

TENURE STANDARDS AND PROCEDURES

Adopted by the Faculty on April 24, 1987;
as amended January 25, 1996, April 3, 1998, and May 4, 2000.

I. Committee Structure

A. Support Committee

At the beginning of the second semester following the appointment of an untenured faculty member the Dean shall confer with the faculty member concerning that member's wishes about a Support Committee. If the member desires the appointment of such a committee, the Dean shall appoint two or three tenured faculty members to serve as a Support Committee for the new faculty member. If a Committee is appointed, it shall serve until such time as the new member is granted or denied tenure.

The function of the Support Committee is to give advice to the new member about teaching, scholarship and the general rules and operations of the School. It is expected that some members of the Committee will visit the untenured faculty member's classes at least once during each academic year, not for the purpose of promotional review, but rather for the purpose of offering helpful advice about teaching. The Committee should also inform the new faculty member that it welcomes the opportunity to review and comment on any drafts of scholarly papers written by the new faculty member, but the Committee should also stress to the new faculty member that submission is not in any way a requirement for promotion or tenure. In general, the Committee should bear in mind that its exclusive function is advisory, and supportive, and not evaluative.

COMMENTARY

Both the Dean, in his discussions with the new faculty members, and the members of the Committee in their relations with the new members, must be sensitive to the limitations of the Support Committee's responsibility and to the possibility that the Committee may become too intrusive. In particular, appointment of the Committee is not intended to foreclose consultation by the untenured member with other members of the faculty, or the solicitation of the views and assistance of others.

B. Standing Tenure Committee

Composition

The Standing Tenure Committee shall consist of five tenured members of the faculty. The Committee shall be appointed by the Dean. In the first year, two members shall be appointed for a term of one year and three members shall be appointed for a term of two years. Thereafter the Dean shall appoint for two-year terms, alternatively, two or three members each year to fill annual vacancies.

The Committee shall conduct a contract renewal review in the candidate's third year as provided in section II.

The Committee shall conduct a tenure review as provided in section III B.

The Committee may gather information relating to the teaching and publications of candidates not scheduled for review during the current year. As the Committee deems appropriate, such information may be passed on to the candidate.

After a faculty vote to grant tenure as provided in section III, the Committee shall confer with the Dean as to the best method of presenting the faculty position on the tenure appointment to the Central Administration. In appropriate circumstances, the Committee, or its appointees, may present the faculty views to the Central Administration.

COMMENTARY

The primary function of the Committee is to gather information. It will make a recommendation, but each faculty member must make his or her own independent judgment on the candidate. As to the possible role of the Committee in presenting the faculty viewpoint to the Central Administration, see the Commentary to III B.

II. Reappointment

During the last semester of a candidate's initial contract appointment (usually the candidate's sixth semester of employment), the Standing Tenure Committee shall review the teaching, scholarship, and public service of the candidate and make a report to the tenured faculty.

The Committee shall recommend renewal unless after reviewing the candidate's teaching, scholarship and public service the Committee concludes that the candidate is not making satisfactory progress toward tenure.

The Committee's recommendation to renew or not renew shall be submitted to the tenured members of the faculty for discussion. If the Committee proposes renewal, acceptance will not require a vote by the faculty. If the Committee recommends that the candidate not be renewed, the tenured faculty (applying the standards set out above) shall determine by a majority vote to accept or reject that recommendation or adopt a substitute recommendation. Renewal shall not be accompanied by a change in rank for the candidate.

COMMENTARY

The principal purposes of a formal review coupled with a faculty discussion are to encourage early publication and to give the faculty an early opportunity to become familiar with the writing and teaching of the untenured members of the faculty. Although there is no formal requirement that a person being considered for renewal have submitted anything for publication, it is the expectation of the faculty that the candidate will be deeply involved in writing at the point of renewal. The Standing Tenure Committee will consider any material

submitted for publication and drafts of other material at the time of the renewal. There would be a serious question whether one who did not have at least one article or its equivalent available for consideration by the middle of the third year would be making satisfactory progress toward achieving tenure.

For those appointed without advanced standing, it is anticipated that the renewal decision will be made in the sixth semester.

III. Tenure

A. Time for Consideration

The person appointed without advanced standing shall normally be considered for tenure during the tenth semester of his or her appointment at a time no later than that specified in part III B. A candidate may postpone consideration to the eleventh or twelfth semester by giving notice of intention to postpone to the Standing Tenure Committee. The candidate must give such notice not later than a date to be fixed by the Standing Tenure Committee. Consideration may be postponed beyond the twelfth semester only upon written request by the candidate and upon the Committee's approval of such request. There shall be a strong presumption for consideration no later than the twelfth semester. Postponement beyond that semester shall be granted only in extraordinary circumstances arising after the ninth semester.

