

University of Arkansas at Little Rock

Final Tenure Track Proposal (1998)¹

REVISED REPORT

The Promotion and Tenure Committee met October 22, 1998, to consider the Report and Recommendation of the Subcommittee on the Status of Instructors dated October 12, 1998. The Subcommittee prepared this revised report to incorporate clarifications made during discussion at the October 22 meeting. This Revised Report and Recommendation constitutes the final report submitted to and acted on by the Promotion and Tenure Committee.

CHARGE AND PROCEDURE

[The] chair of the Promotion and Tenure Committee . . . appointed this subcommittee and directed it to make a recommendation on the status of persons holding appointments as legal writing instructors or as clinic supervising attorneys. The subcommittee has completed its work and files this report with the members of the Promotion and Tenure Committee.

In completing its charge, members of the subcommittee reviewed memoranda from [the director of the legal clinic] summarizing the status of clinicians at a large group of ABA-accredited law schools; reviewed a memorandum from the four writing instructors; reviewed other memoranda and materials deemed relevant, including ABA accreditation standards and the recent ABA task force report on legal writing; held one-on-one meetings with [the dean of the law school] and the five individuals currently holding appointments as Instructors at the School of Law; met one-on-one with tenured faculty who expressed an interest in meeting; and met to discuss the issues. We considered three models:

1. long-term contracts;
2. a separate tenure track; and
3. the existing teaching tenure track with a restricted appointment.

We also considered various combinations of these three models. We did not spend any significant time discussing whether it would be appropriate to maintain the status quo, as none of us believed that to be a viable option.

¹[Historical note: This proposal was passed in the spring of 1999. All instructors who applied to convert their positions to tenure track were approved, and their status was changed to assistant professor of law beginning with the 2000-2001 school year. For more information, please contact Coleen M. Barger, 501/324-9957. This document has been slightly edited to remove references to specific persons.]

GOALS

We focused our discussions on achieving a specific goal: adoption of the model that will best promote continued growth and excellence in the School of Law's writing and clinical curriculum. To achieve that goal, we concluded that the adopted model should:

1. recognize that all teaching faculty are critical in educating our students;
2. make that recognition apparent to all constituencies, including our students, those of us already in tenured or tenure-track positions, those individuals teaching legal writing or teaching as supervising attorneys, our peers at other institutions, journal editors who select scholarship for publication, and the practicing bar;
3. allow for advancement by an individual during the person's time with the School of Law;
4. provide a system of incentives, rewards, and support adequate to attract and retain the best individuals to teach in these critical areas; and
5. comply with ABA accreditation standards and interpretations.

We believe that our recommendations accomplish the identified goal and meet these five criteria.

RECOMMENDATIONS

We recommend that:

1. writing instructors and clinic supervising attorneys hold appointments in the existing tenure track with a restriction to a particular area of teaching responsibility ("Restricted Appointment");
2. a person holding a Restricted Appointment will continue in the assigned responsibility unless hired for an unrestricted appointment through the normal recruitment process at a time the School of Law has a vacancy in an unrestricted tenure-track teaching faculty position;
3. the criteria for promotion and the grant of tenure be the same for a person with a Restricted Appointment as for teaching faculty in the tenure track without restriction, but the Promotion and Tenure Committee adopt by March 1, 1999, a memorandum outlining the types of scholarly effort deemed appropriate to the teaching area of each Restricted Appointment;
4. any person hired for a permanent position to teach legal writing or serve as a clinic supervising attorney after the adoption of these recommendations be hired in the tenure track, but with a Restricted Appointment;
5. any person hired, other than for a permanent position, to teach legal writing or serve as a clinic supervising attorney after the adoption of these recommendations may be hired as a visiting professor, at the appropriate rank, with restriction to a particular area of teaching responsibility;
6. each person currently holding an appointment as Instructor . . . (a "Current Instructor") may apply to the Promotion and Tenure Committee not later than March 15, 1999, for appointment to the tenure track with a Restricted Appointment to be effective

for the 1999-2000 academic year, or by November 1 of any year after 1998 while holding appointment as Instructor to be effective in the following academic year;

