Dear JR Clark,

I want to weigh in on the question of whether the Standards should be revised to dispense with the need to offer law teachers tenure. I would be grateful if you would pass these views on to the Section members studying the issue.

I oppose the change because I believe it will lead to offering the non-tenured positions to those teachers whose areas of teaching are directly tied to practice. Tenure will be reserved for those faculty who emphasize theory unrelated to the skills of practicing lawyers and who may have no or little interest in developing those skills or an ability to do so. We should be going in the opposite direction and protecting the former group. Here are my reasons.

Until about five or six years ago, clients were willing to pay law firms for the time spent by new associates even though much of that time was spent inefficiently and some of it was an extension of their law school education. This allowed law schools to focus on theory courses confident that employers would assume the cost (as would their clients) of the skills training that must accompany the transition from law school to practice.

In the last five or six years, clients, and not just large corporate clients, have increasingly objected to being asked to pay for the education of new lawyers or for time inefficiently used, as inevitably would be so when lawyers are just starting out.

That growing refusal has in turn shifted some of the skills training burden to law schools. The debate over a two or three year law degree is in part a consequence. A two year degree followed by one or two years of something like a paid internship or tutelage is seen as able to compensate for the training that clients are not willing to fund, at least not at traditional rates.

Meanwhile, this debate has forced law schools to reexamine their third year and, in order to make their students competitive in a job market where more than 40 percent of graduates do not now get full time permanent jobs for which a JD is required within nine months of graduation, to offer courses whose focus is practical skills all lawyers must know and perhaps to head off the two year degree or at least compete with it if it comes to pass.

Law schools will do this if it means a high employment rate for graduates -- or higher than peer schools -- but if allowed, they will then do it through reliance on faculty hired on contracts rather than in a tenure track. Courses in legal ethics, evidence, clinical courses, and courses that emphasize negotiation or litigation skills, among others, will be offered to non-tenure track faculty. Faculty offered tenure will be those whose research concentrates of the theory behind their subjects no matter how unrelated to the representation of clients. These are the values in legal academia today and we should expect them to be reflected in choices about job security.

I don't mean to say that this trend will be universal or that there will not be each kind of teacher in each kind of job. Of course, there will be exceptions and overlap. But it would be a
mistake not to realize that American law schools have to a significant degree become graduate schools, not professional schools, that the faculty who make hiring decisions prefer them that way, and that the values of graduate education, noble as they are, will be rewarded in their hiring offers, while the task of professional training will be sent to less secure faculty.

In fact, offers of a non-tenured positions may result in the hiring of faculty members less impressive than the faculty who could be attracted with tenured offers because of the reduced job security. It will also result in less scholarship in the subjects these less protected teachers teach because they may not be expected (or be allowed the time) as part of their contracts to do any.

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