To: CLS Faculty
From: APPC
Date: (Approved as amended December 4, 2019)
Re: Proposal for Faculty Senate Resolution Approving an Exemption for the Law School from the University Policy Restricting Clinical Appointments to a Five-year Term

The APPC recommends that the faculty authorize the Law School to ask the Faculty Senate (and ultimately the Provost and the Trustees) for a waiver/exemption from the provision of the University Charter, which restricts any faculty member with a clinical title from being appointed for longer than a five-year term. Assuming such a waiver/exemption is secured, we will then ask the faculty to vote to create a clinical tenure option with enhanced governance. The details of the proposal set forth here are for the purpose of informing the thinking of the Law faculty and University decision makers, but we are not currently seeking a final vote on these particular policies and procedures. The faculty will have the opportunity to revisit the particulars of this plan when (or if) the University approves the exemption from the provision, which has been previously granted to other departments. Voting on the current exemption proposal will be recorded by category of faculty (Clinical Titles/Professor of the Practice/Tenured and Tenure-track) as requested by the University.

Article XVII of the University’s Bylaws limits the terms of all the modified-title positions to an unlimited number of renewable five-year contracts. Four academic units are currently exempt from these maximum periods of service (the Medical College, the Department of Military Science and Tactics, the Department of Naval Science, and the Department of Air Service). Faculty Senate adoption of the Resolution would trigger consideration by the Board of Trustees. If approved, the Law School would join the Departments that are permitted to offer unlimited terms to its clinicians.

Below we explain four grounds that underwrite this proposal: excellence; equity; efficiency; and leadership. Even more fundamentally, the justification for tenure extends to clinicians. In light of the sensitive nature of the work that our clinics sometimes perform in representing under-served or politically unpopular clients and the retaliation that clinics at other law schools have sometimes encountered (see footnotes 1 and 2 in the Appendix at page 11 below), clinical faculty may have as great a need for the protection that tenure affords to academic freedom as tenured traditional faculty enjoy.

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1 Bylaws of Cornell University, “Article XVI, Section 2. Tenure and Method of Appointment: Except as otherwise specified in Section 6. below, all appointments shall be made with the tenure and in the manner following: […]
   d. Senior scholar, senior scientist, research scientist, principal research scientist, senior research associate, senior extension associate, senior lecturer, clinical professor, associate clinical professor, assistant clinical professor, professor of the practice, associate professor of the practice, and assistant professor of the practice – shall be appointed by the President for a term of not to exceed five years, renewable indefinitely. Research associate, extension associate and lecturer - shall be appointed by the President for a term of not to exceed three years, renewable indefinitely. For those cases where senior lecturers or lecturers are employed to address long-term teaching needs, the terms of appointment shall be five and three years respectively; one year appointments shall be reserved for one-year replacements and other short term needs, and initial probationary appointments. […]
   “i. The foregoing provisions with respect to maximum periods of service shall not apply to the Medical College, the Department of Military Science and Tactics, the Department of Naval Science or the Department of Air Service.”
Therefore, we seek consideration of this motion: To petition the Faculty Senate to Approve the Resolution attached at Appendix I, seeking amendment of the Cornell University Bylaws to exempt the Law School from the limit on clinical appointments.

1. Justification for Clinical Tenure

Several national developments and discussions at the Law School led to this proposal. We group them into four concerns: excellence, equity, efficiency, and leadership.

Enhancing excellence in the clinical program is a key goal of this proposal. We have seen a rapid growth in clinical education at our institution, expanding our clinical program from two clinical courses in the late 1990s to 14 clinical courses and 12 practicum courses in 2018-2019. During this period of expansion, the Law School has taken important steps, such as adopting the clinical professor title, providing long-term contracts for a generation of its clinical faculty, and streamlining the reappointment of those who have obtained the rank of full clinical professor. We believe that these improvements in the status of clinical faculty have assisted us with recruitment and retention. Also during these years, we have observed that some form of tenure for clinical faculty would have aided some of our clinical faculty appointment searches. We have had several entry-level candidates reject our offers or remove themselves from consideration after receiving offers from lesser-ranked schools with a clinical tenure track or unified tenure track. In addition, we cannot access University support for hiring diverse candidates to non-tenure-track lines. We have also observed that the lack of unlimited-term status partially limits clinical faculty access to University support for clinician scholarship.

