

School of Law  
Faculty Meeting  
March 23, 1981  
Conference Room  
4:00 p.m.

MINUTES

Present: Adamson, Browde, Desiderio, DuMars, Ellis, Fink, Flickinger, Gonzales, Kovnat, MacPherson, Martinez, Minzner, Muir, Nathanson, Norwood, Occhialino, Parnall, Scales, Simson, Utton, Winograd; Students Cline and Cohen; Camp

The meeting was called to order by Dean Desiderio; minutes of the meeting of March 9, 1981, were approved.

Dean asked for names of faculty willing to participate in the Summer CLEO program, which is to be held in Tempe, Arizona. Also, he intends to talk with each faculty member separately regarding law school matters.

The main agenda item was the proposed policy on promotions and tenure. The policy was amended per the attached and was approved by faculty vote. Dean thanked Minzner and her committee for the splendid work done in submitting an acceptable proposal. The new proposal will become effective beginning with any new contracts. He noted that interpretation of voting procedures at faculty meetings will be approached at a later meeting.

Winograd explained new procedures regarding substantiation of writing requirement for graduation.

*memo: notes to p. 11  
re "substantial" in writing  
process (v)*

Announcements:

- a. Northern Kentucky University, Salmon P. Chase College of Law, is seeking a legal writing instructor.
- b. Hamline University School of Law (Minnesota) is seeking a dean.
- c. Professor Robert H. Freilich will be on campus next Tuesday; he will speak at 2:00 p.m. at the law school on recent developments in land use planning. Flickinger asks that students be urged to attend.
- d. A Placement Workshop will be held here on Friday at 12:20 p.m.
- e. On April 10, there will be a Judicial Clerk Workshop here.
- f. Persons who are concerned about maintaining Legal Services will meet in the faculty lounge on Tuesday, March 24, at 10:00 a.m.

Dean indicated that he had contacted Senator Domenici and others in an effort to halt budget cuts and cancellations of legal services to the poor and the CLEO program.

Meeting adjourned.

Respectfully submitted,

*Louise R. Camp*

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Sec'y

PROPOSED UNIVERSITY OF NEW MEXICO  
SCHOOL OF LAW  
PROMOTION AND TENURE POLICY

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Approved by vote of the faculty at a regularly scheduled meeting, on March 23, 1981.

UNIVERSITY OF NEW MEXICO

SCHOOL OF LAW

TENURE, REAPPOINTMENT AND PROMOTION POLICY

I.

PREAMBLE

The purpose of this policy is (1) to help ensure that individuals who join the University of New Mexico Law School Faculty are treated fairly in their employment relationship with the Law School and the University, and (2) to describe the expectations of this school regarding the performance of its faculty members. To the first end, procedures are detailed to ensure that tenure, reappointment, retention and promotion decisions will be made fairly. To the second end, this document elaborates the University of New Mexico Faculty Handbook description of expectations in the context of the goals, missions and operation of the Law School.

The two traditional goals of a university, to transmit and to increase the store of human knowledge, are also goals of the Law School. However, the means by which these goals are accomplished at the Law School is affected, if not controlled, by the Law School's responsibility to educate students who will serve society as lawyers and by the characteristics of law as an academic discipline. The Law School, as does the University, recognizes its obligation to provide other services which foster the culture and welfare of the general population. Because ours is the only law school in the state, law faculty members have a special opportunity and responsibility to participate in the improvement of New Mexico's legal process.

substantially modified or even non-existent. In both traditional and non-traditional situations, of course, the expectations of faculty performance must be consistent with the objectives of the course or program.

Classes normally should be taught when scheduled, and rescheduling, when necessary, should accommodate the students. Careful preparation is essential. Demeanor in class is important. Faculty should develop clear objectives for courses taught by them. Because there are many successful pedagogical approaches to the teaching of law, diversification in teaching methods is desirable, and experimentation in methods and materials is encouraged. In all cases, faculty must be demanding of themselves and of students. Much should be expected by way of both preparation and performance.

The teaching goals of a law school cannot be achieved if reliance is placed solely on classroom instruction; time spent by the faculty in education outside of class is essential to the development of students into lawyers. These teaching activities take various forms, and no catalogue of them would be complete. Some examples, however, are illustrative.

