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Faculty Status and Institutional Effectiveness

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B. FACULTY STATUS AND INSTITUTIONAL EFFECTIVENESS

By Deborah Maranville, Ruth Anne Robbins & Kristen K. Tiscione¹

1. Introduction

Legal education has expanded to incorporate practice-oriented topics and courses over the past several decades, and student academic support services have multiplied in response to changing student populations. As a consequence of these changes, law schools are overdue to address the issue of the status of the individuals they hire to fill the multiple and ever expanding needs and interests of students.² Should law schools hire new personnel as teachers, staff, or administrators? If hired as teachers, what titles and governance rights should they be given? Should they be eligible for tenure, presumptively renewable long-term contracts, or short-term contracts? What workloads are appropriate and what courses permitted?

Status and fairness issues for law teachers accompanied the rise of experiential programs, including clinical³ and legal research and writing programs.⁴ More

¹ Readers for this section were Kevin Barry and Jennifer Fan.

² See, e.g., ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMM'N ON SECURITY OF POSITION (2008); Richard Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457 (1994). In March 2015, The Association of Legal Writing Directors, the Legal Writing Institute, and the Society of American Law Teachers adopted a statement expressing their commitment to full citizenship for all law faculty. See, e.g., Scott Fruehwald, ALWD Announcement Legal Skills Prof Blog (March 16, 2015), http://lawprofessors.typepad.com/legal_skills/2015/03/legal-writing-institute-announcement.html and Scott Fruehwald, Legal Writing Institute Announcement, Legal Skills Prof Blog (March 16, 2015), http://lawprofessors.typepad.com/legal_skills/2015/03/legal-writing-institute-announcement.html.

³ See Bryan L. Adamson, Calvin G.C. Pang, Bradford Colbert, Kathy Hessler, Katherine R. Kruse, Robert R. Kuehn, Mary Helen McNeal & David A. Santacrose, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012); *Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention*, 62 J. LEGAL EDUC. 115 (2012). According to the CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE)'s *Report on the 2013-2014 Survey of Applied Legal Education*, available at http://www.csale.org/files/Report_on_2013-14_CSale_Survey.pdf, archived at <http://perma.cc/XEM3-8UJY>, 49.1% (down from 51% in 2010-11) of clinical teachers are in contract positions of widely varying duration; about 31.4% (down from 39% in 2010-11) of clinic teachers are tenured, tenure track, or on clinical tenure tracks; and the remainder are in visitor, fellow, adjunct, or similarly short-term positions. See (CSALE)'s *Report on the 2010-2011 Survey of Applied Legal Education*, available at <http://www.csale.org/files/CSALE.Report.on.2010-2011.Survey.5.16.12.Revised.pdf>, archived at <http://perma.cc/CH47-UVAC>. This loss in full-time faculty signals the increased use of adjuncts, fellows, or full-time faculty on short-term contracts.

⁴ Legal research and writing teachers have the least protection among faculty groups addressed under the ABA Accreditation Standards. The status of legal research and writing teachers varies widely across law schools, from tenure to part-time lecturer. Only ten percent of law schools hire solely tenured or tenure-track teachers specifically to teach legal writing, and only ten percent of all legal research and writing faculty likely have tenure. See ALWD/LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 6, 68, Appendix A (2014) [hereinafter 2014 SURVEY], available at <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf>, archived at <http://perma.cc/A5S6-B28S>. Since 2011, the number of legal research and writing teachers has also declined. Full-time professionals, part-time professionals,

recently, similar issues have arisen with academic support teachers, whose courses may be mandatory for certain students,⁵ and have intensified for externship teachers at many schools. BEST PRACTICES FOR LEGAL EDUCATION identified as a “best practice to enhance the effectiveness of faculty in experiential courses” that “a school uses qualified faculty, provides professional development opportunities, and assigns reasonable workloads in its experiential education courses.”⁶ Faculty status is a key dimension of enhancing the effectiveness of faculty, and this section provides an overview of the issues involved in debates over faculty status.

