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Robert M. O'Neil
University of Virginia School of Law and
Thomas Jefferson Center for the Protection of Free Expression

Faculty Tenure and the Probationary Period

I am deeply honored to have been invited to join you this afternoon as a guest both of SACUA and the AAUP Chapter. This event evokes special memories of a time some fifteen years ago when, at this podium, I was asked to inaugurate the Davis, Market, Nickerson Academic Freedom Lecture series. Having recently spent a weekend in Toronto with Professor Chan Davis, who I'm happy to report is as feisty as ever, those memories are especially vivid. My ties to this institution are substantial. My daughter-in-law is a research scientist in the Medical School. Her husband, my oldest son, manages the Stadium sound for all University of Michigan home football games; though he is not the Voice of the Wolverines, he makes that voice audible for 106,000 fans every Saturday afternoon. My recollection is that during the Rackham renovation he installed the very sound system I'm now using. I have been a frequent visitor to this campus in various roles, though none more important than the one that brings us together this afternoon.

Let me offer a brief prefatory context for my thoughts about the current proposals from the Provost's Committee. No institution is in my view more deeply committed to academic freedom, nor appreciates it more fully, than the University of Michigan. Nor has any other institution taken bolder steps to atone for the tragic events of the McCarthy era, most recently by establishing the Davis-Markert-Nickerson visiting professorship. At no institution is collegial governance more highly valued or practiced by both faculty and administrators than is the case here at Ann Arbor. Nor have I known an institution where faculty values, interests and needs were more consistently honored; during my years as an administrator at Indiana University and the University of Wisconsin, more than once I was beset by faculty colleagues who lamented, "if only you could do it the way they do it at Michigan." We tried, and occasionally succeeded, looking to Ann Arbor for our model.

The current debate over the Provost's Committee proposals reflects those same values. The process strikes me as exemplary – a committee under genuinely academic leadership, with campus-wide faculty involvement, and an opportunity

for forums like this one as well as the chance I had earlier this afternoon to meet with Interim Provost Gramlich. The premise of the proposals also seems to me quite benign – to serve an increasingly diverse array of faculty needs and interests by making certain aspects of the tenure process more flexible. Several of the committee’s specific proposals strike me as exemplary. The problem is that certain other recommendations seem to me to pose more problems than they would solve - - indeed, in part through that elusive phenomenon known as the law of unintended consequences.

Before focusing on specific proposals, let me offer a couple of general comments about tenure and the probationary period. We draw sharp distinctions between those of us who hold tenure and our junior colleagues who are on the tenure track or are serving in probationary status. Most notably, we recognize that a term appointment may not be renewed or extended for reasons that clearly would not warrant the termination of a tenured position. Both the substantive and procedural safeguards are appropriately different in the two situations.

On the other hand, we treat the termination of a term appointment before its expiration just as though it were the dismissal of a tenured professor, believing that a probationary faculty member is entitled to full protection during that period. And we impose certain constraints on the non-renewal decision – insisting, most notably, that such action may not be reflect racial or other unlawful discrimination, nor may it abridge academic freedom (as for example by retaliating against a junior faculty member’s criticism of the administration.) Thus we view the probationary period as something of a hybrid – less fully protected than tenure, but surely not dispensable at will or whim.

Even more basic is our belief that probationary status serves vital interests of the academy. Most obviously a term appointment gives both the appointee and the institution a chance to get to know one another, without permanent commitment on either side. For the junior faculty member it also offers the best opportunity to assess the benefits and burdens of a scholarly career; I have lost count of the number of colleagues over the years who at some time during the probationary period concluded that academic life really was not for them, and returning to full-time writing or the practice of a core profession. When the Boalt law faculty at UC-Berkeley recruited the nation’s preeminent labor law practitioner, David Feller (Justice Arthur Goldberg’s closest partner) he accepted our offer but insisted that he come without tenure, so that he and we could decide whether this was a good match. Happily, it proved to be so; he loved teaching and Berkeley and stayed on to retirement.

It does always work that way, though. The most notable case to the contrary involved my Indiana University colleague Eileen Farrell who, having been offered a tenured chair in the School of Music, insisted that instead it be a five-year

probationary appointment. As that term neared its end, despite our fervent hope that she would remain in Bloomington, Carnegie Hall beckoned her back to Manhattan – much as it had several years earlier recalled violinist Ruggiero Ricci after a brief faculty stint at Indiana. Other preeminent performers and teachers like Janos Starker and Josef Gingold found the academy very much to their liking, and they stayed. Indeed both of them and most of our other music stars initially accepted tenured appointments, thus mooted the issue.

For one's senior colleagues and for the institution, the probationary period not only permits but compels careful assessment of a junior scholar's potential under conditions that are inevitably stressful, but not unrealistic. Although we lack precise data on the percentage of those who survive the probationary period, conventional wisdom posits that in rigorous institutions fewer than half those who start out on the tenure track will hold tenured appointments seven or eight years later. There are of course many reasons for non-completion of that process, though for the majority a negative judgment along the way – express or implied – is the catalytic factor.

The absence of a probationary period thus removes the occasion for a critical judgment about a junior scholar's potential. Those institutions that have no tenure system – relying typically on consecutive five-year contracts – seldom make the critical judgments we prize in our universities. They tend simply to keep marginal performers on for yet another term, confident that if the performance is egregious there is always an escape. In short, there is neither up nor out in such non-tenure bearing institutions; even the possibility of not being promoted to a higher rank imposes none of the pressures or the expectations so central to the tenure system and its probationary prelude.