Co-curricular programs at the Law School, such as law review and moot court, are integral parts of the Law School's education program. It is a responsibility of faculty to serve as judges in the moot court program, and this carries with it the obligations to read and criticize student briefs and to review critically student oral presentations. Faculty are also expected to work with students who are preparing law review articles for publication or who are editing the work of others. No faculty member can be expected to be an expert in every area of the law; hence, it is the responsibility of all faculty to assist students and colleagues who have cases or problems in the faculty member's area of interest.

B. Scholarship, Research, and Other Creative Work

Law faculty members are expected to have abilities and interests which lead directly to research and service as members of the faculty of a state law school. Research enhances the knowledge and understanding of the researcher, and must be continually a part of a faculty member's activities in order to prepare adequately for class and to stay current in his or her particular teaching fields.

The faculty member's responsibilities go beyond this, however, and include the obligation to do research that will aid in the understanding and development of the law. Indeed, one of the privileges of faculty membership is the opportunity it presents for reflection on significant problems, and this carries with it the obligation to share research with others. One engaged in teaching a subject for a significant length of time at the graduate-professional level normally should develop insights into problems warranting communication to others.

Law professors, like faculty members in other professional schools, have a variety of audiences who may benefit from their research. Present and future students may be the prime beneficiaries of legal research through the development of innovative teaching materials such as casebooks or student textbooks. Legal practitioners may be the target of the dissemination of faculty research, through the development of continuing legal education materials and lectures or the publication of articles in professional journals written with the goal of assisting the practicing lawyer to improve the quality of legal services provided to the public. Faculty research may also result in the direct improvement of the legal system, as where the research leads to the creation and passage of legislation or the creation of innovative legal arguments presented to courts in the context of actual litigation. Finally, research may culminate in the more traditional form of a publication

committees are expected to participate actively in committee work. While all committee assignments require substantial commitments of faculty time and effort, three committees impose extraordinary burdens: Admissions, Faculty Appointments, and Curriculum. Admissions requires the review and disposition of applications from over 500 candidates for admission; Faculty Appointments involves attendance at the annual AALS recruitment meeting by members of the committee, scrutiny of a large number of applications for positions, and the recruitment of other applicants; Curriculum requires the determination of courses for the next year, the assignment of faculty to teach courses, and the ultimate determination of the Law School educational program.

Service to the American Bar Association and to state and local bar associations is important because it helps us as a faculty stay in touch with our profession and because it helps us introduce our students to the profession they have entered. To this extent, service to the legal community is a part of teaching. However, service to the legal community can and often does represent service to the larger community insofar as our bar association efforts may improve the delivery of legal services, the substance of the law, or the fairness of the legal process.

Service to legal education is also an important area of faculty effort. Participation in the activities of the Association of American Law Schools, the Law School Admission Council, the Council for Legal Education Opportunity, and the Special Scholarship Program in Law for American Indians, for example, should and do help improve the nature of legal education, the nature of the legal profession, and the contributions the Law School makes to the University.

Service on University committees, membership in the faculty senate, and acting as an advisor to a faculty committee or to the administration also frequently are demanding. In this regard, it is worth noting that representa-

treat such service by law school faculty members as a significant aspect of their professional life.

D. Personal Characteristics

Both the Faculty Handbook and the practice at the Law School recognize that the personal characteristics of one being considered for tenure, re-appointment or promotion may have an effect upon his or her ability to teach, conduct research or engage in service activities. Professional cooperation among faculty is important. The fact that a person is a "good colleague" is relevant to the extent that this term refers to the person's helpfulness in assisting other faculty members and willingness to undertake responsibilities at the school. It is unimportant, however, to the extent that the term is used to refer to social intercourse that the person may have with other members of the faculty at or away from the school. Similarly, acceptance by students is important, but only to the extent that it reflects upon the faculty member's teaching responsibilities.

It is also important that the University and the Law School encourage diversity and individuality among its faculty. Diversity of views, personality, demeanor and values help to prevent the natural collegiality of the faculty from leading to torpidity or self-satisfaction, and are important to help ensure that the educational program and research efforts of the school are varied. Therefore, diversity is itself an independent value to be sought, and the fact that the faculty member under consideration for tenure, re-appointment or promotion manifests unique social or professional values or approaches will ordinarily be a positive factor.

E. Summary

These goals -- teaching, scholarship and service -- are neither antagonistic nor discrete; rather, they complement each other and overlap. For

Finally, a full-time appointment to this law faculty must be accepted as full-time employment. Although some outside consulting and other professional activities are not only permitted but encouraged, these must never detract significantly from the faculty member's primary obligations to the school.

