

# Memo

**To:** CAPP & Senate

**From:** Law Faculty

**Date:** March 9, 2005

**Subject:** Proposal on Clinical Professorships

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Having obtained the requisite internal approval by two-thirds votes, the Law School proposes to use the title of Clinical Professor of Law in reference to a limited and defined group of long-term, non-tenure-track appointees whose primary responsibility will be skills and practice teaching in a clinic-like setting. This title will be available for use at the Assistant, Associate, and Full Clinical Professor rank, with the expectation being that the appointee would normally move up a rank at each reappointment stage.

Our purposes are nicely captured by the preamble to the University's enabling legislation:

- Whereas an inadequacy in the current range of available academic titles makes it desirable to create a new non-tenure-track Clinical Professorial Title, and
- Whereas it is clearly important to recognize and reward the status, qualifications, and activities of those faculty members for whom such a title would be appropriate, and
- Whereas units need to improve recruitment and retention of such faculty-members, and
- Whereas, where appropriate and possible, units should be able to reclassify competitive candidates who are currently doing such work de facto, while employed as Lecturers or Senior Lecturers.

BE IT RESOLVED THAT THIS ENABLING LEGISLATION BE ADOPTED.

In particular, our consideration of this issue has produced the following findings and conclusions:

**A. Justification.** As a combined graduate and professional school, Cornell Law School must instruct its students in both the theory and the practice of law. Indeed, according to the Preamble to the Standards for Approval of Law Schools, generated by

the American Bar Association as the law-school accrediting body, all accredited law schools must provide "a curriculum that develops understanding of the theory, philosophy, role, and ramifications of the law and its institutions; skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession." To meet this mandate, the Law School has a rich lawyering-skills curriculum. It starts in the first year with the required year-long "lawyering" course that focuses on mock cases simulating those the students will face as practicing attorneys, and continues with upper-level offerings that include ones in which the students represent actual clients in real cases under the supervision of the clinical faculty. These courses are taught primarily, but not exclusively, by the Lecturers and Senior Lecturers who constitute the Lawyering Program and Legal Aid Clinic faculty.

The limited range of titles currently available at the Law School compromises its ability to retain and recruit the best Lawyering Program, Legal Aid Clinic, and similar clinical faculty, to maintain its standard of excellence in teaching professional skills, and to ensure its national reputation in its law-in-practice curriculum.

A review of existing title policies at other law schools reveals that almost all law schools, including virtually all peer schools, use the professor title for their clinic's faculty. In addition, a clear majority of law schools, and virtually all peer schools with long-term legal-writing or lawyering faculty, use the professor title for such faculty. Thus, Cornell is now in a small--and steadily shrinking--minority of law schools that have not yet adopted a professor title for clinic and lawyering faculty.

For example, the Association of Legal Writing Directors' 2004 Survey Report for Legal Writing Programs, which included responses from 176 U.S. law schools, indicates that, of those schools that responded to the question whether their title for legal-writing faculty included the term "professor" rather than the term "lecturer" or "instructor," approximately 62% used a professor title. Notably, responses from recent years demonstrate that the percentage of responding schools that use a professor title has increased every year. (In 2001, 53%; in 2002, 55%; and in 2003, 58%.) More specifically, numerous peer law schools have adopted a professor title for such teachers. Law schools that currently use such a title include the University of Michigan, the University of Virginia, Georgetown University, Northwestern University, and New York University. (Some top law schools--e.g., Harvard, Columbia, and Chicago--use graduate students, fellows, practicing attorneys, or other temporary instructors to teach legal writing and lawyering, and so are not relevant on this issue.)

Given this widespread practice, the unavailability of the Clinical Professor title undermines the morale of the Law School's existing Lawyering Program and Legal Aid Clinic faculty, and it hinders the recruiting of top clinical candidates with offers from competing law schools. As recognized by the majority of law schools and by the Ad Hoc Committee of the Faculty Senate on Non-Tenure Track Faculty at Cornell, this is a situation in which the old array of titles is "no longer commensurate with the qualifications and responsibilities" of the faculty who hold them. (Report of the Ad Hoc

Committee of the Faculty Senate on Non-Tenure Track Faculty at Cornell, where it discusses the need for Research Scientist titles at page 9.) Having the Clinical Professor of Law title will add value to the Law School and allow it to accord deserved respect to its highly credentialed faculty who teach skills and practice.

**B. Description of Position.** We envisage non-tenure-track positions similar to those of the Law School's current law-in-practice faculty--the Legal Aid Clinic and Lawyering Program faculty--who focus on teaching professional skills. Therefore, we provide a description of these two positions. Unlike tenure-track faculty, Legal Aid Clinic and Lawyering Program faculty are not expected to produce scholarship.

*Legal Aid Clinic Faculty:* Their classroom teaching occurs in a clinical setting. The faculty create varied instructional materials such as lecture presentations; discussion questions; and simulation exercises, which the students perform and the faculty critique. Most of the clinic's teaching, however, is performed in the context of individual supervision of student representation of real clients. In the course of that representation, the students learn, inter alia, to interview and counsel clients, investigate facts, plan case strategy, engage in discovery, resolve ethical dilemmas, and appear before administrative hearing officers and judges in both motion and trial practice. The faculty must challenge the students to utilize their fullest abilities, while providing sufficient support as the students assume the lawyer role for the first time. The faculty are to model excellence in practice skills and instill a commitment to high ethical standards of practice.

Moreover, the faculty are expected to contribute to the Law School, the University, and the larger legal community through membership in faculty committees; service as student advisors; and participation in local, state, and national legal-education organizations, bar associations, and organizations serving the interests of the clinics' clients.

