosphere, we would probably be happy with that as well. The Status Quo Order prohibits negotiation, not discussions -- particularly if they happen to include AAUP/UFA.”

He also commented that “it is significant that BMS thinks that our allegations are serious enough to warrant both hearings and reinstatement of the Status Quo Order. Many of us would have preferred to deal with a situation where the Senate spoke and the Regents ignored them yet again. Of course, they may do that with respect to Morris, which is (so far as I know) not affected by the reinstatement of the Status Quo Order.”

Williams wrote to her AAUP/UFA colleagues that their “claims must be clearly presented at the Senate meeting. In addition to oral comments, I think it important that we have a handout for the Senate meeting describing exactly what we sent to the BMS that led to the reinstatement of the C & D order. I also agree that the resolutions to tell the regents to do nothing are important for the Senate to pass today, and actually reinforce the cease and desist order. I think it would be a major problem if the Senate meeting was hastily cancelled or we were perceived as interfering with faculty discussion and debate thru the governance system. I agree with you that proposed negotiations between AAUP and FCC are even more important now.”

The Faculty Senate met on December 12 for an hour and forty-five minutes. It adopted a resolution protesting exclusion of heads and chairs from the Twin Cities bargaining unit and asking the administration and regents to change their position. It also adopted a resolution asking the regents to delay further action on tenure at least until February. The Senate then took up, for discussion only, a series of possible changes to Sullivan II; one significant point was whether a financial emergency could be declared for a single college, rather than requiring it be declared for the entire university, in order for temporary salary reductions to be imposed.

After the Senate meeting, Gray wrote to Reagan to transmit the resolution requesting a delay and to report that the Faculty Senate and its committees generally found Sullivan II to be acceptable, but needed more time to review it (and would do so quickly). The resolution on inclusion of heads and chairs was transmitted to Hasselmo.

On December 12, Hamilton wrote to colleagues to inform them that he had met with a reporter from City Pages about “the background for the current crisis in the University. He started out with Brody, who he has targeted as the source of all our trouble. He is doing a major piece for City Pages because he feels that the public does not understand the damage that has been done by Brody and his ilk, and because he feels the other papers have not done a good job reporting.” The reporter wanted a meeting with some of the Gang of 19; Hamilton offered to set one up. “This may be a unique opportunity.”

Also on December 12, Craig Swan emailed to the AAUP/UFA that reinstatement of the cease and desist order “strengthens the case for negotiations with the Regents and underscores how collective action can help the faculty. We need to be sure to deliver on our side of the negotiation effort so faculty not only see what collective action might do, but see what it does do.”

The same day, Carol Wells emailed to a large number of colleagues, including Gray and Morrison, to convey a concern about the implications of Sullivan II for research grants that had been circulating in the AHC for a long time. The effects could be “devastating,” she reported, and had to be clarified as quickly as possible. The problem had to do with the definition of “base salary” in Sullivan II: “If a base salary is defined, this is the amount that must be put on NIH grants. Thus, if your base salary is \$30,000 and you propose to work 50% of the time on an NIH grant, you could only recover \$15,000, even though you may earn \$125,000. At present, the ‘common practice’ at the University of Minnesota is to allow you to list your total compensation (up to \$125,000) irrespective of source, which could yield up to \$62,500 in salary. By defining a base salary that is lower than \$125,000 the AHC would be under great pressure to come up with what could be millions of dollars. This would be devastating to the institution and to the faculty.” Current University practice was acceptable, but Sullivan II would change it, because it defined base salary to exclude clinical income.

One member of the Law School faculty responded to Wells and said that using different definitions of base salary would not be a problem, because the objectives of the terms would be different. Wells inquired if it would not be better to get some assurance from the federal government before adopting Sullivan II, given the implications for the AHC. Her Law School

colleague wrote back to agree that “it would be appropriate for the University to get those assurances before asking because there is obviously a lot of money at stake. I also think there is no need for expedition in adopting Sullivan II for other units and that the whole effort to do so is simply designed to have inappropriate (or illegal) influence on the still-pending union election.”

The day after the Faculty Senate meeting, Carolyn Williams provided a summary for her Public Health colleagues, and sent copies to the AAUP/UFA leadership as well. She said “it was a heartening experience to witness the faculty working together” and reported on the two resolutions that had been adopted. “Also announced at the beginning of the meeting was the formation of an FCC/AAUP-UFA negotiating team concerning tenure. Although this was not discussed at the Senate meeting, this team came about from a proposal the AAUP-UFA sent to the Regents as a way of resolving the tenure crisis using a more orderly process than what was used in developing the various Sullivan proposals.” She reported that “the bulk of time at the Faculty Senate meeting was spent discussing a 10-page document prepared by the Tenure Subcommittee, Judicial Committee, and Faculty Affairs Committee listing concerns about Sullivan II that led these committees, the FCC, and the full Faculty Senate to request to the Regents that Sullivan II not be adopted for any units.” She explained that “of particular relevance to the AHC was these committees’ indication that the concerns about the impact of Section 4.4’s definition of base salary on the computation of charges that may be recovered under NIH grants . . . is legitimate. If you recall, Provost Cerra responded to questions about the base pay definition in Sullivan II as ‘he union appeals to your fears, rather than presenting the facts.’ . . . Discussion during the Senate meeting suggested that this issue, like several others, indicated why Sullivan II was not ready for adoption for a unit like the AHC or Morris.” Finally, she told them that “the original resolution to the Regents not to adopt Sullivan II for the Morris campus included the request that Sullivan II not be adopted for the AHC as well. However, yesterday, in a move that surprised all of us, the BMS reinstated the maintenance of status quo order on the AHC, pending a hearing to determine if the Regents and administration acted improperly during the recent AHC severance election.”

On December 13, as predicted, the regents adopted Sullivan II for Morris. At the Committee of the Whole, Spence spoke in favor of the action; “the faculty has felt that unsettled tenure issues affect faculty retention and recruitment. Spence explained that it is unfair to the Morris faculty, who have opted against union representation, to leave the issue unresolved.” She said she and Reagan would meet with Morris faculty to consult about changes needed. The regents acknowledged the Senate action of the preceding day, and said further consultation would

be welcome. Gray reported to FCC that Reagan and Spence had said the regents would consider the Faculty Senate amendments to Sullivan II when submitted to the Board. (The Board did not act on tenure for the AHC because of the reinstatement of the cease-and-desist order.) Mark Yudof, Provost from the University of Texas at Austin, was also unanimously elected president.

Gray reported by email to FCC on December 18 that the FCC-UFA/AAUP negotiating team would consist of eight members, four from the governance system and four from the union (as FCC had agreed on in an earlier exchange of views); the four from the governance system would be the three committee chairs plus Morrison, and the chair would be Sara Evans (from the AAUP and also an FCC member). The group became known as the “Committee of 8.”

Sara Evans recalled that “the Committee [of 8] was set up, but then Sullivan II was adopted almost immediately. The proposal came forward, then Sullivan II was adopted, so it became clear that any negotiated resolution was going to be a modification of Sullivan II.”

“That was controversial within AAUP/UFA; . . . people like Tom Walsh did not like Sullivan II. And still doesn’t. He didn’t like Sullivan II, but he and a number of other people didn’t like any kind of post-tenure review, ever. There were certain things they didn’t ever want touched. He didn’t like the faculty proposal of the previous June. But for those who had worked on that one, Sullivan II was pretty close. It was clear to me, as a member of both the AAUP Board and FCC, that that was our starting point, if we were going to negotiate, and we had to pass it through faculty governance. [Evans made this point clear in her emails at the time, which are cited shortly.] The point was not to bypass faculty governance.”

Some of the Committee of 8 members exchanged emails (of which only some are quoted here) on December 20. They reflect the give and take, and disagreements that existed, among the faculty. Sara Evans wrote to Murthy, Walsh, and Jack Nightingale (of the national AAUP) to send along her comments about a draft, prepared by Judith Garrard, following a negotiating meeting, and also responding to exchanges between two other AAUP leaders, Anne Pick and Bob Sonkowsky.

Evans wrote to Garrard, Pick, and Sonkowsky to say she agreed that post-tenure review (which Sonkowsky opposed) needed to be faced. She went on to say that “faculty ratification [of any tenure proposal] is a safeguard against any changes that might be made in negotiations with the Regents,” and that “it would have to be understood that no policy would be in place or moratorium initiated until the faculty have spoken.”

“On post tenure review: we should never have initiated this conversation if we were going to go to the mat to prevent anything like post-tenure review or substitute our own proposal

(which we do not have) for whatever the Senate committees develop. It is true that many of the people who started UFA share a strong opposition to post-tenure review. On the other hand, I am equally sure that a strong majority of both our board and our full membership is mostly concerned that any such process be one of peer review and include strong mechanisms for due process. With those provisions, many faculty actually believe it is a good thing.”

She suggested that those who oppose post-tenure review make their views known to the Senate committees, because the Senate process should be respected. She said that debate about the question could take place, but once the committees and the Senate spoke, she “would strongly oppose our taking a different position and claiming that we are the ‘real’ representatives of the faculty. Besides, she added, the regents appear unlikely to back down on the issue, so it would be “best to institute a faculty-designed system rather than let them impose on us a system designed by their lawyer/consultant.”

She followed up that email with another one to Garrard, Pick, and Sonkowsky within the hour. She responded to views expressed by Sonkowsky. He maintained that they should ask the cooperation of the Senate committees in not working on Sullivan II, in the event of negotiations with the regents, because it would be unwise to start negotiation from a position of compromise (which, in his view, Sullivan II was). He suggested that nothing beyond the 1985 code should be conceded, and everything negotiated. He agreed that post-tenure review might have to be accepted, but only in return for other concessions from the regents. Moreover, he said, “we have a certain impetus.”

Evans said she did not believe these negotiations were like collective bargaining, “where each side comes in with a position and you work your way bit by bit to some agreement. It is more like politics.” She noted that the debate had been going on for months, in many venues, and that “we perceive in the committee responses to Sullivan II an opportunity for resolution. They have insisted on the necessity of a close examination and careful revision without giving in to the pressure from the Regents for a hasty judgment.” A deal may be possible. The main objective, she wrote, is to settle the issue “and put a stop to the piecemeal process that has been going on. That means we should assume that the Senate revisions of Sullivan II will be pretty much our bottom line,” not a starting point. What is important is to be sure the regents understand this.

Sonkowsky did not agree, and said “I would prefer to depend upon the picture of what would be before us in our meeting with the regents and/or their mouthpieces presented by Fred Morrison at our meeting.” He agreed there had been much communication, but none twixt faculty and regents. He said that “many of our colleagues want this dispute over and done with,

but they are fooling themselves if they think the attack on tenure will stop,” even with a moratorium. He said faculty had short memories, they “just want it all to go away, and so these lotus eaters believe mistakenly that it has gone away and that the vibes they have picked up in the swirl that are harmonious are the ones that will prevail. This obliviousness and shortness of memory begets shortness of foresight.” He urged seeking an alliance with the governance committees, and said “this is not politics, this is war.”

Swan emailed to his AAUP/UFA colleagues a few days later and touched on a number of issues related to negotiation with the regents. He pointed out that “I’m not sure the Regents could agree in advance to approve whatever is presented to them (would we?), but they can give very strong signals.” He downplayed somewhat the importance of two other points. “The Regents may balk at a formal moratorium for similar reasons (how can the current Board bind future Boards?) but at the same time, individual Regents could send very clear messages. We should ask for a moratorium and push for strong signals, but it is not clear to me that we should make this the litmus test for any agreement.” Swan also thought the AAUP should seek a faculty vote on any tenure code, but that this was not an item for discussion with the regents. “Isn’t it something that the faculty senate agrees to as part of its own procedures? There is a tactical issue too, a very strong faculty vote puts more pressure on the Regents and it puts AAUP in front of the faculty. I think we should pressure the FCC reps to agree to put a faculty vote proposal to the Senate.”

Swan touched on the issue of faculty representation to the regents. He said that “this is not logically part of the tenure code, but it is a very important part of the breakdown in trust between the Regents and faculty and thus a critical part of these negotiations. If the Regents object we are in deep trouble.”

Finally, Swan took issue with any proposal to drop post-tenure review. “There are alternative ways of doing post-tenure review, some worse than others. I like the exceptional case model of the faculty proposals which it part of Sullivan II. If ‘depart’ meant eliminate, I oppose such a move. On a tactical basis, if we said post tenure review had to go, we would lose a lot of external support. We need to have mechanisms that respect peer review and due process but that show we can address the very limited number of cases of egregious behavior.”

On December 17, Williams wrote to her AAUP/UFA colleagues about the re-imposition of the cease and desist order. She inquired what steps should be taken vis-à-vis the AHC faculty. Should the AAUP Executive Committee contact the AHC faculty to explain “the rationale for the AAUP petition to the BMS about the AHC election and what we hope to accomplish?” She said

that she was “concerned that AAUP Executive Committee did something ‘to’ or ‘for’ AHC faculty, yet we did not communicate with them about our actions.” A related question was whether AHC faculty should receive collective bargaining campaign messages directed at the non-AHC Twin Cities faculty, since the AHC faculty would not be participating in the election.

Morrison wrote to his FCC colleagues on December 21 to summarize a meeting of the Committee of 8 two days earlier. He said they had generally agreed on conditions for lifting the cease and desist order in order to negotiate with the regents. The conditions were that the regents would “adopt a modified form of Sullivan II, as approved by the Faculty Senate,” “a moratorium of about five years on any further amendments to the Tenure Regulations,” “agreement that chairs and heads be part of the bargaining unit,” and “service of a faculty member as a non-voting member of each of the Regents’ committees, including the Committee of the Whole.” He said that AAUP/UFA and FCC would consult with their colleagues to find out if these were acceptable, and in early January there would be meetings of the Senate committees to consider revisions to Sullivan II. At the same time, the Committee of 8 would “will meet to decide whether there is a basis for going forward, “ and if so, try to meet with the regents to learn if meeting would be fruitful. If so, “we would then wait until the Senate had acted to conduct the detailed discussions/negotiations with the Regents, since we would not know the Senate’s final text until that time.”

Feeney wrote to his committee colleagues to explain that the work of the Committee of 8 was moving forward; he appended Morrison’s summary. He assured that this effort “was done with the blessing of FCC and the AAUP/UFA Groups.” He went on to reassure them about what was happening. “The members of this group are not convened to do the work of the Senate Committees (e.g. [Faculty Affairs], Judicial, or Tenure). . . . What we will be discussing with the Board, if given the opportunity, is what comes out of the Senate, but we all want these tenure-related deliberations and negotiations to be over.” Finally, Feeney was emphatic in telling them that they must “make no mistake, this is not like the ‘Tenure Working Group’ that the Senate objected to last Spring!”

Also on December 20 the AAUP/UFA attorney, Steve Gordon, wrote to Pat Shaw, at the national AAUP office, to outline issues related to possible legal action against the University for unfair labor practices. He noted that the BMS had re-imposed a cease and desist order on the AHC because of a protest filed by the AAUP/UFA. He wrote that “the conduct by the Regents and the administration with respect to the tenure issue is the most serious unfair labor practice that could have been committed in this matter. . . . By preparing and adopting Sullivan II and

promising to extend it to the entire University, the Regents and administrators committed a flagrant unfair labor practice which very arguably now prevents a free and fair election from taking place in the core.” He told Shaw that the emails from Provost Cerra “demonstrates a willingness to resort to negative campaigning. . . . This type of conduct had a devastating impact on the Academic Health Center election. Indeed, it is the belief of many who were involved in the [AHC] election that the unlawful conduct materially affected the outcome.” A lawsuit would notify the administration and regents that such actions would have consequences. Gordon also mentioned the possibility of claiming violations of the state’s open meeting law, because “at least some of the tenure codes proposed by the Regents and administrators seemed to appear out of nowhere and without public notice or discussion.”

Mary Burgan wrote back to Gordon on January 3. She reported that after consultation, the AAUP had decided against litigation at this time, because energies needed to be devoted to the collective bargaining campaign. A lawsuit would distract from the campaign and consume resources. She went on to observe that “my own sense, as a professor from another Big Ten school, is that our struggle at the University of Minnesota is a political one. We all agree that we will win, or lose, there to the extent that we can convince the faculty that collective bargaining is a reasonable and cooperative instrument for asserting a professorial partnership in the governance of the university. Thus, at this delicate point in our campaign, I believe we must avoid the temptation to view litigation as a substitute for political action and power.” She said that a majority of the Twin Cities AAUP appeared to agree with her. Burgan also cautioned that seeking a legal order to bargain, a possible remedy Gordon had mentioned, without faculty endorsement, would be seen as “anti-democratic.”

Hamilton said that after the election, “I didn’t participate actively in anything, other than to try to ward off Steve Gordon and the lawsuit relating to the AHC. I was successful in that, and eventually was able to convince people like Rama and others, non-AHC people, who respected what I wanted.”

Faculty returned to campus from the holidays, in January, 1997, to find a long article in Kiosk about the tenure controversy (“Tenure fallout: Is the controversy hurting?”). The article noted that “in the past few weeks, the New York Times, the Washington Post, the Chronicle of Higher Education, Science, and PBS’s News Hour all have put the University front and center with their coverage of the tenure controversy.” It also quoted Stanley Katz, President of the American Council of Learned Societies. “We have certainly taken [the tenure issue] very seriously. . . . We’ve had several discussions about it at our board meetings and sent a letter

sharing our views to the chair of the Board of Regents.” The question is whether the debate has affected faculty hiring. “Throughout the University there are reports of candidates for faculty positions routinely asking about the status of tenure”; the article cited several examples. “Deans, chairs, and department heads say they are also concerned but that it is too early to tell what the long-term effect will be on recruitment.” It was also noted that peer “universities -- some of them poised to face their own tenure crises -- have wasted no time in taking advantage of the University’s discomfiture, stepping up efforts to recruit faculty already employed here.” The deans of Technology and of Liberal Arts expressed concern. One said that “other universities might sympathize with the difficulties we’ve been having with the issue, but also see it as an opportunity to come and hire our best people” and in terms of there being a lot of unemployed faculty, “there may be 200 applicants for every job . . . but there are not 200 top faculty applying for every job.” The other was “even more vehement . . . on this point. “There’s no doubt I can fill positions. . . . But I assume -- and hope -- that the expectation is that we get more than warm bodies to stand up in front of class.”

Walsh reported in early January after a meeting at the BMS. He reported that the University’s attorneys wanted “an election Feb. 11 and 12, which we do not want. We accepted almost all proposals except that we want the election Feb 25 and 26. (The purpose is to give us a clear 6 week campaign.) After the other side caucused for an interminable time, phoning the University general counsel, we agreed to meet again Thursday morning at 9 am. They want a quick election -- too quick -- and we would not agree to Feb. 11 and 12. Their counsel wanted to talk to the ‘client’ (it is not clear to us who the ‘client’ is).”

Later in January, Marshak wrote to the American Council of Learned Societies to report on the tenure discussion, because of the October 19 resolution by the ACLS Board of Directors. He said “we have learned the hard way at Minnesota” that tenure “discussions are not easy” and it was “possible to get off-track,” as happened at Minnesota. The discussions got back “on-track.” He explained Sullivan II and said it provided more protection than AAUP principles (which allow layoffs, which Sullivan II does not). He said Sullivan II was likely be extended to the rest of the University when the law allowed, perhaps after Senate amendments had been approved. He said the tenure situation “is mostly resolved” and hoped the “result, although not the process for achieving it” could be a model.

“Morris gets new tenure code; some profs dissatisfied” (Minnesota Daily, January 6). The article reported on the December resolution by the Faculty Senate and the regents’ ignoring the Senate request not to act. The article quoted Wade Savage about problems with Sullivan II

and the regents' "authoritarian, non-consultative way of conducting business." A Morris faculty member protested that the Morris faculty had not had time to review Sullivan II, and that it was unacceptable. Reagan said the Board would take up additional amendments once the Faculty Senate completed its discussion. Dissent focused on the provisions for temporary salary reductions; some pointed to the University's potential \$100-million liability in a federal lawsuit [over an anti-rejection drug, related to the Najarian case] as possibly provoking "financial stringency" requiring salary reductions.

On Tuesday, January 7, Fred Morrison and Sara Evans drafted a letter, for signatures by Gray and Murthy, to be sent to the regents. Evans told her colleagues on the Committee of 8 that "it seemed to us better not to put much of substance on the table at this stage but rather to invite them to join us in a discussion of process. If they are interested, they will call." She noted that "our timetable is very tight if we are to have any possibility of meeting with some Regents on Friday when they are in town for their meeting."

Evans's letter reviewed the proposal that had come from the AAUP/UFA to lift the cease and desist order, that it had been endorsed by FCC, and a committee appointed (Reagan had said the Board would respond when the groups were in agreement on how to proceed). "The joint committee would be interested in meeting with you or your representatives to explore the possibility of a positive resolution of the tenure issue. We believe that such a resolution is possible, based on the framework of the 'Sullivan II' document, with certain clarifications and assurances." The draft went on to say that "we believe that a satisfactory resolution of this controversy is vital to the continued health of the University. We suggest a meeting with you in the immediate future to discuss the potential framework for such conversations, to be followed by more substantive discussions once the Faculty Senate has reviewed the proposals."

Murthy wrote to his colleagues on January 9 that there was an article in the Daily about a letter to be sent to the regents -- even though the letter had not been sent, and he had made that clear to the reporter. He concluded that "we would look pretty silly if nothing comes out of AAUP/UFA at this stage" and urged that they take it up as their first order of business that day, so it could be sent.

Pick wrote back. She would not be at the meeting, but said that she would "STRONGLY urge that a letter be delivered (whatever it says) to the Regents TODAY -- in time for them even to say yea or nay tomorrow if they are so inclined." Pick pointed out that "the editorial in the [Star-Tribune] this morning even uses our language about the horrid Regents wanting to put in place a tenure policy that would put the U 'out of the academic mainstream,' etc. At last, thanks

to the efforts of a lot of faculty, editorial opinion, legislative opinion, and maybe public opinion is clearly blaming the Regents for the mess. This is a good moment for the faculty to be able to ACT in our and the University's behalf."

Pick noted that the negotiating team was to talk with the regents about tenure, but said they had to have some flexibility. She warned that "if we screw up now -- by squabbling over the content of the letter so much that it is either put off or scratched -- we will lose much credibility with our faculty colleagues with respect to several related issues: (1) our argument about the advantages of a union and the possibility of demonstrating how a union together with faculty governance can accomplish important things on behalf of the faculty. The revised Sullivan II document is working its way through the established Senate committees -- being amended, improved, etc. That's how faculty governance is supposed to work. I believe we have individual obligations to participate in that process to the extent we have individual strong views about specific issues. Then, we must respect the outcome of that process -- whatever our individual disagreements or disappointments. (2) We will have done great damage on behalf of the faculty in failing to act in a way that makes the Regents listen/respond. We have argued that however the Regents respond is to our advantage -- We either get them to talk, or we make them refuse to talk up front and in front of the public & press. Why should they ever listen/respond to the faculty if we dissolve or delay our "one voice" effort now. (3) We will certainly have done damage to the basic union effort."

Williams agreed. She urged that "a letter be sent to the Regents TODAY. Virginia, representing FCC, has signed off on this letter and if we delay in sending it any longer, I think it would show that our offer to negotiate was not made in good faith!"

Gray, Murthy, and Walsh subsequently sent the letter to the regents.

FCC met on January 9 and discussed tenure and the negotiating team briefly. The minutes from that closed meeting record that "several Committee members expressed dismay that there had appeared an article in the Daily before the Board of Regents had even received the letter proposing the negotiations." Faculty Affairs met the same day and took up eleven amendments to Sullivan II. Chomsky reported that the possibility of collegiate financial emergency declarations had been removed, and that administrators and faculty would share in salary cuts when an emergency is declared. The committee approved the amendments.

"Faculty overture welcomed" (Minnesota Daily, January 10). The regents indicated they would respond to the proposal from FCC and UFA/AAUP to suspend the cease-and-desist order to talk about tenure. Several regents were quoted as being in favor of beginning such talks.

Reagan said they will not happen, however, until after the union election; Spence said they could talk about “minor changes.”

Dan Feeney wrote to his Faculty Affairs committee after reading the Daily. He concluded that “at least two members of the Board of Regents (Spence, Reagan) apparently placed provisions on further Tenure Code action. If this is indeed the case, this news is disappointing. It seems that despite a joint effort of faculty governance representatives and collective bargaining representatives to move this tenure issue toward closure, we’re still fighting an uphill battle with at least some members of the Board.” The proposal to the Board had made no reference to the collective bargaining election, but Reagan, if quoted accurately, “indicated that he will not support further Board deliberation or action on tenure issues until after the February election. Apparently, Regents’ Chair Reagan pivots approval of the backbone of academic freedom, our Tenure Code, on whether or not individual (PELRA-defined) academic units do or don’t adopt collective bargaining. Have I missed something??? Does this mean that there will be a difference in the Tenure Code applied to individual academic units depending on whether or not they adopt collective bargaining??? This seems to miss the point when the Senate and the AAUP/UFA are working together to get this thing solved!”

Feeney also expressed worry and frustration about Spence’s position; her comment that she would welcome consultation, “‘but I’m not willing to get into huge changes’ also left a bitter aftertaste. It seems interesting that now consultation is welcomed, but with significant restrictions.” Feeney did not believe “huge changes” were being considered, but “it seems that yet again there are roadblocks to what was a sincere offer to ‘work together’ by the Senate and the AAUP/UFA groups in the interest of the University of Minnesota. Doesn’t the Board of Regents share a common interest in our institution as we do? From my perspective, this is not a way to foster resolution of this highly publicized, damaging endeavor that has afflicted our institution since the early Fall of 1995.”

Virginia Gray emailed back to Feeney about the regents’ views. “I was at the regents meeting on Friday and spoke to several regents. Everyone -- Reagan, Spence, Hogan, Peterson -- said they would be willing to consider the amendments coming from the senate. What is coming out in the paper stems from several things: first, the Daily keeps hounding them about their reaction to a letter which they hadn’t seen, as of Friday morning, and then hounding them about their reaction to amendments that the Faculty Senate hasn’t passed. So naturally they are somewhat at a loss as to what to say to this reporter. I think their reported responses were fairly positive under the circumstances. Second, Reagan wants to end up with one tenure code. He sees

adopting our amendments at the end of the process, after Sullivan II has been adopted for units as they are able to adopt it. In the case of the main campus, that is after the election. I don't think he sees his position as impinging on academic freedom, but rather an 'efficiency' argument, that the regents will clean up the language at the end, not today. We can urge him to do it sooner, but we can't realistically urge him to speed up when we haven't given him anything to consider. So I think we have to act, and then we can see how soon the administration and the regents can act."

Walsh said he "was very unhappy that we were starting out from 'Sullivan II,' which was a tenure code not merely born in sin -- it was objectionable on substance as well. But by now the campaign to present it as a holy child had had an impact we could not ignore. There was also hope that we could defang the child when it came to the Senate."

On January 14, the AAUP/UFA emailed to the faculty "to bring you up to date." The message reported that there would be an election in February, and again noted that the ballot would contain only the name of the UFA, for legal reasons. "Last Thursday, the attorney for the Regents gave up their opposition to having Chairs, Heads and Directors in the bargaining unit."

"Last Friday morning, UFA/AAUP and the Faculty Consultative Committee (FCC) sent the Regents a letter proposing negotiations on the tenure issue. We are prepared to waive the present Status Quo Order from BMS for this purpose. In the meantime, the Senate committees are examining the tenure code in an orderly way, as we would all expect for something this important. We hope for a positive response from the Regents on tenure negotiations."

Virginia Gray also wrote to the faculty on January 14 to explain events. She told them that there were two tracks. "One track involves traditional Faculty Senate processes; it is directly applicable only to those units not under BMS status quo orders. The second track involves cooperation between the Faculty Senate and the UFA/AAUP; it applies to other units currently under status quo orders." With respect to the first, she reported that the committees had reported to the Senate on December 12 about Sullivan II, and "found several problems, mostly ambiguities and loose ends, in the document which needed clarification and refinement before the code is enacted for more units." Revisions would be brought to the Senate in late January, and the results of Senate action "will be reported to the administration and the Board of Regents. We had asked that the Board of Regents refrain from further code adoptions until such advice was available. Although the Board went ahead in December with adoption of Sullivan II for the Morris campus, members of the Board have assured us that they will consider our amendments for possible inclusion in the code when they are available from the Senate."

With respect to the second track, Gray explained that a negotiating team had been appointed to talk with the regents about lifting the cease and desist order to consider changes to the tenure code. The team, the Committee of 8, “has agreed to ask that the Regents consider the following items: Sullivan II as amended by the Faculty Senate and a moratorium of several years on further changes in the tenure code. This position was decided upon with the concurrence of the FCC and the executive committee of UFA/AAUP.” She pointed out that “the aim of these activities is to produce an acceptable tenure code that applies across the entire university. I am hopeful that this goal can be achieved through these two processes.” This message elicited a response on January 23 that caused consternation among both the AAUP/UFA leadership as well as from Gray;

On January 15, the AAUP/UFA circulated to the faculty a copy of the letter from Murthy and Gray to the regents proposing negotiation on tenure. The letter expressed appreciation to Reagan for agreeing to proceed, once the FCC and AAUP/UFA agreed on a proposal, which they now had: “The FCC and AAUP/UFA have appointed a joint committee to pursue this discussion. The committee consists of Professors Mary Dempsey, Sara Evans, Dan Feeney, Ed Fogelman, Judith Garrard, Fred Morrison, Anne Pick, and Robert Sonkowsky.”

FCC met again a week later, on the 16th, with Judicial Committee chair Fogelman and Chomsky, who was drafting amendments to Sullivan II for the Tenure Subcommittee. Fogelman reported that the Judicial Committee favored allowing financial stringency to be declared for individual colleges, so faculty could decide to take salary reductions rather than cut positions. The Tenure Subcommittee did not favor such a provision. There was concern that units could be cut repeatedly, rather than simply closed. FCC reviewed the other amendments proposed.

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HEARING FROM JEAN KEFFELER

In late January, the staff to FCC reported on the American Association of Higher Education meeting earlier in the month, at which Jean Keffeler had made a presentation at a panel chaired by Richard Chait.

Keffeler said the tenure review process at Minnesota was a failure and the regents would adopt a code with little substantive change. The regents had invited questions on tenure; the reaction was misinterpretation and stonewalling, and the request was transformed into a syllogism that the Board wanted to end tenure, which would destroy academic

freedom, which would lead the faculty to unionize, which would degrade the quality of the University.

The faculty were right to obtain the outcome they did, if the objective was the least change and most control. The regents were not given information on tenure practices elsewhere or the profile of the faculty, there was no examination of the relationship between tenure and academic freedom, no academic investment plan, and the argument was cast as for or against tenure and academic freedom and the corporatization of the University.

The regents were wrong if the objective was to win a public relations battle (which it was not) and they did not require a context (that is, develop a plan to improve quality, and then ask what barriers to it existed, and if there were any barriers related to tenure). The regents did not insist on accountability for a plan, and allowed the process to become an emotional debate that was never re-grounded. The regents were also wrong on timing, in starting the review when there was low trust between the faculty and administration and between administration and regents.

The losses were to academic freedom (the inability to explore tenure), intellectual standards (the work done was amateurish), institutional reputation (Board intentions were purposely misconstrued nationally), and faculty credibility (the code will not change, the regents were seen as bumbling and vacillating, and the faculty were seen as self-serving and not committed to the welfare of the institution).

These comments elicited reactions, not all of them different from Keffeler's.

