

Fredric G. Levin College of Law
Office of the Dean

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November 25, 2019

MEMORANDUM

TO: Voting Faculty

FROM: Laura A. Rosenbury, Dean

RE: Faculty Meeting Agenda, December 6, 2019 *OXAR*

I have scheduled a Faculty Meeting for Friday, December 6, 2019, in the Faculty Lounge, beginning at noon. The agenda will be as follows:

1. Approve Faculty Meeting Minutes for November 22, 2019, attached
2. Recommendation for the Promotion of Joe Jackson to Senior Lecturer from the Non-Tenure Track Appointments, and Retention, and Promotions Committee
3. Recommendation for the Promotion of Stacey Steinberg to Master Lecturer from the Non-Tenure Track Appointments, and Retention, and Promotions Committee
4. Recommendation for the Promotion and Tenure of Stephanie Bornstein from the Promotion and Tenure Committee, attached

Law Faculty Meeting Minutes

November 22, 2019, 12:00 p.m.

PRESENT:

Mary Jane Angelo, Dennis Calfee, Jeffrey Davis, Robin Davis, Nancy Dowd (phone), Seth Endo, Mark Fenster, Ben Fernandez, William Hamilton, Andrew Hammond, David Hasen (phone), Berta Esperanza Hernandez-Truyol, Darren Hutchinson, Joan Stearns Johnsen, E. Lea Johnston, Shani King, Elizabeth Lear, Charlene Luke, Pedro Malavet, Amy Mashburn, Merritt McAlister, Jon Mills, Peter Molk, Jason Nance, Lars Noah, Kenneth Nunn, Jane O'Connell, William Page, Robert Rhee, Laura Rosenbury, Elizabeth Rowe, Katheryn Russell-Brown, D. Daniel Sokol (phone), Stacey Steinberg, Margaret Temple-Smith, Lee-ford Tritt, Andrew Winden, Michael Wolf, Danaya Wright, Wentong Zheng

ALSO PRESENT:

Gia Arney, Sara Bensley, Lisa Edgar, Rachel Inman, Gail Mathapo, Whitney Smith, Michelle Smith

NOT PRESENT:

Mary Adkins, Thomas Ankersen, Sarah Bishop, Stephanie Bornstein, Yariv Brauner, Neil Buchanan, Karen Burke, Jonathan Cohen, Charles Collier, Deborah Cupples, Teresa Drake, Alyson Craig Flournoy, Jeffrey Grater, Jeffrey Harrison, Joseph Jackson, Michelle Jacobs, Maryam Jamshidi, Christine Klein, Leslie Knight, Grayson McCouch, Silvia Menendez, Leanne Pflaum, Teresa Reid, Betsy Ruff, Amy Stein, John Stinneford, Henry Wihnyk, Steven Willis, Sarah Wolking, Jennifer Zedalis

Meeting called to order at 12:03 p.m.

1. Approve Faculty Meeting Minutes for November 15, 2019

Faculty considered minutes from November 15, 2019 meeting.

Unanimously approved.

2. Information Item: Discussion Regarding Legal Research Tools

Associate Dean Jane O'Connell shared information on legal research tools.

Information item only.

3. Recommendations for Faculty Hiring from Appointments Committee (Danny Sokol and Michael Wolf, co-chairs)

Dean Rosenbury led a presentation on funding.

Discussion ensued about future of funding as it relates to hiring.

The Appointments Committee presented six candidates for faculty consideration: Tinu Adediran, Annie Brett, Jon Choi, Asad Rahim, Andrea Wang, and Eleanor Wilking.

Discussion ensued about candidate qualifications.

Voting took place by secret ballot at the close of the meeting.

Meeting adjourned at 1:31 p.m.

**Report and Recommendation of the Promotion & Tenure Committee
On the Application of
Associate Professor Stephanie Bornstein
for Promotion to Professor and Tenure**

This report and recommendation reflects the culmination of work undertaken by the Promotion and Tenure committee throughout the fall semester. The committee's work was undertaken pursuant to Section C6 of the Levin College of Law Promotion and Tenure Policy [hereinafter College Policy], found in the Faculty Policy Manual, Promotion and Tenure (updated through 10/11/2019).