A second concern relates to equity. In recent years, the faculty and administration have continued to grapple with concerns about gender parity. Women make up a majority of the clinical and lawyering faculty while men make up a majority of the doctrinal faculty. As the chart below suggests, this concern applies to the University more broadly. The Law School faculty has discussed (though never formally considered or endorsed) greater security of status and governance for clinicians as one of the paths toward addressing the situation. Making this move would not solve the problem but could partially address it.

![Chart showing gender parity across ranks and departments](http://harvardpolitics.com/harvard/gender-parity/).
The third concern this proposal seeks to address, efficiency, is of somewhat less moment but carries cumulative weight across years of administrative effort. Our institutional experience since creating the long-term-contract status is that post-long-term-contract-conferral reappointments have been so uncontroversial as to justify implementing clinical tenure. In our view, the ongoing reappointment processes create unnecessary administrative and faculty effort.

We also make this proposal in solidarity with the clinical legal education movement. The clinical section is now the largest section of the AALS and provides significant leadership within the legal academy. The Law School has enhanced its efforts to support the clinical community at the regional, national, and international levels, and thoughtful attention to clinician status within our own institution is an important way to show support and leadership. Just as many features of the instant proposal are gleaned from the arrangements at other schools, we know that our standards will inspire and inform practice elsewhere.

To develop the proposal, the APPC relied initially on the extensive work of the Law School’s Director of Clinical, Advocacy and Skills Programs (John Blume, who is a tenured faculty member) and a current Clinical Professor of Law (Beth Lyon). The current proposal reflects their extensive consultation with relevant constituencies, the APPC’s own deliberations, and revisions made in response to the reactions of tenured and tenure-track Law School faculty to a preliminary version of this proposal during a special meeting to discuss it.

To develop the preliminary proposal, Professors Blume and Lyon consulted with our Law faculty colleagues in both individual and group settings. They met with faculty in ILR, Veterinary Medicine, and Weill Cornell Medicine. They also met with a representative of the Provost Office and the Dean of the Faculty. The Dean of the Faculty circulated a summary of the proposal to the Committee on Academic Freedom & Professional Status of the Faculty, which provided additional comments. The top objection that arose from these discussions was the possibility that making this exception for the Law faculty to offer time-unlimited contracts to clinicians will open up the floodgates to all non-tenure titles to have tenure equivalent in all parts of the University. We believe that, because no unit has sought the waiver since Weill obtained it in the 1950s, a flood of change is unlikely. Moreover, with Weill holding the waiver, it seems equitable for other professional schools to have access to it as well. Another inquiry that came out of Professors Blume’s and Lyon’s consultations was why we could not simply shift clinicians to the existing tenure track and allow different kinds of “products” to be counted in the tenure dossier. Our response to this suggestion is that the Law School is not comfortable going this route because of the potential coming changes in the U.S. News ranking methodology that may begin quantifying scholarship using a narrow definition.

On our behalf, Professors Blume and Lyon reviewed the university bylaws of the other top-14 ranked-law schools² and recorded clinician status at the T-20 law schools as well as the >20-ranked law schools with top-ranked clinical legal programs (see chart below). They also reviewed data gathered by the Center for the Study of Applied Legal Education and the tenure standards of numerous other law schools, and they interviewed clinicians at various institutions. Of the twelve

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² By order of rank: Yale University, Stanford University, Harvard University, University of Chicago, Columbia University, New York University, University of Pennsylvania, University of Virginia, University of Michigan—Ann Arbor, Duke University, Northwestern University, University of California—Berkeley, and Georgetown University.
schools with the top ten clinical programs, five offer unitary tenure (Georgetown University #1, American University #2, City University of New York #3, University of Denver #7, and University of Maryland #7), six offer clinical tenure (Yale University #3, New York University #5, Stanford #7, University of California—Berkeley #7, University of California—Irvine #7, and Washington University - #7), and one offers only a contract track (University of Michigan #6). Most of these programs have a few permanent clinicians in weaker statuses along with a larger number in the top status available to clinicians. Following is data on the status of clinicians at the T-20 law schools.