In terms of the failure to provide information, Gray agreed. She did not agree, however, that the faculty did not want a true discussion. "I think that's valid only to the extent that the actions in the AHC mean you can't have a rational discussion. I think we could have had, if Brody had not polarized things so much."

John Adams was more sharply critical of the administration. "One of the things I don't know was, why, when Bob Kvavik was asked, repeatedly, to produce a report for Jean's committee, comparing what the situation was at Minnesota with what was going on at other universities, they just stonewalled. That really [annoyed her]. I don't know why he didn't do it. He may have decided not to, just to see what would happen. It may have been a tougher job than she thought it was. It maybe that Farber was asked to help and wasn't much help. I don't know. But it didn't come forward; they never did produce that comparison in a form in which it would have been really helpful. That, for someone who is like Jean, was not helpful. It seems to me it was not helpful. Maybe it was. Maybe the absence of that information changed

the course of debate, but on the other hand, it might have enriched it as well. I'd be interested in knowing where we were on the rules, compared with Michigan and Wisconsin. They asked repeatedly for that information, and didn't get it. Then some of the other regents were kind of irritated, even though it wasn't their committee or their problem. They couldn't understand. To tell the truth, there have been a number of cases like that, where the folks in Academic Affairs have not delivered when they were asked to produce information. Some of them may have felt that this kind of tinkering in the internal workings of the University is not the job of the Board of Regents, so 'we're not going to comply and let the President take the heat.' That would have been a possible response. On the other hand, if the Board is responsible for policy, and you don't give them enough information for them to form policy, then you're just begging them to shove policy down your throat in a form in which you don't want it. Which I don't think is smart."

In Shively's judgment, "there is some truth to" Keffeler's charge that she never received the information she sought. "I've always had some sympathy with Jean in all this. For close to a year, she was trying to get from Jim Infante a fairly simple, straight-forward table which listed what the tenure policies in our competing universities are. Month after month, his office was unable to produce that for her. She didn't think it could possibly be that difficult to do. Jim was going crazy trying to get his subordinates to do it. Finally, Bob Kvavik, in desperation, and over a two-day period, called these universities. That was because Jean was getting absolutely bloody-minded about the fact that she had been trying for close to nine months to get that blasted out of Jim's office, and she couldn't get it! Then she couldn't understand why she wasn't getting a simple piece of information; it made her suspicious of the administration. I can't understand why we weren't able to produce it for her."

Shively did not agree, however, with her argument that the faculty did not want academic freedom for a tenure discussion. "That doesn't mean the faculty were all united. There was lots of emotion, but there was also lots of clear argument made. I think that people, in the moment, in times of heat, said things that were emotionally tinged. But I don't think anybody was prevented from presenting their position on tenure. In all the various channels that were open, there was a discussion of tenure. There was not a big congress called, at which we had three days in which people read papers about tenure with each other. But I think there was plenty of discussion of tenure. There were op-ed pieces written pro and con, there were proposals -- there was a discussion of tenure, and by and large it was rational. And by and large, it was courteous. Not every moment, but I don't

think that anybody was hushed. Any position that anyone had on tenure was able to come out. I don't agree with that characterization."

Neither did Bland. "We did a lot of talking about tenure. And whether it [tenure] did accomplish the things it was supposed to accomplish. And I think [we] did a fair amount of soul-searching with regard to it, probably more than most of us had done in a long time. Most of us had pretty much taken it for granted. But just because we came down on the same side that we did before doesn't mean that we didn't consider it. We did discuss it. She seemed to think the only way it would reveal evidence that we were willing to discuss it was if we were willing to dump it."

Morrison said, apropos "academic freedom for a discussion of tenure, I'm not at all sure. That's somebody who's unhappy saying that. That the debate was sloppy? I agree, because I don't think there ever was a debate. I don't think they were ever willing to get into a discussion. We were willing to get into a discussion. We sent off all kinds of questions, and got back zip."

Morrison recalled that "in September, the Morris proposal was put forward at this peculiar meeting. We were going to have our committee hearings and said, 'who's going to come to explain, defend, and discuss this?' They said 'the President.' We said the President doesn't support it. This is not consultation. I said 'we'll schedule the meetings, but who are you going to have there?' We got down to 'maybe one of the members of the regents' staff would come.' No regents would come. The consultants wouldn't come; neither Michaelson nor Chait would be invited to come, because it would cost too much. So we were supposed to have this thorough discussion -- with nobody there to discuss it with."

"The committee meetings were originally scheduled for the week of [September] 16-17-18, and we had set three committee meetings. We said 'who are you going to have there to explain and defend this? We think they'll probably go on at great length because there's lots of stuff there.' Michaelson couldn't come, Chait couldn't come, no regent was prepared to discuss it, maybe Kim Isenberg could come and take notes about what we had to say. That was the point at which I became absolutely convinced that the regents were not consulting in good faith, and not willing to do so."

Morrison did not agree with Gray and Adams on the charge that the regents did not receive the information Jean Keffeler requested. "That was given to her twice, before that meeting."

Bloomfield said he did not know what information had been provided, but observed wryly that "we do know that the administration's ability to lay its hands on reliable data is shaky, so I can believe that they may have had trouble. They

may have been stonewalling, but I can believe they don't have that data in any convenient form."

Marshak, who was in the administration for part of this time, offered a different interpretation of events. Keffeler, he said "was always asking for information. Part of the thing with Jean, and also with Hyon Kim, was that they made your life miserable by asking for everything. Some of it was, you just got tired of providing data, providing data, providing data."

"There was this whole dynamic in the regents' meeting, this awful dynamic. This business about the Senior Vice President's report, where [Academic Affairs staff] would write these 10-page reports, and then Jean and Hyon Kim -- usually it was the two of them -- would pick out some line and quiz you on it. The only way I ever figured out how to deal was to make up the answer on the fly. The whole thing was ridiculous. I can well believe that the staff didn't respond to Jean at the level she insisted on, because she kept asking for data and more data, and it was never clear what it was that she wanted. Or what it is you were supposed to prove. She wanted to know about how much dead wood you had, or how much flexibility, or who was going to retire. Then when you gave her aggregate figures, she said she didn't want aggregate figures, she wanted it by department. If you get down to really small units, then the statistical fluctuations are so large that you can't make any predictions. So it was never clear what it was one was supposed to deliver. Nils was supposed to deliver something by the end of the year, some plan; it was always sort of mystical. I was never sure of what it was that Jean wanted. So did I stonewall her? Yes, because I never knew what it was that she wanted."

"We knew that roughly 5% of the faculty turned over every year. But then she said that was not enough; she said 'I want to know if in the Classics Department 5% of the faculty turn over.' That's not the nature of the thing; you can't tell her. She would insist that you tell her. You couldn't tell her. Then she said you were stonewalling. That always was hopeless."

As for the allegations about the debate, Bloomfield said it "obviously had a lot of emotion. I don't think the debate was sloppy. I think the discussion of issues and the refinement of statements that eventually went into the tenure code was pretty good. The regents certainly didn't contribute much to it; her end of it was sloppy. But I don't think the faculty's end of was sloppy at all."

Keffeler said the debate over what ought to be in the tenure code, and what the Board should consider in evaluating the tenure code, would never have stood up to the standards of scholarly rigor that the faculty typically impose on their own work, and that what passed for argument was simply ad

hominem or emotional appeals, rather than a reasoned study of tenure practices and tenure needs. Bloomfield did not agree. "There certainly was a resistance in those circumstances to starting from scratch. There was pretty reasonable debate about the details, which led to some semi-serious changes in principle, about post-tenure review and reassignment and the possibility of lowering salaries. Those are non-trivial things that were debated seriously and came to rational endpoints."

"The bigger issues indeed were not discussed. If Jean Keffeler expected them to be discussed in this venue and on her rapid timetable, she was foolish. It's not going to work that way."

One faculty member recalled having heard the claims Keffeler made. "I've also heard her make the first charge. I don't have first-hand knowledge on the issue, but I'm willing to believe to she could well be right. I think it was a mistake to bring Dan Farber into this. Dan knows a whole more now than he did before about tenure; he knew very little when it started. When Mary Burgan was here, [there was a meeting where a couple of people] ganged up on Dan. "Why'd you do this? What about this? Do you understand the context for that?" And the answer, in all these cases, was 'no.'"

"On the issue about not wanting academic freedom for a discussion of tenure, I think Jean is wrong. We could have had that had the whole thing been handled differently. But the way things started, almost from the beginning there was such a level of mistrust that it became very difficult. The issue was raised by the regents in a manner that consistently made it more difficult to have an open and candid discussion. From the very beginning, the actions of the Board raised the specter of hidden agendas and pre-determined conclusions. And I think Jean Keffeler bears major responsibility for that level of mistrust. So I reject her accusation."

Gorham dismissed Keffeler's charge that the faculty would not permit a discussion of tenure. "That's a ridiculous claim! I for one have said for years that the obverse of academic freedom is to deal effectively with faculty who are under-performing and not living up to their obligations. I have heard many other faculty express the same opinion. In my view, administrators are often unwilling to act in such matters because of the threat of protracted litigation (which is real)."

Williams comments were akin to those of Gorham. "That's a politician's statement. She was not interested in open debate and discussion with the faculty. She had decided that the faculty and the tenure system were a problem, and by God she was going to fix it, and she knew how to fix it, and she didn't need to talk to us."

Told of Keffeler's view that the faculty would not permit

academic freedom for a discussion of tenure, Goldberg responded "I don't agree with that. Sure, it's a pretty threatening discussion for a faculty, but it seems to me that they did have a committee working on it, and trying to work in a constructive way. But when they were being blindsided by separately-hired consultants and law firms, and proposals being put forth without consultation, that isn't the kind of participatory process that faculty members expect; not a process which they respect and not one they're eager to participate in. One knows what works and what doesn't in a university setting. If it's participatory governance, it has to be participatory governance in a meaningful way. Faculty might be reluctant, some of them, to discuss tenure much, but I think it's discussible. But it's got to be in a reasonable way, in a respectful way."

Marshak's view was slightly more sympathetic to Keffeler. "Is the faculty fascist at some level? Probably. There are certainly fascist elements in the faculty. Could you discuss tenure? It would be very hard to have a discussion of tenure, I think that's probably true."

"What is it that I heard at these meetings I went to? 'You guys blew it, you guys let this whole thing blow up on you.' So what was the implication of that? That it should have been managed from the beginning. That's not a free and open discussion. I think there are a lot of forces; it's not just the faculty. I think the administration doesn't want a free and open discussion of tenure. I think a lot of people don't want an open discussion of tenure. Because it's too profitless. Where is it that you're trying to go? What is it that you're trying to do? What is the goal of this?"

"One of the things that I argued was that we are not a market leader. When the University of California changed its tenure code, we could change our tenure code. So why is it that we could not afford to wait for the University of California? I don't know. Why couldn't we just wait? What was the goal?"

"The whole thing about the Medical School is that [in the case of] the doctors with clinical appointments, [if] you want to get rid of them, it's easy. All you have to do is cut their income, and they'll leave. So who is it that you're trying to get rid of? The dead wood you can't get rid of. One of the ironies here is that Minnesota, as a state, has some of the strongest pro-labor law -- statute and common law -- of any state. Most people get tenure between the ages of 35 and 45. When you tenure somebody, presumably they meet the criteria for tenure. If they don't, your system is screwed up in other ways. If they meet the criteria from age 35 to 45, you don't go bad instantly, except maybe in a few cases. Mostly, it's going to take 15 or 20 years before they go bad. Now you're talking about people who are mostly over 55. The first

person you fire is fine, but the second one is going to allege a pattern of age discrimination, and in Minnesota that person is going to win. So where are you going with this? The answer is, you're not going anywhere. You could argue that in Minnesota, you don't need a tenure code. I'm not advocating it, but you could argue that Minnesota labor law is so strong on arbitrary dismissal that you don't actually need a tenure code. Because essentially the old people are protected by age discrimination, and any of the other grounds that are in the tenure code could be argued by either statutory or common law. At some level, you don't need a tenure code anyway. So the whole business of playing around with the tenure code goes nowhere, ever, given the labor law in this state. All of this tenure stuff is at some level icing on the cake. It could be argued that the whole thing was just nonsense from the beginning. So, as to where it was going, what was the goal, I think it had no goal. For a few people, there were individual goals; as an institution, there was no goal, other than maybe get Becky off our back. There were other ways to do that. The whole thing was just bizarre. Did we screw it up? Yes."

* * *

Events after the new year essentially followed two paths: one, the union campaign, and two, the negotiations over amendments to Sullivan II. The first, the union campaign, was partly carried out in the press, as adherents and opponents made their arguments.

On January 17, Provost Shively's office sent out a memo on the collective bargaining election to the Arts, Sciences, and Engineering faculty with a series of questions and answers. It noted that "the outcome of the vote is decided by a majority of votes actually cast," that if a union were selected, "the administration of the University may not enter into negotiations with any individual faculty member over wages or other terms and conditions of employment without the consent of union leaders," and that "the University Faculty Alliance filed the petition requesting an election for the Twin Cities Instructional Unit. Theirs will be the only name that will appear on the voting ballot in that election." The negotiations would be on "a labor contract covering all terms and conditions of employment for covered faculty. . . . Negotiations would begin from a blank slate, with each side making its proposals for issues to be covered by the contract. For mandatory subjects of bargaining, such as wages, hours, and other terms and conditions of employment, the University may not negotiate with anyone but the union. As a matter of law, the University is not required to negotiate on matters of "inherent managerial policy" such as the University's overall budget, the University's functions and programs, its use of technology, and the selection, direction, and number of personnel, including the number of faculty."

Salaries would be negotiated, and whether there would be merit raises would be unknown until a contract was negotiated. "Typically, faculty union contracts negotiate raises on an "across-the-board" percentage basis. Merit raises could be any portion from zero to 100%." There could be strike, if agreement could not be reached on a contract. Faculty would not have to join the union, but would have to pay "fair share" costs. The union could not guarantee against layoffs, and most contracts at other institutions provided for them. The current tenure code would not necessarily continue, and the role of faculty governance would likely diminish.

On January 21, the AAUP/UFA sent an email to the faculty. It said that "you may have recently received a memo on collective bargaining from your provost. What claims to be neutral information, however, contains misleading innuendo and even outright misstatements. This present message is our response to many negative comments about collective bargaining. You will find much of this in provostal memos." It then rebutted "negative claims about collective bargaining," including:

-- "A union will have to negotiate everything from scratch": The implication is that if faculty vote for collective bargaining, we lose all existing rights established by tradition. This implication is introduced very carefully, because it is not correct. In fact, the starting point after a successful collective bargaining election is present practice. It could hardly be otherwise -- if collective bargaining did in fact erase all existing rights, nobody would ever have voted for it."

-- "The union is a third party": "the collective bargaining agent will be the local AAUP chapter -- the faculty itself." AAUP policy is "that local chapters do it themselves, with help when asked for. . . . The reason for collective action by faculty is that nationally we are losing a fair and balanced relationship with boards of governors and administrations. This is a long term change which we need to respond to."

-- "Unions give administrations more power": "The keyword here is 'inherent managerial rights,' implying that faculties lose existing authority with unions (see point 1). In reality 'inherent managerial rights' are tempered both by existing practice and by the right of a collective bargaining agent to bargain on the 'impact' of administration policies. . . . We will have both consultation with faculty governance, and negotiation where we need it."

-- "Unions are inconsistent with quality": "There is no documentary evidence for this claim. For example, of 47 nationally ranked programs at Minnesota, 19 are outranked by programs at universities that have collective bargaining. Perhaps the most dramatic case is Rutgers University, which has risen significantly in rank and has increased its federal research funding. Rutgers has collective bargaining through AAUP. . . . In any case, Minnesota has

declined in the national rankings to 23rd last year. Obviously, AAUP did not contribute to this decline.”

-- ““Unions lead to leveling of salaries and discourage merit””: “Minnesota already has problems with salary and merit. We rank 28th out of the top 30 research universities in salary. Our present salaries do not reflect faculty merit. . . . We recognize the need for substantial merit increases determined at the departmental level.”

-- ““The contract will give up rights and permit layoffs””: “A contract negotiated at Minnesota will be our contract -- not someone else’s. The entire faculty here will have to vote on it. A common practice is to include in the contract a provision which commits the governing board and administration to consult with faculty governance under existing practice. This means that failure to do so is grievable. It also means that our existing tenure code will be operative, not some new layoff provision.”

-- ““Having a union means that there will be a strike””: “The view of the national AAUP is that the liberal Minnesota law on arbitration makes a strike very unlikely. . . . Will AAUP promise never to call a work action no matter how serious the provocation? We cannot make such a promise; that will be a matter to be determined by the faculty if the occasion arises.”

On the same day, the AAUP/UFA sent a “newsletter” message to the faculty with an update; the initial line was “UFA=AAUP=FACULTY POWER.” It reported on election dates, publications and information sources, and the availability of speakers for departments.

On January 23 the BMS issued an election order; since the University had withdrawn its objection to the inclusion of heads and chairs, there were no further bars to holding the election. The order identified election sites and times.

“Vote scheduled for U faculty unionization” (Pioneer Press, January 23). The BMS scheduled union elections for February 11-12 for the Twin Cities faculty (excluding Law and the AHC). The tenure issue has been quiet recently, but now there could be a “heated debate” on collective bargaining. The article reported the views of faculty favoring a union (the need for improved communication with the regents, the regents’ actions adverse to faculty interests) and of those opposed (the regents backed off on tenure, there is a new president and new regents); salaries were seen as a major issue.

“Union debate needs departmental focus” (Minnesota Daily, January 23, opinion piece by Regents’ Professor John Chipman). Chipman maintained that because departments have an interest in maintaining their reputations, and that salary increases should be determined by departments; if not, they will favor across-the-board increases. Any collective bargaining

arrangement should favor department control and initiative.

“‘U’ arts, sciences faculties to vote on unions next month” (Star-Tribune, January 24). Minnesota would be “the most prestigious [university] in the nation to have a union” for faculty, which is why “Hasselmo and his top administrators oppose the move.” The article described events leading to the move; “with the threat” and worry about the presidential search, “the regents relented in November without holding a substantive discussion on the issue.”

On the Sullivan II front, the Faculty Senate met January 23 for three hours to take up proposed amendments. One proposal removed the possibility of declaring a collegiate financial emergency (permitting temporary salary reductions), although the Judicial Committee favored retaining it. There was objection on the floor to consideration of the amendments, given the cease and desist order, but Gray and Fogelman opposed the objection on the grounds that there were units not covered by the order, that negotiations between FCC and AAUP/UFA and the regents were to be predicated on Faculty Senate actions, and because there were costs to delaying consultation. The objection was defeated 22-67. The possibility of institution-wide salary reductions, with FCC and Faculty Senate approval, was adopted. Other amendments clarified the process for consultation on programmatic change, retraining or reassignment of faculty when there is programmatic change, procedures for suspension without pay, minor discipline, and the meaning of regular compensation. The Senate also took no action on a new ground for termination, “other grave misconduct,” which the Tenure Subcommittee found acceptable.

The same day, Gray sent to Reagan the Faculty Senate amendments to Sullivan II and expressed the hope the regents would approve them and incorporate them into the code that had already been approved. The January 30 Faculty Senate meeting was cancelled because all of the amendments to Sullivan II had been dealt with. This temporarily ended the discussion of any amendments to Sullivan II; for the Twin Cities faculty outside the AHC and Law, attention was turned to the union election. But there was a contretemps following the Senate meeting that nearly derailed the discussions between the AAUP/UFA and the FCC.

The faculty received on January 23, earlier in the day before the Senate meeting, an email responding in part to Gray’s message January 14 message, purportedly from the AAUP/UFA Campaign Committee on January 23 expressing opposition to Sullivan II (but sent by Walsh). “A misconception is circulating regarding UFA/AAUP’s position on the original ‘Sullivan II’ tenure code that the Regents imposed on the Morris Campus and the Law School. UFA/AAUP’s position is NOT to begin discussions by accepting ‘Sullivan II.’ The misconception seems to have arisen from an email message from the chair of FCC (Jan. 14). It said that “the Senate

committees responsible for tenure have developed major changes to the original 'Sullivan II' document. They will be discussed in a Senate meeting today. This is an ongoing process that we support, and we applaud their work. We also consider our present cooperation with the Senate committees to be a model for future cooperation." It also pointed out that the bargaining election for the Twin Cities campus would be in February, and that "we do not support making any recommendations to the Regents on the tenure code until after the election. We remind you that without collective bargaining, the Regents can impose any tenure code they wish, including the original 'Sullivan II' tenure code. Neither we nor the faculty Senate want that version of a tenure code."

This message was apparently sent without the approval of the senior AAUP/UFA officers and led to a lengthy exchange of emails among the AAUP/UFA leadership (more on this shortly). Later that same day, at the January 23 Senate meeting, Walsh, Scheman, and Humphreys made comments that Gray and others interpreted as in direct conflict with the agreements that had been reached between the FCC leadership and the AAUP/UFA leadership concerning negotiations on Sullivan II (e.g., the objection to considering one of the amendments, defeated 22-67). These comments led Murthy to submit his resignation from the AAUP/UFA leadership (more on this shortly, also).

The AAUP/UFA/Walsh message also provoked a tart response from Gray to the FCC after the Senate meeting approving amendments to Sullivan II. "I am very pleased that we are finally done with the tenure code in the Senate. However, I am not at all pleased with the behavior of our union colleagues, in terms of trying to table the entire discussion [at the Senate meeting] so that we never finish anything. That would have derailed a lot of good work by our committees, not to mention derailed an agreement we have with them over the negotiations with the regents. It does cause me to wonder if we should even be working with them at all, if this is the way they behave."

Gray was also annoyed by the email message. "Adding to my irritation is a memo the UFA\AAUP campaign committee sent which blames me for misconstruing their negotiating position, says they support the work of the Senate, and goes on to say they do not intend to recommend anything on tenure to the regents until after the election. It is unclear to whom they sent this memo. Moreover, they drafted a letter for me to sign to the regents issuing an ultimatum on Monday for regents reply to our request for negotiations. I refused to sign this letter, since we have not yet delivered our Senate amendments to the regents; we are hardly in a position to be issuing ultimatums."

Gray related what she had learned. “During the day I have talked to Rama and to Sara, and from what I have pieced together from various sources, the actions of Naomi [Scheman], Walsh, and Roberta [Humphreys] at the Senate meeting were not authorized by the AAUP executive committee. . . Significant portions of the memo referenced above were said to be incorrect and not authorized. So I am calming down a bit; Rama is sorting through all of this (he had not heard what happened at the Senate meeting) and will call me back. I said a corrected memo had to be sent out, since its contents were inconsistent with the 4x4 negotiating committee's position.” She concluded by commenting that “if we are going to be negotiating with either the regents or the administration, we have to do that sincerely. I don't want us to go in there with partners who have motives other than solving the tenure crisis.”

As noted, the January 23 email message supposedly from the AAUP/UFA elicited a series of email exchanges among the leadership.

Murthy emailed to Walsh to suggest that the last sentence (“Neither we nor the faculty Senate want that version of a tenure code”) did not reflect the “spirit of our discussion yesterday” at the AAUP Executive Committee and urged he drop it or make it a statement on the Senate floor. He also emailed to the AAUP leaders telling them he had made this suggestion to Walsh. “The real fear I have is that we will be singled out in the Senate as a renegade group if we say that nothing should be done. I thought the discussion in our group yesterday” was that they would participate in the discussions.

Anne Pick objected more strenuously in an email to Murthy and Sara Evans. She wrote that if Walsh's message went out to the faculty, “I feel very frustrated (to say the least). Virginia's memo did NOT say or imply that it was the UFA/AAUP's position to begin discussions by accepting Sullivan II. She made reference to Sullivan II “as amended by the Faculty Senate.” Pick also asked “since when is it the AAUP/UFA position that ‘we do not support making any recommendations to the Regents on the tenure code until after the election?’ That makes us and the ‘team of 8’ look like idiots or worse, e.g., that we are acting in bad faith by inviting the Regents to talk about tenure for the goal of resolving the issue as soon as possible!” She asked that the memo be discussed.

Sara Evans wrote that “I agree with Ann. As far as I know we did NOT vote as an organization not to talk to the Regents until after the election, in fact we quite explicitly and in writing said the opposite. This makes us look like an organization that either acts in bad faith or doesn't know what it is doing. I know that Tom believes he is shoring up our credibility with some group of faculty but I think the result is quite the opposite.”

Craig Swan wrote that he agreed “strongly with Anne Pick's sentiment. I thought that the

invitation to negotiate on tenure was meant to be a concrete example of how a collective bargaining group could work to strengthen faculty governance and make it more effective. To appear to be fighting will only suggest that in fact collective bargaining will weaken rather than strengthen the faculty senate. This is not a way to convince the faculty of the wisdom of collective bargaining.”

Naomi Scheman followed up on the emails and commented that after the Senate meeting “and a conversation with Tom, Sara, Eville, and Roberta, here's what I think we ought to be saying. ‘If you like Sullivan II as revised by the Senate, vote for UFA/AAUP, because w/out us you'd never have gotten it, and w/out collective bargaining, there's no guarantee you'll get to keep it. If you don't like Sullivan II revised, vote for UFA/AAUP, because w/out collective bargaining, there's no hope of getting anything better.’ She said that ‘before we filed for a collective bargaining election and got the cease and desist and created a real expectation that we would unionize, what the Regents were going to do was impose the truly awful Morris code. All the Sullivan codes are a substantial improvement on that, and the subsequent revisions have gotten better and better. None of that would have happened were we not engaged in the campaign -- and had we not worked cooperatively with the Senate and its committees. What the Senate ended up with today is a real testimony to what faculty can do when they put some real muscle (the up-coming election and the cease and desist) behind their words and actions.’” At the same time, “those who do NOT like Sullivan II revised (and they include many of our core supporters) should vote for UFA/AAUP because if we could get this far (and it is quite far) with just the threat of collective agency, there is very good reason to believe that we can get something significantly better when the regents are legally required to negotiate with us.” Sullivan II was done within the framework of what the regents wanted, but without collective bargaining, nothing would force the regents to make any compromises.

Williams agreed with the comments of Pick, Evans, and Murthy that “this message did not accurately reflect what I felt was the consensus in yesterday's board meeting.” She suggested using language proposed by Sonkowsky. She also inquired whether Walsh had already sent the message to the faculty “which makes this discussion moot? If so, I believe that future messages signed by the organization should be reviewed by Rama (or other executive committee member in his absence) before they are sent out.”

Sonkowsky suggested that instead of “we do not support making any recommendations to the Regents on the tenure code until after the election,” the message say “since the regents have not responded to our offer to lift the cease and desist order for purposes of discussing tenure with them and representatives of the faculty governance system, we shall suspend that effort, and we will not presume to have any authority to make recommendations unless the faculty elects the UFA/AAUP

to be its agent for collective representation. At that time the faculty will elect its representatives to act in concert with the Senate.”

Humphreys added her views. She agreed that Gray's message had said “Sullivan II as amended by the Faculty Senate . . .” but that Executive Committee had decided to delete all reference to Sullivan II. “So where did Virginia get this?” She agreed that the language in Walsh's message was not worded well, “and should have said we were against the Senate talking to the Regents. In that way the authority to negotiate the code would have fallen to the committee of 8.” However, she asked “does the committee of 8 really think they will negotiate the tenure code with the Regents?” There were only about 18 days before the election, and nothing could happen in that period. She envisioned the possibility that “the Senate has now recommended revisions to the Sullivan/Morrison II code” which “will be promptly forwarded to the Regents who I am guessing will accept them at their next meeting the first week of Feb. The FCC declares victory and says to the faculty - see you do not need collective bargaining. The implication will of course be that this code will eventually adopted for the remaining units when collective bargaining is voted down.” Humphreys said she thought Sullivan II was acceptable, but “I have serious problems with the way this has been done. It has clearly been what is know as ‘union busting.’” She concluded that if “the current bickering over Tom's e-mail message which was intended to satisfy a significant fraction of our supporters [does not stop],” she would resign from the AAUP “and conclude that like in previous elections AAUP can't get its act together. If we can't stick together then we will lose. So if this continues then I'm out and I've wasted my time.”

Walsh redrafted the message, incorporating some of Scheman's language. This provoked even more exchanges.

Sara Evans inquired of Walsh and Scheman: “To whom is this addressed? I think it requires a prior decision about whether we are withdrawing from our offer to collaborate since it includes the premise that was in Tom's earlier e-mail, namely, that we won't talk to the Regents unless we are elected. We are sending extremely mixed messages right now. As chair of the ‘committee of 8’ I really have to know where we stand.” She also pointed out that the message put her in a difficult predicament. “I also need to know who was on the list that Tom sent his message to yesterday. It seems to have included FCC. Was it the entire faculty? I now have a lot of explaining to do.”

Evans also wrote that “we have to decide whether we are renegeing on our offer to collaborate with

the Senate and approach the Regents or not. Our partners in this effort, the chairs of the senate committees and the FCC, believe that the offer still stands, and there have been approaches to the Regents about talking. The Regents, apparently, did not want to respond until they saw the results of the Senate action. They may or may not want to proceed, but the possibility that they will is genuinely there. The wish of the Senate to proceed with amendments yesterday was based, for many, on the assumption that this was part of our collaboration and that there might be a positive resolution as a result. Those folks were puzzled to say the least that some of our people wanted to table the whole thing. For the sake of the faculty as a whole and for our integrity as an organization I hope we remain committed. This would mean that we hold off on sending an ultimatum to the Regents since the odds of their responding quickly are just about zero (they just don't function very well) and then not only would we would be going public with a statement to the effect that they have refused but we would have essentially disengaged ourselves from the process. On the other hand, I have freely been saying to reporters that we have not heard a word from them and that this is of a piece with the way they have treated the faculty all along."

"I can't tell how much the differences among us are strategic and how much they are substantive. I don't perceive what we stand to lose by proceeding with a process which we initiated (and I see a LOT to lose if we don't). I think that our substantive concerns about the tenure code have basically been addressed (as indicated by the responses we have gotten from the national AAUP office's analysis. . . The point has to be that we only got to this with a threat of collective bargaining. And if there is a resolution that 'sticks' - including a ratification vote by the faculty as a whole - that will be due to our participation."

Pick concurred. "I believe Sara is making very important points." She said she did not understand "the logic of why, now that the election dates are set, we will assume they [the Regents] aren't interested in our invitation. I suggest we have two important goals: (1) continue our efforts on behalf of the faculty in our cooperative relationship of faculty governance and AAUP/UFA. (2) Get as much mileage as we can out of our invitation to the Regents for our election. Neither of these goals is necessarily served by withdrawing/renegeing on our offer I now think." She suggested that the Committee of 8 should meet and its members then talk with their various constituents. "Can we figure out how to get PUBLICITY about our offer to the Regents and their non-response up to now? Can anyone pressure some of them -- behind the scenes -- to respond?"

Walsh did not disagree significantly with Evans. "I think that we should leave the offer on the table and not set an ultimatum for when the Regents have to respond."

“My reason is that whatever our individual views, no purpose is served at this point in doing either of the above things. In fact, if the Regents do open communications, there is essentially no time to get to substance. So long as we are willing to continue some level of cooperation with the members of the Senate committees on tenure, the existing joint committee might as well be the medium for that. Substance will come later.”

He then noted how the situation would be different after an election. “If we win, a great deal will change. The power relationship with the Senate will change. We will also become not the leadership of UFA/AAUP but rather the interim leadership of the bargaining agent. (We ought to remember that.) But I think that both we and whatever future leadership is in place will want to run ideas on tenure changes through the Senate committees on tenure. So why not keep the joint committee in place? Our members will be aware enough of their responsibility as custodians for the future bargaining agent.”