A person appointed without advanced standing may be considered for tenure before the tenth semester only upon such person's written request to, and with the concurrence of, the Standing Tenure Committee. The Standing Tenure Committee shall grant a request for early consideration upon a finding that it is in the interest of the school and the candidate to consider his or her case before the tenth semester.

Semesters during which a candidate is neither teaching (here or elsewhere) nor on research leave (e.g., on unpaid leave, on medical leave, in public service, in private practice) will not be counted as semesters of untenured appointment for these purposes, even though the person may technically hold a faculty appointment during such time. In cases in which the candidate has taught less than full time for one or more semesters, and in other cases that are not explicitly covered by the immediately preceding sentence, the Standing Tenure Committee shall determine how to calculate the semesters of untenured appointment for the purpose of establishing the time for consideration. Such determination shall be made in a way consistent with the rules set out in the first sentence of this paragraph.

A person appointed without tenure, but with advanced standing, shall be considered for tenure at an appropriate time to be agreed upon at the time of the person's hiring.

COMMENTARY

There are several reasons for selecting the tenth semester as the usual time for consideration. To consider one for tenure prior to that time is too soon if we wish to see more than a single article. Most will devote the entire first year to teaching and will get to work on something in writing only during the summer after the first year.

To adopt a time after the tenth semester as the norm would, of course, permit greater scholarly production and might enable the faculty to make a decision based more certainly upon performance and less upon promise. Nevertheless, we see three important reasons for rejecting a longer period. First, the tenure process and its inevitable

uncertainty cause considerable anxiety in many candidates and that anxiety appears sometimes to interfere with their capacity to do scholarly work. Thus we chose the tenth semester as the appropriate balance between a shorter period that might produce too little scholarship and a longer period that might cause deleterious anxiety.

A second reason for rejecting a longer period is to avoid the possibility that long-term collegial relations will interfere with or override a careful and honest judgment about the merits of a tenure case. A third reason for making the decision in the tenth, as opposed to a later semester, is to do so at a time when the candidate still has the possibility to return to practice and before the candidate has become irrevocably committed to an academic life.

Although the faculty expects that most persons hired without advanced standing will be considered during the tenth semester, the candidate is given the option to postpone consideration one or two semesters. (The decision made after such postponement shall be made on the same standards as though there had been no postponement.) The faculty has granted this option in the hope of avoiding the necessity of making ad hoc judgments about the extension based upon personal considerations such as pregnancy, illness or personal tragedy. It is the view of the faculty that any candidate should be able to meet the standards set out in III C in twelve semesters, even with the loss of a substantial amount of time because of illness or other interruption. In the rare case when the disruptive event occurs after there has already been a postponement, there is a procedure for an additional extension.

How one computes semesters for the purpose of the ten semester rule can be quite complicated. The resolution of that question is left mostly to the Standing Tenure Committee. For example, that Committee must decide how part-time service should be counted. Undoubtedly there are other forms of leave or quasi-leave not covered by our rules; the treatment of these too we leave to the Standing Tenure Committee. There is no provision for any explicit appeal to the Dean or faculty from a Standing Tenure Committee decision to proceed or not to proceed, or from a decision concerning the number of semesters of employment. Such omission arises from the belief that the faculty can always override the decision of a Committee at the request of any aggrieved party.

B. Procedure

The Standing Tenure Committee shall collect the written work of the candidate and shall solicit internal and external evaluation of that work as the Committee deems appropriate. It shall include and consider publications that are available to it no later than October 1 of the academic year in which the tenure review takes place, but not material submitted thereafter. The Committee may receive names for evaluators from the candidate, but it shall not be limited to such persons and both the number and identity of the persons selected as evaluators shall be in the discretion of the Committee.

To measure the quality of teaching, one or more members of the Standing Tenure Committee shall attend at least two of the candidate's classes, shall interview a representative sample of students and shall collect student evaluations.

The Committee shall also compile a record of the candidate's public service. The Committee may, in its discretion, reveal to the candidate adverse information contained in the outside letters or received from other sources and give the candidate an opportunity to respond in writing. It may also pose questions to the candidate and request a response orally or in writing.