7. a Current Instructor recommended by the Promotion and Tenure Committee and appointed by the Dean to the tenure track with a Restricted Appointment hold an initial appointment at the rank of Assistant Professor of Law;

8. a Current Instructor not requesting appointment to the tenure track, or not appointed to a tenure track after requesting appointment, be considered for reappointment on the basis as currently appointed as Instructor, or under any new procedures adopted by the School of Law or the University of Arkansas at Little Rock;

9. beginning with the 1999-2000 academic year, the title of any Current Instructor who remains in an instructor position be changed to Professor of Legal Writing or Professor of Clinical Education, each with ranks of Assistant Professor, Associate Professor, and Professor;

10. criteria for promotion within the ranks of Professor of Legal Writing and Professor of Clinical Education, which criteria shall include a requirement that the person requesting promotion make application to the Promotion and Tenure Committee for the Committee's recommendation to the Dean, be established by the Promotion and Tenure Committee by March 1, 1999;

11. the Promotion and Tenure Committee adopt a resolution recommending that the Faculty amend the School of Law Constitution to give Current Instructors the same voting rights as a Professor of Law;

12. the Promotion and Tenure Committee adopt a resolution requesting that the current and future deans consider Current Instructors eligible for summer appointments on the same basis as a Professor of Law, giving appropriate consideration to the requirement of scholarship from those holding appointments in tenure-track positions; and

13. the Promotion and Tenure Committee adopt a "sense of the committee" resolution, recognizing and informing the current and future deans, that while it is within the authority and responsibility of the dean to set salaries, to make the determination whether funds are available on a continuing basis to hire a person in a tenure-track position, and to decide whether an individual with a Restricted Appointment can fulfill the teaching requirements of the appointment and teach in additional areas, the Committee adopted Recommendations 1, 2, 4, 5, and 7 with the expectation that:

a. a person holding a Restricted Appointment will continue to have the assigned teaching responsibility during the entire period of the Restricted Appointment;

b. as is currently done for all teaching faculty, the salary for a person with a Restricted Appointment will take into account the salaries of persons with similar teaching responsibilities at the School of Law's peer institutions; and

c. if tenure-track teaching positions are funded from "soft money" (e.g. a state appropriation for the particular position or program, grants, one-time gifts), and the total available from soft money becomes insufficient to fund the salary and fringe benefits of that number of tenure-track teaching positions, other funds will not be transferred from an existing use to fund the shortfall until members of

the Faculty are notified of the proposed change and are given an opportunity to comment.

DISCUSSION

1. Why are we making this change?

Consideration of the status of legal writing instructors and clinic supervising attorneys is driven by both external and internal factors. External factors include the MacCrate Report's focus on teaching skills, the recent ABA task force report on legal writing, the increasing number of states which are including a skills-testing component in the bar examination, the Department of Education regulations requiring that law schools publish statistics indicating the number of seats available in faculty supervised legal clinics, and the ABA report on the School of Law's compliance with accreditation standards following the last sabbatical visit. Internal factors include the long-term efforts of the Faculty to reduce the workload of writing instructors and increase the opportunities for students to have a clinical experience, recognition by teaching faculty of the value of stability in our skills courses by retaining well-qualified individuals as legal writing instructors and clinic supervising attorneys, and a desire to treat all members of the faculty equitably. That backdrop informed our committee's discussions.

2. Why not use the long-term contract model?

For reasons which will become evident in this discussion of our recommendations, we easily decided that long-term contracts are not the best way to achieve the stated goal while satisfying the five criteria we identified. Moreover, [the subcommittee chair] expressed his personal opinion. . . that it is not possible for the School of Law to enter into an enforceable multiple-year employment contract unless all costs of the contract are funded from exempt (e.g. endowment) funds. We did not pursue a legal opinion on that question as none of us favored using long-term contracts.