<table>
<thead>
<tr>
<th>US News Rank</th>
<th>School</th>
<th>Top Ranked Clinical Program?</th>
<th>Unitary Tenure System**</th>
<th>Clinical Tenure</th>
<th>Clinical NTT Only</th>
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**We do not place a school into the “unitary tenure system” category if its clinical faculty includes only a small number of faculty with academic tenure by virtue of administrative appointment (e.g., Associate Dean for Experiential Education or Director of Clinical Programs), or because they took on clinical teaching while their primary appointments were in academic T/TT positions.
2. **Main Features of Clinical Tenure Recommendation**

The main features of our recommendation include: 1) enhanced governance for the faculty with clinical tenure-track or clinical tenured appointments, as compared with the current clinical faculty; 2) different and differently weighted scholarship standards for clinical tenure; 3) mandatory clinical tenure track for future-hired clinicians; 4) opt-in for current members of the clinical faculty; 5) status based on primary teaching appointments; and 6) annual information-gathering and a five-year review.

1. *Enhanced governance through weighted voting.*

After consulting faculty at institutions with a variety of voting arrangements, the APPC decided to model our proposal on NYU Law’s method of awarding clinical tenure. The proposed arrangement described here would phase in over time and would go partially into effect once there was a critical mass of faculty on the tenure track (milestone one) and then a critical mass of faculty with clinical tenure (milestone two).

Procedures for appointments and status decisions regarding conventional (sometimes called “doctrinal”) tenure would not be affected by the proposal except in one respect: in recognition of the role that scholarship will play in the career paths of clinical tenured and clinical tenure-track faculty, they would be welcome to participate in meetings involving the hiring, promotion, and tenure of doctrinal faculty in the same way that current junior faculty are. However, because clinical tenured and tenure-track faculty would not themselves have been subject to the doctrinal hiring, promotion, or tenure standard, they would not have a vote on doctrinal hiring, promotion, or tenure decisions.

Given the relatively small number of clinical faculty, a mirror-image procedure—under which doctrinal faculty have a voice but not a vote on clinical tenure decisions—is not desirable, as it would give inordinate weight to the views of one or two people. Accordingly, the proposal would give a vote to doctrinal faculty in clinical tenure decisions. However, both as a matter of the structure of the process and as a practical matter, substantial deference will be given by doctrinal faculty to the views of clinical faculty in clinical tenure decisions.

A new Clinical Personnel Committee would be composed of six members, one of whom would be the Dean. Of the remaining five members, at least two would be appointed from the tenured clinical faculty and the remainder from the tenured doctrinal faculty. The size and make-up of this committee would respond primarily to two considerations: (1) similarity to the structure of the Academic Personnel Committee and (2) the limited number of eligible tenured clinical faculty. We recommend that only tenured doctrinal faculty members who have an understanding of the purposes of the clinical programs and know or have the time and willingness to learn enough about the programs should be selected by the Dean as members of the new committee. We further recommend that the chair of the new committee would ordinarily be one of the tenured clinical faculty members.

The committee will review and make recommendations on tenure for clinical faculty to the full Law faculty. The committee’s procedures would be the same as for the current Appointments
Committee, except that an affirmative recommendation by the new committee of an appointment would require the approval of five members. If the recommendation is negative (or if the committee is deadlocked), the committee must explain the grounds of the decision to the candidate and provide a full opportunity to discuss the recommendation and the reasons underlying it. After this explanation and opportunity to discuss, the candidate will be given the opportunity to forgo full Law faculty consideration of the matter. If the candidate decides to forgo faculty consideration, the Dean upon request shall furnish the individual with a written statement of the adverse decision, which shall include the underlying report of the committee.