2. Status Challenges for Experiential and Academic Support Teachers

The ABA accreditation standards require law schools to provide some status protection for experiential teachers, but that protection has significant limits, in theory and in practice.⁷ Legal writing teachers are afforded even less protection than clinical teachers. In a tight job market, the scant protection afforded them — what is necessary to “attract and retain a faculty that is well qualified . . . and protect academic freedom” — does little to ensure any security of position or garner respect from their doctrinally-focused colleagues.

Clinical, legal research and writing, and academic support teachers are overwhelmingly female, making the question of status heavily gendered,⁸ and

adjuncts, law school graduate students, and teaching or research assistants have likely decreased 13%, 20%, 24%, 20%, and 20%, respectively. *See id.* at 59.

⁵ *See* LAW SCHOOL ACADEMIC SUCCESS PROJECT, *Summary Report of the 2011 National Law School ASP Survey* (on file with the organization at www.lawschoolasp.org, archived at <http://perma.cc/6K9A-X32N>).

⁶ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, text at notes 570-573 (2007) [hereinafter BEST PRACTICES].

⁷ Standard 405(c) requires law schools to “afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members.” Thus, it expressly approves pay differentials. In addition, the standard authorizes “a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.” For legal research and writing teachers under 405(d), the standards require only “such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . and (2) safeguard academic freedom.” The Interpretation of 405(d) explicitly approves the use of fellowship programs to staff legal research and writing courses. The standards require law schools to provide academic support “designed to afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession” (Standard 309(b)), but do not address academic support teachers. In practice, the choice to provide “reasonably similar” status under 405(c) often results in different treatment along multiple dimensions of concern to faculty. Similarly, only a few institutions have integrated faculty teaching in their legal research and writing programs fully into the law school.

⁸ For data on clinical legal education, see studies performed by the CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION [hereinafter CSALE, Studies] for various years, available at <http://www.esale.org/study.html>, archived at <http://perma.cc/6DHG-7KAP>. For data on legal research and writing teachers, see, e.g., Lucille A. Jewell, *Tales of a Fourth Tier Nothing, A Response to Brian Tamanaha's Failing Law Schools*, 38 J. LEGAL PROF. 125, 152 (2013); see also 2014 SURVEY at 71. Status and fairness issues disproportionately affect minorities as well. See, e.g., Lorraine K. Bannai, *Challenged X3: Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014); Teri A. McMurtry-Chubb, *Writing at the*

creating both the perception and the reality that women are treated as a cheap and expendable labor force.⁹ Often, law schools hire experiential and academic support teachers on short-term contracts that lack job security, parity in pay and benefits, and an equal voice in the institution. Many schools — especially higher ranking ones — treat experiential and academic support teachers as categorically ineligible for tenure, even if their credentials are comparable to those of candidates hired on the tenure track.

Law schools often impose higher teaching loads on contract faculty at significantly lower pay on the theory that their jobs are not as competitive, they have more time, they are not producing scholarship, or their teaching is less valuable. When clinic teachers are eligible for tenure, they may have case coverage and other duties that significantly interfere with their ability to produce scholarship. Similarly, legal research and writing teachers often face the same difficulty due to individual meetings with students, grading, and other formative and evaluative assessments throughout the semester. And, whether scholarship is an expectation for an experiential or academic support teacher's position, their scholarship is often devalued, especially if it is focused on lawyering skills or teaching methodology.

Because law schools have different missions and relative rankings, and affected individuals have different values and aspirations, consensus on how best to address these issues is difficult to achieve. Four major options for addressing these issues have emerged (discussed in subsection 4, below), each with variations:

- a unitary tenure track
- a tenure track uncoupled from scholarship
- a separate tenure track
- a separate non-tenure teaching track.

Each option presents distinct challenges and trade-offs, as will be discussed. But, first, a look at why status matters.

3. Three Core Reasons Why Status Matters

Status may appear to be solely about job perquisites: title, a better salary, and access to benefits ranging from travel money to location of offices and mailboxes. But in significant part, these surface features are proxies for deeper issues. Status matters for three primary reasons: to provide the protections of academic freedom, to promote scholarship, and to ensure full citizenship for all teachers.

Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession, 2 DREXEL L. REV. 41 (2009).