“As to our basic position, I do not see how we have modified that. We view the tenure discussion among faculty as ongoing; we are cooperating with the Senate committees responsible for tenure and expect to continue to do so; after the election we are all committed to getting the best deal for faculty that we can. We surely differ on whether or not yesterday’s ‘Sullivan III’ removes our doubts. (It does not remove mine.) But we do not have to settle that now. We just need to keep clear on the fact that, as Naomi puts it, ‘an empowered faculty’ can do better than whatever we are talking about now.”

“There may be some confusion in FCC; that does not surprise me. But that is not our problem so long as we clearly affirm our basic position to the faculty. At least this is my view. Most of the rest seems to me to be just ‘the confusion of war’ and it will pass.”

Dan Feeney also emailed to Virginia Gray and Sara Evans on January 24, to express dismay at the January 23 AAUP/UFA message. Feeney wrote that “I thought there was no relationship between the union vote and our ‘potential’ interactions with the regents once the Senate had an approved version for their reaction. . . . I hope we’re not getting into an internal squabble that will hinder any positive influence meetings with the regents might have. . . . My advice is to stay the course. We have to be consistent. If relations with the regents are not in the hands of the [Committee of 8,] carrying the revised code to the regents and convincing them it is appropriate, then we have nothing to do. I also thought the union folks had separated what the [Committee of 8] was doing from the faculty vote timeline. In other words, we worked toward a speedy resolution of this tenure debacle regardless of when the union vote occurred.”

In the meantime, Murthy had resigned from the presidency of AAUP/UFA over the

weekend. This also provoked a lot of email among the leadership. Williams emailed to the Executive Committee on Sunday the 26th to ask that “we keep the message that Rama sent to the Executive Committee on Saturday night confidential until our meeting this week. . . . A small group will be meeting with Rama late tomorrow to discuss the best ways to preserve the integrity of the Twin Cities Chapter of the AAUP, and will report back to you by our next meeting, if not sooner.”

She followed with a message to her AAUP/UFA colleagues to inform them that “a small group (Rick Purple, Eville Gorham, Sara Evans, Steve Gudeman, Judy Garrard, Anne Pick, Pat Shaw, and I) met with Rama late this afternoon to hear his concerns and persuade him to withdraw his resolution [to resign as president]. Tom Walsh joined the meeting and also affirmed that Rama’s continuing as president was essential to the well-being of our organization and winning the election. We were not able to persuade Rama to withdraw his resignation by the end of our meeting, given his strong feelings that his personal integrity had been seriously damaged by recent events.”

As a result, “we formulated a plan with a series of steps. I agreed to send out a resolution to you, asking for your unanimous endorsement. As I was driving home, I realized that I did not have the eloquence of Rick Purple that may be needed to persuade Rama, and so called Rick to ask if he would draft such a resolution.” Purple did so. Williams said that she and Walsh “are more than willing to talk with any of you about our rationale for needing such a resolution, but hopefully it is self-evident and you will send me your votes ASAP.”

The resolution pointed to the revival of the AAUP chapter, said it been a “leader in the faculty’s efforts to defeat a serious threat to academic freedom through an attempt by a majority of the Regents to radically restructure the tenure code,” and noted that it was leading a collective bargaining effort “while uniting a disparate group of faculty to work for the common goal of collective bargaining,” and because the effort had been “led by the diplomacy and personal integrity of” Murthy, the Executive Committee thanked Murthy and also “refuses to accept his offer of resignation on the grounds that he commands our trust, and that his leadership, diplomacy, integrity, and skills continue to be essential to the Chapter.” The resolution also provided promises on how business was to be conducted: “Executive committee approval by majority for all policy decisions,” “communications to faculty to be approved by the Executive Committee,” “legal actions and BMS petitions by the Counsel only with the explicit approval of the Executive Committee.”

Sonkowsky offered one change that suggested some of the problems the AAUP/UFA had

had, which Williams accepted, that “goes to the heart of our difficulties and lies at the root cause of those features of our organization.” He urged that there be one additional proviso, that “all action items of the Executive Committee shall be acted upon strictly according to parliamentary procedure in accord with *Robert’s Rules of Order.*” Sonkowsky said that “more than one mistake has been made as a result of having discussions and discussions alone; i.e., there is a discussion and no formal motion, no vote, not even a minute taken. The result is that one can go away from a meeting believing that the last word said, or one’s own word, or whatever word one wishes, has won the day. This is not good for the integrity of our leader, nor for the integrity of any of us.”

Williams emailed back to Sonkowsky on the 28th that she had “no problem with accepting your addition to the resolution as a friendly amendment.” She asked that he recall that “this is a highly sensitive and confidential matter that on Sunday I asked be kept within the Executive Committee. I forgot to repeat that request last night, but would appreciate it if you would refrain from broadcasting messages about this topic beyond the Executive Committee. I am trying to prevent Rama’s resignation and the others that may follow if he does not withdraw his offer. Rama’s resignation will be devastating to the collective bargaining campaign. There is absolutely no reason to delay the passage of this resolution to debate whether we should follow parliamentary procedure in our meetings -- that was an obvious and helpful addition to the resolution. I am hopeful that you and others will send in your votes immediately so that I can forward the resolution to Rama and keep this as a containable problem. But the time is getting short for that.”

On the 28th, Williams sent a message to Murthy, along with the resolution that had been unanimously approved by the Executive Committee, “in response to your informal e-mail message, sent late Saturday night, suggesting that you would resign as our president. As this resolution indicates, the Executive Committee has refused to accept your offer of resignation, and we implore that you reconsider.”

“Several of us tried to indicate yesterday that although those many angry phone calls and messages were made to you personally, your integrity remains above reproach. The questions were about organizational integrity, and because you are president, the messages were sent to you. There were obvious missteps in the last few days, but we have to, and will, correct them as an organization.”

“On a personal note, I would like to make a special plea that you continue as our president. It has been a pleasure for me to serve as vice president and see first-hand how you have

worked so tirelessly and successfully to fulfill the mandate given us last May by the nominating committee -- to revitalize the AAUP on this campus.”

* * *

MURTHY (AND OTHERS) ON MURTHY’S RESIGNATION

Murthy recalled that even at this point, there was not unanimity of view between UFA and AAUP members, even though they were conjoined. The January 23 Senate meeting led to exchanges between several faculty. “The Executive Committee of AAUP, including the UFA members, had met for a long time to discuss what our position should be before the Senate met. This was post-Sullivan II -- what to do after Sullivan II was imposed. We all had come to a general statement that we all agreed on. We had an emergency meeting; we should all speak united. This included not just UFA, AAUP; we had been talking with FCC folks at the same time.”

“Then suddenly Tom went and gave a lecture at the Senate. I wasn’t there. I heard it afterwards. The way it came back to me was, ‘hey you guys, you’re saying one thing and doing another; I thought we were all together. How come?’ Sara [Evans] took a strong exception to what Tom said. Tom also sent an email out to the faculty at large, which wasn’t what we had agreed.”

“I felt very frustrated. I was afraid my credibility in the whole process was being lost. Here I was talking to the President, talking to regents, but I’m a member of the faculty, putting in a lot of time. I wrote them a letter, I’m putting my name and time into this thing; what the hell is going on? I actually used the word one night; what the hell is going on in the AAUP/UFA? With the Executive Committee. I said if this is how things are at the moment, consider my resignation from such and such a date.”

“Then Carolyn [Williams] got together a band of three-four people -- Sara, Judy Garrard, Eville Gorham, Rick Purple - - and we all talked. Basically, the idea was that we really had to work as a single-voiced organization. First of all, they met with me; I said if I am assured of that, I will stay until the election. In order for that to happen, I need absolute assurance that Tom won’t be a wild card. The Executive Committee met, including Tom, and elicited some sort of promise from Tom that he won’t do that. There was some reasonably amicable end.”

“When I resigned, I told Virginia I was going to resign. Because Virginia called me right after the Senate meetings and said ‘what is going on? This is not what we agreed.’” Murthy agreed that Gray had every right not to be happy about the December 5 Senate meeting. “I wouldn’t be, either.

She called me up, and somebody from our Executive Committee called me up and said ‘what’s going on?’ I was caught! I felt bad about it, and said you can’t run an organization like this. But in retrospect I’m glad we stayed on.”

“Jim Perley called me, and Mary. Carolyn put them all on me. Eville Gorham, my old, old friend, called me and joined Carolyn in the private group that met with me. Carolyn campaigned. Otherwise she would have been president sooner.”

Swan and Pick also recalled these events, and the aftermath. “There was a Board meeting in the Campus Club one time, where people were essentially telling Tom, ‘Tom, you’ve screwed up and you’ve made a terrible mistake and you ought to back down.’ My impression was that Tom was willing to let the group do what it thought it should do, but he wasn’t going to do anything. He said, essentially, ‘if you want me to apologize, I’m not going to apologize.’ I don’t think anyone was quite asking that.”

“Tom and [Naomi Scheman] had represented as the AAUP’s views their own views. Rama was so embarrassed that he resigned, and then we had to persuade him to not resign. One of the national AAUP people was here, Pat Shaw. Whoever of the AAUP board could be gotten together [met] with Rama to try to convince him we needed him, and this was a reflection on Tom, not on him. He talked about ‘in the culture that I come from, I have been publicly shamed.’ Then Pat brought Tom into the meeting, and Tom finally offered, through gritted teeth, something of an apology to Rama for having harmed his reputation personally. It was a very contentious meeting. Carolyn was involved in getting the meeting organized to convince Rama to stay.”

Purple recalled that the problems within the UFA/AAUP had been building. “Rama would call me up and tell me his troubles with Tom. Tom would call me up and tell me his troubles with Rama. I would work with Carolyn Williams and a few others to figure out what was wrong.” The differences were primarily “personal philosophy, personal psychology. I don’t think, from a standpoint of cause, there was a big difference, other than that Tom is a committed union man. Rama was [of the view that] ‘a union is necessary only as a last-gasp emergency,’ and he was convinced that this was an emergency.” Purple agreed that this was a view shared by a significant number of faculty. “It was definitely the view shared by 51% of the faculty who voted. ‘We don’t need it now, because it isn’t necessary.’”

* * *

Chapter Seventeen

The Final Campaign and the Vote on Collective Bargaining

On January 24, Dempsey transmitted to Marshak the Tenure Subcommittee recommendations for two interpretations to Sullivan II (clarifying financial stringency and creating the expectation that when recurring funds were available, they would be added to base salaries). She requested him to forward them to regents for adoption.

Reagan wrote to Gray, Murthy, and Walsh at the end of January to respond to the request for tenure discussions; he asked Hasselmo to contact Gray to begin consultation, and said that recommendations to the Board should come from the administration if it deemed them “appropriate for Board consideration.”

The UFA/AAUP circulated a memo on January 27 entitled “Collective Bargaining: Strengthening Faculty Governance.” It said the union wanted the Senate and its committees to have more authority, take more initiative in decision-making, and have more faculty participation. It also said governance should be more open and representative, more responsive to faculty, and more ambitious in “asserting its proper governance role.” The UFA/AAUP as bargaining agent would strengthen governance. The faculty make the University work, so the faculty must design the policies. The Senate is not proactive but rather reacts to the administrative agenda, with insufficient time and perfunctory debate, creating at least the appearance of a “rubber stamp.” There is also a perception that faculty leaders come from a small pool of candidates, and that many FCC members become administrators. They recommended changes in the operation of the governance system. The crises and lack of direction by the administration opened “the University and particularly the faculty to an assault from some legislators, corporate consultants, Regents, and the governor,” which has demoralized the faculty. “It would be wise to prepare for more of the same,” so the faculty should have a bargaining agent.

The second UFA/AAUP memo to the faculty appeared the next day, entitled “Collective Bargaining and Faculty Salaries.” It maintained that using the top 30 research universities as a comparison, Minnesota salaries had been eroding since 1980. The administration promised to remedy the problem, but has not. The article contained tables which were said to illustrate the effect of unions on salaries at other institution, and that unionized schools have done as well or better than the top 30. Higher salaries required more state funds and a larger percentage of the budget directed to salaries; a union would lobby the legislature and negotiate the budget

allocation for salaries. Salaries could be merit-based plus cost-of-living, and the union would seek a “substantial merit component” if the faculty approved. (“**Union will improve faculty salaries**” (Minnesota Daily, January 31; the UFA/AAUP memo on faculty salaries appeared as an opinion page editorial).)

* * *

THE SHIVELY LETTER ON COLLECTIVE BARGAINING

The same day as the first AAUP/UFA memo, Arts, Sciences, and Engineering Provost Shively¹²³ wrote to the faculty in his units on January 27, as follows; his memo, and the response, are worth quoting. They represent almost the only organized exchange on the issue of unionization that took place on the campus.

“I have decided to take a bit of a chance and share with you my personal views on the advisability of unionizing. I use the phrase, ‘take a chance,’ because I know this is an issue on which faculty feel strongly, on both sides; I have good friends who favor a union, and who wants to lose good friends? ‘Taking a chance,’ also, in that I know there is a high degree of skepticism about anything an administrator says. Nonetheless, this issue is simply so important for the future of the University that now is one of those times when one must take chances.”

“I respect fully the views of those who favor a union, but I do not believe it would help the faculty or the University. Instead, I think it would be likely to lessen the very quality and excellence for which we all strive.”

“First, I do not believe -- and I do not think the experiences of other unionized schools suggest -- that a union would strengthen faculty influence on University policies. I can certainly see why one might think it would, given the events of this year. The campaign to gather cards, the sense of collective faculty resolve, and the mobilization of many University friends in the community was a dramatic set of events. But it is important to be clear just what happened here. It was the faculty’s threat to unionize, as an indicator of their desperation, that mobilized the community. Were the faculty actually to unionize, however, that tool would never again be available. Exactly those members of the community

¹²³It will be recalled that it was Shively’s appointment as provost that generated fierce faculty support, and the cohesiveness of the search committee that included Berscheid and Humphreys.

who were moved at the sight of faculty driven to a desperate step would be appalled if now, having won the day, the faculty actually went ahead and organized a union. One powerful community figure said at the time, 'this was the faculty's noblest hour. They took the only tool remaining to them, even though it was potentially destructive for them, and they used it. This was the equivalent of the Chinese peasants who flooded their fields to repel the Japanese.' How might this person react if the farmers decided, near the end of the war, to flood their fields Permanently?"

"More generally, I do not believe a union gives faculty extra powers, except the power to strike. With the exception of that one dangerous tool, a union can only do what faculty leadership have always done -- negotiate with the administration over issues. The whole process becomes more formal and legalistic, but I do not believe the power relations of faculty vis-à-vis administrators would be enhanced under collective bargaining."

"Even if I do not believe a union would improve the faculty's position, why should I be against trying it out? What is there to lose? The main problems I see stem from a basic incompatibility of the industrial model of a union, and the more decentralized, individualistic organization that works best for a research university. Our state's public employees' relations law pushes unions in Minnesota very much towards an industrial model. What I fear is a heightened emphasis on standardized work-rules, with a decrease in our ability to accommodate individual faculty. I do not think a corporate model is a particularly good one for our University, and that holds just as much for 'employee' organization as it does for academic leadership."

"Over the last several months many things have turned in the right direction for us. Our new president, Mark Yudof, knows from experience what an excellent research university can be, and how to make it better. The administration last year -- prior to the union's election petition -- properly made getting faculty salaries up to competitive levels its highest priority, and the first signs from the governor and state legislature are that this message has received a lot of support. At the same time excellence at the University -- and support for the investment that requires -- are receiving unprecedented public support. The influence of faculty in University decision-making has grown as a result of the crises we have been through. What we need now is flexibility to build on these advantages, to achieve the excellence we all want."

“I would really rather not have felt a need to write this letter. The choice of whether to unionize is a faculty decision, and I currently serve as an administrator. But I also have been a member of this faculty for twenty-six years. I look forward to returning to a full-time faculty role here at some time in the future, and I care deeply about what sort of faculty I will return to. While I disagree with the supporters of a union, I certainly do not denigrate their ideas. There are strong arguments on both sides. All I urge is that everyone weigh the arguments, and make certain to participate in the voting.”

Shively later commented that the reason he wrote this letter to his colleagues was because there appeared to be no organized group presenting views in opposition to unionization.

Bloomfield noticed this as well. “One of the things that really struck me about this was how little opposition there was to the union. Outspoken opposition. Among the faculty. The administrators in general were doing a very neutral job; they were all saying ‘vote’ and we all knew what that meant, because they assumed, as we assumed, that a majority of faculty didn’t want the union. But I was struck that until the regents’ professors, at the very end, changed their mind, there was almost no thoughtful argumentation about what a union might mean. We [FCC] talked about it a little bit, as to how a union and regular faculty governance could co-exist, but nobody seemed willing to [organize opposition]. Virginia [Gray] and I took vows of chastity on this one. But even if we hadn’t, I doubt that either of us would have been willing to speak up about it. The pro-union folks I thought behaved very well, within the bounds of propriety, but they were partisan. I guess what mostly annoyed me was that they got irked at other people for being partisan; that’s the sort of thing I suppose you expect in these kinds of battles, but it’s not very faculty-like.”

Gray, asked if she thought Shively’s message had any effect, responded and made an observation similar to that of Bloomfield. “I think all of those [communications] had an effect. The situation was that there was a silence on one side. There was all this stuff coming out from the union. At the beginning of the year, I said I didn’t think the union could be defeated without an organization on the other side, but there wasn’t such an organization. Various people met and tried to start one, but they never got off the ground. That meant there was a vacuum, and then at the end all of a sudden people came out of the woodwork and wrote emails and said ‘I don’t think a union is a good idea,’ for these reasons. Then people felt like they had permission to say ‘I didn’t think it was a good idea, either, and now have a reason why I didn’t

think that.”

A few days later, some of Shively’s long-time colleagues -- friends, in several cases -- responded to his message to the faculty.

“In his January 27th e-mail letter, Provost Phil Shively expressed his personal views on collective bargaining. We have accepted his invitation to use the faculty list-server to respond.”

“As some of Phil’s friends who favor collective bargaining at this time, we realize that many of his remarks are a matter of opinion. However, there are places in his message where we challenge the impression created by his choice of words.”

“He says that a collective bargaining association can only do what faculty governance already does, that is negotiate with the administration. However faculty governance does not negotiate. The administration and the regents consult with the Senate and its committees. They are under no obligation to accept or follow the recommendations of the Senate. In fact, faculty governance exists at the pleasure of the Regents and is even paid for by them which makes it easy for them to bypass and ignore it when they choose.”

“In the past few years we have seen many examples where the consultative process has been ignored or by-passed - tenure code reform, the presidential search committee, bi-weekly payroll, graduate student fringe benefit rate, etc.”

“Under Minnesota labor law there are two roles for collective bargaining - ‘meet and negotiate’ and ‘meet and confer.’ The collective bargaining association (the AAUP) will have the responsibility of negotiation on very specific issues concerning salary and conditions of employment while consultation - on the myriad issues of educational policy, curriculum, peer evaluation, and judicial committee procedures - will still be the function of faculty governance. If there are differences between governance and the administration over issues that impact the faculty, these issues can then be negotiated. In this way the collective bargaining association can support and empower faculty governance.”

“Furthermore, a collective bargaining association does not have to follow the ‘industrial model’ he implies even under Minnesota law. It is our own administration that has been pushing the corporate model he says will not be good for the University (and we strongly agree!). Members of our administration refer to our students as ‘customers’ and it is they who are pushing the corporate-style re-engineering in the AHC.”

“We will not be the first professional organization to engage in collective bargaining by inventing a model

appropriate to our work and our institution. Consider, for example, orchestra musicians, actors and screenwriters, journalists and airline pilots. We hope that Phil will carefully read the materials we have produced which outline a model intended to honor and strengthen the basic values of a great research university including collegial governance and merit pay. If Phil has suggestions for improving our proposals, we would like to hear them.”

“Many universities such as Cincinnati, Massachusetts, Hawaii, Kent State, Connecticut, and Delaware have collective bargaining contracts. Faculty will find in many of these contracts a strong commitment to governance and preservation of academic traditions and standards.”

**Roberta Humphreys, Astronomy
Tom Clayton, English Language & Literature
Sara Evans, History
Richard McGeehee, Math
Robert Sloan, Geology**

With respect to a senior administrative officer taking a position on unionization, Gorham was not angry at Shively. “I don’t think Phil had made any vow of chastity. I think he was opposed from the beginning, and he was forthright in saying so. I respect him for it. Actually, I felt that way all along, but it was reinforced for me when Phil came up afterwards and thanked me for the efforts I’d made on behalf of unionization. He said ‘the effort had to be made, and I thank you for doing it effectively.’ I don’t think he lost his virginity there; I think he was an honest broker from the start.”

* * *

Williams reported on January 27 that she had spoken with the City Pages reporter doing the article on the AHC and the tenure debate. “He had originally planned for the story to run by the end of January. Unfortunately, his newest estimate is the end of February, given the amount of research and background checking that he needs to do. He did not know of the election dates, and did not think he would have the story completed before then -- too bad.”

“Professors should unionize for good of state” (Minnesota Daily, January 30, editorial by Alfred Aeppli (Mathematics)). The issue of what would happen to clinical faculty led to the attempt to abolish tenure for the entire University. The administration first supported abolition, then changed its mind, then the regents hired their own lawyers “against the administration.” Sullivan II is “dismissal regulations,” not a tenure code, and one-fifth of the faculty must pass post-tenure review each year or face dismissal [this was an erroneous characterization of Sullivan

II]. The discipline and salary reduction provisions would harm academic freedom, and Sullivan II allows “financial stringency” and local retrenchment. If Minnesota wants to be a university, someone must defend faculty numbers and salaries; the faculty will do so, and must be united if they are to be heard. The UFA/AAUP is ready to “provide the necessary leadership.”

Murthy and Walsh wrote to Hasselmo (with copies to the regents) on January 23. They said the administration “waged an active, aggressive, and anti-union campaign” in the AHC election, that faculty were intimidated, and that the campaign “created and exacerbated divisions within the faculty.” The UFA/AAUP had objected to the BMS, and there would be a hearing in March; the BMS had received “subpoena requests for you” and Cerra, Furcht, Marshak, Sullivan, Regents Reagan, Spence, Keffeler, and Kim, and others. The hearing would show that the University violated the law, but they said “this is not a good time for this to be called to the attention of the public and the legislature,” and that they would withdraw the subpoena requests and objections if the administration “will commit to a position of neutrality” in the election. The regents had already done so, and the University was neutral in the past; that provided “the best atmosphere in which to conduct a free and fair election.”

Hasselmo responded a week later. He said he accepted the sincerity of their proposal, but that the regents and administration had followed the law in the union elections and would do so in the one that was scheduled. He noted that the UFA attorney repeatedly “has proposed to ‘trade’ various unfair election practices charges for an undefined promise of ‘neutrality’ by University officials” and to ‘trade’ charges for UFA advantages in the election. This was inappropriate, Hasselmo maintained: individuals did not “intimidate faculty” or violate the law, he would not “‘plea bargain’” on charges that individuals inappropriately affected the AHC election, the University will go to a hearing on the charges if the UFA wishes, the “threat to subpoena these individuals” was “unacceptable,” and he and Regent Reagan made clear the administration and regental position that there “will be no threats, intimidation, or other improper influences” on faculty.

At the end of January, Gray and Bloomfield (as FCC chair and vice chair) emailed to all faculty about the “Contributions of Faculty Governance.” They did not like the belittling of past and potential contributions of governance in the union position papers, and said the Senate and its committees “played an active and crucial role” in the tenure debate. They acknowledged that the union effort stopped the Morris tenure proposal from being adopted by the regents, but the results since then had been the result of governance actions. They listed important governance activities and said governance had been “strong and effective” at the University, and there was no evidence

it was less effective than other ways to represent faculty. They contended there was broad participation in governance, and that its influence was often unseen. They recognized there was a need to be more active in explaining faculty work.

Purple wrote to the AAUP leadership about the memo. "Let's see, Gray and Bloomfield seem to have put themselves into a classical paradox. Do they say collegial governance is great, and they don't want any help from the faculty in strengthening it, or do they say they don't want to see it strengthened period?! Or is it they object to it being put on legally sound grounds of strength?" He urged that any reply should say that "we applaud their trying, but trying to chew without teeth can be difficult" and cited a number of issues where faculty objections to a course of action were overridden. "All AAUP/UFA is attempting to do is restore teeth to the worn down gums of collective bargaining."

The same day as the Gray/Bloomfield email, there came an all-faculty email from Hasselmo to the faculty. He said the union election was "critical . . . to the future of faculty governance" and to all units. He said each faculty member will have make a personal judgment, and he asked all to vote. He said the faculty governance system had served the University well, would continue to do so, and had done so with tenure. He maintained that a union would "adversely affect not only the faculty's relationship with the institution, but the future standing of the University," and said that no one knew how peers would respond to a union at a top 30 research university.

This action by Hasselmo angered Gorham -- unlike his reaction to Shively's letter. "I can put my finger on the thing that upset me most, and that was when Nils, after saying that the administration would remain neutral on the whole issue, came out with every administrator, including himself, speaking strongly against unionization, but divorcing themselves from their status as administrators. It seemed to me that was speaking with a forked tongue. There is no question that his claim to impartiality was broken by those statements. When he made it finally himself, with that written letter, that seemed to me not to be the Nils I knew, the straight-shooter. That seemed to me to be dirty pool. If he'd said initially, 'I oppose unionization and I'm going to urge my administrators to oppose it, too,' we could have accepted that, and said 'OK, that's your stand, and we oppose it.' But for him to say he was going to be impartial, and then prove to be extremely partial, along with every one of his administrators, seemed to me to be breaking trust with the faculty. I've never felt quite the same about Nils since he did that."

FCC met on January 30 -- the day that the all-faculty emails from Gray/Bloomfield and from Hasselmo were sent. Gray reported that Reagan had accepted the proposal to negotiate on

tenure and that amendments were to come through the administration. She also said the situation with respect to the UFA/AAUP was in disarray; Sara Evans said it would be cleared up, and that the majority of those who favored collective bargaining thought strong faculty governance was needed, and that the sentiments of the Gray/Bloomfield email needed support. Morrison told FCC that if a union were elected, the functions of the Faculty Senate, and the Faculty Affairs committee, would become the purview of the union, while the functions of the University Senate (educational policy, etc.) would remain in the Senate. The interplay of the union and the regents vis-à-vis the future of the Senate was discussed. Carl Adams¹²⁴ pointed out that Reagan's letter departed from his understanding of the structure; Hasselmo, as chair of the Faculty Senate, receives actions and transmits them to the Board, and the "administration" has no formal role to play. Reagan, however, said the administration is to decide if the amendments should come to the Board. FCC sentiment, however, was that Reagan's letter was positive.

Walsh recalled that "AAUP/UFA had prepared a detailed plan for how the future AAUP bargaining agent would interact with faculty governance. The basic principle of 'faculty governance with teeth' remained our policy. By this time we had learned that other faculties with collective bargaining did this by contract terms which obliged boards and administration to consult with existing governance. We intended to do the same. There was a lot of unnecessary panic among some faculty leaders on this question."

Hasselmo joined the FCC meeting and urged faculty to vote in the union election; he affirmed that the administration and regents would remain neutral, but in the spirit of the right of individuals to express their views, he had done so. He also said the administration was reviewing the Faculty Senate amendments and would work with Gray on evaluating them.

FCC also took up an Alumni Association proposal on changing the method of regent selection, including giving the Governor and Foundation/Alumni Association larger roles in appointing the regent selection advisory committee and eliminating constituency-based seats, but with final election remaining the responsibility of the legislature.¹²⁵ FCC endorsed the proposal.

¹²⁴FCC members are elected for 3-year terms. Carl Adams had served as chair his second year, so remained on FCC during 1996-97, even though he no longer served as chair.

¹²⁵Under the Minnesota constitution, the legislature elects the regents. There were, at this point and thereafter, a number of proposals made to the legislature to change the manner in which regents were selected. Most of these proposals were made as a result of what the authors saw as unacceptable performance by the regents during the tenure debate.

For example, Swan reported to FCC in early February that one member of the House of Representatives was proposing legislation for changes in the composition and selection of the Board of regents, including that the "Board must develop procedures for removal of members," quadrennial external

AHC provost Cerra and AHC provostal FCC representatives also joined FCC; Cerra commented “thank God that’s over” with respect to CSC Index and re-engineering. Cerra explained how he was structuring change in the AHC, and said he had met with CSC Index to give them an appraisal; he told FCC he had said, apropos transplanting business management into education and research, that “it won’t work, it can’t work, it’s the wrong philosophy, in the wrong place, at the wrong time, it shouldn’t work.”

One response to the Gray/Bloomfield email came from Purple, who wanted to know if the message was an FCC position or just from the two, and if FCC, he wanted a roll call vote. He said their letter was “paradoxical”: the system governance works and doesn’t need faculty help? Or do they not want it any stronger? Or would they object to it having legal strength through collective bargaining? Or were are they just opposed to a union? He said the UFA/AAUP was not belittling governance, and a union would strengthen it. The current administration had a corporate, one-sided interpretation of “consultation” and saw it as an “irritating need to inform, listen, and then do what it had planned to do anyway.” Previous administrations saw as consultation as a collegial, almost legal contract. A union would be evolutionary, not revolutionary. Purple cited a number of issues where he believed governance had been ineffective, and “then there is the ‘tenure question’! Yes, we were technically ‘consulted,’ but to derail the Regents’ plan we had to threaten revolution, and to this day it is not behind us.”

The AAUP leadership drafted a statement to the faculty about the positive regental response to the proposal to negotiate. As a minor change, Humphreys urged that it include the names of the AAUP Executive Committee (which it did). At the end of January the four AAUP leaders (Murthy, Williams, Gudeman, Walsh) reported to the faculty that “we are pleased to report that the Regents have at last made an initial response to the joint AAUP/UFA/FCC proposal for discussions concerning tenure.” It noted that the proposal came originally from the AAUP/UFA in November, that the cease and desist order could be lifted for tenure discussions, and that “this offer reflected our firm belief that settling the issue in a manner that protects academic freedom, affirms due process, and involves the active participation of faculty in creating our tenure code is in our best interests. We reaffirm our continuing collaboration with the Faculty Senate on this important task, and regret any misunderstanding from a draft memorandum circulated to the faculty that incorrectly characterized the position of the Chair of FCC.”

On January 31 the BMS dismissed a University request for a cease and desist order

reviews, sitting members must go through the selection process for reappointment, and that there would be a new regent selection group (to include one faculty member).

(asking the BMS to order the UFA to stop labeling itself UFA/AAUP) because an investigation would delay an election, but the BMS noted the continued UFA reference to itself by a different name than the one under which it filed the petition and said the ballot would reflect the name UFA only.

Gray wrote to all the faculty on February 3 to “remind you of the important union election coming up next week in Arts, Sciences, and Engineering, Agriculture, and Professional Studies and to urge you to vote in that election. As a political scientist, I often say that ‘the world is run by those who show up.’ This election is an example of that fundamental principle: if you don't show up to vote, you are letting others decide the future for you. The election outcome is decided by a majority of those voting, not a majority of the faculty in the unit. Hence, it is critical that as many faculty members as possible vote.” She reminded them that “as faculty members we have important rights and responsibilities. In this instance you have the right to vote on a big change at the University and the responsibility to exercise that right. Some faculty members have told me that they are ambivalent about unionization or not informed enough to vote.” She urged her colleagues to “use the next week to arm yourself with information so that you can comfortably cast a vote.”