### III.

#### APPLICABILITY OF POLICY

##### A. In General

This policy applies to initial appointments only to the extent that the appointment has tenure or rank implications. The policy does apply to all Law School decisions involving recommendations to the University on (1) granting of tenure, (2) promotion, (3) second three-year appointments where a faculty member is initially appointed to a three-year term, (4) mid-term reviews of faculty on probationary status, (5) annual reviews of those on three-year or probationary contracts, and (6) retention of faculty who have tenure.

To some extent this policy codifies existing practices. To that extent it is effective immediately. In other respects, this policy reflects changes in policy or procedure. With respect to changes, this policy is applicable only to contracts, new or renewed, entered after its enactment.

##### B. Initial Appointments.

At the time an individual is offered an appointment at the Law School, a copy of this policy and the Faculty Handbook will be made available to the person. The offer of employment must contain a clear statement of the status that the individual will have and must refer both to this policy and to the Faculty Handbook.

If an individual is offered an appointment other than an initial three-year term appointment or a visitorship, or is to be offered appointment other than at the Assistant Professor rank, the Committee on Tenure, Reappointment



the Dean, will be evidence of satisfactory progress toward reappointment and tenure during the coming year. A written response will form a part of the faculty member's file.

At the beginning of the faculty member's third year under the three-year contract, the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise under the procedures established by this policy, and will make a recommendation as to whether the individual's performance and promise warrant the offer of a second three-year appointment. This recommendation shall be based solely on the faculty member's performance and promise as stated in this policy, and shall not take into consideration the University or Law School's need for flexibility.

If the Committee recommends that the faculty member's performance and promise warrant reappointment, a second three-year contract, which is a probationary appointment, will be recommended unless the Law School's need for flexibility dictates that it is inadvisable to reappoint the individual. Where a question of the Law School's flexibility is raised, the Dean, as chair of the Committee, shall call a special meeting of the Committee. This meeting shall not be held until after a decision has been made that the faculty member's performance has warranted reappointment. At the meeting, the Dean shall present the issue of flexibility. The Committee shall make a recommendation regarding the reappointment in light of the need for flexibility, and shall forward its recommendation, through the Dean, to the Provost.

If a second three-year appointment is offered and accepted, reviews shall be conducted annually by the Dean in the same manner as during the first and second year. At the beginning of the faculty member's sixth year, the Committee on Tenure, Reappointment and Promotion shall prepare its recommendation as to whether tenure should be granted, and whether the faculty member should be promoted.

At the midpoint of the faculty member's probationary period,\* the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise in accordance with the procedures established in this document and will report to the Dean its opinion as to whether the person is making satisfactory progress toward a favorable tenure recommendation. This mid-probationary report will contain specific recommendations regarding teaching, research and service. The Dean shall encourage the faculty member to respond to the mid-term review in the same manner that responses are sought to annual reviews.

At the beginning of the faculty member's last year under a probationary contract, the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise under the procedures established by this policy, and will make a recommendation as to whether tenure should be granted. The Committee will also recommend as to whether the individual ought to be promoted to the next higher rank.

E. Promotions.

Whenever the Committee on Tenure, Reappointment and Promotion makes a recommendation that a second three-year appointment be offered to a faculty member or that tenure be granted, it shall also make a recommendation as to whether the individual ought to be promoted. If the Committee recommends promotion, but the promotion is not granted by the University, the Committee will reconsider recommending promotion annually until either the promotion is granted or the Committee recommends against promotion. Whenever the Committee

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\*The Faculty Handbook provides that "if a faculty member receives a second term appointment, the third year review shall become the faculty member's mid-probationary review." See Section 3(g)(ii); fn. 3, page B-2 of the Faculty Handbook (Rev. 1-8-80).

a full-time faculty or decanal appointment, other than a temporary appointment, at the Law School, other than the individual being considered for tenure, reappointment or promotion. Notwithstanding the foregoing, however, membership of the Committee on Tenure, Reappointment and Promotion requires that an individual have served as a full-time faculty member at this school for at least one full academic year.

V.