⁹ For articles on the second-tier status and gendered treatment of legal research and writing teachers, see, e.g., Kathryn Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 469 (2004) (symposium issue on dismantling hierarchies in legal education).

a. Academic Freedom

One of the most fundamental reasons that academics and educational institutions care about faculty status is the need for academic freedom to engage in controversial research and express unpopular opinions without outside interference and fear of job loss. Meaningful academic freedom requires some form of real job security. Thus, academic freedom and protection from outside interference have historically been linked with job security in the form of tenure, based on the production of traditional scholarship.

i. Why Experiential and Academic Support Teachers Need Academic Freedom

All clinical, legal research and writing, and academic support teachers need a form of job security that will provide them with meaningful academic freedom. In-house clinical teachers, for example, often represent unpopular clients and causes or clients in actions filed against large organizations or corporations. At some law schools, they experience intense external pressure to stop representing controversial clients or terminate their representation in a particular matter.¹⁰ Externship teachers require protection for the sometimes politically delicate task of selecting and supervising appropriate field supervisors, especially if they need to discontinue a supervisor's participation in the program. Legal research and writing teachers, too, often experience internal pressure to defend the value of their programs, positions, courses, credits, methods of instruction and grading when law schools experience financial difficulty or administrations change. And, as the field of academic support grows, the risk increases that those who teach students with academic challenges will be viewed as less worthy because of the subjects — or students — they teach, or they will be held responsible for their students' learning outcomes.

ii. Teachers, Not Administrators

The need for job security and protection from outside interference explains why it is important that law schools hire experiential and academic support personnel as faculty members rather than as staff members or administrators. While this typically is not an issue for in-house clinical and legal research and writing teachers, it is a serious issue for externship¹¹ and academic support teachers and occasionally in-house clinical teachers hired initially as staff attorneys or administrators and whose duties shift to teaching.

The nature of some experiential and academic support teaching may help explain why these hiring issues arise. The increasingly outdated, but perhaps prototypical, image of what it means to “teach” is to convey knowledge to a group of students from a podium at the front of a classroom. Today, much experiential teaching is done

¹⁰ See, e.g., Robert R. Kuehn & Bridget M. McCormack, *Lessons from Forty Years of Interference in Law School Clinics*, 26 GEO. J. LEGAL ETHICS 59 (2010).

¹¹ An emerging and disturbing trend is to hire administrators to “run” externship programs rather than faculty members to “teach” externship courses.

outside the classroom in supervision meetings, team work, writing conferences, course websites, or through reflective writing such as journaling. Similarly, academic support teaching is not always done in the front of a classroom in a separate course that awards credit but through individual student meetings. Although these forms of teaching may include some administrative tasks, such as organizing externship placements or tutors, every course involves administration of some sort.

b. Scholarship

Status also matters because historically it has been a key vehicle for promoting research and scholarship. Although there is disagreement about the value of legal scholarship to the profession and to society more broadly,¹² scholarship continues to be the most highly valued contribution faculty make at many law schools. Eligibility for tenure (and, at some schools, the struggle to become tenure eligible) has inspired experiential teachers to produce scholarship that bridges the artificial gap between theory and practice. Many experiential teachers with significant experience representing clients publish articles that “theorize practice,” helping discover the principles that underlie effective legal practice in areas such as interviewing and counseling, fact investigation, negotiation, and written and oral advocacy. Many experiential teachers have also produced important scholarship on doctrinal topics that brings together theoretical, doctrinal, and practical insights grounded in their practice experience. Finally, experiential teachers have been important contributors to the scholarship of teaching, for instance, helping bring research on brain science and learning theory to legal education.¹³

As has been the case with many innovative forms of scholarship, the scholarship of skills and the scholarship of teaching often produced by experiential and academic support teachers have not been welcomed or respected at all law schools. Nonetheless, experiential teachers have been instrumental in developing both forms, as well as producing more traditional doctrinal scholarship firmly rooted in practice. Their efforts have benefitted law students and the legal profession, directly and indirectly, by developing better legal practice methods, better teachers, and better prepared future lawyers.¹⁴ While academic support scholarship is not yet as well developed, academic support teachers have already been important contributors to the best practices for

¹² See, e.g., Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (A Report on the State of the Art)*, 97 GEO. L.J. 803 (2009); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

¹³ See, e.g., Gary Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995); Beryl Blaustone, *Improving Clinical Judgment in Lawyering with Multidisciplinary Knowledge About Brain Function and Human Behavior: What Should Law Students Learn About Human Behavior for Effective Lawyering?* 40 U. BALT. L. REV. 607 (2011); Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 B.Y.U. EDUC. & L.J. 53 (2008); Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149 (2004).

