

MEMORANDUM
UNIVERSITY OF WASHINGTON SCHOOL OF LAW

April 28, 1994

TO: Faculty Senate

FROM: Rob Aronson
Tom Andrews

RE: Professor Junker's Proposed Amendments to Adjudication Procedures

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$5/3 = .60$
de minimus

In addition to the amendments we (along with John Junker, John Stewart and Lea Vaughn) previously proposed in writing, Professor John Junker has proposed two alternative amendments intended to provide even greater protection of faculty involved in the adjudication process. Because we believe that the amendments we have already proposed are sufficient to protect the legitimate interests of faculty, while at the same time accommodating the concerns of the President, the Special Committee on Faculty Women, minority faculty members, students and staff, we oppose adoption of Professor Junker's additional amendments.

If the Senate passes our proposed amendments increasing panels with students or staff members to seven, requiring Faculty Senate approval of the staff and student members of the Adjudication Panel, and prohibiting a non-party participant of right from being represented by an attorney if the parties have waived representation by an attorney, the concerns expressed during the previous Faculty Senate meeting will, we believe, have been adequately addressed. Professor Junker's additional protections threaten to undermine the many compromises reached between the faculty, administration, students and staff. In addition, they go well beyond the protections faculty now have in the existing Code. Under the existing Code, which many Senators said has worked well, the decision of a hearing panel has been by a majority of the members applying a preponderance of the evidence standard. Professor Junker's proposals would either require a super-majority or a higher standard of proof in all cases "to remove or dismiss a faculty member."

Professor Junker's Alternative 2 would require a super-majority of 71% for seven member panels and 80% for five member panels in adjudications "to remove or dismiss" a faculty member. Again, since it cannot be determined whether an adjudication is "to remove or dismiss" a faculty member until after the decision, the super-majority requirement would apply in almost all cases. Ironically, a higher percentage of faculty members would be required when there were no students or staff (i.e., all five person panels). The President has—appropriately, we believe—consistently maintained his opposition to such a super-majority, even when limited to cases where the panel had student and staff members. Professor Junker's proposal would now require an 80% majority in cases where all five members of the panel were faculty members and there were no non-party participants of right.

As John Junker pointed out at the first faculty senate meeting at which the SEC document was considered, the problem with requiring a super-majority is that it allows a minority to overrule a majority of the panel. In the process, it dilutes, if it doesn't totally eliminate, the votes of any student or staff members on the panel who vote with the majority. Several speakers before the Senate expressed concern that the proposed super-majority requirement was insulting to the staff or student members.

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