PROCEDURE OF THE COMMITTEE ON  
TENURE, REAPPOINTMENT AND PROMOTION

1. During the first three weeks of the fall semester, the Dean, as chair of the Committee on Tenure, Reappointment and Promotion, shall appoint a subcommittee of the Committee for the purpose of preparing a recommendation and evaluative report on each faculty member who will be considered for tenure, reappointment or promotion during the academic year. The subcommittee shall have at least three members. If warranted by the number of decisions, the subcommittee may be divided into panels by the chair of the subcommittee with each panel having at least three members. Where panels are used, all provisions of this policy governing the subcommittee shall apply to each panel. The Dean shall consult with each faculty member who will be under consideration for tenure, reappointment or promotion in selecting the subcommittee; if panels are used, the chair of the subcommittee will consult with the faculty member concerning membership on the panel that will prepare the report on him or her.

2. The Dean shall provide the chair of the subcommittee with the names of all individuals who are to be considered for tenure, reappointment or promotion under this policy during the year. The chair of the subcommittee will determine whether this list is complete. The chair of the subcommittee will add to the list any faculty member requesting consideration or a faculty

report will reflect its disposition of the suggested changes. A final draft of the recommendation and report shall be given to the faculty member and the Dean as chair of the Committee on Tenure, Reappointment and Promotion.

7. The Dean, as chair of the Committee, shall call a meeting of the Committee to consider all tenure, reappointment and promotion decisions that must be made. Copies of the subcommittee reports and recommendations shall be distributed at the meeting. The faculty member under consideration shall have the opportunity to present to the Committee a written statement, to appear before the Committee, and to present relevant evidence. The Committee may adopt the report, with or without amendments, or reject it. If adopted, it shall constitute the Committee's recommendation and report to the Dean. If rejected, the Dean, as chair of the Committee, shall appoint a new subcommittee to revise it in light of the discussion at the meeting, and a new meeting of the Committee shall be held to consider adoption or rejection of the revised report.

8. When a recommendation and report is adopted, copies shall be given to the faculty member and the Dean, who will transmit it to the Provost. The Dean may add his or her recommendation and evaluation, but if this is done, a copy shall be provided the chair of the subcommittee and the faculty member. A copy shall also be made available to any other faculty member requesting it. If the faculty member under review, or any other faculty member, is dissatisfied by the recommendation or report of the Committee, he or she shall have the opportunity to present relevant evidence and arguments to the Dean before the Dean makes a recommendation, and thereafter to present relevant evidence and arguments to the Provost.

There must be a judgment that the individual's overall contribution to the Law School and the University has been and will continue to be significant.

For tenure, reappointment and promotion, a candidate is evaluated in terms of effectiveness in four principal areas: teaching; scholarship, research, or other creative work; service; and personal characteristics. A faculty member normally will not excel in all of these areas, but distinction or promise of distinction in either of the first two constitutes the chief basis for tenure, reappointment and promotion.

It is important that a faculty member's performance in teaching, scholarship and service be viewed in context of the responsibilities imposed upon the individual by the school. In some situations, particular assignments may limit a faculty member's opportunities in other areas. The development of new programs, the assignment to innovative courses requiring extraordinary planning and preparation time, and administrative duties are examples.

B. Teaching

1. In General

Wide variations in personality, talent and style inevitably and desirably produce great diversity in methods and approaches to teaching. Whatever the method or approach, substantial performance under this criterion requires demonstrated teaching ability comprising both competence in and motivation toward furthering the intellectual development of students. The tenure candidate's classroom teaching must be thoughtful, provocative and effective. Performance in teaching situations, both in and out of the classroom, must be of a quality to justify the conclusion that he or she is fully capable of furthering substantially the intellectual and professional development of those studying at the graduate-professional level.

In its consideration of student evaluations, the subcommittee should keep in mind that not all faculty will appeal in the same degree to all students. Variation in such appeal is inevitable.

3. Evaluation by Peers

Other faculty members often will be able to evaluate the teaching effectiveness of the individual under consideration. This is clearly true where the other faculty member has observed the candidate's classes for a period of time sufficient to form a judgment. It is usually also true when another faculty member is teaching the same course, and often true when they are teaching in the same areas. Participation with a faculty member in Continuing Legal Education or other programs often reveals some aspects of the person's teaching effectiveness and habits of preparation.