If the candidate desires to have the matter submitted to the faculty, the committee will present its recommendation to the tenure-track and tenured faculty. At the meeting for which the matter is scheduled, the candidate will be given a reasonable opportunity to explain why the committee’s recommendation is believed inappropriate.

With respect to full faculty action, all tenured doctrinal and tenured clinical faculty shall have the right to vote on clinical tenure decisions. All tenured and tenure-track doctrinal and all tenured clinical and tenure-track clinical faculty will vote on initial clinical appointments. Doctrinal and clinical faculty will vote on different colored ballots, which will then be separately tabulated. Candidates for initial clinical appointment must receive a substantial majority of the full votes cast, a substantial majority of the votes of the clinical faculty, and a majority of the votes of tenured and tenure-track doctrinal faculty. Candidates for clinical tenure must receive a substantial majority of all votes cast, a substantial majority of the votes of clinical tenured faculty, and a majority of the votes of tenured doctrinal faculty. “Substantial majority” as used here has the same meaning as when it is used with respect to our existing tenure procedures: that there is not substantial opposition.

We recognize that because the clinical tenure track is a new status, this requirement could not go into effect until there are clinical tenure-track and clinical tenured faculty. Moreover, when there are faculty in this category, the substantial majority vote requirement will always involve a smaller universe of opinion than a larger group would provide. The difficulty is counterbalanced by the other requirements stipulated for appointments as well as the special familiarity of clinical faculty with the needs of the program. We recommend that until there are four clinical faculty members who are either on the clinical tenure-track or who have clinical tenure (milestone one), clinicians will be hired onto the clinical tenure track in the way they always have been, except that during this transition period, as clinicians enter the tenure track or receive tenure, they will be able to vote for clinical appointments in the same way that doctrinal faculty do. We further recommend that until there are four clinical faculty members who have clinical tenure (milestone two), promotion or tenure shall be granted in the way it is now, with the caveat that during the transition period, upon receiving tenure the first three tenured clinicians will be eligible to vote on clinical tenure as though part of the tenured doctrinal faculty.

2. **Different and differently weighted scholarship standards for clinical tenure.**

For clinical tenure, scholarship will be added to the existing three performance criteria for clinicians (teaching, service, and professional role). It is our hope that establishing clinical tenure will capitalize on the existing institutional support for clinician scholarship by underscoring our
collective expectation of scholarly contribution and ensuring greater access to university support. In light of the additional criterion clinicians must meet (professional role), we believe assessing clinician scholarship requires a modified standard as well as flexibility in weighing the criteria.

The current scholarship standard for doctrinal tenure reads as follows, “Scholarship in law or about law, legal institutions, and the legal profession is central to the life of the School. Scholarship in a professional school quite naturally takes more diverse forms than in some other parts of the University. Legal scholarship may be theoretical, empirical, or devoted to improving professional practice, public policy, or legal education. It may find appropriate expression in forms other than books and articles. But whatever form it may take, an individual being considered for a tenured appointment must have demonstrated the capacity for engaging in significant scholarship of high quality. Far more than with teaching or successful professional practice, the capacity for significant scholarship requires a capacity for self-initiation. For this reason, it is especially important in considering this aspect of the tenure question to be clear that it is not past performance but future productivity as indicated by past performance that is the relevant perspective.”

We propose to set a modified and less heavily weighted scholarship requirement for clinical tenure. If and when the university exempts the law school from the ban on clinician tenure, we propose to incorporate the following language after the paragraph entitled “Scholarship” in the law school guidelines for tenure decisions:

The above criteria should also be considered in decisions regarding clinical tenure. At the same time, given the time demands placed on clinical faculty, which include not only teaching but managing clients and case dockets as well as supervising student case work, clinical faculty members are not expected to produce scholarship in the same quantity as that expected of doctrinal faculty. Nor, due to the different focus of the scholarship of some clinical faculty members, should the work be evaluated under the same standards as those used to assess doctrinal faculty members. The scholarship should, however, be of high quality, legally significant, and reflective of a productive and creative intellect.