There were a number of newspaper articles in early February.

“Faculty, regents to consult on tenure” (Minnesota Daily, February 3). The regents agreed to accept the invitation from FCC and UFA/AAUP to discuss tenure before the union elections. The article also reported on, and cited, the Hasselmo letter to Murthy and Walsh “chastising them for offering to drop charges of unfair election practices . . . in exchange for a neutral stance” on the election.” It also reported that the University “filed a motion with the [BMS] that the AAUP is illegally associating itself with the union drive” and that the BMS has twice rejected a request that it be permitted to do so. The General Counsel said ““the campaign is misleading; the voters need to know who they’re voting for.”” Walsh said the University was ““trying to pretend”” the affiliation did not exist.

“Fennell Evans a quick-acting catalyst” (Pioneer Press, February 3). Primarily about his professional work, the article described Evans as a “key member” of the Gang of 19 that “eventually drove the school’s regents to abort their controversial effort last fall to rewrite” tenure. Berscheid said Evans’s organizational skills had been critical and that he had been one of the first to understand how to use of email effectively. Evans and Berscheid wrote the questions for the poll of faculty about the regents; Evans said the regents were trying to fix problems “by figuring out how to fire faculty” and that the “regents mishandled the tenure controversy badly,”

harming efforts to recruit and keep top talent.

“AAUP gives view on tenure reform” (Minnesota Daily, February 4). The AAUP’s Mary Burgan visited the campus the day before and held a press conference; she said the faculty had already achieved a partial victory with the cease and desist order: “‘We’ve stopped them in their tracks.’” Murthy said that if the union is not selected, the AAUP would continue as “an outside lobbying agent for faculty interests.”

“Professional unions are inevitable trend” (Minnesota Daily, February 4, editorial by Kris Davidson, Physics). Faculty status has been declining nationally recently, and faster in 1996 in Minnesota, with managers getting higher salaries and professional power being reduced. A professional organization was required to take back power and status; if there are no unions at other universities, it is because the faculty are not faced with “comparably hostile, inept administrators and regents.” Union supporters are not romantic, but see a union as necessary for the survival of “professional self-esteem”; the faculty should organize now, not later.

“Bargaining unit will protect academic freedom” (Minnesota Daily, February 5, opinion by Committee on Constitutional and Policy Issues, UFA/AAUP (including Humphreys, Purple, Rabinowitz, Swan)). They wrote that tenure may not be enough to protect academic freedom, and reported on letter from a New York law firm requesting information on a faculty member and that the General Counsel would comply with the request even though it was “ominous.” They said state law did not protect public employees, the General Counsel protects the University, and individuals only if University and individual interests correspond. The problem arises with research that is contrary to what a major industry wants, and the industry attacks a faculty member. This is not an isolated case, and collective bargaining can protect against this kind of harassment.

“Eerie silence on important union questions” (Minnesota Daily, February 6, opinion piece by Senior Vice President Marshak). If the faculty voted not to unionize, Minnesota would remain similar to other top-30 institutions “in using shared governance as our basic decision-making process”; if they voted to unionize, the University would explore the possibility of the co-existence of bargaining and faculty governance. He expressed surprise that there had been little discussion of why other first-rate institutions did not have collective bargaining, of experience at other institutions vis-à-vis shared governance and bargaining, of the effect of bargaining on public funding and private giving, and on the cost of a union and the possibility and effects of a strike. Everyone should discuss these issues before the election is held.

Marshak related that “there was a whole spectrum of faculty opinion on the union,

ranging from the very pro-union people -- Tom [Walsh], people like Hy Berman [labor historian, member of the Gang of 19] -- to the people who were using the union, using the cease and desist order, but who had no reason to support the union. We in the administration would remark occasionally about where various people were on this spectrum, and some people turned up in places that were a little surprising. People moved, too. We were always surprised by certain people, surprised and a little shocked by some who moved more towards the union side. That worried us. People like Craig [Swan]. There was something called the UMFA, that was the group in the '70s [that opposed the union]. When some of the UMFA people wound up in the union, as real union supporters, that was cause for worry. We didn't really understand why that happened. We were worried about that. We knew Tom, and we knew Hy. That didn't bother any of us. But we were worried when the non-union people of the '70s wound up in the union. Gorham was another one; we didn't understand why Gorham was such a union supporter.”

Walsh said that “Roberta Humphreys and I did a careful survey of NRC-ranked departments at the University and compared them with departments in institutions with collective bargaining. This appeared in the Daily and showed clearly that in about half of the ranked programs at Minnesota we were outranked by departments in collective bargaining universities. This was the case despite the small number of such universities. This was plain evidence against the often-repeated notion that collective bargaining hurts quality.”

On February 5, Professor Jay Goldman (Math) sent an email to Arts, Sciences, and Engineering faculty saying the Gray/Bloomfield email on governance made extraordinary claims, and he argued (in language designed to provoke) that their claims were inaccurate and misleading. He said the regents had ignored the faculty, and to prevent that from occurring, the faculty needed collective bargaining. One leader of the UFA/AAUP quickly disclaimed any union endorsement of the “diatribe” and said it would upset the efforts of FCC/UFA to negotiate with the regents on tenure, and that the Committee of 8 (the four governance and four UFA/AAUP members) had been “unanimously and enthusiastically” supported.

FCC met on the next day and concluded that while it would not respond to Goldman’s message, one statement needed a correction: FCC did not appoint its own members. Gray reported the negotiating team was scheduled to meet with the administration on the Faculty Senate amendments to Sullivan II after the election. Feeney suggested, and the committee concurred, that the team was working well and probably should not be changed whether or not there is a union. (It is Walsh’s view that “the Senate has never come to grips with the circular way FCC is chosen. The faculty governance structure went so far off the rails in the tenure war

that it needed examination. That never happened.”)

Professor Bernard Bachrach (History) responded to Goldman by email to the Arts, Sciences, and Engineering faculty, and said a union was not the answer to problems, and that the faculty should give the new president and regents the opportunity to show goodwill; if they do not live up to expectations, the faculty will be completely alienated and “such a vicious adversary atmosphere will be created . . . that it would take a half-century or more to revive the University.” The faculty should reject a union now; the new president and regents are on probation until “they erase all memory of the recent debacle. If this group should fail there will [be] time enough to go to war.”

Research Vice President Mark Brenner sent an email to all faculty responding to the statement that collective bargaining would “better protect academic freedom and faculty members against legal harassment” than would the University. He said the University had “vigorously and successfully” protected the faculty, there is consultation between the University and faculty about the release of information, and the University had worked on behalf of faculty in the courts as well as for changes in the data privacy laws so it could better protect faculty, but the University must comply with the law with respect to public information.

* * *

THE SECOND REGENTS’ PROFESSORS’ MESSAGE

The morning of February 7, the regents’ professors sent an all-faculty email saying the University’s “future looks brighter than it has for years” with the selection of Mark Yudof as president and turnover on the Board, and more understanding of the faculty’s role and the University’s importance to the state. They said “a sensible resolution of the tenure code issues is imminent.” Faculty unionization would constrain the new president in improving the faculty situation, endanger the new public support for the faculty, and extend the tenure controversy through the prolonged and time-consuming negotiation of a contract that would be necessary, and increase uncertainty for faculty in their careers. “For these reasons, we urge you to vote NO on the question of authorizing the UFA/AAUP to become our collective bargaining agent at this time.” There would be time to reconsider the issue if changes were not positive. [The letter had clearly been released earlier, because the newspapers had articles about it the same day.]

According to Berscheid and Fennell Evans, retired Regents’ Professor John Turner played a significant role in the second regents’ professors’ letter. Evans recalled that “he and I got together at lunch. He invited me over to his house for

lunch; he wrote the letter, and we iterated it back and forth. Turner and I wrote the first draft, and then Ellen and I worked on it.”

Berscheid said she hoped the regents’ professors would stay silent, but that although she did not believe a union was the best alternative at that time, she hoped for a very close vote that would send a message to the Board. But it became apparent to us that a number of regents’ professors were strongly opposed to a union and wanted to speak out. Since they had made their opposition to a union very clear to her when she was recruiting their support for the first letter calling for the faculty to sign cards, she felt obliged to participate when Fennell called up on a Saturday morning and said ‘how does this sound?’ Forty hours later. . . .”

Purple had stronger language to describe Turner’s role. “The guy that really killed us is an old mastermind on the union vote, who got the regents’ professors’ letter out. You know who did that? Go talk to John Turner. I was on John’s side in the last union election. Every time I’ve been on the opposite side of an issue from John Turner, I’ve lost. John Turner is the most effective strategist and organizer of any faculty member I’ve ever met. You have to interview John on where that letter came from. We even heard that he walked in on one senile regents’ professor who didn’t even know what he was signing; he went into a nursing home and got him to sign. I don’t know if that’s true. John engineered that. That’s what killed us.”

“Elite U regents professors sign anti-unionizing letter” (*Pioneer Press*, February 7). The article reported that Berscheid had wanted not to be involved, but she and 24 other current and former regents’ professors signed a letter opposing a union. She said the faculty were now optimistic and a union would spoil opportunities. The factors involved (a new president, regental turnover, greater appreciation of the faculty role, resolution of the tenure crisis) “marks the possibility of a new beginning.” The article said the “eyes of higher education officials across the country” will be on the University, as the first major research university to have a faculty union. The three most responsible for pushing tenure changes -- Brody, Keffeler, Kelso -- were no longer in their positions [Kelso had changed legislative committees], the Governor was supporting new president Yudof, and faculty compensation was on the agenda for the legislature, administration, and Governor. Berscheid said the regents’ professors’ earlier statement urging faculty to sign union cards was to “thwart the regents, not to join a union” and to gain time. She also said the regents’ professors were not saying never join a union, but that the faculty should wait two years and see if things had changed.

“Most regents professors flip-flop on issue of faculty union at ‘U’“ (Star-Tribune, February 7). The article reported on the letter from 15 of the 20 regents’ professors opposing a union. The article quoted Berscheid and the earlier support of the regents’ professors for signing union authorizations: “Quite frankly, we were playing for time’ in September, . . . ‘and, fortunately, it worked.” Murthy expressed disappointment, but said “they are a little bit out of it compared to grass-roots faculty members, who would be much more affected by the misdeeds of the Board of Regents.” The article quoted Regents’ Professor Eville Gorham as disagreeing with his colleagues, and noted the changed circumstances that had led to the change of views by the regents’ professors.

One faculty member said that “the vote was so close -- I think the regents’ professors took leadership, they were a respected group, I think that did have a fair amount to do with the general faculty. [One colleague] was furious with that flip-flop. He wrote a letter to the Daily or the [Star-Tribune] and said the regents’ professors are not like the rest of us. [He] saw that as a real betrayal, particularly knowing how much Ellen [Berscheid] had been involved.”

Not everyone agreed that the regents’ professors had flip-flopped, but there was also no agreement on the impact of their letter.

In Morrison’s opinion, “it was always clear, from that first letter, that they wanted it to gain time, not to gain a union. I don’t think they were being hypocritical. They wanted to gain time, to do other things to stop this, and if all of the other things failed, then. . . . But signing cards was the way to stop the regents on the 11th of October, and they were quite willing to do that.”

“In the end,” Gray said, “I think they played a critical role in helping to defeat the union, because people do respect them. There were other groups of senior people who wrote letters at the end, but I think the regents’ professors were the most effective.”

Asked if he believed they changed their minds, Bloomfield said “I don’t think so. I think they signed union cards the reason the rest of us did, initially -- to stop the juggernaut. Then once it appeared that things were changing, you make another decision about what’s best.” He also thought the letter made a difference. “I don’t know whether their initial one would have made any difference; people would have signed whether they came out in favor of it. Their statement at the end certainly did. With that one exception, there was almost no statement that the union was not necessarily the best thing for us.”

Was anyone listening to them? "I think so. It would have had to have been something beyond ad hominem, not just that the regents' professors say this. But they also gave some reasons. I think the regents' professors are in general a respected bunch of people among the faculty, and they do get listened to. When you think about the margin of the vote, the regents' professors themselves, had they voted unanimously for or against, would have changed the election result."

Feeney said that "they did what they thought they had to do. But I think what they did eroded their credibility. When you say 'rah, go sign the union cards!' what you're doing is telling people to take an action they may not want to do, but they're going to do it because it will stop something. It's like 'we're going to use the process.' I think people would interpret it as saying there were a bunch of regents' professors who were pro-union. Some of them were, some of them weren't."

"I don't think the regents' professors did themselves any good. If you looked at the stuff that Ellen [Berscheid] had said, and had been quoted in the newspaper saying, it was one of these things, 'get out, get your card signed!' And later, 'we don't want a union, we don't want anything to do with that.'"

When it was suggested that Berscheid probably never had any intention of voting for a union, if there were some resolution to the tenure crisis, but was fully prepared to do so if the Board had adopted anything like the Morris proposal, Feeney agreed. "A number of us would have been. If things had really gotten to the point where the Morris code was going to be shoved down our throats, I would have voted for a union. To me, that would have been the consummate development that said faculty governance hasn't got any influence on those people."

Feeney had an entirely different view of the impact of the two letters from the regents' professors. "I think they influenced both ways. But as I said, you have to be careful when you take a group that is highly scholarly and turn them into a political action group. I think if you read between the lines, and read that the reason you were signing that card in the first place wasn't because you were pro-union. I'm not sure how many people [realized that], or some of the newspaper articles that followed it -- it was more 'regents' professors tell people to sign the cards.' I think they did have a big influence, because if the regents' professors had come out and said 'don't sign the cards,' there would have been a number of people who would have said 'these are long-term veterans of the institution, so we shouldn't do it.'"

As for the impact of their opposition to the union at the end, Feeney surmised that the impact was "a hell of a lot less than the first go-round. Did they prompt people to sign a card who wouldn't have ordinarily signed a card? I think the

answer is yes. Did they make a big difference in the union vote? Would it have been close had they not said anything? I don't know. If I had to bet, I'd say it would have changed probably 50 votes. We're not talking political landslides either way. If the regents' professors had come out in favor of the union, would there have been a 500-vote margin in favor? No way. It could have thrown a few votes one way or the other."

Gorham reported that he was "sort of shattered" by the letter from the regents' professors, "because I had thought at our first meeting we had agreed not to take a stand on unionization. At the meeting when we agreed to urge people to sign cards. I thought we agreed to sign cards, but that we would not take a stand directly on unionization, because we were split."

Gorham affirmed that the intentions of the regent's professors, in September, had been quite limited. "All they urged was that cards be signed as a tactical maneuver to stop the regents." He recalled that he had participated in the drafting of the original letter. "That was my perception: that we really wanted to stop the regents, and this was the mechanism to do it. But at that meeting, I thought we had agreed we would not take a stand on unionization itself, because we were split. I had made a strong pitch for unionization at that meeting, and others had disagreed violently with me. So I thought the regents' professors would not issue a statement of the kind they did in the second letter. I don't fault them for doing it, if it's 19-1 or 25-1 or whatever; it's perfectly legitimate. What did upset me somewhat was the fact that nobody communicated to me at all about this."

Gorham was baffled in particular by the behavior of one of his regents' professor colleagues. "At least John Chipman might have called me. John was a puzzle in this whole thing. He was part of the Gang of 19, he kept in with the group of UFA and AAUP, and was talking about unionization -- and then all of a sudden he came out against it. When most of us thought he was on our side. I found that very, very strange to understand. And without really telling us. He came out with a strong statement against unionization without ever saying 'well, folks, I've changed my mind, I don't think this is a good idea, I'm going to come out on the other side.' He never really told us. I believe that he and someone else wrote a letter to the Daily saying that unionization would be a bad thing. It was a surprise. We had thought he was part of it. And I had been calling him on the phone, with suggestions for things we might do and things we might say, and so on. It was a big surprise to me."

Berscheid's view was unequivocal. "You have to remember that at the AAUP meeting in the fall, people made it

very clear to Rama and the union leadership that they were signing cards only to get a cease and desist order. It was made very clear. People stood up, over and over throughout, and said 'you must understand: I'll sign a card, I'm not for a union.'"

She and Fennell Evans also explained why they followed the path they did. According to Evans, "when it began to crystallize that there was going to be a vote, it became clear that we were looking at a situation that would be very divisive, and divide all kinds of people. Roberta Humphreys, who had been an extraordinary ally through all of this, ended up on the other side from us."

Berscheid recalled that originally, "I thought a union was far preferable to putting up with those regents. But then, when things started to break, I thought the faculty would do better without a union." And it was not the Sullivan proposals that made her change her mind. "It was what was happening on the Board of Regents, the change of tone. I was for a union up until the point at which the Board of Regents backed down. And Jean Keffeler resigned."

Evans also pointed out that in addition to the evolving Sullivan proposal, "at this point the Alumni Association had swung in, and the Foundation had swung in. There were a lot of things that were happening. It became clear to both of us that we'd be better off to take a chance without having a union, and see what the heck a new president could do, and what would happen as a consequence of the Board of Regents backing down."

"And," Berscheid added, "if that didn't pan out satisfactorily, we could always collect cards again and join a union. But at that point, it just didn't seem reasonable."

Evans and Turner then "wrote the first draft of the letter that the regents' professors signed. The week before the election." He also partly answered Gorham's puzzlement at Chipman's action: Evans said that Chipman signed the letter "because I got him to sign it. I called him." Chipman had changed his mind.

Berscheid concluded that "again, we were just responding to a change in our situation; it now appeared that a union was no longer the better alternative." And it was more the Board than Sullivan. "It was the ignorant and malevolent attitude of that Board. That was a nasty Board. The fact that the alumni and the Foundation stood up, and the newspapers, especially the Star-Tribune, who had the courage to change their stance mid-stream -- I just felt then that there was so much public opinion against them that the Board would have to change."

Berscheid said that "I'm sure people watching us thought we were amoral in our sliding and turning and twisting. But we just pragmatically kept our eyes on the goal

and kept trying to move toward it, which at that point meant defeating the union, which was painful, because so many people we respected were for the union.” First it had been to defeat the Board to preserve tenure and stop the decline of the University, and then it was to defeat the union, to stop the decline of the University. Evans thought that “the union had won that election. There are about 15 very small ways we actually snatched victory from them.”

In Evans’s view, one of them was the regents’ professors’ letter. Berscheid took a contrary view. “I don’t agree with Fennell on that, by the way. We strongly disagree. If the regents’ professors had not written that letter, I believe there would have been a much stronger vote against the union. I think people were mad, and the question Fennell and I had was, ‘are they going to vote their gut and their anger, or are they going to vote their mind and their rational analysis of the situation?’ I think when the regents’ professors came out with their letter asking people not to vote for the union, many people thought that other people were going to be swayed, and thus they themselves had the luxury of voting their anger and yet not end up burdened with a union. I really think that’s why it was so close, but that’s my view as a psychologist and theorist of emotion -- people usually look for excuses to follow their gut, not their minds.”

“So we really disagree on the effect of that letter. Fennell thought there should be a letter, and so did many regents’ professors. I didn’t; I didn’t think it would be helpful to the anti-union effort. I don’t think it swayed anybody against the union, if you want to know the truth. I think it just allowed a lot of people to vote for the union, which turned out to be OK in that we got the desired close vote.”

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“Organizer sees power balance shift” (Pioneer Press, February 7). The article described Sara Evans (FCC member, AAUP Executive Committee) as a social activist and pro-union, “a southern belle who is really a steel magnolia.” Evans said it was time for faculty “to take the gloves off, face facts about the shifting balance of power at the university and vote” for a union. With the growth of the infrastructure at the University, no one is looking out for the interests of the faculty. Evans said the union would not be stereotypical, and would retain the Senate structure.¹²⁶

There was more debate about unionization in the press.

“Lots of baggage comes with a union [;] A fork in the road to success” (Minnesota

¹²⁶Sara Evans was subsequently elected chair of FCC, for 1998-99.

Daily, February 7, editorial by Fogelman and four other senior faculty). The claim the union would get higher salaries was not accurate for first-rate institutions; state universities with unions had not received higher salaries than the University. The legislature was the major player in salary funding, not just the administration; a faculty union would lead to treatment of the faculty as “just another group of teachers.” It was doubtful there would be merit salary increases; negotiations would take a long time; faculty influence on policy would be reduced, not increased, because of state law; faculty would not devote time to union efforts, so control would fall into the hands of a few; the present increased support for University came from a fear of union rigidity that would lead to decline; a union would be seen as a “retrograde step” by faculty being recruited; and “unionization is the other side of the corporatization coin.”

“Union will be better than Faculty Senate” (Minnesota Daily, February 7, editorial by Sara Evans, Humphreys, Murthy, Purple, Scheman, other senior faculty). Governance representation of faculty concerns has been ignored, and the governance system only has influence, not power, and influence is undemocratic. The regents and administration must respond to local and national pressures to corporatize, and the Tenure Working Group was seen by faculty as led by lawyers and consultants following a corporate agenda. The faculty then started the union effort, and the Gang of 19 (“a group of senior faculty who have played distinguished roles in the intellectual and governance life of the University”) organized. The regents never acknowledged receipt of the Faculty Senate tenure proposals, and instead wrote their own code, so the faculty filed cards. The regents adopted Sullivan II even though the faculty asked them not to; even if the Senate and its committees say it is acceptable, achieving it came only as a result of faculty bargaining pressure, and it could be lost without a union. On many recent issues, the administration made decisions without consulting Senate committees; without a union, the regents might not hear the faculty voice above other demands. The union would work with and make faculty governance stronger.

Walsh later amplified on this view. “There was never any reason to oppose ‘the union’ against ‘the faculty senate.’ We did have a problem with a small group of faculty leaders negotiating behind the scenes when an open election on the issue was in the works. That was really our only problem. Otherwise our whole plan was actually to empower the Senate and its committees. I thought then and still think that FCC needed reform, but that and a more central role for the Senate Research Committee were the only structural changes I would have liked to see. And even those changes might not have been necessary to enable the Senate and an AAUP bargaining agent to work together. So all this talk was pointless, in my opinion.”

* * *

COULD THERE BE A DIFFERENT KIND OF UNION?

One question in the minds of the faculty was whether it have been possible to have a different kind of union, one that retained collegiality and faculty governance while also negotiating over terms and conditions of employment. That was the “promise” held out by the union supporters, and something about which the opponents expressed doubt.

Sara Evans, a strong union supporter, said that “I never thought collective bargaining was a panacea. I think we may have to develop a different model for a university like this. But you need a strong, savvy, politically-organized faculty voice that can mobilize, when necessary, and that should work in consonance with governance, should be the political caucus of the governance system, to make that work.”

With respect to developing a different kind of union, Evans recalled that “some of that we tried to explain in some of the thought papers we put out. We would be forced to -- and with the help of the AAUP we could do it -- develop a model of collective bargaining that builds on the traditions of shared governance within universities, rather than building first on the traditions of collective bargaining in industrial settings. It’s where you start; we start with a different sense of who we are in the institution, and a long tradition of that which I don’t think we want to give up. But it would be within a different structure, at least for certain issues. What we were working on, that was getting exciting in AAUP, [was] trying to think through how there would be certain issues that legally negotiable; for those, you elect people, you bargain it, you come back and say ‘is this OK?’ For those, there is a legal requirement that the parties come to terms. I think for some faculty, what’s really uncomfortable is the thought that there [are] two sides to this table, and because there are two sides, it must by definition be adversarial. But it’s a method of conflict resolution, not just a method of conflict. But we were also talking about how we would use what we have in Minnesota, which is very good labor law for public employees, to provide some legal underpinnings to our traditional forms of faculty governance. Which are not negotiable -- the faculty role in setting the curriculum, and degree requirements, and so forth. Those are not subjects for collective bargaining, but the role of faculty in those could be bargained; the process could be given a legal underpinning.”

Evans suggested that “the experience of a collective bargaining negotiation would [not] be all that different from what we did with the Committee of 8, where we were trying to be as clear we could about what the faculty’s stake was in this. And about the integrity of the process of faculty involvement.

That means sometimes you have to say, 'this is where we are; you try to push anything else down our throats and we'll go back to the Senate and it will lose and we will not support it.' There are times when interests are different, and it's important to be able to articulate those, and then get to what's underlying them. Where are the key issues, and where is it possible to make things work, in win-win situations?"

"But I don't think necessarily collective bargaining means a loss of collegiality. But I never did think it was a panacea, either. For faculty at a university like Minnesota, it's a last resort, when their power is dramatically eroding. I personally don't think we will come up against that choice again until we have another crisis. I have to hope we don't have another crisis; it was genuinely scary. But I won't be surprised if there is a growth -- there will be a breakthrough in a research university somewhere along the way for collective bargaining. Unless these trends just wither us all away. That's another real possibility. Administrations will grow, part-timers will grow, and faculty will become a little, tiny group. One way or another, faculty have to exercise collective power. Whether it's collective bargaining or some other form, faculty have to find new ways to express their power within the institution."

Williams recalled that "I became convinced that that was the only way we were going to have strong faculty governance, with a union. I didn't start out that way; I chose to join the Gang of 19 rather than the UFA, but became very convinced that that was the only way out of the situation. It's still an open question in my mind whether we're going to need that. Universities and faculties have constantly reinvented themselves, and that may be where we're headed, as an organization."

Swan felt similarly about the possibility of a different kind of union. "Had we had one, that's what Anne and I would have worked for. That was the argument, and I think that so many people supported and voted for a faculty union suggested that they thought we could. My sense is that there are 15-20% of the faculty who forever has felt we should be unionized and forever will, and probably 15-20% on the other side, who think that's the absolute worst thing you can do, and then there is a big range in the middle."

Purple also thought a different union could have evolved. "Mainly because of Minnesota's meet and confer laws [which] says you have a bargaining group, but you can designate meet and confer groups. You would automatically designate the University Senate as your meet and confer group. That means that FCC, [Faculty Affairs], Tenure, and SCEP are dominant committees. That means now when [Faculty Affairs] says [something], the administration can't just unilaterally do it, because then [Faculty Affairs] says we

turn this over to the bargaining agent. Do you want to go into a bargaining room and bargain over that? Do you want to bargain over phone modem charges? Those aren't issues that make for fun bargaining, they're very embarrassing, and number two, they involve the kind of detail that a top-level administrator just doesn't want to get involved in. Using the meet and confer laws, we would have strengthened collegial governance. We would have given it teeth. That is still my belief."

Gray did not agree. She recalled that she had "said to one union supporter at the end, 'your position is that you are going to have the only good union in the entire United States.' If we would point to Duluth and say 'what a terrible example, their salaries are worse than ours,' they would say 'oh, we're not going to have one like Duluth.' Then if you point to Rutgers, where they were about to go on strike for no merit pay, they would say 'oh, we're not going to have one like Rutgers.' And wherever you would point, they would say 'we're not going to have one like that.' I said 'wait a minute, why is it this organizational imperative works everywhere else but it's not going to work here? You'll be the only good people running a union.' That's what they thought, but I think that's not realistic."

"The other thing is, as I pointed out to some of them at the time, the way they were treating FCC members, including myself, the way they were working with FCC, that wouldn't lead me to think we were going to have a good working relationship in the future. They wrote one memo trashing FCC and the Senate, and they were constantly writing private emails calling us names and trashing us. It's not a good advertisement for a collegial organization."

"Plus, during the worst of it, when we were trying to have these Senate meetings, they threatened to take AAUP dues -- to which I contributed -- to sue me, personally, for having a Senate meeting just to decide whether to take up Sullivan II. I do not understand how they can possibly say they are democratic! That's the most undemocratic response in the world."

"They were going to have a union like every other union, that's what they were going to have, and it was going to be run by the more radical elements. It wasn't going to be run by the people who thought they were going to run it, because they weren't even running it the week before the election. They weren't going to suddenly run it after the election."

"If the year could have ended with November and Sullivan II, it would have been a very nice ending. I could have slept well. But instead, it was a long period of very dirty, personal, divisive politicking among the faculty."

"If the intensity of this conflict had started getting out,

the community would have no support whatsoever for the University. As I said, people kept saying 'aren't you happy now?' I said 'well, no, some aren't happy because we didn't dot the i's and cross the t's right.' The community is not interested in that. And they're very distinctly against a faculty union. They think we're privileged already; why do we need some other privileges?"

Fischer affirmed the importance of the unionization question, as had Goldberg. "Another important factor that people were concerned about was the threat of unionization of the faculty, which would put the excellence of the University at risk. For example, not one of the top 30 universities was unionized. There was genuine concern by knowledgeable people that a unionized faculty could not operate effectively in a highly research-oriented university." As to the proposition advanced by Virginia Gray, that the private sector, the legislature and the Governor had come around to essentially supporting the faculty, but had the faculty unionized, they would have lost all that support, Fischer said "definitely. I was perplexed myself that some faculty, who were direct beneficiaries of private gifts -- through an endowed chair or an endowed center they were running -- didn't seem to understand or acknowledge how problematic a unionized faculty would be for many major donors."

Morrison agreed largely with Gray; he thought a different kind of union would not survive. "I think in the short run, yes, and in the long run, no. In the short run, we could have had a union that was very academic, was the Faculty Senate plus the Consultative Committee in a different guise. I think in the long run, institutionally those things tend to [become more] union-like, because those are the people who play the politics of the union in the long run; [in contrast], faculty governance has always been a three-year commitment, and people were brought into it and faded out of it. Union organization tends to be a longer thing." When it was noted that many long-standing governance leaders could be involved, he said "maybe. But would we all have gotten elected in a completely democratic election? I'm not sure about that. We've had roles; most of my roles have been appointed. I think if you had a completely democratic election, the people who got elected would be different ones."

Morris thought a different kind of union might have been possible, "but I share Fred [Morrison]'s concern about this. Yes, you probably can, but I'm not at all sure you can maintain it. At some point, the really stellar members of the faculty will want to get back to their labs and to their scholarship. And you're going to get a different quality person running the thing. So in the long run, the union may lose quality leadership."

"This gets me back to what I was saying about the FCC,

and the depth of their constituency. There comes a point when the faculty doesn't choose to exercise its power of governance and oversight of the organization, and things just drift off. That can happen with a union, too, although it would be a little less likely because everybody would recognize that the union was not simply something that the president brought in for tea once in awhile. But still, I'm not sure that Fred isn't right about that, that we could start one, but that we might not be able to maintain it."

Bland thought the possibility of a different kind of union small. "But that makes it sound like it isn't a possibility, and of course it's a possibility. But what they were asking was to trade a dream, that nobody'd ever accomplished, for a governance approach that had worked pretty well in the past. I thought we were better off fighting for a bird in the hand. Also, I thought their dream was unlikely because the basic premise of a union is adversarial and assumes an employer/employee relationship, while the basic premise of joint governance is partnership and collaboration. I didn't believe these two basic premises could be merged without losing the powerful positive effect being a partner has on morale and productivity."

Fogelman shared the view of his colleague in Political Science, Virginia Gray. He rejected the notion there could be a "different" kind of union. "I don't believe that, frankly, because there is a dynamic to trade union activity. There are certain things they need to deliver on, and that's what they focus on. It creates its own kind of hierarchy, its own kind of bureaucracy. That, of course, was the promise held out: a different kind of union. Nobody could cite an example, as yet, of such a different kind of union. So it's the triumph of hope over experience. And I'm not too strong on hope over experience."

"**Strategically**," Fogelman said, "that was critical to the outcome -- the threat of unionization. It was a very important part of the whole process. But I personally -- and I obviously disagree with some of my colleagues on this -- I think the notion of trade union with a different face is a triumph of hope over experience."