¹⁴ Today’s clinical and legal research and writing scholarship draws on the theoretical, empirical, and interdisciplinary — biological, psychological, and social science — theories that explain the efficacy of advocacy and persuasion. Three peer-reviewed journals showcase this scholarship. THE LEGAL COMMUNICATION & RHETORIC: JALWD journal states as its express mission “to advance the study of professional legal writing and lawyering and to become an active resource and a form for conversation between the legal practitioner

teaching students generally,¹⁵ as well as to best practices for teaching students with various challenges.¹⁶

At the university level, production of scholarship has long been a prerequisite for tenure and tenure an incentive for producing it. To promote scholarship, law schools have typically provided significant incentives, such as research leaves or sabbaticals early during the initial assistant professor appointment, summer research grants, research assistants, faculty travel support to attend academic conferences, and, more recently, “pay for production” bonuses for articles (or books), especially those accepted by highly ranked law journals or prestigious university publishers.

c. Full Citizenship

The third reason that status matters is because it is the gateway to the full institutional citizenship that benefits the institution, individual teachers, and students. The components of this full citizenship are equal and fair treatment and a full voice and participation in the institution.

i. Equality & Equitable Treatment

Equal and equitable treatment covers a host of issues, big and small. On a macro level, it includes determining what constitutes “merit” — what the institution values, especially what it values beyond traditional scholarship — and how “merit” translates into faculty status. Embedded in that determination are issues, long recognized and debated by equality theorists, of equal treatment, special treatment, and power differentials.¹⁷

and the legal writing scholar,” available at <http://www.alwd.org/>, archived at <http://perma.cc/FQ5V-ED77>. The CLINICAL LAW REVIEW is “devoted to issues of lawyering theory and clinical legal education,” available at <http://www.law.nyu.edu/journals/clinicallawreview/>, archived at <http://perma.cc/D68M-8F99>. and LEGAL WRITING: THE JOURNAL OF THE LEGAL WRITING INSTITUTE “encourag[es] a broader understanding of legal writing and the teaching of it,” available at http://www.lwionline.org/journal_of_the_lwi.html, archived at <http://perma.cc/4ZGP-RJTF>. Similarly, several fairly recent textbooks written by clinic and legal writing teachers incorporate the theory behind lawyering principles. See, e.g., DAVID BINDER, PAUL BERGMAN, SUSAN PRICE, PAUL TREMBLAY & IAN WEINSTEIN LAWYERS AS COUNSELORS (4th ed. 2014); STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT ANALYSIS (4th ed. 2011); THOMAS A. MAUET, TRIAL TECHNIQUES AND TRIALS (9th ed. 2013); RICHARD K. NEUMANN, JR., & KRISTEN KONRAD TISCIONE, LEGAL REASONING AND LEGAL WRITING 136 (7th ed. 2013); RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING (2013).

¹⁵ See, e.g., Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402 (1998); *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315 (1998).

¹⁶ See, e.g., Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet The Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1 (2012); Ellen Yankiver Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond — Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?* 73 UMKC L. REV. 497 (2004).

¹⁷ See, e.g., Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297 (1992); MARTHA MINNOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990). Regrettably, this short section cannot address the many implications of this debate for faculty status issues.

On a micro level, equality and equitable treatment include determining eligibility for the titles that accompany the tenure process; alternatives to tenure; distribution of teaching and service workloads; fair pay; and benefits, such as sabbaticals, research grants, and reimbursement for travel and parking expenses.

ii. Voice and Participation

Voice and participation include both formal and informal aspects. The formal aspects are rooted in the faculty governance norms that have historically characterized higher education, including voting on key decisions and participating in committees to support the mission of the school. Thus, a full voice in faculty governance means the right to attend and vote at faculty meetings; the right to participate and vote in and chair committees; and eligibility to be considered for leadership positions, such as associate dean. At a minimum, the informal aspects of voice and participation mean inclusion in communications and informal discussions and decisions.