3. Mandatory clinical tenure track for future-hired clinicians.

If this proposal is adopted, the current faculty members with clinical titles and primary appointments in the clinic will have the option to remain on the long-term contract track or status, or to seek to convert to the clinical tenure track as appropriate for their current level of seniority and readiness for clinical tenure consideration. All new hires at the Assistant or Associate Clinician grade after the date the new policy goes into force will be onto the clinical tenure track, and all new hires at the Clinical Professor of Law grade must meet the new criteria for clinical tenure. This model is at odds with the “safety valve” arrangement found at schools such as NYU, Boalt, and the University of Maryland, where there are parallel clinical tenure and clinical long-term-contract tracks. We propose requiring new appointments on the clinical tenure track, because we feel this model is most likely to increase integration of the clinical faculty with the scholarly life of the institution. We recognize that this model increases the “up or out” risk to future clinicians, but this is the risk our doctrinal colleagues already bear. By crafting appropriate scholarship standards, enshrining a principle of equity in tenure, and holding all future permanent clinical hires to these standards, we will be best ensuring a future of integrated clinical faculty realizing the
benefits of practicing within a top research institution. Furthermore, this requirement most closely approximates the example of the law schools at the top of the clinical program rankings with full unitary tenure for clinicians, such as Georgetown, American, and CUNY. Finally, and within the bounds of ABA Standard 405(c), we would retain the ample flexibility available on the doctrinal side, including and not limited to the use of adjunct faculty, short-term visitorships including renewable visiting clinical professorships, professors of the practice, and short-term Fellows.

4. Opt-in for current members of the clinical faculty.

The current members of the clinical faculty (faculty members with the Clinical Professor title – any level – with primary appointments in the clinical program) would have the option to pursue clinical tenure or to remain in their current long-term contract statuses. The faculty would set a deadline for current faculty members to make the election. The eligible faculty include: Sandra Babcock; Celia Bigoness; Liz Brundige; Angela Cornell; Sital Kalantry; Bill Jacobson; Beth Lyon; and Keir Weyble. To ensure equal treatment with new hires, current clinical faculty who opt to apply for but are denied clinical tenure would not be permitted to remain in their long-term contract status beyond a transition or grace period. Those current clinical faculty who opt out would continue to vote on what they vote on now: all non-tenure/tenure track appointments, including lawyering hires, reappointments and promotions of existing clinical faculty of the same long-term-contract status, professors of practice, and lecturers. They would not vote on clinical tenure track hires or promotions in the clinical tenure pipeline.

5. Status based on primary teaching appointments.

Statues categories are imperfect. Multiple members of our Law faculty work across and between categories, for example podium and lawyering faculty members who direct clinics and clinicians who teach podium courses. Therefore, the emphasis in determining status is on the primary teaching appointment. It seems worth re-stating this fundamental rule of faculty arrangements because one of the effects of this change is to grant differential status and governance opportunities to faculty holding the same titles. Faculty with primary appointments in the clinic will be included in the new rule, while faculty holding clinical titles but whose primary appointment is in the lawyering program will not.

To facilitate management of the new clinical tenure and voting systems, we recommend adopting an informal designation of “clinical faculty (lawyering)” to designate clinical faculty with a primary teaching appointment in the lawyering program. We also recommend adopting the term doctrinal to refer to podium/doctrinal faculty. This proposal would not modify the formal titles of any of the faculty.