3. Will this change make more than a cosmetic change in the School of Law's environment and culture?

Many, if not all, of us know that instructors are often considered second-class citizens in higher education. Some may not realize that at least some of our students share this prejudice. We made no attempt to assess the impact this has on how seriously students take courses involving instructors, but reason suggests that a prejudicial view of instructors would not enhance the learning process. We do know the impact outside of the classroom, however. Lack of equal treatment in terms and conditions of appointment and in voting rights is demoralizing to some of our faculty. Our goal should be to maintain individuals dedicated to the very demanding task of

teaching legal writing and supervising students who are learning to be lawyers by “practicing” on real clients as the learning tool. Because these programs are an integral part of the Law School’s curriculum, and require grading, supervising, and critiquing responsibilities more demanding than in the traditional course curriculum, the committee concluded that a tenure-track appointment best meets the needs of the School of Law and of our instructors.

4. Why not achieve the same goals with a separate tenure track?

Once the committee reached the conclusion of a need for tenure-track appointments, we addressed whether it should be a separate tenure track or a continuation of the practice implemented for the Director of the Legal Clinic. We reviewed the criteria we established for our recommendation and realized that much of our discussion concerning separate or same tenure track was mere semantics. We concluded that the same rights and responsibilities would be appropriate regardless of which path we chose. Given that, we simply had to decide which model best served our goal, using our five criteria to make that assessment. We agreed that Recommendations 1, 3, and 4 will best serve our goal. By offering regular tenure-track appointments to individuals who will teach legal writing or supervise clinical programs, the School of Law will be able to attract and hire the best-qualified applicants in the nation. We recognize this approach will put us at the forefront in legal education. Very few schools currently offer tenure-track appointments to legal writing instructors. While many schools offer tenure-track appointments to directors of clinical programs, far fewer schools offer tenure-track appointments to supervising attorneys – but again, some do. We do not consider our recommendation to be on the fringe; we believe it represents what should happen and what is slowly happening in legal education.

5. Is everyone shifted automatically to the tenure track?

Recommendations 6, 7, and 8 reflect that we currently have five instructors with regular appointments at the School of Law. These instructors were not hired for tenure-track positions; these instructors may not all want the differing responsibilities which come with a tenure-track position.

Recommendation 6 answers how a current instructor will be considered for a tenure-track position with a restricted appointment. We decided to have the Promotion and Tenure Committee review the request because this is similar to requests for promotion. The individual is already a member of the School of Law faculty and is asking for a change in status.

We do not know if all Current Instructors will apply for a tenure-track position, or if all who apply will be recommended by the Promotion and Tenure Committee and appointed by the Dean. Recommendation 8 makes it clear that a Current Instructor will not be prejudiced by not requesting, or if requested, by not receiving, a tenure-track appointment.

6. Must everyone begin with assistant professor status?

Some faculty members asked that we consider whether Current Instructors should be appointed at a rank above assistant if ranks are approved. Recommendation 7 addresses that question. We concluded that years in legal education and past performance are relevant in evaluating whether to grant a Current Instructor a tenure-track position, that years in legal education and past performance may be relevant to a future Promotion and Tenure Committee when it considers applications for promotion or tenure, but that because a Current Instructor will have for the first time the responsibilities relevant to decisions on promotion and tenure, the initial appointment should always be at the assistant professor rank.

7. What happens to Current Instructors who do not make the switch to a tenure-track position?

Recommendation 9 is our attempt to meet our stated goal and fulfill our five criteria as nearly as possible for Current Instructors who remain Instructors. We believe that this is crucial to avoid further undercutting the efforts of these individuals if some of their peers are in tenure-track positions.

We included dates in Recommendations 3 and 10 for the Promotion and Tenure Committee to complete defined tasks in order that Current Instructors will have a minimum of two weeks to review the relevant standards before deciding whether to apply for a tenure-track appointment for the 1999-2000 academic year.