The voice and participation that come with status are important for law schools as well as the affected individuals. Where the goal of the law school is to expand or improve its experiential education as much as possible, the law school will need to attract and retain at least a core of teachers with a diversity of expertise and a long-term commitment to the institution. Giving such teachers a full voice and participation in the institution helps achieve those goals.

4. Four Potential Paths to Full Citizenship

As stated above, law schools have adopted, with varying success, four basic approaches to promoting academic freedom, supporting scholarship, and achieving increased voice and participation for their experiential and academic support teachers:

- a unitary tenure track
- a unitary tenure track decoupled from scholarship
- a separate form or forms of tenure
- a separate teaching track, either for all interested teachers, or experiential or academic support teachers only.

Each path approaches the problem differently. A given school's mission, the attitudes of its faculty, and methods of implementation affect both the path chosen and its success in serving students and developing faculty potential.

a. The Unitary, Scholarship-Focused Tenure Track

Those who favor a unitary, scholarship-focused tenure track do so for three primary reasons. First, a tenure track that is truly unitary as to employment duties and benefits avoids lingering and valid concerns that continue to bedevil all other alternatives. Second, those who value the scholarship produced by experiential and academic support teachers often believe that access to the tenure track for these teachers is crucial to encourage that scholarship. Third, scholarship can be an

important method of professional development for all experiential teachers, although clinicians' professional development is arguably the result of being engaged in the ever changing practice of law.

To make the unitary, scholarship-focused tenure track a viable solution, law schools must adopt realistic scholarship expectations, value diverse kinds of scholarship, and provide teaching loads and other job conditions that allow tenure-track experiential and academic support teachers to succeed both as teachers and as scholars. An oft-stated concern that a unitary track will open the floodgates for clinical, legal research and writing, or academic support teachers who really want to teach doctrinally-focused courses is unfounded. It is no more likely than a Constitutional Law professor deciding she would rather teach Trusts and Estates instead.

i. Adopt Realistic Scholarship Expectations

In the past quarter century, many law schools have intensified their emphasis on scholarship by heightening the quality, quantity, or page-count expectations for achieving tenure, a trend that has coincided in part with the increased hiring of experiential and academic support teachers. These expectations can be difficult enough for doctrinally-focused teachers to satisfy, but they typically impose additional burdens for experiential teachers. To allow experiential and academic support teachers to succeed, law schools must acculturate them at the beginning of their careers to understand the importance of being students of their discipline and contributing to the scholarly enterprise. At the same time, they must be realistic about the scholarship expectations they impose.

ii. Value Many Kinds of Scholarship

Historically, tenure has been available at most schools only to those teachers who engage in theoretical or doctrinal scholarship unrelated to skills. A potential obstacle to incorporating experiential and academic support teachers into a unitary tenure track is the belief that only doctrinal topics yield worthy scholarship. Although some experiential and academic support teachers produce doctrinal scholarship, the majority engage in the scholarship of skills or teaching, focusing as doctrinal teachers often do on the issues that grow out of their teaching. The scholarship of skills and of teaching often differs in form; it can appeal to a different audience or be shorter or less footnote heavy. Law schools must be willing to value these different but no less intellectual forms of scholarship if they want to create an environment in which their experiential and academic support teachers can be tenured.

Law schools must also begin to value the experiential scholarship published in peer-reviewed, specialty journals focusing on legal practice or pedagogy. These journals can be as highly selective as more "mainstream," student-reviewed journals, and their submissions often undergo a multi-leveled review by experts in the field prior to selection. Selected pieces likewise receive higher-caliber editorial attention than student-edited journals because they are edited by teachers not students. While some of these journals were formed as a place for experiential teachers to publish when student-edited journals would not even consider them, the value of publishing in

these journals today is lost only on those doctrinal faculty who are unaware of the quality of their content.