6. Five-year review.

If the Law faculty adopts this proposal, the University Bylaws are amended, and our policies and procedures are changed accordingly, we recommend that the administration gather information annually about the operation of the new policies, and that the appropriate committee review the data and make a full report with recommendations for consideration by the faculty in the fifth year after the new policy goes into place.
Appendix I: Proposal to Grant Law School Discretion over Maximum Periods of Service

December 6, 2019

To: Charles van Loan
   Dean of the Faculty

Re: Proposal to Grant Law School Discretion over Maximum Periods of Service

Dear Dean van Loan,

I am forwarding to you the Law School’s proposal seeking a waiver of the maximum periods of service for certain faculty categories contained in Bylaw Article XVII.2.

Our attached proposal, which includes a justification and an impact statement, was reviewed and approved by the Law School faculty. The votes were as follows:

Faculty with Clinical titles: 15 eligible, 11 total vote, 11 – Yes, 0 – No, 0 – Abstain
Professor of the Practice: 3 eligible, 2 total vote, 2 – Yes, 0 – No, 0 - Abstain
Tenured and Tenure-track Faculty: 40 eligible, 22 total votes, 21 – Yes, 0 – No, 1 – Abstain

Thank you for reviewing this request. Please do not hesitate to contact me if you need further information.

Sincerely,

Eduardo Peñalver
Allan R. Tessler Dean and Professor of Law
I. Preamble

Before 2002, Cornell lacked any professorial titles for those holding academic appointments that were focused heavily or exclusively on a primary teaching function. The Faculty Senate concluded that the lack of such titles put the University at a competitive disadvantage in terms of recruiting and retaining such faculty members. In 2002, the Senate approved the creation of new, non-tenure-track Clinical Professor titles. The Senate amended that legislation two times to add alternate nomenclatures for this form of professorial title: in 2014, to authorize the use of the Professor of Practice title; and in 2016 for the title of Research Professor. The Bylaws limit the terms for all these positions to an unlimited number of renewable five-year contracts. Four academic units are exempt from these maximum periods of service (the Medical College, the Department of Military Science and Tactics, the Department of Naval Science, and the Department of Air Service). A timeline of these exemptions is set forth at Appendix B. The Law School seeks to join the list of Departments that is permitted to offer unlimited terms to its clinicians.

Clinical Legal Education

The clinical legal education movement began in the late 1960s (Cornell’s program began in 1960), creating academic programs for law students under faculty supervision to provide legal services to low-income communities. In the intervening decades it has grown immensely, now counting more than a thousand faculty members, a Journal of Clinical Legal Education, and dozens of conferences each year. The movement has spread internationally, and each year hundreds of clinicians travel to or from the United States to support this form of pedagogy in other national contexts. Several clinical programs have encountered political interference owing to casework that challenged large corporate interests1 or championed unpopular groups.2

As clinical legal educators developed a new scholarly field, refining theories of clinical legal pedagogy, they worked to create sustainable institutional models, including establishing student practice rules and law school accreditation norms requiring experiential academic programming, long-term contracts and academic freedom for permanent clinicians. The norm continues to evolve in a direction toward greater protection for clinical legal faculty. Of the eleven law schools with top-ten-ranked clinical programs, five offer unitary tenure (Georgetown University #1, American University #2, City University of New York #3, University of Denver #7, and University of Maryland #7), five offer clinical tenure (Yale University #4, New York University

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1 See, e.g., Robert R. Kuehn, Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic, 4 J. L. Pol’y 33 (2000); Controversy threatens funding of Pitt's environmental law clinic, University Times (Oct. 25, 2001); Ian Urbina, School Law Clinics Face a Backlash, NY Times (April 3, 2010).
#5, Stanford #7, University of California—Berkeley #7, and Washington University #7), and one offers only a contract track (University of Michigan #6). Most of these programs have a few permanent clinicians in weaker statuses along with a larger number in the top status available to clinicians.

