

AFPSF Committee Review of the Cornell Law School Clinical Tenure Proposal

April 2020

The Academic Freedom and Professional Status of the Faculty Committee (the “AFPSF”) reports to the Faculty Senate and deals with all matters that relate to tenure. This document constitutes our review of a [Proposal](#) from the Cornell Law School (CLS) that would create an opportunity for clinical professors in the school to be granted indefinite tenure pending a positive outcome of a rigorous review. For the convenience of the Senate, we produced this [one-page summary](#) to make it easy for the busy reader to understand the proposal and the approval process. The Committee studied a rough draft of the proposal a year ago and provided feedback. More recently we discussed the final proposal with Dean Eduardo Penalver and Professor Beth Lyon.

We enthusiastically support the CLS effort to strengthen the clinical component of its operation and to better prepare its graduates for careers in public service. The proposal is strong in several regards. (a) It provides evidence that high-ranking clinical programs are associated with schools that offer their clinical faculty tenure opportunities. (b) It documents and explains the expansion of clinical activity within the CLS. (c) It describes in detail how the various promotion processes would work should the clinical track have a tenure option.

Nevertheless we did have some concerns associated with the proposal which are summarized below.

The CLS Vote. There are 40 tenured and tenure track faculty in the CLS and they approved the proposal in a December 2019 meeting as follows: Yes=21, No=0, Abstain=1. We raised concerns about the low “voter turnout”. As a result further canvassing of the CLS faculty led to revised totals: Yes=30, No=0, Abstain=1. The Committee is satisfied that the proposal enjoys broad support in the CLS.

Two Questionable Justifications. The gender equity justification for offering clinical tenure mentioned in the proposal (p.2) has little merit. Our view is that the unfavorable percentages (TT Female = 20%, Clinical Prof Female = 80%) signal a climate issue that is not likely to change should the proposal be approved. The efficiency justification (p.3) is likewise weak. The workload issue associated with RTE reappointments is important, but it should not be a factor when considering the worthiness of the CLS proposal.

What Makes an RTE Title “Tenure-Worthy”? The AFPSF feels that this question needs to be satisfactorily addressed before the proposal can be endorsed. The fundamental reason that we have tenure is to protect academic freedom. A reasonable case can be made that clinical law faculty who work on controversial cases should be afforded that protection. However, there are slippery slope concerns associated with this justification. There are, for example, Senior Lecturers and Professors-of-the-Practice who teach controversial topics in other disciplines who could argue for the same protection. We are concerned that other Colleges will follow suit and propose tenure options for RTE titles that they deem central to their strategic plan. This may be the wave of the future; something made possible by “decentralized Cornell”. But before proceeding down this path we need university-level principles for the colleges to follow.

The Senate dealt with a similar situation in the early 2000s when the idea of “Clinical Professor” first came up. Enabling legislation was devised that established criteria that had to be met before a college was authorized to use the title. This establishes a measure of consistency; it is not advisable to have ten different versions of clinical professor across campus. Perhaps for the same reason we need enabling legislation that establishes criteria that must be satisfied before a college can be authorized to have a tenure option for one of their existing RTE titles.

Unitary Tenure vs. Clinical Tenure. In the context of this proposal, a unitary tenure system refers to the current CLS tenure system with adjusted promotion criteria. With these adjustments clinicians could be placed on the tenure track and go through a promotion process that was broad enough in its thinking to recognize outstanding clinical work. The proposal includes a careful analysis of clinical work and its assessment; this part of the proposal could be folded into a thoughtfully designed unitary system.

The AFPSF was not persuaded by the arguments made in the proposal against having a unitary system. We use an example from the Department of Physics to illustrate our point of view. That unit recently hired a tenure track assistant professor whose scholarship is focused on physics *education*. Physics regarded this type of scholarship to be of such great importance to the field and to their direction as a department that (in consultation with their college) they decided not to use any of the available RTE titles for that individual. With that move physics is exercising the kind of leadership within the STEM community that the CLS is aspiring to have within the community of great law schools. And Physics is hardly alone--departments routinely modify their stance on "what's tenurable" based on changing research directions and evolving definitions of what is important.

Worries that FACTA might give a clinical-rich tenure case from the CLS a hard time are unfounded. Our experience with that advisory committee indicates that it is extraordinarily broad minded when it comes to assessing the quality of academic work.

Summary. We appreciate the importance of having a CLS that is highly ranked for its clinical component. We also appreciate the argument that the CLS deserves the same flexibility as Weill Cornell Medical where various titles come equipped with a tenure option for reasons that have to do with recruiting and retention.

The Committee is unanimous (9-to-0) in its support of the unitary tenure system for clinical-focused faculty in the CLS. It is the best framework for realizing all the ambitions stated in the proposal subject to the constraint that there are no unintended side effects that impact the other colleges.

With respect to supporting clinical tenure as described in this proposal, we are much more conflicted than the vote suggests (Yes=2, No=6, Abstain=1). On the one hand, we recognize the support for this proposal within CLS and the right to self-governance. However, implementation of a clinical tenure path would have ramifications for the rest of the University and, as such, cannot be viewed in isolation but must be viewed in the broader context looking forward. Without a principled plan for handling analogous requests that are sure to come from the other colleges, we are reluctant to support this one.