Applying the standards set out in III C, the Committee shall recommend granting or denying tenure to the faculty. It shall make such recommendation in a report that analyzes the record and states the Committee's reasons.

The Committee shall make its proposal to the faculty no later than one month before the Dean must submit the faculty's recommendation to the University administration. It shall consider publications available under the standard in III C no later than October 1 of the academic year in which the tenure review takes place, but not material available thereafter.

The tenured faculty shall pass on the Committee's recommendation under the standard two-meeting rule. Before the governing vote there shall be a secret straw ballot. At the conclusion of that ballot the Dean shall announce the vote and shall open the floor for continued discussion. The final and governing vote shall not be secret. If two-thirds of those present vote to grant tenure, a recommendation for the grant of tenure shall be forwarded to the Central Administration. Those granted tenure shall be proposed for promotion to full professor.

COMMENTARY

Because the Central Administration considers candidates from all units during March and proposes those for tenure in the May meeting of the Regents, we are bound to some extent to conform to the schedule set out above. If, for example, the faculty were to make a proposal for tenure in September, it is probable that the case would not be considered by the Central Administration until March and not acted on by the Regents until May of the following year. Because of the short time after the first Of the year, the Standing Tenure Committee should begin its work no later than the beginning of the ninth semester and at that time will have most of the candidate's publications available for the consideration of outside evaluators. Because material may be accepted as late as two months prior to faculty submission, some evaluations may have to be procured in a relatively short time.

This report does not deal explicitly with the responsibility of the Dean or of the faculty after the faculty vote. Because of the Dean's frequent contact with members of the Central Administration and because the Dean has a somewhat broader perspective than a typical faculty member, the Dean can best advocate the faculty's position in most cases. When the Dean personally dissents from the faculty's position, there are difficult questions about his or her responsibility. In the case of such dissent, the Standing Committee and the Dean should consult about how the faculty's view may best be presented to the Central Administration, and it may be appropriate for the Standing Committee to play a somewhat greater role than would otherwise be the case. That role might take the form of preparing the documents for submission to the Central Administration, of making that presentation, or of both. The faculty recognizes that the Dean is free in such cases freely to express his or her opinion to the Central Administration. The faculty relies upon the Dean's wise discretion in observing the line between proper consultation and inappropriate advocacy of a position contrary to the faculty's.

C. Standards

When an untenured person is appointed, the faculty believes, on the evidence available at the time of appointment, that such person is capable of earning tenure. The faculty does not appoint large numbers of persons in the expectation that only some of them will be granted tenure. The faculty makes a recommendation on tenure based on an appraisal of the candidate's performance in three areas: as teacher, as scholar and as contributor to the Law School, University and larger community (i.e., "public service"). Of these three, the faculty accords substantially greater weight to performance in teaching and scholarship than to public service.

The paragraphs that follow set forth the faculty's expectations in each area separately. At the same time, the faculty recognizes that its recommendations ultimately rest not on three separate judgments but on an appraisal of the candidate's achievements and performance in the three areas taken together.

Teaching

Every candidate must have demonstrated a capacity for superior teaching. The faculty recognizes that outstanding teaching can take many different forms. Typically superior teachers possess depth and breadth of understanding of the subject matter, express themselves clearly and convey enthusiasm for presenting the topic to students.

Most law school teaching will occur in the classroom. The faculty, however, will also consider performance outside of the classroom, such as serving as mentor to students or creating new approaches to teaching.

Scholarship

The faculty recommends for tenure only those who have demonstrated significant achievement as a scholar and who show promise of future achievement. In this regard, no absolute rules regarding quantity are desirable. And no definition of quality is acceptable that does not leave substantial room for individual judgment. The following is nonetheless an attempt to state the expectations of the faculty, expectations formed, in large part, on the records of those to whom tenure has been granted in the years since we began considering tenure in the fifth year.

By the end of the semester immediately prior to a candidate's consideration for tenure (normally the ninth), the candidate should have published or have submitted for publication the equivalent of at least two substantial law review articles. The candidate's publication need not be in the form of law review articles, but can consist of essays, book reviews, books or chapters in a book, monographs, or other types of publications, provided that the corpus is the equivalent of at least two articles. In determining whether the standards set out in this paragraph have been met, the Standing Tenure Committee will not give significant weight, except in the rarest case, to material not submitted for publication.