4. Classroom Observations

If the faculty member under consideration requests that one or more members of the subcommittee observe his or her classes, this shall be done in cooperation with the faculty member. If the subcommittee believes that other evidence of teaching effectiveness is insufficient to clearly establish that the faculty member meets the required standard of performance, the chair of the subcommittee will suggest to the faculty member that classroom observations be conducted, and, if the faculty member agrees, one or more members of the subcommittee, or other designated faculty members, will visit classes of the faculty member. The faculty member may request that the visitation be preceded or followed by a thorough discussion of the content of the material to be covered in the classes and the objective that the faculty member is seeking to achieve. Precautions shall be taken to ensure that the faculty member is not prejudiced by the presence of others in his or her class, and to ensure that the classes observed are representative. The faculty member shall

C. Scholarship, Research and Other Creative Work

1. In General

Like teaching, wide variations in personality, talent, style and opportunities result in a diversity of the types of research that faculty members undertake. Any evaluation of scholarship, however, involves a judgment of the scholarly abilities and interests of the faculty member. Therefore, a favorable recommendation presupposes that the faculty member undertakes research projects with care and thoroughness, and that he or she has the ability to observe and analyze legal issues and processes and to organize results in a way that leads to a better understanding of the subject researched.

A faculty member has the obligation to disseminate his or her research beyond teaching in the Law School in order to allow other interested scholars and lawyers to share in the research. Dissemination also has the function of subjecting the faculty member to the critical review of others, thereby providing additional evidence of the competency of the faculty member as a scholar. Thus, except in highly unusual situations, dissemination of a faculty member's research in a form subject to critical review by other scholars and lawyers is a necessary requirement for a favorable recommendation.

Much of the research conducted by a faculty member on an initial appointment will be in the context of classroom preparation. This is often due in part to the fact that the faculty member's legal education, including his or her graduate legal education, and prior practice may have been general in nature and may not have afforded an opportunity to develop the area of expertise in which he or she is asked to teach. This must be taken into consideration in making recommendations. The faculty member's promise as a scholar is often of greater concern than his or her publications at this stage, but there must be tangible evidence of such promise, and it is expected

gation of a case, and memoranda prepared in the context of consultantship are other examples. Publication of class materials, manuals for the clinical law program or lawyers, materials distributed at Continuing Legal Education programs, and papers, even though not published in any form, given at meetings involving legal educators or the practicing bar also are appropriate.

3. Evaluation of Scholarship, Research and Other Creative Work

A faculty member under consideration for tenure, reappointment or promotion will be asked to supply the subcommittee or panel with a complete list of all of his or her research undertakings including both those that have resulted in dissemination beyond the Law School and those that have not. The faculty member should be encouraged to make this list as complete as possible, refraining from any concerns of modesty. The subcommittee will then discuss with the faculty member his or her research activities, including projects presently in progress and those planned for the future.

Research that is published in any form will be evaluated by the subcommittee. The opinions of other faculty members at this school who have teaching or research interests similar to those of the faculty member under consideration will be sought.

Sources outside the Law School will also be consulted. Again, it is impossible to enumerate all ways in which this may be accomplished, but some examples may be helpful.

(a) Faculty members at other law schools or, where appropriate, in other disciplines at this university or at other universities may be asked to evaluate the work.

(b) The extent to which the publication has been cited as authoritative by courts or other writers should be considered.



## D. Service

### 1. In General

Service activities of a faculty member are divided into those that are of service (a) to the Law School, (b) to the University, (c) to the legal community, (d) to legal education, and (e) to the community at large. All shall be reviewed in evaluating a faculty member under consideration for tenure, reappointment or promotion. The extent to which a faculty member engages in service activities will vary among the faculty, and from time to time. Involvement in the administration and governance of the Law School is expected of all. Exceptional service will be considered a positive element in recommendations, but service activities should not be so extensive as to detract unduly from the faculty member's teaching and research obligations.

Service frequently involves teaching or research. For example, service on a committee may lead to the production of reports or the drafting of statutes or rules of court. To the extent that this is the case, the product of such service should also be considered evidence of scholarship.

### 2. Evaluation of Service

The subcommittee should ask the faculty member under consideration to provide a detailed and complete list of his or her service. The subcommittee should also discuss service activities with the faculty member to ascertain the extent of participation that each has involved. Service activities shall be judged upon the following criteria: (1) the importance of the activity, (2) the degree of the faculty member's participation, including the amount of time involved and the quality of the faculty member's service, and (3) the appropriateness of the activity for an academic lawyer. Where the Dean of the Law School or another University official has requested that the faculty member undertake the activity, this shall be taken into consideration.