Bloomfield shared the doubts. "Possible? Yes. But these things really depend on the people involved -- if Sara Evans was willing to stay involved as a leader. Once this happens, you don't just sink back into the ranks of the faculty. If you want to influence what the union does, you have to be a union leader. That means you have to give up a fair chunk of what you're doing as a faculty member. What is likely to happen is that the people who are willing to do that are the ones who are not as successful in their faculty careers. It's not an inevitable dynamic, but there are built-in tendencies in that direction. It's not so clear it would have

played out that way if we'd had a union here. Again, it might, but it would have taken some major devotion from some of the best faculty."

The political scientists (Fogelman, Gray, and Shively) were of one mind on this question. On whether it would be possible to have a different kind of union, Shively said "I just don't believe that's possible in the long term; I think you can have it in the short term. I think that the process of negotiating over terms and conditions of employment becomes something that makes collegiality impossible. I don't think you see examples of unions of teachers anywhere that manage to sustain that balance." There was the example of Rutgers, but at the time this debate was going on, the Rutgers AAUP and the university were embroiled in a lengthy dispute. Shively thought that Rutgers no longer a good comparison, "and Rutgers was probably the best potential example. For many years, it did stand as an example of how you could have collegiality and high academic standards and a union, but my feeling, strong conclusion, is that in the long run there is an inconsistency there that makes it impossible, and Rutgers seems to bear that out. I've always felt that really strongly."

* * *

"Thawing the Cold War Over Tenure: Why Academe Needs More Employment Options" (Chronicle of Higher Education, February 7, editorial by Richard Chait). In this long editorial, Chait made comments about Minnesota. "Regents and lawmakers might aim, for example, to shift resources from low-priority to high-priority programs, a key concern when the University of Minnesota's Board of Regents tried to reform its tenure code last year." Chait wrote that "comparative data on personnel policies are . . . scarce. In the absence of readily (and electronically) available data on the criteria and standards for tenure or the grounds for layoffs and dismissal or post-tenure review processes, the debate inevitably turns on anecdote, hearsay, and emotion. Thus, a professor at the University of Minnesota unequivocally declared, at a Board of Regents meeting last summer, that the institution's ability to recruit professors would be severely jeopardized by any changes in the ironclad protection that tenure faculty members enjoyed against termination were their programs discontinued. He presented no internal data to support this assertion and no comparative numbers from the scores of research universities without such a guarantee. Vehement assertions were presented as fact; a doctoral dissertation committee would have been distraught." Chait criticized tenure opponents for often acting on the anecdote as well. He wrote that "Jean Keffeler, a former regent at the University of Minnesota and a strong advocate of changes in the tenure code, recently remarked that much of the

ultimately counterproductive debate there was marked, on both sides, by amateurish work, the absence of intellectual standards, and too little information, provided too late.”

The union vote on the Twin Cities campus was scheduled for February 12. There was considerable newspaper coverage in the days leading up to, and then after, the election.

“Union vote conjures fears for ‘U’ future” (Star-Tribune, February 10). 1600 faculty will vote on a union; the question is whether the University would “sink in a tide of mediocrity if the faculty votes to organize?” There was little evidence a union would harm a research university, but “fears persist.” The article noted the regents’ professors’ letter and quoted one provost as saying a union would “lessen the very quality and excellence” that all seek. The Governor’s Roundtable (six business people who advised him on higher education) said a union would affect recruitment and grant-getting. The article reviewed the union at Rutgers and the impact of a union on salaries (union supporters said they should be both across-the-board and merit-based) and on governance.

“Regent’s [sic] professors miss target on crucial points” (Minnesota Daily, February 10). Regents’ Professor Eville Gorham and Murthy wrote on behalf of the AAUP/UFA Executive Committee to take issue with the letter from the regents’ professors urging a vote against collective bargaining. The new president and changes in the Board of Regents might improve the situation, but a union would not hinder the improvement. It was premature to assume the tenure crisis was over; the changes to Sullivan II had not been discussed by the regents. “There is no evidence for the claim that collective bargaining will jeopardize public support for the University”; support will remain if excellence remains, and Minnesota is a “labor” state. There will not necessarily be prolonged negotiation; the AAUP data suggest it takes less than a year. The University has been declining for 20 years and a change is needed.

“‘U’ faculty begins historic union vote [;] 1,350 of 2,400 professors are involved” (Star-Tribune, February 12). The article described the scene at one voting location and quoted several faculty about how they felt. Berscheid said faculty were divided and polarized on the issue.

“No to ‘U’ union [:] Faculty has defining choice” (Star-Tribune, February 10, newspaper editorial). The editorial urged faculty to vote against a union. The vote is “a defining moment” at the University; “the union election presents a fundamental choice in how this university will govern itself.” The faculty have opposed corporatization, but union supporters argue what “they really needed to put the regents in a box was a tool straight from the nation’s factory floors.” There is no evidence a union would harm the University’s reputation -- because

no top institution has a union, and choosing a union will make Minnesota “an outlier” among its peers, and would be disadvantaged in recruiting faculty. Positive changes were occurring (changes in the regents, a new president).

Lori Sturdevant recalled why the Star-Tribune took the position it did. She recalled that the newspaper had actively supported the faculty in opposing the Morris tenure proposal, but “very soon thereafter, we were not with the portion of the faculty that favored a union. So Lori was the hero in the fall, and was the goat come February. We also thought that moving to a union would move the University out of the mainstream, and primarily for that reason, we opposed a union. We know that may be hypocritical for folks who carry union cards in their purses and wallets, but that’s how we saw it. It’s not out of the norm to have a newspaper guild represent editorial writers; it is out of the norm to have a union represent your Ph.D. physicists; it was on that basis that we took the view that we did.”

In terms of her assessment of the larger community’s view on the desirability, or lack of it, of a faculty union, Sturdevant commented that “I think the CEO community very much agreed with us, but they’re predisposed against unions anyway. I think a lot of other kinds of citizens didn’t know, didn’t care. They see faculty unions exist in the MnSCU system. I don’t think a lot of people have a sophisticated understanding of how what happens at the University is different from what happens at St. Cloud State. So I don’t think the unionization cut a whole lot with the citizenry as a whole. But with opinion leaders, I think most of them were against a union. I’m thinking now about some DFL legislators who I have talked to, who, in the rest of their public pronouncements, are very pro-union, may have been taking union political money all these years, but would see that unionization, that would leave the impression that this university was out of the mainstream, was not a healthy or positive thing.”

“It also seemed to me that it would lock in place forever the bad feeling of last fall [1996]. It would stand as this perpetual reminder that there was once this huge ugliness between faculty and regents and administration at this university. Did we really want to have that legacy go forward? Couldn’t we say there was a horrible mistake and the Board of Regents was transformed soon thereafter and we got a new president soon thereafter and we got new faculty leadership? There was this nasty episode that is now history, rather than some continuing thing.”

In addition to the CEO community, Sturdevant said that “others would see it as the way we saw it, which is a ‘how do you present yourself to the world?’ kind of question. I keep coming back to the notion that this university has to be in a competitive posture to hire a lot of faculty members in the next ten years, and to look out of synch with the rest of the world is not a

good thing with that task before you.”

Russell Bennett echoed the views of Lori Sturdevant concerning the collective bargaining vote. “I think the union vote was something that was very threatening to most people I know outside the University. When the faculty did not vote for the union, their stature went up greatly in the eyes of most people I know. Most people I know went ‘pew, we dodged a bullet, and thank heavens those people over there were smart enough not to get shoved into this just because we acted badly, or because the regents and a lot of people acted badly.’ The faculty could have said ‘screw it, we’ll vote for a union.’ I think the fact they didn’t made a lot of people have great confidence in the faculty. They thought ‘my gosh, when push came to shove, they were there.’” About the close vote in the election, Bennett commented “Hubert Humphrey used to say a plurality of one is a landslide.”

“On the last lap [:] Union drive shifts its focus to salaries” (Minnesota Daily, February 10). The union effort saw the defection of the regents’ professors; after the AHC, Law, and Morris votes and regental action on Sullivan II, “with the tenure issue largely moot, union supporters have been forced to look elsewhere for a cause,” and union supporters “are promising pay raises.” The Daily also had a long article on the history of faculty unionization efforts at the University. There also appeared a full-page ad (which followed numerous earlier advertisements) signed by a number of senior faculty (including some current and former FCC members) urging the faculty to vote for unionization.

“High turnout and low friction at polls” (Minnesota Daily, February 12). The article reported a lot of faculty voters and no delays. “Most faculty cited regent-faculty relations, not the salary increases promised” by the union as the as the biggest issue.

On the evening of February 12, the BMS announced the union vote of Twin Cities faculty: 666 in favor of UFA/AAUP, 692 in favor of no representation, and 237 faculty did not vote.

“Close vote, but no U union” (Pioneer Press, February 13). The article said there was an “unexpectedly close vote” and that faculty were “less frustrated” now than when the regents tried to change tenure, but the vote suggested a mood of “continuing dissatisfaction.” Reagan said he hoped they could “incorporate lessons we have learned over the last six months”; Hasselmo said the outcome affirmed the efforts to restore trust and cooperation. Faculty said “much needs to be done to repair” relationships; the article quoted Walsh, Murthy, and Evans saying the result demonstrated that faculty concerns could not be ignored, and reported that the one regents’ professor who supported the union believed his colleagues had made a mistake in

opposing the union. Union opponents cited the appointment of Yudof, the fact that some faculty receive higher salaries because of the market, and doubt about the ability of a union to obtain higher salaries.

“‘U’ faculty rejects union” (Star-Tribune, February 13). The union “barely” was defeated; Hasselmo said it was “a ‘reaffirmation’ of the current working relationship among the faculty, administration, and regents” but that the vote made it clear “‘we have to be very mindful of faculty governance.’” Union supporters said it was a moral victory and that reconciliation was needed. President-elect Yudof said he had his work cut out for him, and said he wished to meet with AAUP leaders. Berscheid said the “anger and discouragement” was more than she had guessed, and that “if steps are not now immediately taken by the regents and new administration . . . I predict we’ll have a union within a year or two.”

“Then again, maybe not” (Minnesota Daily, February 13). The article reported the vote; “a press conference Wednesday night with the [AAUP and UFA] was lighthearted with leaders joking at one point about the ‘renegade regents professor who voted for the union’” [Gorham “has been outspoken in his support of a faculty union”]. Murthy called it a moral victory. Sara Evans said “‘the AAUP will be a loud and powerful voice in discussions on tenure. . . . We’ll be there as the voice for the faculty.’” Reagan said “the loss of the union election wasn’t a victory for the board. ‘The regents are prepared to work with whomever will be the faculty’s leader,’ Reagan said.” Walsh said the loss was because of the regents’ professors’ letter, and that the union issue would arise again. “‘This can happen in the future. . . . The regents can’t be stopped by (the faculty) appealing to their reason, because (the regents) aren’t reasonable. Next time we’ll find the crack to destroy the Death Star.’”

“U. of Minnesota Professors Reject Plan to Form Union in Close Vote” (Chronicle of Higher Education (Academe Today), February 13). The vote was reported; Walsh said what the margin “‘tells you is that this story is far from over.’” Reagan said he was “glad this day has finally arrived” and “I hope we can build from the strong foundation of faculty governance” and take lessons from the events. Hasselmo said “the tenure wars are over” but Walsh believed the “regents’ ‘retreat [on Sullivan II] was only tactical’” and that the regents had not changed their views.

On February 13, the BMS issued its findings, and ordered that “the Maintenance of the Status Quo order issued by the Bureau on September 13, 1996 is hereby lifted in its entirety.”

Fennell Evans recalled that “one of the more curious things was on the night after the first day of the union elections. I called John Adams. He was absolutely astounded to hear me on the

other end of the phone. I said 'look, John, there's a real concern about where we are on this union vote. The business school is not getting out and voting.' This was John Turner's analysis. I said 'is there anything you can do?' He said 'yes, I'll get Carl, and we'll go over and we'll knock on every door.'"

Purple offered a variety of views on the build-up to the election, and the outcome.

"You can't tell me Virginia was a proponent for the union. Virginia can say she was neutral, and I will say that is pure hogwash. If you believe that, I've got a bridge. . . . Virginia was playing a political game."

"That's what happens when you get into something like this tenure crisis. Everybody has their own cause. The Gang of 19 had that to some extent, and the union and the AAUP. But what was remarkable was that they could pull together."

"One of the things that helped tremendously was [the national AAUP staff, Steve Finner, Mary Burgan, and Jack Nightingale]. Jack Nightingale came here, took an apartment, and worked every day. Steve Finner knew how to organize."

"We knew it was going to be a close election two weeks before the election, because we had a phone poll. We called every single faculty member that we could reach, to find out how they felt. While we kept the phone poll going right up until the last couple of days, it was pretty obvious to those of us who were doing the phone calls that the faculty had already made up their mind a week before. Unless something really dramatic happened, it was going to be a squeaker. It was a question of how upset people were with the continual erosion that had occurred; were they at the point where they said 'no, we're not going to do it any more'?"

"Because the tenure thing was done by then. Tenure was done; the Board of Regents and administration were going out for a big pay raise for the faculty, all these nice things were suddenly happening. You think all these nice things would have happened if there hadn't been a union election? Don't kid yourself."

"There was a very, very vigorous anti-union campaign. In the AHC, it was about as dirty as you can get. It included [one administrator] setting up an email [chat room, but] the only email that came out of this so-called chat room was anti-union sentiment. If you had a pro-union sentiment, it never saw the light of day. David Hamilton got the crap harassed out of him by irate faculty, who wanted him to quit sending his messages. Why? Because somebody might believe it. He was sending messages in favor of joining the Twin Cities unit."

About the outcome of the vote, Bob Morris (Law School) later wrote that "it is ironic that the AHC's vote to remain aloof actually strengthened the faculty's hand. Had the AHC faculty

joined the Twin Cities unit, the vote against unionization would have been much more substantial.”

FCC met on February 13 and contemplated the results of the union vote. It agreed without dissent that the Committee of 8 should continue to serve, representing the faculty as a whole, but that it only had authority to present and explain the Faculty Senate amendments, not negotiate, and that any additional changes would have to go before the Faculty Senate. Morrison said the closeness of the election sent a clear message to the regents and administration, but also to FCC, which must broaden its base of support or wait for the next union election. There was agreement that the support of the 49% who voted for the union was needed, that the faculty should not be bifurcated into “us” and “them,” and that the governance system may need to be more strident. Governance needed to be a topic of conversation with senior officers as well.

Sara Evans commented afterwards that “the bargaining election came about because of the tenure crisis, but we kind of won many parts of that war before the election. Tenure was not going to be done away with; people knew that.” This, of course, was something union opponents pointed out. “Exactly. And the proponents said ‘yes, but we won this because we made this move.’ And this was in fact the only access to legally-enforceable power, the only way we even got to be at the table or were able to leverage our position vis-à-vis the regents. But then the discussion grew into broader discussions of faculty governance and faculty power and the role of a research university.”

Purple commented that the appointment of the Committee of 8 was “an example of how a bargaining agent and a collegial governance structure can work together.” It would not “just be the union people talking to the regents, we’ll include the FCC. Then there was a lot of negotiation on how many people, and you knew how it was going to come out; you’re going to pick four trusted colleagues on each side, and you’re going to pick somebody that everybody gets along with, like Sara Evans, to chair it. At that point, the FCC was desperate to re-establish their leadership; I think they were still struggling with that. Virginia was there, but they were in another hideous bind that was the legacy of the Carl and John Adams’ years. How do you establish your legitimacy? When the AAUP says ‘let’s do it in an open process, we’ll give you these guys, you take your guys, and we’ll trust you, you trust us,’ all of a sudden the AAUP is saying to the FCC, ‘we’ll recognize you as legitimate bargainers on this thing, and if you say it has to go through the Senate, and it’s not going to meet Tom Walsh’s requirement of a total faculty vote, fine, we’ll settle for things like that.’ Those are bargaining positions. I think the FCC genuinely reacted to that, because it was basically us saying ‘you are a legitimate group, and

you've got to be legitimate.' When the thing got over with, I think the FCC responded in kind, with true leadership, saying 'this group's already been meeting, there's no reason to break this process off. The AAUP trusted us, we're going to trust the AAUP on this one.'"

At the regents' meeting of February 13, immediately following FCC, Gray made her quarterly FCC chair's report to the Board, and talked about institutional governance and the role of the faculty. Reagan agreed with a suggestion from Regent O'Keefe (who replaced Keffeler) that a future agenda item should be regent-faculty relationships, communication between the two groups, and the possibility of faculty representation on regental committees.

In Feeney's view, "the Committee of 8 meant different things to different people. It did a number of things. It was the first time that faculty governance and folks with a union interest got together because of a common problem, so it served to help meld the faculty. And it further solidified the faculty after the vote, when we made the commitment to keep the committee together. As chair of [Faculty Affairs], I went on record in favor of keeping the committee together regardless of how the vote came out. We had a working liaison between the folks who were oriented to collective bargaining and those who were more heavily oriented to faculty governance. It was interesting that three of the people who were on the committee from the union side were heavily involved in faculty governance."

On February 14, Gray reported to FCC that Hasselmo had proposed a retreat with the Executive Council and FCC to discuss consultation, tenure, and other issues. She also wrote to the Committee of 8, as FCC had agreed, confirming their continued appointment, with Sara Evans continuing as chair.

President Hasselmo emailed to all faculty on February 14 and commented that the union vote "did result in a slim majority favoring continuation of our system of shared governance" but acknowledged that "the closeness of the vote sends strong signals of distress, serving notice that issues have to be addressed if the faculty are going to continue to have faith in our time-honored system." Among those issues were tenure, which Hasselmo said was the cause of the union election; he said the new code was a good one, since it was based on the Faculty Senate recommendations, but it was necessary to resolve remaining issues so there could be one code for the institution. He also pointed to salaries as a problem, and then said the vote "gives our system of shared governance one more chance to prove itself." He said it was essential that regents, administration, and faculty work together, with all elements of the faculty part of the discussion; he said the regents shared his wish to make the system work.

"A Scholar Provides an Intellectual Framework for Plans to End or Revamp Tenure

Systems [;] Trustees praise Richard Chait, but many faculty members call him a ‘hired gun’ or ‘hypocrite’” (Chronicle of Higher Education, February 14). The article began:

“Richard P. Chait would normally be flattered to hear that his name had inspired applause. But it was not his well-known work on alternatives to tenure that drew cheers at a faculty meeting at the University of Minnesota last fall. It was the news that Minnesota’s Board of Regents had decided it no longer needed Dr. Chait as a consultant on tenure.” Faculty are critical of Chait; “a faculty member at Minnesota, who does not want to be identified, says: ‘People here have a great interest in making sure faculty around the country know that he is no friend of tenure.’” (Chait said he was “not an enemy of tenure, either.”)

The Chronicle article described Chait’s work and career, and the views of one of his critics, Matthew Finkin. “Some professors at Minnesota also do not hold Dr. Chait in high regard. The university’s regents paid him \$25,000 to be a consultant on tenure and also paid an undisclosed amount to a Washington law firm, Hogan & Hartson. It was the law firm that put the regents’ ideas into legal form. The regents’ proposals -- including one that said tenured professors could be fired if their programs were eliminated or restructured -- sparked a furor and were ultimately set aside. Professors at Minnesota, while acknowledging that Dr. Chait did not write the document, believe he defended it. ‘I must say, he tried to caution the board against doing some of the more extreme things,’ says Fred L. Morrison, a professor of law at Minnesota. ‘But then the board did it anyway, and he was a mild apologist for it.’ Dr. Chait, he says, was not accessible to professors. ‘My impression is,’ Mr. Morrison says, ‘he has become a kind of management representative and not an even-handed analyst.’” (The article reported that regents and faculty at Arizona had a different experience.)

“Patricia B. Spence, a regent at Minnesota who worked closely with Dr. Chait, says faculty members who cheered when the board severed its relationship with Dr. Chait (and with Hogan & Hartson) were simply looking for someone to blame. She says that Dr. Chait gave the board a national perspective and that she has no complaints about his work. ‘I’ve worked with consultants before, where they tended to push their perspective, but he always carefully showed both sides of an issue,’ she said.”

Towards the end of the article, the reporter wrote that Chait “is uncomfortable about the role he played at Minnesota. He made the mistake, he says, of allowing himself to become ‘a resource for the regents,’ when he could have been more effective as a moderator. ‘The board overreached what was the available political consensus,’ he says. Still, his experience at Minnesota hasn’t lessened the demand for his services.”

A month after it appeared, Bland responded to the article in the Chronicle of Higher Education about Chait. She commented that “I had read this article and got mad, reading it again just makes me more angry.” She said that Chait “can only think of enabling institutions’ flexibility by changing the employees contract -- always to the advantage of the institution. What about changing the institution so that it committed to . . . continually retraining, reassigning, and repositioning faculty to meet changing needs?” She also complained that “I am tired of his version of what happened at Minnesota being what the public hears.” She said that “the tenure code that the Senate presented to the Regents had most of the creative ideas he suggests! He doesn’t say that. Yes, the debate was counterproductive because of amateurish work and too little information. But, that was not the case on BOTH SIDES -- as he states. I would argue the faculty did an outstanding and scholarly job in all the proposals and information we presented to the Regents -- their lack of information was not a result of our lack of providing it, but rather their lack of reading it!”

* * *

THE ROLE OF THE REGENTS’ PROFESSORS

“Rejection of union isn’t a surprise [;] Supporters, foes say outcome is what they expected from profs” (Star-Tribune, February 16, Doug Grove column). Grove said the regents and University officials were “breathing sighs of relief” at the union vote, but should be wondering about the intelligence of a faculty that would “turn away from a union that saved their bacon?” Grove cited Jon Hassler’s novel Rookery Blues about a faculty that backed off a union movement, and quoted Hassler as saying faculty “don’t deal well with real stuff such as workplace issues. ‘We make up wars and skirmishes,’ Hassler said. ‘We do the backbiting that harms the weak ones, but when something serious happens, we run back to our books.’” Grove wrote that “no group seemed to run more weirdly in this reality check at the university than the school’s most distinguished teachers, the regents professors.” He said their turnabout was “baffling.” He quoted Murthy: “‘They are so highly distinguished that they live on Cloud Nine. . . . They’re all settled, they’re all well paid. They don’t have the average fears or even the average aspirations of most of us. If you’re a regents professor you can say “I have arrived.” My feeling is, they didn’t do any significant damage.’” Grove was critical of the faculty for not choosing the unknown of a union, and quoted Burgan: “‘There seems to be a notion that belonging to a union is somehow un-American. . . .’ Instead of accepting real power, the profs

scurried for their books and their petty bickerings.”

“Lessons from the union drive” (Minnesota Daily, February 18). Walsh said the effort failed because an informal poll suggested to him that engineers voted against the union by a 2-1 margin. The article said engineering faculty are better supported and more mobile, so can move if they do not like the tenure code. Murthy thought the late entry of the AAUP may also have been a factor. Walsh also cited the letter from the regents’ professors, and “said the elite group of professors are out of touch with most faculty members. ‘(The message) was predictable because (the regents professors) are over-the-hill. They don’t have a good understanding of what’s going on.’” Murthy said he would rather have lost than won by such a small margin, and the message was clear about the need for a faculty voice, and that the AAUP had no plans to begin another union effort, assuming the regents did nothing dramatic again.

Berscheid took exception to these comments. In an email to a friend after reading the article, she expressed dismay at the comments of Murthy and Walsh about the regents’ professors in recent news accounts. She said there was no group of 20 faculty who had shown such loyalty and commitment to the University, and who more than most had fought for academic freedom and tenure. She said that faculty would not be interested in joining an AAUP that attacks the motives of the regents’ professors and which has forgotten “who the enemy is.” She was also of the view that the union would not have gotten sufficient authorizations had it not been for the initial regents’ professors’ letter urging faculty to sign, and that getting all of them to sign the letter had been a great struggle (we “talked until our noses bled to get our colleagues to sign that letter”).

Walsh disagreed with Berscheid. “Most if not all of the authorizations we filed on September 13 were in the campus mail before the regents professors’ letter could have had an impact. The flood was driven by the ‘Morris Code’ and not by anything we said or by anything the regents professors said. So their letter did not influence the cease and desist order. The letter probably did help us get to about 1000 authorizations out of about 1600 core faculty. But that was far more than we needed to file. It was a safety cushion and we were grateful for it. That made their turnabout look even more bizarre to us. You may be interested to know that very early we got about 500 authorization cards, even before this all blew up. Of course, some of those were from AHC. What is most interesting is that 30% of 1600 core faculty is now only 480 signed cards. We and the BMS did not realize just how small the core unit had become.”

One faculty member said that his colleagues “have ambivalent feelings about the regents’ professors. By and large -- and Ellen is a little bit of an exception in this regard -- in terms of day-to-day governance stuff, the regents’ professors have not been all that active. Many regents’ professors think they shouldn’t. When they do get active, it seems a bit like the mathematician who comes in with the proof on the perfect solution of government. It doesn’t always work that way. That is how I would interpret the sense of Rama’s comment. I also don’t think it was meant to be personal, although Rama has every reason to wonder about Ellen’s motives about things.”

Pick recalled that she “did hear some criticism of recruiting of retired regents’ professors to be part of this. After all, John Turner was a major player in getting that [second] letter put together.”

* * *

John Adams wrote to Mary Dempsey on February 17, after the close union vote. “The failure of the unionization drive is no cause for celebration. Major problems remain, and if they are not addressed successfully during the next two years,” there will be another union drive. Adams identified “*at least* eight different groups” of faculty, “each with one or more serious concerns, which were expressed through their support of the union.” The eight were:

The disgusted, “angry about the performance of the Board in recent years, cynical about administration motives,” who see the University run by bureaucrats (could direct sentiments more positively); the unappreciated, who “believe they are doing important work” but not appreciated by the public, and are predominantly in the humanities (they need to be recognized); the underpaid, some of whom are unappreciated and some of whom do not do their jobs (find different work for them and improve compensation); the unproductive, who overlap with the underpaid, but some are full professors who do not produce (upgrade skills and enthusiasm); union advocates, who “honestly believe that a faculty union . . . offers a better path,” some of whom do not know the difference between consultation, administration, and shared governance (better orientation might help); those reasserting control of academic agendas, who “believe we have become utterly bogged down with cumbersome, costly processes and top-down corporate style management,” who don’t blame the administration or regents but who believe the developments have made their lives hard (the union is a weapon to fight back, to regain faculty control); the isolated, loners, perhaps stale, at difficult career points (departments could build bridges); and the threatened, “terrified at the thought of losing their jobs” because of the questions raised by the regents (end the debate and reassure them). Adams expressed guarded

optimism about the new Board of Regents and incoming President Yudof, and concluded that it will be up to faculty to strengthen departments. He warned that the vote should “not lull any of us to the conclusion that the battles are over. They’re still underway.”

On February 18 Purple emailed to Gray, who circulated the message to FCC with his permission. Purple commented on the lengthy minutes of the FCC discussion with Cerra (not reported on here in detail), and said that re-engineering was alive and well in the AHC and that corporate management practices were being imposed.

AAUP President Murthy wrote to Hasselmo on February 20 to inform him the UFA/AAUP executive committee had decided “to withdraw the objections to the [AHC] election and to forego the filing of objections in the more recent election.” They still believed that there were improper statements, but “we believe even more strongly that we cannot afford now to be distracted from what we view as a renaissance of faculty resolve to participate meaningfully and collaboratively in institutional decision-making and to establish a spirit of cooperation” and it was better to build a strong faculty organization.

Feeney wrote to Hasselmo, Yudof, and Marshak on February 20 to outline concerns of the Faculty Affairs committee about the situation of the University. He said the priorities and perceptions of the faculty must not be lost in the debates about the role of higher education, and that faculty morale was low in part because of shifting priorities of the administration to respond to external constituencies and a faculty sense that no one was serving as their advocates. He noted the advance of a corporate model of management, contrary to the traditions of consultation, and that faculty had to be involved in institutional change because they are critical to the standing of the University. He said that a number of issues that had aroused faculty ire could have been dealt with differently, with more positive results, and urged that faculty views be solicited early. The faculty will work for the best interests of the University, and do not want to usurp administrative authority, but better communication in decision-making was essential.

The Daily reported on the unfair labor practice action (“**Groups withdraw objections to vote**” (February 25). The UFA and AAUP dropped their charges of unfair labor practices in the AHC vote on joining the Twin Cities campus bargaining unit; the BMS dropped the cease-and-desist order. The two groups wrote to Hasselmo; Walsh said they did not wish to do so, but because the AHC wished to discuss problems with President-elect Yudof, and because the close election results were already having an effect, they would drop the claims.

Sara Evans wrote an opinion piece about the union election for AFSCME and circulated it to FCC on March 3. She said the result could be attributed to any number of factors; more

interesting was why 49% of the faculty voted for a union, when that would have “been unthinkable” even quite recently. Faculty are more than employees, and it is their work that determines the reputation of an institution; their “collective power . . . has diminished greatly in recent years” because of significant changes in higher education, including growth of administrations and corporate management styles. The vote sent a message that faculty will “respond to this erosion of power” and not allow institutions “to lose touch with their central missions of generating new knowledge and educating citizens.” She predicted that if the faculty again find themselves marginalized in decision-making, they would undoubtedly opt for a union.

Chapter Eighteen

The Touchy and Frustrating Endgame: Negotiating with the Board on Sullivan II

Attention now turned to amending Sullivan II. The faculty had a series of changes they wished to see made; events suggested that the administration and regents were unenthusiastic about dealing with tenure at all.

In late February, Senior Vice President Marvin Marshak wrote an “informal memo” to Reagan, Spence, and the regents’ Executive Director about the amendments approved by the Faculty Senate. The housekeeping amendments he accepted. He did not support restricting financial stringency to the institutional level or requiring a 2/3 vote of the Senate to approve it (and he suggested this issue be taken up further); he did support a change to make it more difficult for a dean to establish a post-tenure review different from the one stipulated in the tenure code (“since I really don’t want colleges to have separate post-tenure review processes which are different, I waive my usual objection to excess process in this case”), suggested that the requirement for programmatic change be based on “academic” rather than “educational” considerations, he suggested further discussions of the faculty reassignment provisions because the issue was complex and there were a lot of problems with the Senate language, he accepted a proviso that faculty members who prevail in a dispute be awarded back pay if they have been suspended without pay, and suggested the 1985 code language be used for minor discipline. Marshak recommended that programmatic change and financial stringency be given to incoming president Yudof and dealt with after July, 1998, but that the rest of Sullivan II should be adopted for any unit not covered by a cease-and-desist order.

About this memo, Marshak later commented that when he first became Senior Vice President for Academic Affairs, in July, 1996, it took him awhile to figure out what was going on. By early fall, he had learned two things.

1. The communication channels were non-existent by early September. The Morris draft was a complete surprise to the administration; they knew the regents were “up to something,” but did not know what. Marshak concluded that situation could not continue; communication between the regents and administration had to be opened, so at least the administration knew what the regents were doing. Having the regents deal with Michaelson and Chait, and the administration not know about it, should not continue. In order to open communication, Marshak felt he had to take an intermediate position. He said they could not afford another surprise like the Morris draft.

2. In July, there was talk about calling all the regents. He learned it was not profitable to try to go around Regents Reagan and Spence; it was best to confront them first, with whatever might need to be discussed. After that, one could talk to any members of the Board. But it did not work to try to “soften” up other regents before going to Reagan and Spence. Marshak said he saw that backfire too much.

