

## UNIVERSITY OF WASHINGTON

Office of the Faculty Senate

DATE: 21 March 1994  
TO: Senate Executive Committee  
FR: John Junker  
RE: Standard of Proof

You will recall that when the Senate approved the revisions to the adjudicative process at its last meeting, it expressly reserved the question whether to require a higher degree of proof in cases in which the administration seeks to remove a faculty member from his or her position.

This memorandum explores the reasons for any such added protection for faculty facing possible termination and the ways in which such protection could be built into the revised procedures.

The first question, of course, is whether there should be enhanced protection for faculty facing termination. The Faculty Council on Faculty Affairs debated the issue and concluded that such protections were unnecessary. The Senate Executive Committee disagreed and added a proviso to Section 28-54 to the effect that "any decision to suspend or dismiss a faculty member shall require the affirmative vote of at least two faculty members of the Panel" (the "faculty supermajority option"). In a memorandum to the Senate dated Feb. 8, 1994, I suggested that the proposed revision be amended to require "clear and convincing evidence" in faculty termination cases (the "higher standard of proof" option). A third option would require that the hearing panel-- whether composed entirely of faculty or faculty and students or staff--decide such cases by a two-thirds vote, rather than by a simple majority. In effect, this "super-majority" option would require the affirmative vote of four out of five members of the Panel in cases involving dismissal of a faculty member.

To return to the initial question, **Should the Code provide enhanced protection for cases in which the administration seeks to dismiss a faculty member for any of the reasons specified in Section 25-51?**

The rationale for such added protection rests upon the belief that the punitive dismissal of a faculty member is a singularly severe sanction that will effectively end the career of the person dismissed by permanently barring him or her from re-employment at any institution of higher education. That such a consequence should be based on a bare preponderance of the evidence found by a simple majority of the Panel strikes many as insufficient regard for the consequences of an erroneous decision to terminate a faculty member's career. Of course, enhanced protection against erroneous decisions to terminate risks an increased likelihood of erroneous decisions not to terminate. A preference for errors in favor of faculty (and thus against the institution) may be justified on the ground that the individual is entitled to additional safeguards against the power of the collective, or because the harm inflicted on the wrongly dismissed faculty member is greater than the harm done to an institution wrongly obliged to retain a faculty member. Those who believe that errors in favor of or against a faculty member are of equal magnitude would presumably agree with the position of the FCFA to make no special rules for adjudications involving the potential dismissal of a faculty member.

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