8. How does the change in status affect voting rights?

Recommendation 11 – full voting rights – logically follows from our other recommendations. We realize this still leaves some faculty, such as the law library faculty, without full voting rights. We concluded that our charge did not include addressing that issue. If any person wishes the Faculty to consider amending the voting rights of other categories of faculty under the School of Law Constitution, that can be addressed separately from this decision.

9. What other personnel benefits are included?

This past summer, [the dean of the law school] made summer appointments for both teaching and research support available to the legal writing instructors and clinic supervising attorneys. We believe this was a positive step forward. Because it represents a change in an operating assumption at the Law School, we include Recommendation 12 so that members of the Promotion and Tenure Committee will be on record supporting this change. We believe it appropriate, however, for a dean, when allocating available funds for summer appointments, to consider that persons with a tenure-track position are required to produce scholarship.

10. What impact will the proposed change have on the budget, salary increases, other programs, and teaching responsibilities?

Recommendation 13 addresses concerns expressed by current tenured teaching faculty, as well as what we viewed as potential misunderstandings on the part of both Current Instructors and current tenured teaching faculty. We realize adoption of Recommendation 13 represents a departure for this faculty; as a faculty, we have never inserted ourselves into management decisions to this degree.

10.a. Can a faculty member with a tenure-track Restricted Appointment move into a position with unrestricted teaching responsibility?

Recommendation 13.a addresses the concern voiced by some faculty that a person with a restricted appointment will at some point drift or evolve into a unrestricted status without faculty input. The concern was also raised that if this happened, members of our faculty would be hesitant to step forward and raise the issue. Recommendation 13.a addresses those concerns by putting the Promotion and Tenure Committee on record so that neither the dean nor a Current Instructor will be unaware of the Committee's sentiment. Furthermore, Recommendation 2 provides that the individual seeking to move from a tenure-track Restricted Appointment to a tenure-track unrestricted appointment must follow the same procedure and receive the same faculty approval required of any candidate for a tenure-track unrestricted appointment.

10.b. What impact will the change in status have on salaries?

Recommendation 13.b addresses questions about salary. [The dean of the law school] . . . stated that in setting all salaries, he will, should, and actually has no choice but to, take market factors into consideration. We all recognize that even within the same college in a university, some disciplines command higher salaries than others. [The dean] anticipates that market forces will continue to be an important factor in setting all salaries, including salaries of persons with primary responsibility for teaching

legal writing or for serving as clinic supervising attorneys. Recommendation 13.b reflects this view on the part of the Promotion and Tenure Committee.²

10.c. What happens if tenure-track positions are funded with “soft” money and those funds become insufficient?

A concern was also expressed that this faculty would never want to eliminate a position, even if funding for the position is lost. We concluded that unwillingness of the faculty to assert itself is not a basis to reject Recommendations 1 through 7. However, inaction brought about by lack of knowledge is not the same. Recommendation 13.c puts the dean on notice of the faculty expectation that, if “soft” money received becomes insufficient to continue the same number of tenure-track positions, funds will not be reallocated from other uses prior to affording faculty a chance to comment.

CONCLUSION

We have instructors interested in performing public service and in producing scholarship. Their doing so can only enhance the reputation of our School of Law and improve the quality of the education we give our students. We believe our recommendations are both reasonable and an effective way of making it possible for our program and our colleagues to continue improvement and growth.

ADDITIONAL DISTRIBUTION

Our recommendations, if adopted, will have importance to many people in addition to those of us on the Promotion and Tenure Committee. We have therefore distributed this memorandum to those individuals in tenure-track teaching faculty positions who are not tenured, to our five law library faculty, to persons with appointments as visiting professors or visiting instructors, and to the Current Instructors. We invite each of these colleagues to contact any of the three of us with reactions and comments. The Promotion and Tenure Committee meets Friday, October 16 to act on our recommendations.

²[Historical note: In the fall of 2000, the UALR faculty passed a “sense of the faculty” resolution requesting that the dean use available funds to “close the salary gap” between former skills instructors now on the tenure track and other professors of the same academic rank, thus making no distinction on the basis of the subject(s) taught by the professor.]