The February 25 memo reflected both lessons: Marshak was making his views known to the two of them first, and he tried to be in the middle. In the end, he thought, the strategy worked, because communication did resume.

Marshak reflected on these events. He said it was amazing to him that there can be 12 reasonably intelligent and reasonably forceful people on the Board, but people who can be stampeded by one person. When Regent Keffeler left the Board, the entire relationship of the Board to the administration changed. Marshak recalled that Board meetings reminded him of what happens when a substitute teacher comes to a fifth grade class, and the boys sit in back and decide to bully the teacher. When he would give his monthly report (a 10-12 page report that he did not personally), a couple of the regents would pick out small points and quiz him on them, to try to catch him. The meetings had degenerated into a game that was stupid, he said. After Keffeler left the Board, that all changed, and the questions to him were to gain information, not make him look bad.

It was Marshak's view that Brody came to Minnesota campaigning to be president of Johns Hopkins, and he had to do something fast. He came and blew the place up. Marshak said that before he took office as Senior Vice President, he would not have believed that any two people (Brody and Keffeler) could have such a negative effect on an institution. He found it incredible, but he saw it happen.

Reagan wrote a short article for the March/April issue of Trustee. He described the events at Minnesota, and said their “overarching goal was to improve the tenure code in ways that would provide sound governance into the next century.” The regents requested a review of the code; the administration and faculty responded. The faculty “rejected” the task force appointed by the administration, while the Board sought “both internal and external guidance.” After the Faculty Senate acted, the regents accepted many of their recommendations, but “offered additional modifications.” Instead of getting the dialogue, “to our dismay, the board was widely characterized as an enemy of tenure bent on destroying academic freedom.” There was “enormous conflict,” but working to a compromise was halted with the BMS orders and “the board’s effort to articulate its position on tenure was completely stymied.” Morris and the Law

School have a new code and discussions are taking place. Reagan concluded the effort was worth it, and said the University now has “a simplified and streamlined tenure code that gives managers of the university greater authority and accountability without threatening academic freedom.” He suggested that schools revise tenure “if, and *only* if, your code is restricting sound governance and future planning. Study it carefully and proceed cautiously.”

Very little of note happened over the next few months; the comments of the participants, which follow shortly, indicate why.

* * *

HEARING AGAIN FROM JEAN KEFFELER AND A COLLEAGUE

On April 15, former liberal arts dean Julia Davis presented a paper by former regent Jean Keffeler at a national conference on collective bargaining. Keffeler’s written text contained the following comments.

“The program bills me as the participant who will argue the case against academic tenure. But you won’t hear that argument from me.”

“I do not want to abolish tenure. I never wanted to abolish tenure and never said I wanted to abolish tenure. Granted, I did have the audacity in 1995 to request that the tenure code at the University of Minnesota be examined. And the mere fact that I raised the issue caused me to be labeled by self-proclaimed (and undisputed) faculty leaders as a demon, a Nazi, an enemy of tenure and a destroyer of academic freedom.”¹²⁷

“Suffice it to say that the Minnesota tenure code is one of the most rigid in the country, the grievance and judicial procedures are among the most cumbersome and the proportion of the faculty who are tenured or tenure track is unusually high. Yet, a number of factors combined to torpedo a modest reform initiative and demonstrate that at the University of Minnesota freedom of inquiry did not apply to tenure. The Minnesota experience is an excellent example of how not to undertake tenure review and reform.”

She then discussed generally tenure and American higher education.

¹²⁷Walsh pointed out that “neither Paula Rabinowitz nor I publicly attacked any individual regent. We assumed that if we won we would be working with the Board and anything we said might poison the well. I never heard anybody refer to Keffeler as a demon or Nazi, but emotions were running high and somebody may have said that. I do not feel any constraint now, and feel happy to report my view that most Board members are the sort of folks who dive headfirst into the shallow end of the pool.”

The comments by Davis elicited an email commentary in early June. Purple forwarded a message from Bob Morris to Swan and Murthy. Morris wrote:

“As you may know, on April 15th, there was a conference at CUNY concerning academic freedom. One panel, which is preserved on videotape, had three participants. The final one was to be Jean Keffeler, but a personal matter prevented her from attending. She had prepared a written speech and she sent Julia Davis to read it.”

“Before reading the speech, Professor Davis made some remarks about Ms Keffeler, saying that her suggestion that the tenure code needed reformation had caused calumny to be heaped upon her. Professor Davis said reform was necessary and mentioned three anecdotes in support of the matter. First, CLA hired a visiting professor for one year who was such a drunk that he could not perform. Firing him for cause could take two years, so he was bought off. This happened on Davis’s watch as dean & is probably true.”

“She said that this was not an isolated case. Two tenured professors were convicted of felonies, one for sexual molestation, and were protected by Minnesota’s tenure code, even though the molester’s duties required he deal with young children, she said.”

“I inquired of Professor Davis concerning these incidents and she said they were not in CLA but that she had been told of them by University lawyers when she sought to fire Professor Zahavy. She was told they happened in the Medical School. She told me that she did not know if these professors were protected by their departments who voted against instituting removal proceedings or by the Judicial Committee which voted against removal.”

“I have made a diligent investigation and have discovered Professor Davis’ story of retained felons is false. A professor who had clinical duties was convicted of molesting his children. Charges were brought for his removal for cause, with the approval of a majority (but not all) of his colleagues in his department. He appealed to the Judicial Committee. He continued his university duties pending the hearing, but the clinic director kept him from having children as patients. Upon seeing a preliminary draft of the Judicial Committee’s report advising dismissal, he resigned. The other felon was accused of serious dishonesty. At the conclusion of his trial, conviction and his appeal, charges for dismissal were brought with the approval of a majority of his colleagues. Upon being informed of the charges, he resigned.”

“What should we make of this? Undoubtedly Professor Davis sincerely believed her remarks. She did, however, defame the University. I think we should do nothing, but I am

only one voice on this committee. I think so for a number of reasons. It is not clear to me what effective response is possible. Moreover, resisting slander gives publicity to the misrepresentation. I have no idea how wide an audience heard the remarks, or will hear it (the videotape is circulating).”

* * *

FCC met on April 24; Sara Evans reported that the Committee of 8 had three meetings with the administration, with discussions of concerns raised by the regents about the proposed Faculty Senate amendments to Sullivan II. The issues had been discussed in detail and were continuing. It was unclear what the regents wanted and what their views were about the amendments. Reagan had written to other regents saying the Board would only consider housekeeping amendments, but that was his own view, and the Committee of 8 was concerned about what it meant. Evans said they were proceeding on the assumption that all amendments would be considered in good faith.

Feeney and Dempsey reported to Faculty Affairs on the negotiations later in the day. The administration asked the faculty to be patient about tenure, pending legislative discussions of the biennial appropriation, and there was concern that the administration did not want to present the amendments to the regents because rejection of them might renew the controversy at a delicate time in the legislative process. Any further amendments would go to the Tenure Subcommittee first, and then to Faculty Affairs.

* * *

THE SLOW PROCESS OF THE FINAL AMENDMENTS

There was considerable faculty puzzlement and dismay about the length of time that the Committee of 8 negotiations were taking.

Sara Evans, chair of the Committee of 8, said that after the elections in February, “things went very, very slowly. The administration representatives basically wanted us to capitulate on almost everything. We had a series of issues that seemed bottom-line. It was absolutely essential that we had the leadership of the Senate committees, because we could constantly ask ourselves what would fly with the committees and what would fly with the Senate, and where the faculty would be back up in arms. While we knew that we had a year before we could have another collective bargaining campaign, we also knew that it would get right off the ground, under certain conditions.

I guess we were a little surprised that the administration did not respond more, but they were evidently under tremendous pressure from Tom Reagan and Pat Spence not to budge. As far as we could tell, there was not a lot of communication going back and forth: we presented stuff to them, we met with them, and they took a lot of notes. We said 'here are our issues.'

The meetings, she recalled, were with Hasselmo, Marshak, and Bognanno. "They wanted to know what we were willing to give in on. We said that's not the point. It went very slowly. What was frustrating was that we couldn't get a take on where the regents were coming from. It took us a while to realize that the people we were talking to saw themselves as go-betweens between us and the regents. That's basically how they saw themselves."

The Committee of 8 never talked directly to the regents. "We were pretty much not allowed to. It was made clear that we should not. And that was hard; we couldn't get a fix on 'is there only one regent here?'" The principals weren't talking? "That's right. Our job was to try to figure out what's at stake; is the changing of any word a symbolic thing? It did finally come down to that; a minimalist approach is what worked, to get the goals that we had in language that was as minimalist as possible. It was hard to know what kind of leverage we could get, to get motion."

Morrison, one of the Committee of 8 members, described his view. "There were two reasons. One was that [Chief of Staff] Mike [Bognanno] and Nils wouldn't go talk to [the regents], and the other was that if they did talk to them, Tom [Reagan] said 'I only want technical corrections.' So we were at loggerheads, and I think Tom thought eventually we would succumb, and we didn't think we would. It moved very slowly. The administration and/or Reagan stalled.

[Bognanno] and Nils both didn't want to deal with regents any more on this issue. The end game was delayed endlessly because they wouldn't go talk to the regents. Yes, everything was housekeeping, that was the only thing that could pass. So we described it all as housekeeping! If you had a question, we could explain to you why it was simply housekeeping!"

Morrison commended the role of Senior Vice President Marshak. "He was quite helpful, and he was one of the people who did have access to the regents and did go back and forth." Asked if he thought Hasselmo and the Board leadership were even on speaking terms at that point, Morrison replied "no."

One faculty member commented that Bognanno "was not useful. I thought he sometimes didn't understand. Especially when the Committee of 8 started meeting. He would come, and Marshak would come, and I thought they were trying to stall, or else they didn't understand what we

were talking about. Because we never got anything done until very close to the end, when [incoming President Mark Yudof] Mark was coming. Finally the FCC met with him; I know I told him 'they're dragging their feet, and I don't understand why, because we're ready to go with this.' I think that after that, Yudof talked to Hasselmo, and after that things started to happen."

Pick was a member of the Committee of 8 and said that she would not described the process as stalled. "I would say it was paralyzed. They were unwilling to raise issues with the Board. At one of our first meetings, Nils talked at some length about how Tom Reagan felt burned. We came to believe it was a long time before the administration was ever raising anything with the regents. We would meet with them, we'd agree what was going to happen, and then we'd meet again, and nothing had been done. I'm quite sure that even at the end, when we were getting the thing wrapped up, it was only Reagan who was being conferred with. I'm not sure he was directly involved; he was making the rules for Kim Isenberg, who was meeting with us. The administration acted like they were completely paralyzed."

"One event that may have helped bring about resolution," Pick recalled, "was that on one of [President-elect] Mark Yudof's visits here, the Committee of 8 met with him, and had been in contact with him before that. We wanted to hear from him whether he really wanted this settled, before he came, and we were also interested in what kind of hand he was willing to play to help get it settled. He clearly did want it settled. One of the things we told him was that it did not seem that Nils was talking with the Board at all. I don't know whether Mark told Nils that, but Nils got very defensive about that with the Committee, and said 'I am too talking to the Board.'"

"Initially, our understanding was that some representatives of the regents were going to meet with this group; we got the clear sense that Reagan was no way going to be in the same room with a faculty member. So it was us and the administration, and then the administration going to the regents -- or not going to the regents -- and coming back to meet with us."

"Reagan absolutely, apparently, insisted that everything had to be housekeeping, so that we played these stupid mind games of turning substantive things into housekeeping, trying to make the argument they were housekeeping, so that he would be convinced that his rules were not being compromised." Pick agreed with Fred Morrison's assessment that everything became housekeeping, and gave him the credit. "Fred was very, very clever at figuring out ways of doing that."

Pick said that Marshak and Bognanno and Hasselmo

usually met with the Committee of 8. "For a long time, we had to get past the issue of Tom Reagan's ego. They were all talking to us about needing to sooth Tom Reagan. Later on, I would say that Marvin and Mike were helpful in trying out ways around an issue. If it was substantive, not housekeeping, they would at least entertain language that made substantive things sound like housekeeping. I'm sure they played a role in convincing whoever had to be convinced -- either Tom or his spokesperson -- that they were just housekeeping. They all really wanted to get it done, but they wanted to get it done in a way that wasn't going to upset Tom. More than once the phrase was used, 'he feels he's been burned.'"

It was not all housekeeping, however, and the Senate knew that. Pick agreed. "It wasn't entirely housekeeping! But in terms of the communication with the Board, Tom had to be convinced this was just housekeeping. There were some items that were housekeeping. For example, the base pay/salary thing. Initially, the Board's response, or Tom's response, was that all of these things were substantive. We made the argument, 'look, you're going to be in trouble with granting agencies if you don't change the way these terms are used.' That clearly was a housekeeping item. They weren't going to entertain any changes, essentially, for awhile."

Fogelman, also a member of the Committee of 8, provided his perspective on the process. "It took a long time because it was a back-and-forth process. It was a matter of amendments to Sullivan II [which had already been adopted for Law and Morris]. We proposed about a dozen amendments; the Board took the position -- which was a very peculiar position to take if you're negotiating -- that they would not negotiate over anything substantive, but they would accept what were called housekeeping amendments, which were fairly evident. But they would not negotiate on substantive matters, which put us in a peculiar position. At least one person took the view that if that's the case, there's nothing for us to do. And what we did was not unanimously approved."

"The challenge was to reduce, as much as possible, what was substantive in those amendments. Initially, they agreed that maybe four of the amendments were housekeeping and eight were not. We changed some language around, and eventually got up to eight as housekeeping and four substantive."

"Nils was very good on this. We kept reworking the language so it appeared they were all, in effect, housekeeping, so the Board wouldn't have to lose face on this. And we were willing not to make a confrontational issue about it."

"The amendments were all eventually approved. We made some compromises, but in the end they were all

acceptable to the Board as 'housekeeping' amendments. So that's how it got resolved."

Fogelman said that he himself never spoke with Board members during this process. "Maybe some others did; I personally never did. It was all going through Nils and Mike Bognanno and Marvin. I don't think the Board wanted to deal with the faculty. And the Board did not want to meet with us. We offered to meet with them directly, but they didn't want to do that."

"It was a situation you can describe in different ways. Face-saving for the Board is one way of looking at it, or challenges to their authority is another way of putting it. The Board did not want to deal directly with the faculty; we were quite ready to. We proposed a meeting, but Nils did not think that would be strategically or tactically wise, under the circumstances. And the notion that there could not be any substantive amendments seemed to us -- other faculty might have been more adamant about that, but we were willing to say 'OK, we'll accept that.' We made some changes."

With respect to the senior administrators who were involved, Fogelman said, "they wanted a solution, there's no doubt about that. This came up at one point, very explicitly, when Nils seemed to be suggesting that maybe we should leave this for the new president. I know that a number of us, including myself, spoke very directly, and said we've got to make an effort to settle this before the new president comes in. It may or may not succeed, he owes it to himself to get this settled before the new administration comes in."

"We met with Yudof. There was some talk of involving him, when we were down to the end-game, you might say, and just needed to make some kind of breakthrough. He told us -- I don't know what he may have done privately -- that he should not intervene and let's see what happens. I agreed with that. Then he would deal with it if he had to."

"Nils then did accept the view -- and it may have been his own view as well, but we certainly reinforced it -- that we had to make this effort now, to try to get it settled. Personally, as chair of a department, I was most concerned that we settle it before the new year for recruiting and all the rest. We were really somewhat behind the eight ball in recruiting, among other things, as long as this was hanging over our head. I had a strong interest, on behalf of department and whole institution, to get this thing settled, and not wait for the new administration. I thought that would be a big mistake."

"In the end, I think Nils played a very positive role in helping to identify the grounds upon which we and the Board could agree. I think the faculty was very flexible, I must say; we didn't stand on ceremony. We wanted to get this thing settled, as long as there was no compromise on what we

regarded as essential matters. In the end, the Board agreed that these are not substantive issues, so they could agree to them.”

Gray described the administration as “skittish; they’d had it up to here, they wanted to quit and go home, which I could understand, because I wanted to quit and go home, too. But they went along with negotiations for months, they were cheerful about it when they had to do it. They just wished they didn’t have to spend any more time on it. And they were very nervous once the legislative session started.”

Vic Bloomfield’s perceptions coincide with Morrison’s summary. “The word that I got was that Nils and Mike sort of kept guessing at what Reagan and Spence would buy. That they [Hasselmo and Bognanno] got very little direct word from them, that they didn’t feel they could talk to the other regents in any very direct way, and that they were trying to figure out what would be acceptable. I’m sure it was very frustrating for them; it was very frustrating for the Committee of 8. It’s one of those things I want to bring up with Hogan; we need to be able to talk to each other, for God’s sake.”

Dan Feeney’s recollection of what the Committee of 8 did was clear. “We looked over the proposals, from the Faculty Senate and the stuff that came back from the Board of Regents. What came out of it was that there were no real changes made in the tenure document of any substance by the Committee of 8. What there were was a series of discussions held in an attempt to get the administration moving.”

“We met among ourselves, and we met with Hasselmo, Mike Bognanno, and with Marvin Marshak. We met with them and said ‘listen, the administration has got to push this through with the regents, they have to support the faculty ideas, and we have to get this thing cleaned up.’”

“At first, [the administration reaction] was ‘well, we don’t want to do this because it will ruffle somebody’s feathers, and we don’t want to do this because there may be a problem here or there.’ And there was the ever-present reminder of the pending budgetary stuff in the legislature, and they didn’t want to get anybody irate during that period. We were sensitive to that, but we said there could still be discussions between the administration and regents to get this thing off dead center, because if it were to just hang out there, then you’ve got faculty anxiety continuing.”

Feeney had a recollection similar to that of Pick. “Finally, what the Committee of 8 did was request some time with Yudof during one of his visits. We made the point that nothing was happening and that we were going to ask him to expend some of his honeymoon capital to get this squared around. How he did it, we didn’t care. Did he have to talk to Hasselmo, to put the bee on Hasselmo to do what he could to get it done before he showed up? Or did he have to talk to

the Board? What I came away from the Yudof meeting with was that Yudof was going to do something.”

“Very shortly thereafter, there was a meeting called with Hasselmo and Marshak and Bognanno and the Committee of 8. We then met with them; Nils, I think, was visibly disturbed that we had put pressure on. On the flip side of it, within two weeks we had a deal worked out.”

The Committee of 8 was not in contact with the regents, Feeney affirmed. “I think there were some phone calls made by members of the Committee to selected regents, but we had to play the game by the rules, and supposedly the administration is the liaison between the faculty and the Board. What we were worried about was what seemed to be the inertia of the administration on this issue. The first meeting of the Committee of 8 and the administration I would describe as an exercise in frustration. It was ‘do you really need this?’ and ‘do you really want this?’ We said ‘we wouldn’t be asking for this stuff if we didn’t think it was rational. We are aware of how ticklish the situation is, but you can’t just blow off these things like layoff privileges or disciplinary action.’ We got past that.”

“The Committee served sort of an urging function. We didn’t do any real negotiations; we discussed things with the administration, and everything went back through [Faculty Affairs] and the Tenure Subcommittee anyway.”

What did come back “were not substantive changes. If you say, for example, the Judicial Committee should have the last word, or that there could be pay cuts in financial stringency, rather than financial emergency -- that was brought back to [Faculty Affairs] as an idea. A lot of this we attribute to Fred, coming up with ideas as to how to get this thing through. But a number of these things were pushed back to being housekeeping measures, or the Judicial Committee, in its rules of procedure, could put some things in as to how it would handle matters, including having its own attorney -- and not have that stuff in the code. So things were pulled back, and we said we’d do things through the committees, and then they could be put past Reagan’s dogma of ‘only housekeeping issues.’ What it became was ‘let’s just delete that and put it in the operating rules someplace, or render it as an interpretation.’”

“We discussed the Committee of 8 even in [Faculty Affairs]. I said I wanted to make it very clear: ‘this is no attempt to be any kind of mimic of the Tenure Working Group,’ because we know how sensitive that issue was. [Faculty Affairs] had no problem with it, and neither did the Tenure Subcommittee.”

One faculty member reported on events as seen from outside the process. “The story was that the Board, and maybe even the administration, didn’t want any public action

on tenure until the University budget had been decided by the legislature. But given what happened in the end, I'm not sure that would have made any difference.¹²⁸ It looked like a sort of coming together and a new beginning. Although if you're going to talk about symbolism, they adopted this the same day they elected Hogan as chair of the Board. Certainly electing Hogan as chair and repudiating Reagan sent a strong message. Whether that would have happened earlier, I don't know."

Board resistance to any further changes to Sullivan II were also a surprise. "At one point, I understood when the Board adopted Sullivan II, there was some language about 'well, we think this is the right thing to do, but we also understand that there may be some little things here and there that we need to revisit.' But then there seemed to be a stonewalling later on. I didn't have any contacts then, but the second-hand information I got from people who did was that no regent wanted to do so. 'We've done this, we're through, don't raise this issue, we don't want to do anything.' I would have thought that the November thing would have said 'you put together a package of things that are going to make this right, because yes, it was sort of jerry-built quickly over a weekend' or something like that. So they were sending mixed messages."

Marshak recalled his comments about Reagan sticking to a deal, once he made it, and offered a different interpretation of events surrounding the Committee of 8 negotiations. "I said Tom stuck to a deal; if you ever shook hands with Tom on something, you had a deal. I never viewed Tom as committed to the Morris proposal. When Tom got rigid was when he shook hands. There are four descriptors of Tom which I think are very important. One, he's from the Iron Range. Two, he was a teacher and basketball coach. Three, he has an Irish background. Four, he was a politician in Washington, a big-time politician for many years. Of those, the Range is most important."

Marshak pointed to experiences with Iron Range legislators. "When you go to the legislature and deal with those people, the different members are totally different. There are some who want to hear about education and policy and whatever. You go and talk to somebody [from the Range], there is no talk about policy and education and all that; you

¹²⁸One faculty member recalled discussions with legislators at the beginning of the legislative session. He reported that one member of the legislative leadership said "'I've looked at those faculty proposals; I don't see anything wrong with that. I don't understand why the regents didn't adopt that.' How much he really knew, in terms of the particulars, I don't know, but I interpreted his remark as saying 'that was a solution, and the regents could have saved them a lot of trouble if they'd acted at that point, and we could have gotten on with more important things.' Which was certainly the faculty position."

just talk money and power and deal. You talk real practicalities. Tom is very much like that. He wants to know, what is it going to take to make a deal? Reagan-Spence was a proposal; Reagan-Spence wasn't a deal. From Tom's view, a proposal is something you put on the table, you talk about it, you can move on it. Once you make a deal, a deal is done. People who come back and try to undo deals, then he gets mad."

"That was part of the problem afterwards, because he saw that there had been a deal done, and now there was a backpedaling on the deal. Of course it's true, there was."

The deal was not with the faculty, it was with the administration. Marshak said "of course. I understand that. That was always the problem. The problem was that in the fall, Nils and Mike and I had to make deals, and we didn't have the authority to make deals, because we didn't have the authority from the faculty side. But we had to make some deal, and we knew that we were going to have to backpedal on it, but we couldn't say that up front. You don't make deal by saying 'we'll make a deal, but we're going to come back later and change it'! The dynamic of all this was very tricky."

"Skipping way ahead, with the Committee of 8, I didn't realize until it actually fell together, that we were going to walk out of this, that we would come to an end. It wasn't clear to me until way into May, maybe even June. There was a Committee of 8 meeting at which it was all of a sudden clear that it had been decided, by the faculty, better do a deal with Nils than wait for the new guy. In my mind, that was the thing that pushed it over at the end. 'We've got three or four more weeks of Nils, we know Nils, let's do a deal with Nils, rather than leave it on the table for the new guy. Because we don't know him and we don't know what will happen. We want this over.' I'm not sure exactly when the Committee of 8 decided that."

"Clearly, there was a deal that nobody would win if we blew this up while the legislature was in session. There was a lot of money in St. Paul, it was clearly in everybody's interest to collect our money. We had an explicit discussion, in my mind, with the Committee of 8 [on this point]. At least I had that discussion with several members of the Committee of 8. Explicitly. 'Look, we are going to negotiate until the end of the legislative session, in a very desultory way. We'll negotiate, and then we'll schedule another meeting, but it's going to take us awhile because calendars don't match.' But nothing was to happen. It was in neither side's interest for anything to get out of control before the end of the legislative session, because we all wanted our money. Then we would have time, from the 15th or 22nd of May, to make a deal."

"That took us into early May. By early May it was clear we were getting our money. Then we started talking

seriously. We were apart; it wasn't clear there was a resolution."

The faculty were troubled by Reagan's insistence that everything had to be housekeeping. That there could be nothing except housekeeping changes. Marshak explained, as did his faculty colleagues, that "in the end, that's how we got out of this. We called everything housekeeping. The regents gave in a little bit, and so did the Committee of 8. This was 'don't ask, don't tell'; we'll all pretend, and we got out of it. Who gave the most at the end, I don't know. I think both sides gave at the end. The regents didn't demand quite as much as they had, and the Committee of 8 decided you could burn the house down and rebuild it and still call it housekeeping. You could do major remodeling and pretend you were just using a broom and the dustbin."

"The real thing that got us out of it was the desire to do a deal with Nils, and that was on both sides. The faculty wanted a deal with Nils as president; I think the regents very much wanted Yudof to start with a clean slate, and not start with this."

Marshak said the Board was giving the administration no difficulty at all during the negotiations with the Committee of 8, contrary to how it may have appeared to the faculty. "I was representing my clients; my clients were Reagan and Spence. In this particular negotiation, I was representing them, and we were talking all the time. I was determined that Reagan and Spence weren't getting out of the corral. I know where I wanted things to go, but I couldn't move them so fast that Reagan and Spence got out of the corral. I wasn't going to repeat that disaster. I know people on the Committee of 8 got frustrated with me, because they thought I should be moving faster, but I couldn't because I couldn't keep my clients. I couldn't let them go."

Of course [the faculty] couldn't see that, but there I was, talking to the Committee of 8 being a stick-in-the-mud, and they're asking why Marshak is being a stick-in-the-mud. But I can only move at the rate I could bring my principals along. Because I was determined that I wasn't letting them get away. I was ahead of them, but I wasn't letting them get away. I'd seen what happened the year before; that was the ultimate principle: they could not get away from me. I had to have them along, and I couldn't go any faster than I could move them."

"Those were some of the things I had to keep in mind. From my point of view, I was in a fairly uncomfortable position. I was in the middle of this whole thing. I was between Nils and Tom. I was between Nils and Mark and Tom. It was trying to run around; sometimes it came around to some kind of shuttle diplomacy. I was the message boy. And then Fred would call me up and say 'there's a new disaster.' I

like Fred a lot, but he has this tendency to talk in apocalyptic terms. I would say ‘oh, no. Can this disaster wait until tomorrow?’ I was just doing the best I could, and chase after everybody and try to keep them all connected, and not letting what happen in the previous summer happen again. Because I knew that was impossible.”

* * *

Hasselmo met with FCC on May 1, and said the discussions with the Committee of 8 were directed to working out compromises that would be acceptable to the regents and the Faculty Senate, and that he hoped they could be presented to the Faculty Senate in June. He then commented on the University’s faculty governance system, which he said was a good one and that it had done well, even with the stresses and strains, in part because faculty who participate are also leaders in research and teaching. The system held up “pretty well,” and the administration had to take some responsibility for recent events, including an inability to control forces that drove agendas that some saw as damaging to the University. Hasselmo said the tenure discussion was infected by other issues, and the breakdown between him and the regents made him less persuasive, although he might not have been able to be more persuasive under any circumstances. Hasselmo agreed there should be greater faculty-regent interaction.

Sara Evans recalled how things finally got off the dime. She related that “we had several meetings. Right at the end, it became a little clearer to us. The person who can talk about this is Fred [Morrison], who was the most creative person in coming up with language. He was the wordsmith all along, all along behind the scenes of every possible version. He was also very good -- there were any number of times when we were pressured to give in on this or that or the other; we just had to say ‘no, that won’t do, the faculty will not accept this and we’re not going to be a party to it.’ Fred can be pretty effective at doing that, when you have to say ‘no, this is not possible.’”

“At the end, it was like there was a sudden break-through. Once it happened, it happened very fast. On the one hand, we had had to make it very, very clear all the ways in which there were matters of principle on which the faculty was not willing to give ground, both because we’d already given ground on a whole lot of things, and because we were down to some fundamentals. The committees had reviewed Sullivan II and expressed themselves; there were issues about procedure and the Judicial Committee.”

One item was collegiate financial stringency. “That was genuine compromise. Clearly, the Senate did not want collegiate financial stringency, but apparently that was one of the things that was a ‘do or die’ issue for Regent Reagan. The way we compromised was putting in

additional protections that I think most of us could feel very comfortable with, in terms involving the Senate in any such declaration.”

Evans also recalled that one of the staff members in the regents’ office had done some last-minute “editing” of the document that had been approved both by the regents and the Committee of 8. “There was something I never understood, how the staff functioned in the regents’ office. Why a staff person would feel the freedom to do that, I simply can’t imagine. They were also stuck in this bureaucratic mode that regents’ policies have to be formatted in a certain way. There were a whole string of little ‘stumbles,’ towards the end, which threatened to derail it when we had resolved it. The staff editorial changes were real word changes, and some of them were substantive, done by somebody at 2:00 a.m., putting in the things we had agreed upon, and putting in a few more. Another was the formatting issue; this had been before all the committees in the form in which tenure codes have always been, and they re-did it to do it the way they do it, which was not acceptable. We had never passed it in that form, it made the most fundamental statements of values submerged behind a series of definitions. That was one of the things, at the end, where we just had to say ‘this is what we agreed on, this is what we voted on, this is what we are sending to the regents, you can take it or leave it.’”

On May 15, Sara Evans sent an email to the Committee of 8 members with the subject field entry “Deal!” She reported that she had “talked with the president this morning and again this afternoon. Apparently both Regents Reagan and Spence are willing to support the proposals we worked out yesterday. Nils is going to ask Tom Reagan to put his support in writing and he would like a statement from us as well. I would like confirmation from each of you affirming your willingness to support the proposals we worked on (on the presumption that the leadership of the Board makes a similar affirmation) before the Senate Committees and, if those committees also adopt these modifications, the full Senate on June 5.”

On May 19, Evans again emailed to the Committee of 8. The manner in which agreement was being reached suggest how taut were nerves and how deep the distrust that existed. “Things are moving very quickly. We will meet with Nils, Mike, and Marvin tomorrow morning. . . . The purpose is to go over the materials that we will give to the Senate Committees and be very sure that we all understand the agreement. I hope that Nils will have a signed letter from Tom Reagan and Pat Spence by then. Our letter will not take effect until they have signed on. I just reiterated this point to Mike Bognanno and I believe Fred did the same this morning. Having heard back from just about everyone, I plan to write a letter to the effect that the Committee of 8 supports the agreement. While we all agree that the Senate committees and the

Senate should consider it and make a recommendation to the Board, one of us, as a matter of conscience, cannot endorse the agreement in its entirety but will abide by the decision of the Senate. The other seven have agreed to support this agreement before the Senate with the understanding that the leadership of the Board of Regents will do the same with the Board.”

As Evans reported, there was not unanimity of view on the final compromises urged by the Committee of 8. Bob Sonkowsky wrote to Sara Evans that “I must vote no for the committee of 8’s final tally on the package. While I may have given the impression to the President, or even to others, that I favored it by participating somewhat in what I regarded as the improvement of its language, I have, as you know, too many reservations about such matters as the very concept of financial stringency, which I view as a step in the wrong direction of imparting more and more control to administrators and regents. I have been told that my attitude resembles that of the NRA in its opposition to gun control. I am sorry if any regent or administrator feels threatened by my stance as by an AK 47.”