**Clinicians at Cornell Law School**

In 2005, the University allowed the Law School to use the title of Clinical Professor for its Lawyering Program, Legal Aid Clinic, and similar clinical faculty. Currently, the Law School has 15 faculty members with clinical titles. Nine of them direct live-client clinical courses, four of them teach only in the simulation-based lawyering program, and two of them teach in both programs. The three current faculty members with tenure who are involved in clinical courses were hired as doctrinal or doctrinal/clinical hybrid faculty in a non-experiential capacity. In 2015, the Faculty Senate approved the Law School’s petition to confer the title of Professor of Practice. The Law School has three faculty members in the Professor of the Practice line, one of whom also teaches in the live-client clinical program.

**Recruitment and Retention**

Since 2005, several clinical searches have failed due to the lack of permanent tenure. Similarly, one law faculty member holding clinical titles resigned in order to accept a tenure-track position elsewhere. This faculty member is an LGBT person whose LGBT-centered clinical course was suspended as a result. While the lack of a clinical tenure-track was not the sole reason for that particular departure, it played a role. More broadly, some potential clinicians may not even apply for positions on our faculty due to the lack of a clinical tenure track.

**Gender Equity**

The current status arrangement creates a significant gender disparity on the faculty. Eighty percent of the tenured and tenure-track faculty are men, while eighty percent of the clinical professors are women. Clinical tenure will only partially address this issue as the new status does not include full voting participation, but it will be an important step toward rectifying inequality and may assist in attracting male candidates to the clinical faculty.

**Efficiency**

With a five-year maximum term and 15 members of the clinical faculty, the faculty devotes considerable time to reviewing the records of clinicians. Meanwhile, in the past thirteen years, no member of the clinical faculty has been denied promotion or contract renewal. Moreover, clinical courses are optional, and all of them, even the longstanding courses, are fully subscribed by

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students who apply to return for multiple semesters. In the faculty’s view, the ordinary quality control and funding measures (such as teaching evaluations and faculty compensation decisions) are sufficient to ensure excellent, innovative training and supervision in socially relevant topic areas.

Self-Study Report

In its 2018 Self-Assessment Prepared in Anticipation of the April 2018 Site Evaluation conducted by the American Bar Association’s Section on Legal Education and Admission to the Bar, the Law School noted:

“Several challenges facing the clinical program are increasing the diversity of our clinical faculty, improving the status of clinical faculty and addressing salary disparities between clinical and doctrinal faculty. We have made some strides toward greater diversity through our fellow and adjunct hires, and we remain focused on this issue to the extent permissible by law in our permanent hiring processes… the Clinical Director is persuaded that not having a clinical tenure option for persons with clinical faculty titles engaged in significant scholarship is negatively affecting clinical recruitment and morale….While these are challenging budget times, significant salary disparities also exist between clinical and doctrinal faculty that hopefully can be addressed over time.”

Tenure Process

The Law School’s Faculty Handbook will be revised to include the standards for and a process to seek “clinical tenure.” Consideration for “clinical tenure” will generally follow the procedures used for appointment at the rank of Professor of Law, with modifications to the dossier review. The standards for clinical tenure will also vary from the standards for law school existing (doctrinal) standards, to reflect the different type and amount of the scholarship in light of other clinical faculty duties. One option we considered was to shift clinicians to the existing tenure track and allowing different kinds of “products” to be counted in the tenure dossier. We decided not to follow this path because of potential coming changes in the U.S. News law school ranking methodology that may begin quantifying and narrowly defining scholarship. A clinical tenure track is a more appropriate path for the law school at this juncture.

Departmental Voting and University Faculty Support

The current Law School faculty voting rules will change to reflect a new system of weighted voting for clinical tenure. This arrangement will phase in over time and will go partially into effect once there is a critical mass of faculty on the clinical tenure track (milestone one) and then a critical mass of faculty with clinical tenure (milestone two). The primary feature of weighted voting is that clinical tenure decisions will require a majority of tenured traditional faculty and a substantial majority (roughly two-thirds, but qualitative rather than strictly quantitative) of tenured clinical faculty. Voting procedures for hiring, promotion, and tenure of traditional faculty would not be affected, but in recognition of the scholarly contributions of tenured and tenure-track clinical faculty, they would be welcome to participate in the meetings at which
traditional tenure decisions are made (in the same way that untenured traditional faculty now are).