Factual Record Considered by the Committee

The committee bases its recommendations on the following factual record. The committee reviewed all of the information contained in Professor Bornstein's packet. Two members of the committee conducted peer teaching evaluations of Professor Bornstein's teaching during the fall semester. Each committee member read the following articles, which were also sent out for external review:

- Equal Work, 77 MARYLAND LAW REVIEW 581 (2018)
- Antidiscriminatory Algorithms, 70 ALABAMA LAW REVIEW 519 (2018)
- Public-Private Co-Enforcement Litigation, 104 MINNESOTA LAW REVIEW _ (forthcoming 2019)

In addition, as permitted by the second paragraph of Section B of the College Policy, the committee requested that the Dean provide us copies of any public record documents regarding any final administrative determinations of misconduct that negatively affect the candidate's performance and prospective capacity for instruction, research, and scholarly activity, or service. This was a continuing request for any responsive documents that might become available prior to conclusion of the faculty and committee assessment process. The Dean has advised us that no such documents currently exist and that she will provide any responsive documents should any come into existence during the period covered by our request.

We met and discussed Professor Bornstein's record in light of the substantive standards applicable to each of the three categories of performance.

Relevant Standards

The standard for promotion and tenure articulated in the College Policy, Section B, is:

Promotion and tenure are based on three broad categories of performance: instruction, research and scholarly activity, and service. Promotion and tenure require distinction in two of these categories, one of which shall be that of the faculty member's primary responsibility. Superior contributions in one area do not compensate for lack of contribution in another. . . . To determine whether a candidate qualifies for promotion or tenure, the faculty will only consider materials included in the candidate's promotion or tenure packet [which includes the evaluative report of the candidate prepared by the Promotion and Tenure Committee, per section C6 of the College Policy].

The policy defines instruction and service but does not elaborate on the standard of distinction in these categories of performance. Section B1 of the College Policy provides only that: "Instruction consists of regular classroom teaching and all preparation for this work, including study to keep abreast of one's field."

Service is defined to include "public, professional, University, or College of Law activity. Public service means either professional or community activities in the public interest." College Policy, Section B3. This section states further that:

Only in the most extraordinary cases will distinction in service help to satisfy the University's requirement of distinction in two of the three categories of performance (instruction, research and scholarly activity, and service). In virtually all ordinary cases, distinction in both instruction and research and scholarly activity is required.

The College Policy specifies both quality and quantity requirements for research and scholarly activity. The quality requirement for promotion to *rank* is as follows:

The production of excellent scholarship is a central part of the mission of the College of Law. The quality of a faculty member's scholarship is the most important factor that the Promotion and Tenure Committee and the faculty will consider when evaluating the research and scholarly activity of a candidate for promotion or tenure. The evaluation of the scholarship of candidates for Associate or Full Professor will consider the following

factors: (1) analytical rigor; (2) thoroughness of research; (3) the amount of effort expended; (4) the difficulty of the undertaking; (5) the relevance of the undertaking to legal scholarship considered broadly; (6) the novelty of the undertaking or of the ideas; (7) the literary quality of the writing; and (8) the locus of the publication.

College Policy, B2a.

In terms of quantity, the policy requires:

Eligibility for promotion to Full Professor with tenure . . . requires that a faculty member publish, or have accepted for publication, two . . . [single-author articles in a law review (primary or secondary) at an ABA-accredited law school or in a comparable academic journal, in addition to the articles previously produced for promotion to the rank of Associate Professor].

College Policy, B2b.

In addition, for candidates seeking tenure, the policy states:

Although the standards for tenure and for promotion to Full Professor are not differentiated, the faculty reserves the discretion to recommend one and not the other. For the purpose of promotion to Full Professor or the grant of tenure, quality, quantity, and timing of all scholarly work, whenever produced, will be considered.

College Policy, B2a.

Evaluation

Having considered the information described above regarding Professor Bornstein's instruction, research and scholarly activity, and service, in light of the standards set forth above, the committee members evaluated Professor Bornstein's record under the three categories of performance. (The committee's internal vote is reflected in parentheses.)

The committee determined that the candidate meets the standard of distinction in teaching. (5-0)

The committee determined that the candidate meets the standard of distinction in research and scholarly activity. (5-0)

The committee determined that the candidate meets the standard of distinction in service. (5-0)

Recommendations

Based on the foregoing, the committee recommends promotion by a vote of 5 to 0 and recommends tenure by a vote of 5 to 0.

Mark Fenster
Christine Klein
Lea Johnston (chair)
Robert Rhee
John Stinneford

October 30, 2019