With respect to the “re-formatting” matter that Sara Evans mentioned, she emailed to Fred Morrison in the morning of May 21 to let him know that “Steve Bosacker has talked with me at some length wanting to assure us that any reformatting that takes place will involve protracted conversations with - and assent from - the relevant faculty governance representatives. I told him I thought the Tenure [Sub]committee and perhaps the Judicial Committee would be essential. I actually think he means it, but I did go on at some length about the problem of trust in light of the ways things have unfolded around here. After reading your note, I think we might simply go back to Steve and ask for a letter stating that any reformatting will be done ‘with consent.’ I’m sure he would do that.”

Evans later in the day forwarded to the Committee of 8 a message from Fred Morrison, and added a comment of her own. Morrison told her that Marvin Marshak was collecting signatures on the letter to be sent, and that “Marvin will also write a letter that says that any formatting of the document will only take place with the consent of the Tenure Subcommittee. Any non-agreed items would be reprocessed through the section 19 procedure.” Morrison also told the Committee of 8 that the Tenure Subcommittee had approved the changes 4-0, and that FCC, Faculty Affairs, and the Judicial Committee would soon be taking them up. Evans also reported that she had had a conversation with regents’ Executive Director Bosacker to confirm that there would be no more reformatting.

Late in the day on May 21, the Committee of 8 and Regent Reagan exchanged nearly identical letters.

“On behalf of the (regents)(committee of 8), thank you for your time and commitment to finding a resolution to tenure code reform. (I)(we) have received the President’s recommended amendments to [Sullivan II] as negotiated by the administration and (Committee of Eight)(Office of the Board of Regents). Upon receiving your written statement recommending ([regents’])(Faculty Senate) approval of the Sullivan II proposal as modified by the proposed amendments, (I)(we) will forward the amended policy to the (Board)(Senate and its Committees) with (my)(our) recommendation to adopt the entire proposal for the University system [except Crookston and Duluth].

“Now is the time for healing. The (Board, the administration, and the faculty)(faculty, the Board, and the administration) have worked diligently to find a reasonable resolution to this challenging policy discussion. (I)(we) ask that we come together and publicly acknowledge our agreement and dedication to a good faith effort that transcends past divisiveness and leads to a successful conclusion of this debate.”

(The Committee of 8 letter included a final clause, “and a renewed commitment to the concept of shared governance.” Reagan’s letter did not.)

Evans explained the exchange of letters. “I don’t know who composed Tom Reagan’s letter. But we as a committee decided -- and it was partly with the advice of Fred Morrison, who participates in international negotiations all the time, [who told us that] this is one of the ways that you signal you’re on the same page, is by issuing essentially identical letters. At one point I had drafted a letter, and then we looked at Reagan’s letter, and said “we can say these things, too, and this is a way to say that we agree.” That was our decision. I think he was a little back taken aback that we wrote him back his same letter. But apparently in the world of international negotiating, when you come to agreement, that is one of the ways you make it very clear. That was our decision; we were trying to figure out the proper words to use, and the letter we had gotten from him in fact said what we wanted to say, so we just modified it a little bit and sent it back.”

Morrison’s recollection was similar. “After we had the ‘deal,’ there was a question of how to certify it. Kim Isenberg came with a draft of Reagan’s letter, which we could see but not have until Reagan approved the text of our letter. There was then some jockeying about Sara’s draft letter and whether it would give Tom ‘adequate assurance.’ It was at that point that I suggested we just copy Tom’s letter (with changes). Surely he couldn’t say that that language didn’t give adequate assurance, since it was his own language to us. (Yes, this is sometimes done in exchanges of diplomatic notes.)”

On May 22 seven of the eight members -- minus Sonkowsky -- of the Committee of 8 wrote to FCC, Faculty Affairs, and the Judicial Committee to propose further final amendments

to Sullivan II. (The letter was originally going to come only from Fred Morrison, but he agreed with a suggestion from Evans that it would carry more weight if the Committee of 8 -- minus one -- were all to sign it.) “We believe that this is an acceptable settlement of the current controversy. . . . We do not argue it is a perfect solution; we do believe it is the best outcome practicable. . . . We ask the committees to vote on this proposal as a whole. The process has reached a point at which further detailed amendments are not productive.” They reported that both Hasselmo and Reagan supported the amendments. The memo outlined the amendments; most were housekeeping. In the face of regental insistence, the possibility of collegiate pay cuts was retained, but with the proviso they would have to be approved by the faculty assembly of the college. There were also changes in the “minor discipline” provisions so that suspensions were not permissible.

At the end of May, Evans drafted a letter for the seven Committee of 8 members, to be placed in the Daily. It described briefly the final stages of the process, and told the readers that “after more than a year and a half of controversy, a resolution to the tenure debate is in sight.” She reported that “seven of the members of that committee support the proposal which has now also been accepted by the Tenure Subcommittee, the Faculty Consultative Committee, the Senate Committee on Faculty Affairs, {and the Judicial committee}. {Professor Rama Murthy, president of the AAUP, has added his support.} The document also has the endorsement of President Hasselmo. Regent Reagan has pledged to support it in the Regents’ meeting.”

Evans warned that “it is an acceptable settlement of the current controversy. We do not claim that it is a perfect solution; as members of the academic community we could debate that question at length. We do believe that it is the best outcome practicable at the present time and that it fully protects the academic freedom and tenure of all faculty.”

Gray wrote to Reagan on May 23 to inform him that while FCC did not adopt a particular resolution at its meeting of May 22, it “voted unanimously to endorse the proposed tenure revisions” worked out with the Committee of 8. Gray assured him she intended to endorse them and would “enthusiastically urge” the Faculty Senate to approve them.

The Daily reported progress in “**Tenure armistice may be at hand**” (June 5). The Faculty Senate would probably pass a compromise on tenure, “ending almost two years of pain and suffering . . . [and that] could put an end to the war-like tenure controversy.” The article reported on the work of the Committee of 8 and the changes proposed. The general view was that the code was acceptable, but not perfect.

The Faculty Senate met on June 5, and were provided copies of the May 22 memo from

the Committee of 8. Evans described the result as an “honorable” conclusion to the debate and said the discussions with the administration had been “vigorous.” Morrison explained that faculty were adequately protected by the amendments. Dempsey said the draft was not that of the Tenure Subcommittee, but it approved the changes “as a matter of peace on this subject.” Feeney said it was “time to bury the hatchet,” and said that Minnesota was in the lead on this process -- other institutions were just getting into the subject. Fogelman said it was “an historic occasion”: that in April of 1996, the faculty had “reclaimed an independent voice in revising the tenure code,” had done so in the “impossible time of six weeks,” and had expected the regents would act on the proposals; instead, they had “hired the tenure demolition team” of Hogan & Hartson. The final document, however, expresses the voice of the faculty. Murthy distributed copies of a resolution the AAUP Executive Committee had adopted June 2 urging support for the amendments and bringing the debate to closure. Regents’ Professor Eville Gorham (the one “renegade” who continued to support unionization) cautioned that while the battle may have been won, the war continued because there remained other threats to tenure. Following only a few additional comments, the Faculty Senate then voted overwhelmingly in favor of the amendments. The meeting ended with the singing of an adaptation of the 1960s antiwar song “Last Night I had the Strangest Dream” for the conclusion of the tenure controversy.

Walsh commented that “I voted as an alternate against Sullivan II+, but I am glad the war is over and the faculty is not very seriously split. Of course there remains the divergence over collective bargaining, but very little animosity was left behind. So we did OK. When a couple of us realized that the Senate was going to sing a song, we ran from the room in terror, but not in anger.”

The newspapers also covered the action by the Senate.

“It’s over: New code ends ‘U’ tenure war [;] The Faculty Senate voted overwhelmingly in favor of the revised plan, which the regents are expected to sign next week.” (Star-Tribune, June 6). The “furious battle” came to a “peaceful end” with the Faculty Senate vote; regental approval will end “nearly two years of muddy fighting.” The Faculty Senate meeting ended with a song, lyrics offered by Scheman and the singing led by Sara Evans and Marvin Marshak. Marshak said the vote and regents’ action would “resolve this issue for a generation”; Hasselmo said it increased the credibility of tenure. Gorham was quoted as saying the faculty “must remain vigilant.” The article summarized the changes that had been agreed to. (The newspaper also set up a telephone number the public could call to hear Evans and Marshak singing.)

“Faculty approves new tenure code” (Pioneer Press, June 6). The debate “came to a surprisingly upbeat end” with the Faculty Senate vote. The article also reported on the singing, and that “professors who have sat through countless meetings on the tenure issue were practically giddy with relief that a tenure truce is at hand.” The article reviewed the changes and the events. Gray said it was “the end of a long and tortuous road.” According to Hasselmo’s chief of staff, Mario Bognanno, “the ship is back on course.”

“Faculty Senate OKs tenure plan” (Minnesota Daily, June 6). The compromise proposal passed with only four nays; Gray was “‘happy and comfortable’” with the code; Hasselmo described it as “‘a wonderful outcome of an arduous process.’” Murthy said it was acceptable, but that communication between faculty and regents was needed. Walsh opposed it because it “‘was written by the administration to prevent collective bargaining. . . . The board got in big trouble because they never realized the public wasn’t willing to support their draconian attacks on tenure. They learned their lesson: To not do it all at once.’”

On the morning of June 6, Gray sent an all-faculty email announcing that “I am pleased to report that yesterday the Faculty Senate overwhelmingly voted to accept the proposed tenure code.” She thanked the Committee of 8, along with the three Senate committees and their chairs. “Finally, you may have heard that the Senate burst forth into song at the end. If you want to experience that moment, you may hear a recording by calling the Star-Tribune’s audio line at 673-9050, ext. 5391.”

“‘U’ tenure code [:] Faculty endorsement is encouraging” (Star-Tribune, June 9, newspaper editorial). The Faculty Senate action was “a progressive step” and “an encouraging measure of mood among the people who constitute its most important asset.” Unlike the close union vote, this says the faculty “is enthusiastic about a new tenure code.” The regents wanted change to accommodate a changing world, but forgot how a university is different, that faculty “are not merely employees” and they “insulted the faculty,” harmed the University’s reputation and future. The changes are desirable; the regents should be credited with dropping “their wrongheaded initiatives and to consider more sensible alternatives” and should approve the new code.

The article then quoted a number of individuals about the process. “Reagan said that relying on outside consultants caused resentment among faculty. ‘Some of the language was harsh, but we didn’t have time to study it,’ Reagan said. ‘That was the mistake; we should have taken more time to look at it.’ Reagan said the board had only a few hours to review the language before presenting the code last fall. Faculty leaders agree there were serious mistakes made. . . .

‘The best way to have prevented it would have been not to bring up tenure in the first place,’ Reagan said jokingly. ‘But seriously, we probably should have laid out what we were trying to do which was review tenure, not destroy it.’” Gray said she hoped the issue was closed; “‘our intention was to bring closure; nobody wants to bring it up again.’” University officials “agree that the main casualty in the tenure debate was the trust held between faculty members, regents and administrators” and that it needed to be rebuilt, which will take a long time. The President’s Chief of Staff, Mario Bognanno, said “‘no, this issue wasn’t neat, but damn it, it’s a winning outcome.’”

Hasselmo wrote to the regents the next day to transmit the Faculty Senate amendments to Sullivan II (as Walsh’s comment indicates, the code was now known as “Sullivan II+”). He “strongly” endorsed them, said the code met the objectives he had identified last year and those established by the regents.

On June 13, at the Committee of the Whole meeting, the regents unanimously approved the revised tenure code. Reagan made a statement in which he noted that the review of tenure, begun in the fall of 1995, “has been rigorous. . . . There has been some discomfort along the way. There was disagreement, too.” He then thanked the Committee of 8 and the administration. One member of the Board read an adaptation of the lyrics to “Zip-a-Dee-Doo-Dah.”

Following the meeting, Gray reported to FCC that the regents first passed the tenure amendments, and then had a discussion. There were congratulations all around. Gray expressed pleasure that the issue was settled.

Sonkowsky later explained why he did not sign the letter to Reagan agreeing to the amendments. He commented on the result. “Although I worked with the majority of seven to make the language of the tenure code as unharmed as possible within the concessions they were convinced should stand, I had been from the beginning in disagreement with the Senate on post-tenure review. Even though safeguards against its abuse were put in, I did not think they were sufficient. My belief still is that post-tenure review is ‘the camel’s nose under the tent’ toward the ultimate destruction of tenure. My stand, on the other hand, has been compared to that of the NRA against any modification whatever of the gun laws. Tenure, however, is only a shield, not a sword, and certainly not an AK-47. Moreover, I was in disagreement with those who were not merely relieved with the pause in the tenure war but felt that the Committee of 8 had reached a successful or wonderful conclusion, and later I was in fact disgusted with the exuberance of some in the Faculty Senate and in the administration.”

Clayton shared Sonkowsky’s reservations. Williams forwarded to the AAUP Executive

Committee on June 11 a message from Clayton, who had run for office in the AAUP. Clayton wrote that “my views, as I hope I made clear in my un-candidate’s statement, are very different from the AAUP officers’ who heartily endorsed the latest tenure-code revision, of which I did *not* approve and suppose it will come back to haunt some of its enthusiastic supporters (though I hope it won’t). I believe that the AAUP officers should work toward another collective-bargaining election and try to educate its own membership and the faculty at large on the value of such an organization in the changing and industrializing climate likely to prevail and even increase in the foreseeable future. They should by all means work with President Yudof as far and in as many ways as serve the faculty’s -- and on that account the University’s -- best interests, but it would be refreshing if they could also maintain the University AAUP’s integrity and independence, and not become just another faculty rubber-stamp organization, toward which there is a certain proneness in this University that appears in ‘faculty governance’ and was shone in relief in the course of the speeches of mutual admiration made in the Senate meeting last Thursday, a wonderful display of creditable consensus where the stance on the issues warrants it, not so wonderful when it doesn’t. In this case, the Senate was ‘overwhelmingly’ of the same mind (the word is apt for the voice vote, I agree), but not even unanimity guarantees correctness, and I for one would have preferred near-unanimity.”

At the annual meeting of the regents on June 13, the Board elected its officers for the following two years. The Board first voted (7-4) to depart from normal procedure to cast non-binding paper ballots to express a preference for chair and vice chair (one regent was absent from the meeting). For vice chair, the paper votes were 5 for Neel (the current vice chair), 5 for Spence, and 1 for Hogan. For chair, there were 6 votes for Reagan and 5 votes for Hogan. On a roll call vote for vice chair, Spence was elected 7-4. After a recess, the Board again conducted a preferential ballot for chair; there were again 6 votes for Reagan and 5 votes for Hogan. On the first roll call vote, the result was the same. The results were the same on the second and third roll-call votes. After a recess, Spence was nominated as chair, so she withdrew as vice chair. At that point Reagan withdrew his candidacy for chair; the Board then voted by roll call for chair, with 8 votes for Hogan and 3 votes for Spence. Spence was then again elected vice chair.

One experienced observer commented on the vote of the regents to change their leadership. “There is absolutely no doubt the tenure debate was a major factor in the election of the chair of the Board.”

These events were, of course, covered by the papers, as the denouement.

“Regents vote to replace leader [;] Board also adopts new faculty tenure code”

(Pioneer Press, June 14). The article noted the votes for chair and the tenure vote. “If that [the tenure debate] was a factor in changing chairmen, the regents weren’t saying.” After the third vote, the article reported that Reagan said “‘Looking at this, . . . I see nothing but ugliness down the line if we proceed” and that he had deprecated the notion that the Board was split or that he was upset at the outcome. After the “harmonious” tenure vote, Spence “recited the words to a song she co-wrote to the tune of ‘Zip-a-dee-doo-dah,’ which appeared to reflect the joy all parties involved felt now that the battle over tenure is over.” The vote was followed by applause.

“‘U’ regents elect leaders, finalize tenure code” (Star-Tribune, June 14). The article described the meeting as one “that surely ranked among the strangest in recent memory for contrasts” because of the reading of the Zip-a-dee-doo-dah lyrics followed by the deadlock over the chair and vice chair positions. Describing the votes, the article said “perhaps the biggest surprise was Spence’s support for Hogan. She and Reagan were allies” in the tenure dispute, and on the first roll-call, “Spence hesitated several seconds before casting her vote for Hogan, denying Reagan the seventh vote that would have re-elected him.”

“Regents close book on tenure” (Minnesota Daily, June 17). The debate ended “in less than three minutes” at the regents’ meeting. “‘I wish we could have accomplished this in three minutes at the beginning,’ said Virginia Gray.”

“A Fierce Battle Over Tenure at the U. of Minnesota Comes to a Quiet Close” (Chronicle of Higher Education, June 20). Written before the regents’ vote, the article said the Board “was expected to approve” the new policy. Gray was quoted: “‘We want to get the information out to the academic community that the horrible tenure code was not passed. . . . People don’t need to fear coming to the University of Minnesota. Academic freedom is alive and well here.” Reagan said “the regents’ views had been distorted during the furor. . . . ‘It was never as bad as it was painted to be, and compromise was always in the wind.’” Marshak said those involved “purposely kept the tenure deliberations quiet this spring” in order to avoid a debate during the legislative session. The article noted the adoption of the post-tenure review system, pay cuts for specific colleges if approved by the faculty, and reassignment and retraining in the case of programmatic change. It also reported on the Faculty Senate singing at the end of its June meeting.

“Minnesota Tenure Turmoil Resolved” (Science, vol. 276, June 27). The article reported the regents’ action adopting the new code; Dempsey says “‘everything is peaceful and quiet and hopefully will be for a good, long time.’” “The storm has been weathered, the regents who were pushing the more draconian proposals have either resigned or retired, and the new code

addresses most faculty concerns. Ironically, it is '90%' similar to the one the faculty had originally proposed, says Dempsey."

Chapter Nineteen

Final Reflections

THE FAILURE OF WHOSE LEADERSHIP?

Sara Evans commented that these events were “a greatly intensified version of what is happening at a lot of other places. What was happening in the AHC was driven by changes in the health care system and the vulnerability of medical schools; those changes were happening much faster in Minnesota than anywhere else. That put us on the leading of change and leading edge of crisis in medical centers. Then Brody comes in, and brings the solutions from the corporate world. What was happening here was an accelerated version of what was happening at other places.”

“Then, put Brody together with Keffeler, together with Kelso, and Keffeler’s wish to do in Hasselmo. We had a systemic breakdown. All the ways in which faculty interests might have been protected didn’t work. All at once, all in the same place, so it was a total breakdown. It’s Rama who said we had a breakdown of administration, of regents, and of faculty governance all at once, and there was this ganging up in the legislature, too. You can find every one of those elements other places, and constellations of them, but we had it all at once.” A number of those involved offered a reaction to the idea that everything broke down.

Fred Morrison commented, about the failure of Board leadership, that “yes, that’s true. Faculty leadership failed? I think that’s somewhat true. We never got our act together on this, especially 1995-96. The administration failed or was too weak? That’s true, too.”

“There’s a fourth thing you have to have in there. This comes back to something I said earlier; you have to have the relevant parties talking to one another. If you don’t have the relevant parties talking to one another, then you’re going to have trouble. You’re going to have misunderstandings. If everything is passing through somebody who’s shell-shocked by the controversy, then there are going to be strange results.”

“A year before this was going on, I was involved in this interpretation -- still hasn’t been decided -- of the Algiers Accords, that ended the Iranian hostage crisis, before the Iran-U.S. Claims Tribunal. The Algiers accords are two pieces of paper, identical, one signed by the Iranians and one signed by us, because they wouldn’t sign anything we had signed. International law treats that as a single treaty. No American ever talked to -- or saw -- an Iranian in the negotiation of those accords. We only talked to Algerians. The Iranians only talked to Algerians.

And now we've got some interpretation problems about 'what did we mean?' And the Algerians can't help us."

"The same thing happened. We never had a real conversation with any of the regents about what they wanted or why we were concerned about what they wanted. And they never had a real conversation with us. It was all done in this public speaking, 'here's a document [from Morris], now give us a formal response.' That's a failure of leadership in the administration, which couldn't carry the Board. It's a failure of leadership in the Board, which could carry the Board 7-5, which is good enough if you're on the Iron Range, and didn't worry about communicating with anybody else, 'we'll just pass it.' And in a sense, a failure of leadership in the faculty."

In John Adams' view, "in retrospect, you might think of it as clever political cover for a stalking horse, or you might see it as something that blew up in their face, but [the regents] had been marching through their big, thick rule book, and each year they had a new batch of them that they were going to take a look at. And this one [tenure] came up. In that respect, a careful historian might say, if it had come up two years earlier or two years later, it might have had a completely different treatment. With a different cast of faculty leaders and a different cast of regents. It might have gone in terms of 'it looks OK, let's leave it the way it is' or, depending on regents and faculty leadership, it might have changed again. Besides that, if it had come up later, we would have had more history of other universities taking a look at their tenure codes, and that would have had an effect. The fact is, we were looking at it at the same time half a dozen other places were engaged in it."

Adams considered the notion that, given the clear public confrontation of the President and the Board, the Board must have been deadlocked in some ways. It could have fired the President, even though he was a lame duck; how frequently does a Board tolerate its chief executive being in open, public, vehement opposition to what it's doing? "A friend of mine was president of the University of Oklahoma, and he got into a public dispute over the football program, and he quit. He didn't wait for them to fire him, he quit. He wouldn't tolerate their support for what amounted to a corrupt operation. I think you either support the president or you fire the president, but you don't hang the president out to dry in public. I attributed that to ineptitude on the part of the Board leadership."

"The worst case of that was the picture that appeared of Tom Reagan demonstrating with the people who were trying to save General College. That was going on also. The sheer idiocy of such a behavior, to this day I do not understand. It was that regental support for the General

College, in the face of what Shively and Hasselmo had proposed, that indicated to me that this Board is just inept. It's not malign; it's just inept. Maybe some people would say that's a more generous interpretation than is appropriate. I've told several of them since then, when I've talked to them, I don't think these are bad people. Sometimes they're in over their head, they don't spend enough time doing their homework, they think they're supposed to represent the interests of their district rather than the interests of the University and the future of Minnesota, but I don't think they're bad people. I don't think they lie awake nights trying to figure out how to do evil things. The world doesn't work that way. And I think that some folks think I'm innocent, and there really is evil in the world, but I'm more comfortable with my observations."

Adams also commented that "I remain convinced, though, that there was major failure of leadership and management in the middle echelons of management of the University all during that period. Many deans and department heads were less than helpful in many instances. They watched, instead of thinking and acting. By choosing to be non-participants, for the most part, the various faculty groups and the administration had to carry the ball for the University and against the board. An administrative structure that served us well in the 1960s and for part of the 1970s proved to be totally inadequate to serve the University's interests and the faculty's interests when trouble developed. This is the one feature of the pre-troubles era that has not been addressed well."

In Bloomfield's judgment, "the leadership of the Board clearly failed. Did faculty leadership fail? I'm not willing to concede that. The faculty came closest of anybody to doing it the right way. Events just got out of hand." He acknowledged that faculty leadership may not have functioned as well as it should or could have during 1995-96, but maintained "I still think that of the three groups, the faculty was least culpable. I don't say that out of any particular loyalty to the faculty."

One reason the faculty prevailed, in Bloomfield's view, was because they had "right on our side" -- and he added that he was not being "totally flippant." What was dangerous about what the regents were doing was that they were so out of step with the rest of higher education; their proposal would not fly. The faculty did it mostly right; they were informed and did what they were supposed to do in a timely fashion. The broader community recognized the rectitude of the faculty, so the tide of opinion shifted away from the regents and the arguments for efficiency to the faculty as responsible members of the community. The Tenure Subcommittee did an amazing job, he thought, and said that Tom Walsh "stopped the train," which was crucial, because the train needed to be stopped.

Bloomfield also commented that if the regents had had their wits about them, they could have gotten more changes in tenure, but they were in such disarray and so inept that they didn't accomplish as much as they might have. The legalities are that the Senate proposes, the regents debate something and sends a response to the Senate, the Senate says it does not like it, and the regents can say "too bad." That could have happened, he thought. In politics, Bloomfield concluded, once one makes a mistake, in the short-term, it can't be reversed -- one has to get it right the first time.

Reading [the chronology], Bloomfield also said, "one of the strong conclusions I came away with is that what you see happening in other large organizations constantly: management screws up and the people in the trenches suffer the consequences. I see that as what happened here, [with] management consisting of the administration and the regents. Of course, what happens then is that not only does the morale of the people in the trenches go down, but they start fighting with each other, and the whole thing goes sour."

Bloomfield agreed that there is a difference between a university and other kinds of institutions, however, because at a university, the people in the trenches probably have a greater ability to fight back. "That's right; there certainly is a difference in the outcome. At least in the objective outcome. I think the subjective outcome is still that things are very shaky."

Gray's views paralleled those of Bloomfield. "The leadership of the Board? Yes, I think it failed. The faculty? I don't think it's fair to say the faculty leadership failed. Certainly I don't think it failed during 1996-97, when I was chair. But I don't even think it failed the year before, because the Senate kicked the Gang of 4 out and reasserted itself. Nothing we did in 1995-96 brought about the Morris code. That's totally the Board. The awful thing that resulted, whatever the faculty did the year before, it had nothing to do with internal faculty politics."

"Did the administration fail, and the constellation of events [create the situation]? I basically think this is the product of a lame duck president and, I'm sorry to say, an ignorant Board. When faculty from other schools ask me about this, I tell them 'whatever you do, don't have your tenure crisis when you have a lame duck president.' Nils had no political power. He had the best intentions, he worked at it tirelessly, but he couldn't deliver. The job of a CEO is to manage the Board, and he failed to manage the Board at the most critical time."

As for assigning blame, Gray said "remember, I said it's mostly Brody's fault -- but I think the Board failed in the sense they just were not knowledgeable about tenure, and they let this one person, who wanted to spend a lot of time on it, railroad them into this situation."

Gray recalled that "in June, when I took over, I wrote a five-page memo at the request of

a Board member, who said they have no idea how we get tenure. (Remember, this was after a year-long review and educational effort by the administration.) He, in fact, thought faculty all got tenure unless we were bad, that having tenure just meant you weren't bad. He had no idea you actually had to do anything to get tenure. And these are the people who are rewriting the tenure code!"

Dempsey also took the view that the faculty leadership did not fail. "I think that might be a perception on some people's part, especially if they wanted a union. The Board leadership didn't fail, they were just on the wrong track. And Nils was greatly hampered by having to deal with unfortunate people on the Board. And of course he was a lame duck. But the faculty leadership never really failed. I thought Virginia kept everything together, carried it through very serious challenges from the unionization drive, but was always open."

Gorham may reflect the views of many faculty when he assented to the proposition that leadership of the Board, administration, and faculty all failed. "That's probably true. It may be that even if two of them failed, it still could have happened. Or if the Board ram-rodged things through, despite stronger protests by the administration, it still could have happened. I think all three things happened; that made it almost certain that things would go the way they did. Whether stronger leadership in either the faculty or the administration would have derailed the Board from their intentions, I don't know."

Swan agreed. "Did everyone fail? Yes. Could things have turned out differently? I think so. The Illinois campus talked about issues with regard to tenure, and the place didn't come apart. It was done in a very different sort of spirit."

In Williams' view, "the leadership of the Board definitely failed, the faculty governance system failed, the administration failed. But what is interesting is that natural leaders in the faculty emerged and changed the course, and the Board and the administration really underestimated this faculty. One of the books I've read about tenure suggested that one of the products of a tenure system is that you have a loyal group of individuals with a history with the institution; when it's being attacked from the outside, being pushed too far from its basic academic principles, you're going to have tenured faculty mobilize to protect the institution. What happened here reflects that byproduct of the tenure system."

Shively agreed that "it was a bad set of events, and so some leadership obviously failed unless the thing was foreordained by providence. On the other hand, looking at it from the standpoint of the administration, [given what the Board was interested in doing] I'm not clear that we could have done a set of things that would have prevented this from happening. We certainly

tried. One possibility would be to not have brought the GC proposal forward. But this tenure thing had been going on long, long before GC ever came up, and it was building pretty heavily before GC ever came up. I don't think that would have changed it."

Cerra thought it all broke down. "That's where my thinking ended up. We just had a complete failure of the structure, and this was a lightening rod and it just blew."

One wise watcher of these events explained the views of the opinion-leader outsiders. "For the most part, they couldn't believe what was going on, that the Board of Regents was so inept. I think they were incredulous. It gave them cause to almost write off the University, saying "how could this group be in charge of governing the University? They're such an inept bunch." I think some people began to view Keffeler as malicious, having an agenda that wasn't the well-being of the University at all. I have no idea what contributed to Keffeler's resignation. That, in my view, was a very positive thing."

"MANAGING THE BOARD"

Comments about the apparent inability of the President to "manage" the Board on the subject of tenure raised the question of whether any president or administration could have "managed" the Board at this time in the University's history.

In Gray's view, "I think that Board could have been managed." Even the presence of a strong-minded regent like Jean Keffeler did not make management impossible. "I do not think she is, by the standards of Boards, off the charts. I think she could be managed."

Berscheid largely agreed with Gray. "What you needed was a president -- a lot of people have said this, and I agree with them -- who would pick up the phone and talk to them, who would lead them, who would inform them. You needed a president who would somehow have a better relationship with the Governor and the legislature. Nils did not. I think Nils thought he and Keffeler were going to be the national leaders of tenure reform."

Gorham disagreed. "I suspect not. I think they were completely out of it with regard to faculty sentiment, and they might just have pushed even a stronger administration. I think it was the leadership of the Board that was most important here, and I don't know whether anything could have stopped that bunch of people from going the way that they wanted to go."

It was Sturdevant's view that "an administration that really had the confidence of the Board could have" managed the tenure issue. "No question. But things were way far gone between and Jean and Nils, and I don't know about faculty leadership, but that's sort of a critical

relationship. Nils was powerless to stop the regents from going forward.”

One of those interviewed related an anecdote. “I’m told, by an elder statesman among the community of past regents, that he at one point sat down with Jean and said ‘you have a couple of choices. You can either fire this guy or you can quit the Board yourself, or you can sit there and keep quiet, and those are your only choices.’ She was trying to follow a [third] path, which was to trash him in public, embarrass him, belittle him, and hope that that would drive him out of office. She should have been, instead, taking all that energy and focusing it on getting seven votes for ousting him. Had she done that, because she is so shrewd, she probably would have succeeded, it strikes me. But she didn’t. She for some reason thought that was not a feasible option for her, so she was going to do this other thing, which was horrible for the University. It was very bad behavior for a regent; if that was indeed her method that she was consciously choosing, what a horrible decision for a regent to make, whose trust is to do the very best for the University, because you cause a lot of damage.”

Marshak was uncertain if the Board could have been managed. “I don’t know.” But he said that he tried to work with them. “My relationship with the Board improved a lot after I went up to northern Minnesota and had a long, heart-to-heart talk with Tom Reagan. That was in November. [After Sullivan II was adopted for the Law School.]”

One incident that helped him with the Board, Marshak recalled, was that “I took on Jean in front of several other Board members at the August retreat, in the bar that night. She was badmouthing the University, and I went after her. Several Board members, afterwards, were very complimentary and supportive of me for taking her on. A, for taking her on, and B, for supporting the University when she was badmouthing the University. That was important, for my relationship with regents other than Jean.”