For the purposes of participation in university decision-making and access to grievance and appeal procedures, faculty with clinical tenure will be treated like other tenured faculty members. In addition, clinical tenure will be treated as the equivalent to doctrinal tenure for any Law School or University faculty support programs, such as, for example, grants supporting scholarship, and diversity-related dual careers support.

**Percentage Limitation**

This proposal does not change the Law School’s obligation vis-à-vis the percentage limitation rule as regards holders of the clinician title whose status is contract base. However, we interpret the percentage limitation as applying only to contract clinicians and not to faculty with clinical tenure.

**Impact Statement**

The new unlimited term clinical-tenure status will be implemented in the following ways. The long-term contract positions of the current members of the clinical faculty (faculty members with the Clinical Professor title with primary appointments in the clinical program) (hereinafter “clinicians”) will be protected from elimination by new clinical tenure track positions. Current clinicians will have the option to pursue clinical tenure or to remain in their current long-term contract statuses.

This narrow exception for the law faculty to offer time-unlimited contracts to clinicians does not open a floodgate. No unit has sought a waiver since Weill obtained it in the 1950s. Moreover, with Weill holding the waiver, it is equitable for other professional schools to have access to it as well.

The proposed Resolution also modifies the Faculty Senate’s 2002 enabling legislation creating the clinical professor line. Article VI.B. of the 2002 legislation stated “Terms of positions bearing these titles shall normally be for three to five years and shall not exceed five years.”

BE IT RESOLVED THAT THIS LEGISLATION BE ADOPTED.

II. Purpose of Enabling Legislation

The purpose of this legislation is to recommend that the Trustees amend the University Bylaws to allow the Law School to offer unlimited term contracts to clinical faculty members with primary appointments in the clinical program, concurrent with or after appointment at the rank of Clinical Professor of Law.

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5 *Id.* p. 4.
Appendix A

Trustee adoption of this proposal will require modification of University Bylaws as follows:

Article XVII THE INSTRUCTIONAL AND RESEARCH STAFF APPOINTMENT AND TENURE

Amend section 2.i. to read

The foregoing provisions with respect to maximum periods of service shall not apply to the Law School, the Medical College, the Department of Military Science and Tactics, the Department of Naval Science or the Department of Air Service.

END OF LEGISLATION

Appendix B

Following is a chart tracking the evolution of Section 2.i.

<table>
<thead>
<tr>
<th>Year</th>
<th>Source</th>
<th>Change</th>
</tr>
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<tbody>
<tr>
<td>1950-1951</td>
<td>Proceedings of the Board of Trustees of Cornell University Including the Minutes of Certain Standing Committees July 1, 1950- June 30, 1951</td>
<td>“Article XX, Section 3…was amended to read as follows:...3.d. The foregoing provisions with respect to maximum period of service do not apply to instructors and assistant professors of the Department of Military Science and Tactics, the Department of Air Science and Tactics, the Department of Naval Science, the Medical College, or the School of Nursing.”</td>
</tr>
</tbody>
</table>
| 1947-1948 | Proceedings of the Board of Trustees of Cornell University Including the Minutes of the Standing Committees July 1, 1947- June 30, 1948 | “4. Appointments in Departments of Military and Naval Science
The foregoing provisions with respect to maximum period of service do not apply to instructors and assistant professors of the Departments of Military Science and Naval Science.” |
<p>| 1946-1947 | Proceedings of the Board of Trustees of Cornell | “4. The foregoing provisions do not apply to instructors |</p>
<table>
<thead>
<tr>
<th>University Including the Minutes of the Standing Committees July 1, 1946-June 30, 1947</th>
<th>and assistant professors of the Departments of Military Science and Naval Science.</th>
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<tbody>
<tr>
<td>“It was the opinion of the Board that these recommendations were not quite ready for action at this time and the matter was deferred until the next meeting of the Board of Trustees.”</td>
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