

MEMORANDUM

September 30, 1964

TO: Paul Oberst
FROM: Tom Lewis

As I indicated the other day, I told the President I had talked with you and that you expressed some concern about the wisdom and legitimacy of reading the 1960 Regs. as requiring something more than reappointment beyond the 5th year for tenure. Past practice appears to be an extremely weak basis for an interpretation that tenure must be grounded in an express recommendation to that effect. Investigation reveals, for example, that Agriculture has not recommended tenure as such, but has recommended reappointment beyond the probationary period on the theory that this automatically confers tenure.

Assuming, then, that the decision is made to treat 6th year people as having tenure, I see the following problems and would like to have your reaction.

- a) Persons currently in their fifth year, who have not acquired tenure earlier by specific recommendation, normally would acquire it by reappointment beyond this year. The new policy calls for their review and a tenure decision in 1966. As I see it, they cannot complain that a mechanism has been created to review their performance and base a tenure decision upon this review. Nothing in the 1960 Regs indicates that appointment to a five year term removes the power of the University to decide, by any procedures it erects, whether tenure should follow the probationary period. Do you agree? Suppose though, that a man in his fifth year complains that a decision in his case has been postponed from this year to 1966. Or suppose that in spite of the notice carried in the new policy, such a person in 1966 claims that reappointment of him in 1965 went beyond five years, and the Regs under which he was employed (1960 Regs) provide tenure. Does the AAUP have any precedents dealing with a University's change of rules? Does an employee have a vested claim to be processed under rules in existence when he was initially employed? Is there a problem of fairness of sufficient proportion here to warrant an escape mechanism? I am thinking of recommending a letter to deans, etc. requesting them to notify fifth year people of the new statement calling for review, and then to advise them that they may request review in the fifth year if they feel the 1960 Regs provide them that right. Such review, of course, would go forward on the basis of established criteria, and an assistant professor might be terminated if promotability to associate professor couldn't be predicted by the review committee.

How do you feel about this? Should we stick to 1966 review for five year people or give an option for earlier review? If option is granted, I guess we might have to grant the same option to anyone employed prior to the adoption of the new policy, i.e., an option for review in the fifth year. On

in seven years, perhaps their failure to protest would be sufficient to estop a later claim of right to 1960 procedure.

- b) The old Regs gave no credit for service at other institutions. The new Regs do, but still provide for review in 1966 of people here in 1960. An individual could be in his fifth year here and have five years elsewhere, and still not be reviewed until 1966. At the same time an individual hired in 1961 is now in his fourth year, and, not being here in 1960, doesn't come within the 1966 review provision. Yet if he has three or more years at another institution, this is his seventh year and he should be reviewed this year. Thus we have the anomalous situation of reviewing a four-year man (total 7 years) now, but a five year man (total 10 years) in 1966.

This needn't be a problem, because the tenure policy creates maximum review periods, not minimums. Thus, our 1960 appointee with two or more years elsewhere could not complain of review earlier than the technical maximum, unless he has a term of appointment which doesn't expire until next year or later. Therefore, since policy calls for review of the 1961 appointee with three or more years elsewhere, I'm thinking of recommending review now for the 1960 appointee with seven years total time. Do you agree this is a sound position?

- c) For people reviewed this year (under more stringent criteria) I'm thinking of recommending a year's notice. Your intuitive reaction the other day that some how this could create problems troubles me. Do you see any problems?

If you can think of any other types of cases that may present problems or have any advice to offer, I'll make a good audience.