“The other thing was going up there, in early November in a snowstorm, sitting in the Holiday Inn in Eveleth in the coffee shop for about two and one-half hours. We went in the far back corner, and Tom, who knows the management, arranged that nobody would sit near us. We yelled at each other for two and a half hours. After that we had a much better understanding. He needed somebody in the administration to talk to -- he had lots of baggage to get out.”

“He went down the line; he had something to say about everybody. He was very, very frustrated. He felt that he had been put on -- it was crucial to the University to get Jean out as Board chair. That with another two years of Jean as Board chair, the place would have gone up in flames. Nobody else was willing to step forward, and he had reluctantly done it, and his wife hated him for doing it, and he had paid a price in his personal life for doing it. All he was getting

was beat on. And not that Tom doesn't do things that deserve to be beat on, especially if he makes impromptu remarks. You'd like to get up there and strangle him, sometimes. But basically I think his position was true, that he had put himself out, that no one else had stepped up, that another two years of Jean would have been a disaster -- it was a disaster even without her being Board chair. And all he had gotten was grief. I think that was all pretty much true."

Goldberg spoke to "board management" and Hasselmo's lame duck role. With respect to the latter, she observed that "it's hard to know exactly what role that had. One pictures a situation when a Board has hired a new president and is very enthusiastic about that person and wants to make things work. Of course that's the case today, because they've seen how awful it is when they don't want to make things work. It's very hard to know. In my mind, one of the major factors -- more major than Nils being a lame duck -- was the fact that the regent leadership wasn't dedicated to working effectively with the president." As for whether this administration could have stalled a tenure review, Goldberg's reaction expresses some doubt. "If a board basically wants the president to stay, and the president says 'this is an issue over which I won't stay if you don't follow me,' then the board has a choice: either the issue is so important or the chief executive is so important. Being a lame duck, he wasn't in a position to use that."

IMPLICATIONS OF THE TENURE DEBATE

This debate took place in a national context, and the result at Minnesota could be viewed in one of at least two ways: it represented a vigorous defense of tenure, and will serve to strengthen it nationally (perhaps by deterring other institutions from "reviewing" tenure and risking the conflagration that Minnesota saw), or it was the high-water mark of faculty defense of tenure, and historians will say that after that tenure basically shrank (by stealth or other changes so that many faculty appointments are not tenured) to the point where it was no longer significant. Those involved thought about these possibilities.

Gray said that "I think we'll look back at it as strengthening tenure nationally, not as the high-water mark. I think Chait's wrong that pretty soon we'll only have tenure at private universities. I don't think that's going to be the case. If this battle had come out differently here, that might be the case, but I don't think tenure is down the tubes."

Swan said "I think it's too early to know. One of the lasting notions will be some of these lessons about missed opportunities; hopefully, in other places, those sorts of mistakes won't be repeated. In other ways, it depends on things we don't know. If the U.S. falls into a hair-

raising depression that decimates the finances of states, public universities are going to be in all sorts of problems. On the other hand, if that doesn't happen, there will be a lot of natural turnover of faculty, and a lot of this discussion of tenure could easily be 'why did we waste our time and worry so much about that?' That was part of the faculty position; if you're concerned about flexibility, this institution is going to have a lot of flexibility, and then it's a question of how that will be managed, not tenure per se. I'm not ready to predict the world's going to turn out one way or the other."

"I think a lot also depends on the political context in which regents are selected. If there hadn't been some regents up for election, who knows what would have happened."

Bloomfield expressed doubt that most faculty appointments would turn into non-tenured appointments. "I'm not saying that a rational policy would end up there. You look at the very top private universities and their tenure policies; the majority of younger faculty who start in those institutions don't get tenure. [Harvard doesn't allow it by policy.] One can argue that the great opportunities that a Harvard assistant professor had to get a fine job somewhere else have disappeared, so the pragmatic rationale for that policy is no longer as strong as it used to be. One thing that really has changed is the nature of our collective intellectual endeavors. Fields change so rapidly now, new interdisciplinary things come up, and federal funding, both in the sciences and arts, is so volatile, that whether you can respond to take advantage of new intellectual opportunities in a structure that's dominated by conservative departments is somewhat questionable. I don't think it's impossible, but we need to think more seriously than we've generally done about how to do it. Sometimes our capacities in certain areas get overbuilt, where there's no longer a demand for what the faculty on board can do. Retraining and reassignment is the proper way to do that. We are terribly under-invested in faculty development. That's a key issue."

"I don't know if this is the high-water mark or the low-water mark. I think tenure is going to change, in some ways. We don't have a clear view from the faculty how they feel about that. Different faculty feel very differently. There's really no consensus about it in the profession."

Bloomfield concluded that the result was more likely to be a defense of tenure. "Both for the tactical reason -- other institutions will be scared to go through it -- but more importantly, because we had a decent debate and came to a decent endpoint. I think tenure is stronger here at Minnesota. It's a little more functional, a little more understandable; we at least have some things in place that we can explain to the outside world. Some of the things that were hardest to

understand and justify. I think we've got a better tenure code, and a better tenure code strengthens tenure. I've always felt that professions need to police themselves. So when a doctor does something outrageous, you always wonder why doctors don't throw him out of the AMA. But then it when comes to professors, it's hard. But I think we need to do it. It's a tiny percentage of faculty who are deserving of that. I think it's important to have the tools in place to do it, and make it clear it can be done. We always said, even the previous tenure code gave us the tools and we were scared to use them. I think that's true. I don't know whether the University of Minnesota was anomalous in its fear of taking strong positions because it could get sued for it; I think we have often backed away from fights because of that. People really got burned by the Rajender [consent decree] and have been running scared ever since. What Hasselmo did with Najarian was admirable; that took real guts, and it was absolutely the right thing to have done. But again, there's a fair number of faculty on either side of that issue. We have very few instances where the University has been willing to take a stand like that."

Humphreys thought it possible both propositions were correct. "This was only one battle in the war. You will hear, if you talk to the national AAUP people, that this was just the first salvo. Minnesota was the first test." Echoing the views of Walsh, Humphreys said "there is a group they call 'the Dupont Circle crowd,' they have official names, and their goal -- Richard Chait is one of their main advisors -- is to basically eliminate tenure in American universities, and to run them more like businesses. Hogan & Hartson is their main legal advisor. Peter Magrath is one of them. They officially say no, but look what they do, look at what they say, look at the articles they put out. It's the Pew Trust, and others, that are questioning, they are building their case to weaken the justification for tenure."

Humphreys recalled vividly an experience that confirmed her views. "I was at a meeting last April at the Rutgers AAUP chapter; it was sponsored by the national, but at the Rutgers campus. The woman who spoke was the head of one of these organizations, and she was a member of the Board of Trustees for some prestigious women's college on the East Coast. We were talking casually over coffee. She said 'one of the best people to advise on tenure, I trust him so much, he knows so much, he's so good, is Marty Michaelson at Hogan & Hartson. He is just wonderful.' I looked at her and said 'yeah, he's the one who wrote the tenure code.' She said 'oh. He wrote that?' I said 'yes.' She said 'OK' and walked away. She pretty well revealed her agenda."

Morrison took a middle ground. "I think other Boards have said 'we don't want to see that happen; what went wrong?' Will it deter it other Boards from moving forward? I think the

answer to that is ‘no,’ but they’re going to learn some of the lessons. And one of the lessons is that you don’t do this until you have the president on board. Another lesson is, you get a decent communications plan together. The third lesson is you don’t threaten people.”

Morrison recalled hearing about a speech given by General Counsel Mark Rotenberg on the tenure debate. “There were principal headings about what went wrong. One of the things he said is that everything ought to be discussible; you can’t have anything off the table. He was very critical of the faculty for saying that there were certain things that were not discussible. That was his take on certain things, like layoffs. We said ‘no.’”

“My response to that, in a way, was ‘that’s right.’ We never had a discussion. We never had the real players sit down with one another and say ‘this is what we’re interested in, what are you interested in, and how can we work together?’ We rather had the regents saying ‘you come up with something, and we’ll come up with something, and we’ll adopt what we came up with.’”

“The second thing he [Rotenberg] reacted to was that there should be no threats. It’s hard to argue with that proposition, but what he saw as a threat was the faculty going over the heads of the regents to the press. What he did not see as a threat was the regents saying ‘we’re going to adopt this [the Morris proposal] on the 11th of October.’ I think the thing that most set me off, in addition to the language, was the ‘we’re going to do this on the 11th of October.’ When they said that at Morris, it seemed to me that they were not interested in any serious conversation, if they were setting that fixed timetable. Particularly when they wouldn’t enter into any discussions.”

“The other one sounded to me very peculiar. He got really upset, as many people did, by Fennell’s reference to the Jews and the boxcars, and the Nazis have herded the faculty to the station, but the BMS has locked the doors to the boxcars. He thought that was inflammatory. Fennell intended it that way. And the faculty leadership did not stand up and disown him. So? It was excessive, and most of us sat around and said ‘now Fennell.’ But what he wanted was people to come to his defense, and he really didn’t like being described as the Nazi Gestapo leading the Jews into the boxcars. He just found that absolutely offensive.”

“As least as to the latter two, they were the ones who were making the threats, and they were the ones who were saying, certainly after Sullivan II, there were things that were not discussible.”

PARTING COMMENTS

Several parting comments are worth recounting.

Walsh's wrote that "it was a big shock to many that we came so close to a union; 26 votes is nothing. The waves from that will slosh around for a while. But I would rather have won. Thanks to Roberta Humphreys and her committee, we had developed a very good mechanism by which AAUP as bargaining unit would work with faculty governance. Essentially, we would have followed some other faculties in which the contract commits the administration and Board to work with existing faculty committees -- mainly SCFA to my mind, but we also need others. If the administration and Board do not consult sincerely, they have to face the AAUP at the bargaining table. That is the set of teeth I was talking about from the beginning. We established without a doubt that collective bargaining does not hurt quality. We could have made it work, and we may have to make it work some day."

"A number of good things emerged from the tenure war."

"Our Board and our President got the well deserved scare of their lives. The Board will not be back for a while. They are still largely the amiable but miscast group they were two years ago. But they are cautious now. Maybe our new President will help the faculty restore some of the quality we have lost over the last 20 years."

"We finally got salary increases, after years of being ignored by the administration and the Legislature."

"The administration was going to take ten days pay away from us until retirement as a benefit for a new payroll system. They dropped that and even ended up advancing us money."

"The collective bargaining drive accomplished these things. Once we had that Status Quo order in hand, it changed the whole political landscape. Most amazingly to me, we found out that when the chips were down the public supported us -- not our bureaucrats and managers and our board. They supported us."

"But there are problems that never got dealt with, and that collective bargaining probably cannot help us with. The problems are national in scope and they are getting worse."

"Tenure was always a red herring. There was never any genuine institutional management reason to look at it. It was all a political move, like a war started for stupid reasons. From this point of view we wasted over a year. And every year more and more people are hired to do faculty work but are on year to year contracts. Tenure is vanishing by stealth."

"We continue to lose ground against a growing class of managers and educational bureaucrats. Their power grows nationally, not just locally. What they talk about is what the 'public' is said to believe. That is where the tenure war originated. We only noticed the impact

this last year. We won this fight, but from now on, the punches will be softer but unrelenting. Can we handle it? I don't know. We really need a new model for running a university that does not require these people. Unfortunately, our Carlson School of Management does not seem to have any novel ideas on this subject.”

“Corporate style managers now pretty much own AHC. They claim otherwise, of course. But who are they kidding? It is OK to visit AHC, but I would not want to work there. I feel bad for my friends who are stuck with they system they have over there. That these new managers come out of academia does not ease my mind.”

“We still have a Board which can only think in one paradigm -- a business. But we don't have to defer to the concept of the corporation, we represent worthwhile ideas as well. That isn't arrogance, it is respect for a tradition that has proven itself. We need a Board that respects the institution.”

“Faculty divisions are still there, the class of elite faculty who want to move into administration are still with us. Lyndon Johnson told a story -- that he wanted John Connally in the tent, not outside the tent. (I omit the reason; it has to do with a bodily function.) Any collective bargaining solution for universities will have to figure out how to keep our administrative-minded faculty inside the tent.”

“It is scary that the core university is rotting -- and has been for 20 years at least. In the 1981 union election there were 2000 or 2100 faculty in the core, depending on how you counted. This last election there were under 1600. We were 12th nationally then, now we are 23rd by my count. We have departments hanging on to positions in the top 30 by heroic efforts. At some point, people are going to get tired.”

“It is not clear that medicine and the university can be held together. The gulf is partly money -- there are huge amounts of volatile money in medicine. Much of it does not support real basic science and scholarship. It is industrial scale money generated by our nations' health mania. Power relationships in medicine are another source of trouble. We have seen how this has infected the entire AHC with corporatism. Universities such as ours could lose their entire concept of themselves in trying to deal with these issues.”

“Most of these are not ‘union problems,’ they are professional problems. But powerless and demoralized professionals can do little to deal with them. The satisfaction at winning this strange war over tenure will dissipate. Then we will have to face reality.”

Fogelman concluded that “for me, as this whole struggle unfolded, the real issue, the underlying issue, is what has been called -- and I think it is the right way to describe it -- the

‘corporatizing’ of academia. Other segments of society have been corporatized -- the medical profession is completely so. That has both an internal and an external dimension.”

“Internally, it means restructuring into a much more hierarchical organization, so that the central administrators have control over the research and teaching activities of the faculty. That’s needed, because the external part of corporatization is gearing the University to the interests and needs of big external constituencies, such as business corporations and government agencies who provide funding. You really make the University a research and teaching arm of the outside world. I am not endorsing this at all! This seems to me to be what was at stake in this struggle.”

“This has clearly happened in the business schools. It is interesting that the companies rate the business schools now. Business Week had a rating, where the corporations rate the business schools, instead of the business schools rating the corporations. The thing has become absolutely reversed. And the business schools are responding to how the corporations rate them! This is a complete inversion of what seems to me the appropriate relationship between universities and the corporate sector.”

“Tenure is an obstacle to [the corporatizing of academia], because tenure assures the independence of faculty members so they can say ‘no’ to those kinds of pressures. If, in the Medical School or business school or ag school, faculty are told ‘you have to work on this because this is what our clients will pay for’ or ‘this is what they want us to work on and that is where the money is,’ tenured faculty can say ‘no, I’m working on these projects and I’ll raise my own money.’ It really guarantees independence.”

“The protagonists like to see tenure as an obstacle to that kind of restructuring of the university, to make it more responsive to the corporate world. From that point of view, we won the battle, but the war is continuing. If we cannot articulate another convincing mission for the University, we’ll lose the next battle. These pressures will not cease. What still needs to be done, as an outgrowth of this whole struggle, is to clarify and affirm publicly some alternative mission. I like to call it a civic mission, rather than a corporate mission.”

“The defense of tenure is really, in the end, a defense of the independence of faculties to pursue research and teaching that may not be on the agenda of these external funding agencies and influential organizations.”

“If you look at the protagonists, who were they? Brody? He was out front and outspoken about this; he brought in these re-engineering people. That’s been their explicit goal, to re-engineer the university, based on Champy’s notion of re-engineering the corporation. This would be a test case of re-engineering a university, to make it into a more effective corporate

structure.”

“It was clearly Keffeler’s agenda, too. She is a business consultant by profession. Had it been accomplished, it would have been an enormous professional feather in her cap. The outside business interests, mainly the medical establishment around here who were supporting Brody, were all pushing in the same direction. The legislators were talking about accountability, but serving the same notions of efficiency. I’m not opposed to efficiency, and the University being effective and efficient and accountable, but it has a different meaning in a corporate context than it does in a public, or what I might call a civic, context.”

“It was only a battle in that war; the war goes on. The battle was won here by the skin of our teeth, you might say. Because if we had unionized, from my point of view that also is a view of the corporatizing model. A unionized faculty is the flip side of a corporatized academic structure. You’re in that kind of adversarial, trade union, collective bargaining setting. I’m not against trade unions, in the corporate context, but I’m still hoping that the university is in a different world.”

Fogelman also dismissed notions of evil intent. “It isn’t a matter of malevolent. They’re pursuing an agenda; it’s an agenda that’s all over the country. It isn’t a malevolent Board. These are real issues, and they’re still going on. How much do you corporatize our universities? Tenure is in the way of that, there’s just no doubt. I don’t see it as malevolent or not malevolent; I see it as conflicts of interest that are at stake.”

“There are certain people inside the University, and outside the University, who want it to be reorganized, with tenure either eliminated or limited, so that reorganization can proceed. There are reasons for that, and I’m not sure they won’t win next time. It isn’t just a question of some malevolent people; these are national trends and strong interests.”

Fogelman thought that the “particular personalities involved” at Minnesota affected the way that everything “played out in the way that it did.” But, he said, “they had an agenda, and it’s an important agenda nationally; they were trying to make it happen here. They were very self-conscious about that. And we were resisting it, very self-consciously, as far as I’m concerned. Because I don’t want the University to move in that direction. It’s a matter of them having one vision of the University and I have another vision.”

Different members of the Board probably had different understandings of what was occurring. Fogelman said that “Jean Keffeler is not ignorant. Others may not have seen all the ramifications of it. For Keffeler, this is a life-long professional interest: how you organize companies and how you manage these organizations. For her, it’s neither ignorance or casual or

anything. She knew exactly what she wanted from the beginning.”

“Reagan went along with that, but possibly for somewhat different reasons. I think that he was operating more on the model of company-employee relationships; ‘what’s going on here? Of course you fire people.’”

Of “the others, who may have understood it, nobody spoke. Stan [Sahlstrom] was our strongest ally; he understood it, and he was for us, and he didn’t speak out. He didn’t become a leader. Someone had to challenge Keffeler, not just in terms of her influence on the Board, but in terms of the issues. Someone had to say, ‘this is the wrong way to go for the University.’”

“We never got a spokesman on the other side who would take on Keffeler. Reagan gave her full rein. He didn’t have enough sense, in my opinion, of the well-being of the Board and a concern for what was happening to the Board as an institution. The way that the chief justices worry about the [United States Supreme] court. The Board was being dismantled; the chair, instead of trying to contain it, was helping.”

“If they had not overplayed their hand, or had better leadership, we might have lost. And on the next round, we might lose. That’s why what we need to do now is try to articulate another mission that people can understand and support. If we just let it slide, there will be another struggle like this in a couple of years, and we’ll probably lose it. We’ll end up with a unionized faculty, which I think would be too bad. That changes the nature of the University, too.”

Both Berscheid and Evans recalled with regret and loss the effort required. Berscheid said that “this took an extraordinary amount of time. We spent all our time on the phone. Lost all kinds of productive scholarly work.” Evans agreed. “I can remember, with some of these resolutions, I spent basically all Sunday on the phone. I would talk to 30-40 people.” Berscheid thought that was too generous. “Every weekend??!! It was every Saturday, every Sunday, every night, and most of most days, for months and months and months. It was exhausting. That’s why I have all cordless phones in the house now. I couldn’t have gotten anything else done without cordless phones, so I could try to do other things while talking on the phone; I was on them almost continuously and often had a sore and chapped ear.”

Berscheid said that “crucial to the winning of public support that finally ended the tenure crisis successfully for the faculty were: the faculty’s op-ed pieces and willingness to give interviews that educated the public (including legislators) on the purpose of tenure and academic freedom; informing the public of the competition among universities for good faculty and likelihood that Minnesota would not remain competitive without tenure (underscored by newspaper articles reciting the ‘brain drain’ that already was occurring under the tenure threat and

the expressions of support that the U of M faculty received from faculty at other institutions), the new awareness by the Regents and the public that the U of M faculty was embedded in an academic web that extended throughout the world and that condemned the Regents' actions; the faculty's collection of financial statistics that showed the faculty's contribution to the economic health of the University, a contribution that far outweighed the State's investment in their salaries. That is, the tenure revision was framed by the Board of Regents as a solution to the University's financial problems; in the end, they saw that not only was the weakening or elimination of tenure not a solution to the financial problems the University was experiencing, but it would exacerbate those problems. Letters from other universities saying that they would not recommend that their graduate students accept jobs here were particularly potent."

Berscheid emphasized that one must underscore "that it was winning public support (and in the beginning we didn't have any) that turned it around. Another thing the public (and some of the Regents) didn't realize until we pointed it out was that the situation is shortly to become even more competitive for good faculty. The retirement data we got together was very important. Also important was the 'survey' of the faculty in early June, that received front page coverage when it was released, showing that the faculty had no confidence in the Board of Regents and its leadership."

Morrison said that "this is something like an individual who finds a spouse *in flagrante delicto*. It may be forgiven, but it can never be forgotten. I think that's the right sense. There will always be a wariness, for those of us who were around when this happened. There will always be a caution."

Walsh wrote that "Apple computer may well vanish because of the incompetence of its Board of Directors over many years. Steve Jobs' first act was to remove most of the old Board members and bring in new ones. The Apple board failed and ours failed. The difference is that we still have most of our old board."

Gray offered a conclusion about the events. "The Board just shouldn't have embarked on this mission. They weren't equipped to do this. And they wouldn't have been embarking on this mission if the President had been managing the Board. They would have had some kind of innocuous review, and he would have produced some big report, and they would have all said 'yes, yes,' to whatever he suggested, and that would have been the end of it."

Asked if she thought changes were needed, Gray said there were. "I think post-tenure review was a needed change. And some of the streamlining of judicial processes -- people involved thought those were needed. The Med School thought lengthening the probationary

period was needed. I don't think there were urgent problems, but there were enough things that different people had identified as problems that it was worth going through and straightening those things out."

"Even [on] reassignment -- I don't think anyone except maybe the Waseca faculty were happy about the outcome of Waseca and the fact that all of those people were suddenly up here. I never knew that the tenure code required that, and I still don't think it does. I think the administration interpreted it to require that, or the lawyers read it the most extensive way, but I don't think faculty had adopted that tenure code to force that kind of outcome. I think most faculty have a more reasoned view; you should pick up the slack, whichever individuals make some sense, but you're not obligated to everybody. But then when you see stuff happening in the AHC, and you have saber-rattling by Jean Keffeler on the Board, all of a sudden people say 'every last person has to stay no matter what!' It just drives you into that position, but I don't think most people think that's what we have to have. We should just be glad that Brody got another job. Just think what would have happened if he had stayed!"

Morrison concluded that "we're fortunate in a sense that we got inoculated against this. We had a strong case of the smallpox and got over it; the rest of the country is going to face the smallpox. If we had not gotten over it, what sweeps the rest of the country would have been much worse and much quicker. I think we're going to have some big issues like part-time and short-term commitment."

"As I look back on it, I think that the weakness of the administration, and the lack of confidence between the regents and the administration, was the precipitating event that caused this to go really sour. That a president who was really in charge would have taken charge of the process, would have seen that it was communicated better, and we would have had a more positive outcome. But Nils didn't have that kind of control on the Board, and as a result, he kept getting pounded from that side. We kept getting pounded from that side. So the whole thing fell apart."

"Reflecting back, it's not just the influence of the community. I think that the Chronicle, Science magazine, New York Times coverage, had more impact than you may be thinking about. Because those are the ones that brought the national attention to it. I don't think it was Erwin's [Marquit] email; Erwin's email brought national attention from people who read 'www.radical.com,' but these aren't the people who are influential. The thing that brought it to national attention was when the New York Times started picking it up, the Chronicle came back to it after Morris; [that] meant that Minnesota and tenure was the issue all over the country. I

think that wasn't lost on the regents, on the middle regents. 'Gee, this isn't where we wanted to be. Why are we here, rather than where we wanted to be on this? This is not a trip we want to be on.' That also was a significant factor."

Morris pointed to what he believed was a fundamental flaw in any drive to weaken or eliminate tenure. "The British parliament is not limited in what they can enact, like our legislatures are. The British parliament amended Cecil Rhodes' will to allow women. They just rewrote it. No legislature in this country can do that. They just passed a law ending tenure. It's gone. The retention rate of new professors in English universities has gone up considerably, because they don't have a time when they have to fish or cut bait. 'It's not a long-term decision; keep him on for three more years.' You end up with de facto tenure, forever and ever. You end up with de facto tenure and a weaker faculty."

One deeply-involved faculty member said that "one of my own conclusions from the Minnesota experience is about the structure of the discussion. Much of the discussion was handled by amateurs -- people who had only limited experience in issues of tenure and no knowledge of or appreciation for the long history of our tenure code or tenure codes in particular. I'm not sure about Bill Hogan or Stan Sahlstrom, but I'd include all the other regents in this group, along with Jim Infante, John Adams, and Dan Farber. That these people now know a lot more about tenure is no consolation."

"The problem was that ad hoc committees were set up that bypassed established committees and excluded people who were most knowledgeable. I think the exclusion was by accident, not design, but motives don't matter here."

Bloomfield concluded that "one of the things that's really weird about this is that we've come out very well. I think we have a tenure code that's a pretty good one, and some of the changes were in the right direction. We have the best Board of Regents that we've had since I've paid attention to this issue. We have a sympathy towards the University, on the part of the public, that we haven't had in a long time. It has been very painful, and may well have been very destructive of faculty governance, but in terms of a lot of what we care about, it's ended up positive. Wars sometimes do, in strange ways."

John Adams provided his insights into the events. "Throughout all of this, there really were many different kinds of reactions to what was going on, ranging all the way from not knowing anything about it at all, to serious attempts to pay attention to what was going on because people thought this looked important, to seizing on the opportunity created by the disruption to engage in another unionizing effort -- which is perfectly legitimate -- to real anger at

the disruptions of things that were going on in the health center, to stark terror on the part of some, who thought the whole place was going to turn upside down. Then the devil theories started to emerge, about who's trying to do what to whom. Some of that was accurate. The absence of any kind of grasp of what was going on in health economics, and the confrontation with some of the financial realities, and the implications of those financial realities, for much of the personnel in the health center -- I think by the time the forums were being held, that was already welling up. Brody had already hired the gang from the East to come and straighten things out, and that poured gasoline on something that was ready to explode."

"It's kind of like reading a Tom Clancy novel; there are different things going along at different times, and then they start to intersect. I have the various story lines pretty much clear in my head, but I don't have the connections between and among them arranged in my head in the right time sequence."

"For instance, I don't have any idea what kinds of conversations occurred between what pairs of regents on all of this. I don't have a clue. I know that since Jean was chair of the Faculty, Staff, and Student Affairs Committee, this was a central agenda item for her committee. Given the way the Board seems to operate, they don't seem to have much contact. I have asked a number of them, perhaps half a dozen of them, point blank: How often do you folks ever talk to each other outside these meetings? 'We don't talk to each other outside the meetings.' A perfectly straightforward, honest answer. And I believe them. There may be cases where, one on one, they talk about one thing or another, but as a general practice, I have the impression they don't talk. Then they proceed to volunteer a complaint that it would be easier to be a regent if there were occasions when they actually could talk about things before they get to the table, so they could have some of their stuff worked out."

"In this case, I have the impression -- and I can't document it -- that Jean could run that Committee, and as chair of the Committee could run Jim and this tenure thing, without much participation by the other members of the Committee. Because she's very smart, and on the face of it, the kinds of questions she raised were legitimate issues to raise. I'm kind of trapped, because I agree with her; I do think it is legitimate to raise them -- and I think it's legitimate for the faculty to raise them, not to wait for her to raise them. For us to raise them, and to say 'is the code the way it is, at the present time, serving the purpose of the University, present and long-term?' I think that's a very legitimate question, and I think it should have been asked. The Tenure Subcommittee and [Faculty Affairs] weren't going to raise that question, which is unfortunate. The fact that it wasn't raised by them meant that it had to get raised by somebody

else or not get raised.”

“But that (i.e., not raising the tenure question) was not a viable option, from Jean’s point of view -- quite aside from whatever other agendas that she may have had, which many faculty felt were pretty well known. She was trying to get rid of Nils. Whether she saw this flap as a vehicle for accomplishing that purpose, or whether or it was just another handy stick to whip him with, I don’t know. But the fact is, as early as the year before I was chair, the minutes will show that serious concern was rising in the Health Center about the money. There’s no question about that. And the regents, I know from what Nils told us when he came and briefed us, and what Jim told us when he briefed us, were really getting concerned about how they were going to handle the problem of the rapidly changing economic picture in the health center.”

“I’m tuned in on that kind of stuff because I understand the relationships that existed between what was going on in the Health Center and what was going on in the rest of the University. I think guys like Fred understood it pretty well, too, although I’ve never heard him talk much about it. As smart as he is and as knowledgeable as he is, Fred seems not to be interested in some of the things that I think are more important than some of the things he gets interested in. I’ve never understood this. Maybe it’s the lawyer in him; he’s very interested in procedure and he’s very interested in the rules, but apparently not particularly interested in what I would call the big picture, the relationship between the mission of the institution and the need to pay attention to some of these large-picture questions.”

Was the Morris draft malevolence? Adams said “you’re never going to be able to get a ‘Y is a function of A, B, C, D, and E’ and then put betas on each of the independent variables. The world doesn’t work quite that way. Things have feedbacks in them. The regents learned, as they went along; the Board changed. The press learned; the press had an effect. The editorial boards became very thoughtful. The Citizens’ League directors climbed all over some people. Former regents and governors and whatnot got into the act and called people’s attention to the fact that ‘this is really important, stop the games and playing personalities and let’s get down to serious business, there’s something substantial going on here.’ It’s the way a political process works.”

“I think the final result has been a good one. The Board was chastened, it was changed, and the current chair of the Board is quite clear that it’s the president’s job to run the University. He does not want any kind of repeat performance of what happened before.”

“I haven’t asked [Board Chair] Hogan why the previous Board allowed the thing to get out of hand the way that it did. Maybe some time the right moment will come for me to ask. I believe it’s

because the activity that occurred, occurred when we saw it occur. Plus, in the face-to-face confrontations between Jean and Nils and Jean and Jim, on almost a daily basis during that year that preceded the creation of the Tenure Working Group, I think she just had it in her head she was going to get rid of him [Hasselmo]. Aside from that, there was this business of the University to take care of.”

“In one way, it’s so much more complicated than a series of events. But in another way, it’s been human business as usual. This is the way the world works. As far as malign intent is concerned, I’m not a psychiatrist.”

Some among the faculty were willing to see conspiracies in what happened. Adams did not. “I think conspiracies take a lot of time and talent. Good, solid conspiracies. I like to read espionage novels. I just finished reading Executive Decision. . . . Talk about conspiracies; that’s real conspiracy. There’s nothing approaching that here.”

“Probably, from the point of view of understanding what we did, at the time we were doing what we did, it’s useful to know, not so much the facts -- which are pretty much straightforward -- as outlooks at the time. What we were thinking, and why we were thinking what we were thinking. I don’t think he [Hasselmo] will ever be able to be 100% forthcoming, but he was pretty candid with me. He was really worried about the University and the things that he was being pushed into doing. Another person, at an earlier time, who was in a similar situation, was Hubert Humphrey in 1968. He had to decide, ‘should I leave and make a point, or should I stay and try to change things?’ It’s a situation that many people find themselves in.”

Sturdevant observed that “lots of universities have in one way or another looked at tenure, for a variety of reasons, not just the reason that Jean Keffeler was trying to articulate. But I don’t think any university handled it as badly as ours did, or got the notoriety and negative press that ours did. When you think about it, we were only really headed in a badly wrong direction for a few months, but the damage from those few months was really great. The bad press will linger for a lot of years. How much worse would it have been if the Morris proposal hadn’t been withdrawn rather quickly?”

One can be quite certain that Craig Swan summed up the sentiments of all of his colleagues. “I just hope this is an experience the institution never has to go through again.”