Allowing experiential faculty to engage in alternative forms of scholarship need not involve “lowering standards.” Ample precedent for such an approach is available: As interdisciplinary scholarship has expanded, especially that involving science, technology, and health fields, many institutions have embraced scholarship that looks very different from traditional law review articles — scholarship that is co-authored and often very short by law review standards. Some schools have taken an even more expansive approach to what is valued as scholarship by including professional communications customary in the practice of law, such as briefs, memoranda, and proposed statutes and regulations.

iii. Provide Teaching Loads and Other Job Conditions that Allow Tenure-Track Experiential and Academic Support Teachers to Succeed

Schools should not assign teaching duties that make it impossible for experiential and academic support teachers to produce the required level of scholarship. Traditionally, doctrinally-focused teachers have had significant time during the academic year to engage in scholarship because they evaluate their students’ performance once, at the end of the semester, as opposed to providing individual formative assessment throughout.¹⁸ Historically, they have also been able to engage in school-funded scholarship in the summer.

If law schools choose the unitary tenure track option, they must make it possible for experiential and academic support teachers to succeed. In-house clinic pedagogy is founded on intensive and time-consuming supervision of students engaged in the actual practice of law. Even if clinics do not operate during the summer, clinical teachers often continue to be responsible for ongoing client matters. In addition, some clinical teachers have the added burden of raising funds for their clinics. Grant writing and reporting can be tremendously time consuming, and law school administrations provide comparatively little or no administrative support for these tasks. Externship teachers spend significant time developing and maintaining placements, training supervisors on supervision and feedback skills, and reviewing and responding to student reflections throughout the academic term, often with large numbers of students.

Similarly, legal research and writing pedagogy is founded on intensive and time-consuming one-on-one student intervention in the process of research, writing, reflection, and revision. By the end of one semester, legal research and writing faculty have designed complicated and challenging simulations; reviewed, commented on, and assessed multiple drafts of multiple written assignments; and met repeatedly with some or all of their students on an individual or small-group basis to discuss both

¹⁸ At some schools, this is changing as they and individual teachers focus more on teaching, whether prompted by accreditation requirements or inspired by their devotion to students. If this becomes a trend, the challenges typically faced by experiential and academic support teachers may become widespread.

product and process. Likewise, academic support teaching often involves time-intensive one-on-one work with students.

To allow experiential and academic support teachers to succeed, law schools must encourage them to become students of their own discipline, present at in-house faculty workshops and conferences, join and participate in scholarly organizations, and shepherd younger colleagues. In turn, they must carefully consider teaching loads, scholarship expectations, and the amount of support needed for all teachers to succeed as scholars.

b. A Unitary Tenure Track that Decouples Scholarship and Tenure

Where university rules or attitudes are not an impediment, law schools can address status issues by decoupling tenure from scholarship within the tenure track. Some newer law schools have taken this route. They acknowledge that faculty members contribute to the academic endeavor differently, and that for some, teaching may be a more valuable use of their time than teaching plus scholarship. In this approach, the track is unitary in the sense that title, job security, pay and fringe benefits, voice, and participation in the institution are identical. Although scholarship is not expected of all teachers, job duties and teaching loads may differ.¹⁹

If successful, this approach can avoid second-class citizenship for tenured teachers who are not scholars. For institutions that heavily emphasize and value scholarship, achieving true “parity” by decoupling tenure from scholarship may be difficult because non-scholars may be seen as “lesser.” Decoupling scholarship and tenure will be more likely to succeed where those who do not produce scholarship are engaged in uniquely burdensome teaching activities, such as intensive law practice in clinics.

c. “Alternative” Tenure Tracks

Some schools have adopted alternative tenure tracks such as clinical tenure. Often, these are created to address the challenges of successfully implementing a unitary tenure track. Again, methods of implementation are critical to their success in protecting academic freedom, fostering scholarship, and providing full citizenship. In theory, teachers with clinical tenure are equal to those on the traditional tenure track. In practice, however, such tracks are often highly separate and unequal. The segregation of faculty can create the perception of “lesser tenure” and make it difficult, if not impossible, for those with clinical tenure to teach any courses outside their discipline or specialty. This can work to a law schools’ disadvantage when flexible staffing is necessary. In addition, clinical tenure often brings with it a different title, less job security such as that permitted by ABA Standard 405(c), lower pay and benefits, and a limited voice in the institution. Law schools with these tracks should