*Lawyering Program Faculty:* As to classroom teaching, they prepare interactive classroom sessions, lectures, and in-class skills-related simulations for their year-long lawyering course. Through a series of simulated problems, which the faculty research and design for that course, they instruct students how to identify and analyze legal issues, investigate and develop facts, master several forms of legal writing, and engage in written and oral advocacy. The faculty also extensively train, and closely supervise the work of, upper-class students who serve as teaching assistants. Some of the faculty additionally teach upper-level courses, either skills-based seminars or clinical courses. As to one-on-one teaching, the faculty provide students with in-depth written critiques of their work and regularly meet with them to discuss progress on writing and other assignments.

Moreover, the faculty are expected to engage in collegial contributions similar to the Legal Aid Clinic faculty. In addition, Lawyering Program faculty commit substantial time to their program's development.

### **C. Terms of Appointment.**

*Nature of Search for Candidates:* The current Lawyering Program and Legal Aid Clinic faculty members, all of whom will be designated Associate or Full Clinical Professors, were hired following a serious search. In future hiring for Clinical Professor positions, the Law School will conduct a serious search, utilizing the conventional means for such law professor searches.

*Required Credentials of Candidates:* Applicants for the position of Assistant Clinical Professor shall have a J.D. or the equivalent, excellent academic credentials, a strong writing background, and excellent practice credentials. Substantial practice experience is preferred. Applicants for the position of Associate or Full Clinical Professor must display the qualities sought in Assistant Clinical Professors, but will be held to a higher standard of performance; such candidates also must have prior relevant teaching experience. Appointment will be governed by Section 14 of the Cornell Law School Policies and Procedures Governing Faculty Appointments, as amended through November 10, 1999, which currently applies to appointment to Senior Lecturer and which is appended as Attachment A.

*Appointment Approval Process:* The approval process will follow the provisions set forth in Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments, which currently applies to Lecturer and Senior Lecturer positions.

*Length of Appointments:* Assistant and Associate Clinical Professors normally shall be appointed for a term of three years. Full Clinical Professors normally shall be appointed for a term of five years. Shorter terms may be appropriate for initial probationary appointments or to meet short-term needs. Appointments shall be renewable indefinitely.

*Possibility of Movement Between Non-Tenure-Track and Tenure-Track Paths:* Movement between the non-tenure-track and tenure-track paths shall be governed by Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments.

*Procedures for Renewal and Promotion:* The procedures for renewal and promotion shall be governed by Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments. The appointment of a holder of any Clinical Professor title whose appointment is not renewed shall extend for two academic terms after receiving notice of nonrenewal.

**D. Percentage Limitation.** The Law School envisages an initial designation of the nine current members of the Legal Aid Clinic and the Lawyering Program to these new titles. This constitutes 25% of the Law School's tenure-track faculty of thirty-six members. But because the Law School plans to use the new title as a recruitment device, as well as a retention device, the Law School expects that the percentage of Clinical Professors will, from time to time, somewhat exceed 25%. Accordingly, the Law School

requests a waiver of the 25%-cap. Granting a waiver in the unique circumstances presented here fulfills the goals of the University's enabling legislation and is consistent with broader University faculty policies for the following reasons:

(1) New appointees would do substantially identical work as that done by the existing skills and practice faculty, and should therefore have the same title; moreover, inability to offer the Clinical Professor title to new appointees would place the Law School at a competitive disadvantage relative to peer schools. To ration the titles by giving them to only some of the current skills and practice faculty would similarly be unjustified in light of the work they all perform; moreover, it would be destructive of their collegiality and morale. Indeed, the net costs of drawing distinctions among the current and future skills and practice faculty as to title would so outweigh the net benefits of adopting the new titles that the Law School would choose not to go forward without a waiver of the 25%-cap.

(2) The important academic freedom concerns about undermining tenure that originally motivated the 25%-cap are not implicated in these circumstances. None of these positions replicates functions of tenure-track faculty or impedes adding to the tenure-track faculty. Additions to the Legal Aid Clinic and similar clinical faculty, if made, would be driven primarily by a desire to broaden the range of student opportunities to represent actual clients in a law-office setting. Additions to the Lawyering Program faculty, if made, would be driven primarily by increased student body size or by the desire to reduce student-teacher ratios. Neither of these positions involves an area in which tenure-track faculty have historically sought to work.

Underscoring the fact that granting this waiver will not in any way jeopardize the health and growth of the tenure-track faculty of the Law School, the Dean of the Law School--who is currently working hard to obtain funding for several additional tenure-track faculty lines--strongly supports this proposal to use the Clinical Professor title and waive the 25%-cap.

**E. Voting and Other Rights.** The Law School plans no changes in rights by going from a lecturer title system for the Lawyering Program and the Legal Aid Clinic to a Clinical Professor title system. Currently, those lecturers have limited voting rights in conformity with University legislation, and they have full access to the grievance and appeals processes available to tenure-track faculty (Policies and Procedures Governing Faculty Appointments; Academic Grievance Procedures, adopted by the Law Faculty on March 3, 1976, which is appended as Attachment B). No change is proposed thereto.

**F. Impact Statement.** Use of the Clinical Professor of Law title will be limited to non-tenure-track faculty engaged in skills and practice teaching, as currently exemplified by faculty in the Legal Aid Clinic and the Lawyering Program, who are now titled as Lecturers or Senior Lecturers. Current holders of positions in these programs will be retained and will have their designations changed from Lecturer or Senior Lecturer to one of the Clinical Professor titles. This proposal will have no effect on other non-tenure-track titles and their holders, now or in the future. Accordingly, non-tenure-track

positions under titles such as Adjunct Professor, Research Associate, and Distinguished Practitioner in Residence will continue. No tenure-track or non-tenure-track faculty positions will be eliminated as a result of this proposal.