The publication must be work of high quality--i.e., work that demonstrates the high intelligence, care and perception one would expect of a person on the way to becoming a leading scholar. The work as a whole must also make a significant contribution to legal scholarship. It can do so in various ways, such as by providing fresh insights on a significant issue or by producing new and important data that will contribute to shaping the law. It can also do so by collecting, organizing, and analyzing a substantial body of law, but such work must go beyond mere summaries or surveys of the law. However, the faculty does not expect work by the candidate that will reshape fundamental principles of a field of law.

The faculty is also seeking some qualities of scholarship not measured by the published work alone. For example, the faculty will also be reaching a judgment about whether a person has a serious and enduring commitment to scholarly production.

COMMENTARY

We have chosen the "equivalent of at least two article" quantity standard for several reasons. First an exhortation that three or four or five articles are required might substantially alter the kind of work that a candidate would do. Most candidates for tenure are certainly capable of producing five respectable articles in five years. However, it is likely that such articles would be more shallow, less innovative, less likely to enhance the future growth of the candidate. In effect, there is a trade-off between quantity and quality. We want to encourage the candidate to make the proper balance. Nor do we expect that it will have escaped the notice of the tenure candidate that larger files of good work make easier cases than thinner files of comparable work.

For various reasons, the faculty believes that the case should rest principally on materials submitted for publication. Provided that the candidate has met the minimum quantity standards with materials that have been published or submitted for publication, the candidate may, of course, submit additional writing that has not been submitted for publication. If such material is submitted, the committee and the faculty will consider it, but with the understanding that it may never be published or that it may not be published in its current form. In the "rarest case" we contemplate the possibility that one could meet the threshold requirement with material not yet published, nor submitted for publication. The single example that we recognize at this point is one in which the candidate is far along on a substantial book and was able to provide polished drafts of chapters or other segments.

The faculty cannot answer all questions that will arise about the form of scholarly work, but some questions have arisen with sufficient frequency that a few specific comments about them seem wise:

Casebooks. Like any other publication, a casebook will be judged by whether it is a work of "high quality" and whether it makes "a significant contribution." Casebooks that are merely a compilation of court decisions often do not provide a candidate an opportunity to display the candidate's own intelligence and perception in the manner that the faculty will be seeking in a candidate's early scholarship. Such books will carry little weight. On the other hand, a casebook that contains especially extensive and perceptive note material, or that brings together the texts in a field in an innovative and insightful manner, can carry substantial weight. Candidates should nonetheless take into account the personal experience of many of the faculty that case-books, and especially innovative casebooks and casebooks with abundant note material, take far more time and effort to prepare than most people foresee.

Book reviews. As with casebooks, the faculty will regard book reviews in the same way as any other scholarship, recognizing that book reviews by law teachers take many forms. Some are the length of a substantial article and have entailed considerable research by the author of the review in challenging the thesis of the author of a book. Such a review may, standing alone, make a significant contribution to a field. On the other hand, many reviews are brief essays describing a book and making a few criticisms. Such reviews, even if perceptive, will not carry great weight.

Co-authored work. Co-authored work may pose a difficult dilemma. The faculty believes that young faculty members can profit greatly from working in alliance with other colleagues and with faculty members in other disciplines. However, when a candidate's portfolio at the time of the tenure decision rests largely on co-authored work, the faculty may have difficulty discerning the particular contributions of the candidate.

Service

The faculty recognizes the value to the Law School of participation in its administration, participation in the administration of the University, participation in the activities of the profession and participation in activities of a legal character that serve the general citizenry (e.g., assisting legislative bodies). Nonetheless, we will give quite limited weight in the tenure decision to

exceptional service in these or any other areas of public service. Of course, in evaluating the potential scholarship and teaching of a candidate, the faculty will take note of the fact that ongoing professional and government service may make the candidate a better teacher or better scholar in the future. It should also be emphasized that every faculty member, including the non-tenured faculty members, is expected to participate actively in committee work and other activity relating to the administration of the Law School, and the failure of any candidate to bear his or her fair share of that responsibility may count against the candidate in the tenure decision.

COMMENTARY

Our current standards note that "a third category, that of community service of a legal character, is also appropriate for the faculty to consider." The Regents Bylaw on Qualifications for Appointment and Promotion states:

Service. The scope of the University's activities makes it appropriate for members of the staff to engage in many activities outside of the fields of teaching and research. These may include participation in committee work and other administrative tasks, counseling, clinical duties, and special training programs. The University also expects many of its staff to render extramural services to schools, to industry, to local, state, and national agencies, and to the public at large.

The reality of past practice (and current thought) is that even exceptional public service counts for a limited amount in the tenure decision.