¹⁹ Two examples of this model are University of California Irvine Law and Charlotte School of Law. The University of California Irvine Law has a unified tenure track. All entry-level faculty, whether they are clinical, legal writing, or “academic tenure track” are paid the same salary. Email from Carrie Hempel, Dean of Clinical Education and Service Learning, University of California Irvine, to Lisa Bliss (Dec. 16, 2014) (on file with authors).

create policies that promote equality and equitable treatment across all tracks.

d. Teaching-Focused Tracks without Tenure

At many large research universities, decoupling scholarship and tenure is impractical in light of the research-focused culture, but expert teachers are needed to serve students. In response, these universities have adopted non-tenure teaching tracks that do not carry an expectation of scholarship. At least one school's version of a teaching-only track includes those teachers in full committee participation and the same voting rights as assistant professors in the institution.²⁰

Under Standard 405(b), some law schools have created similar teaching tracks without a scholarship expectation. At their best, teaching-focused tracks can provide alternative paths to security of position and full citizenship, including equal and fair treatment and full voice in the institution. This can be accomplished through long-term contracts — typically five years, renewable, and sometimes with rolling renewal dates that ensure that the individual is always in the middle of a multi-year contract, opportunities for promotion, and significant voting rights. And for some teachers, they may provide an attractive alternative to the “publish or perish” regime.

In practice, separate teaching tracks will likely be unequal and inequitable in one or more of the following ways. First, many law schools categorically exclude experiential and academic success teachers from the tenure track. In such cases, the motivation for a teaching-focused track is exclusion, not individual choice. Second, separate tracks often lack significant job security and voice in the institution, and those differences communicate and confer lesser status. Third, if the teaching-only track is reserved for those teaching duties viewed within the institution as the least desirable or prestigious, those teachers will likely be limited in what they may teach, as is often the case with a separate tenure track. Finally, teaching tracks historically mean lower salaries — perhaps two or three times lower — for teaching-track teachers.

5. Incentives and Challenges Moving Forward

The American Bar Association has adopted standards requiring that law schools provide more and better experiential education to make their graduates “practice-” or “client-ready” and that they assess the effectiveness of their teaching methods.²¹ These standards are, in part, a reaction to critiques of legal education published in mainstream media and a resulting public pressure for reform. In response, law schools are increasing the number of their experiential courses as a matter of

²⁰ The University of Washington, for instance, has a competitive lecturer ladder (lecturer, senior lecturer and principal lecturer). This ladder brings the potential for long-term (five year) contracts, along with full voting rights, even for those on short-term contracts, except for decisions on tenure and promotion to full professor. However, the track typically is implemented with significant pay disparities between the tenure and lecturer tracks.

²¹ ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2014-2015 Standards 301-305, 314-315 (2014), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf, archived at <http://perma.cc/TQ4H-RFDS>.

compliance and touting them in order to attract students. Thus, law schools have a greater incentive than ever before to give experiential teachers equal status.

Despite these incentives, law schools may be tempted to choose lower status and lower-cost alternatives for hiring clinical, legal research and writing, and academic support teachers, such as adjunct teachers or fellows. As a practical matter, these choices may defeat the purpose of lowering costs by leading to a higher turnover or job elimination rate. This can only diminish the effectiveness of a school's curriculum and stifle its growth.

Some tenured teachers will undoubtedly resist giving experiential and academic support teachers equal status and a voice in their institutions. Some will be concerned about the loss of power and control; others may fear that experiential and academic support teachers will engage in block voting or that they threaten the intellectual growth and reputation of their institutions. These concerns are often overstated. Individuals in groups that feel excluded sometimes do band together and engage in collective action, but the challenges of maintaining such coalitions are significant and well-known. However, once experiential and academic support teachers are given academic freedom, scholarship support, and full citizenship, they will be empowered to realize their full potential intellectually and as contributing members of the academic community. Often, when an underclass is elevated, it distinguishes itself in unanticipated ways.

6. Conclusion

As legal education has changed, attitudes about experiential and academic support teachers must also change. Just as law school teachers and administrators are working to achieve a healthier balance between theory and practice, they must work together to achieve equality and equity for all law teachers. The reputation of those law schools with the courage and vision to treat all law teachers with the respect they deserve can only improve in the minds of students, law school communities, the profession, and the public at large.