Enough about the probationary period in the abstract, though it may be helpful every so often to reflect on why we structure the process as we do and what we expect to derive from that process. Now to the particulars. There is no magic in the number seven, save for the occasional septophile or septophobe. Indeed, there are quite reputable institutions – the University of California System, most notably – whose probationary period has always been eight years. Yet for a century or more, most of us in the academic community have agreed that six years is the optimal time period within which to make this critical mutual judgment, with a seventh and terminal year to cushion a negative outcome. Many tenure decisions are made in substantially shorter time frames; in my own field of law the process rarely goes that long, and a junior law teacher rightly feels his or her case is a difficult one if it drags into the sixth year. But I realize the issue here is not whether seven years is too long, but whether it is long enough.

In some situations we recognize that seven years may not permit all that must be done before the tenure judgment occurs. There seems to be universal

agreement, for example, that some flexibility to accommodate family responsibilities is both humane and appropriate. Our experience under the family-friendly policies that most institutions have adopted with the blessing of national AAUP policy seems to have been entirely satisfactory. That basis for extending the probationary period is not in question.

Nor is there doubt about the wisdom of a dispensation for which I sought governing board approval as President of the University of Virginia – at the urging of our Medical School dean and his faculty – to permit a probationary period as long as ten years for certain faculty in clinical medical fields. That exception was later validated through acceptance of an AAUP subcommittee report which I commissioned as Chair of Committee A, and which expressly recognized the unusual needs of our colleagues in clinical areas who must not only demonstrate promise in teaching, research and service, but who also bear a heavy patient-care responsibility as well.

These two compelling situations do not exhaust the range of exceptions to the seven-year norm. During my relatively brief term as Provost I sought and received approval from the national AAUP office to extend for as much as a year the probationary terms of two junior faculty whose potential had been inadequately and unfairly appraised near the end of the six-year term. In both cases the faculty members in writing expressly requested such an extension, understanding that the result might be negative. The campus AAUP chapter was consulted and concurred. Happily both reviews, when properly conducted by a new dean, were favorable. Though I was never again in a position to seek such a dispensation, I would not have hesitated to do so in the interests both of an improperly appraised colleague and of the institution.

There are other types of exceptions on which I can report from personal experience. More often than I could count, I have approved a dean's or department chair's request to provide a research leave, and thus take a junior colleague off the tenure track, for a year as the term appointment neared its end but promised scholarship had not been completed. Indeed, in a couple of cases I found or provided the funding necessary to support such a leave. Here, with some regret, I cannot report that the outcome was always positive – though I am convinced that we did the right thing by affording a junior colleague every opportunity to meet our expectations.

Another area of variance comes from my experience. On several occasions a recruited faculty member had prior teaching experience that normally would have been credited against the probationary period. Although AAUP policy strongly recommends that such prior service be fully credited, I will confess that on a few occasions – again at the candidate's request and that of the dean or chair – we moved the probationary period somewhat further back than AAUP would wish.

The effect was to start the tenure clock running all over again when the person joined our faculty – believing that only in that way could we fully and fairly assess the potential of a person who came to us with prior experience, but felt the need of a full six years to persuade us that he or she deserved tenure.

Through my many years on Committee A, I never knew of such a case to be deemed “excessive probation” by the national AAUP office, much less the target of an investigation that could lead to censure. Again I would stress the importance of the faculty member’s written request, setting forth compelling needs that would warrant an individual exception to the normally appropriate prior service crediting policies. I would also underscore the need to negotiate any such exceptions at the time of the initial appointment, rather than altering the rules during the probationary period. But even under current policy, crediting prior service invites some creativity.

What I hope I may have done to this point is to persuade you that the current system – whether at Virginia or at Michigan or any other university with rigorous tenure standards – contains substantial flexibility for those who are willing to be boldly creative in its application. Now let me turn to specific concerns about the proposals from the Provost’s Committee, noting as I did earlier their indisputably benign origins. I am deeply troubled by the suggestion that each school or college should be free to extend the probationary period on its own. I recognize the University of Michigan’s strong tradition of local autonomy; indeed a quarter century ago, we at Indiana surveyed the Big Ten principal campuses on just that issue, and was not surprised to learn that schools and departments here in Ann Arbor had by far the widest discretion of any in initiating or modifying courses. So I would surely not fault the underlying premise of self-determination. The problem is more immediate.

Let me be brutally candid. My fear is that those academic units in which we – and now I speak more as a former administrator than as a professor – have least confidence would be the ones most likely to take advantage of that option. Those that most need a rigorous time-limited review and appraisal process would, in short, be the first to seek an escape from it. One might even envision a struggling non-tenured teacher in school A, that had retained the probationary period, desperately seeking a transfer to school B, which adopted a longer period and is now seen as a sort of haven or safe zone for less promising performers.

Indeed, one finds precedent for just such concerns in the medical school context. When we were fashioning the extension of the clinical faculty probationary period to a ten-year maximum, there was some rumbling from basic science faculty about “unfairness” and “inequity,” wondering why they should not enjoy the same opportunity. The answer was loud and clear, and has prevailed for two decades: The case for giving some clinical faculty several more years reflected

our uniquely high demands upon them. Since most basic science faculty aren't expected to see and treat patients as well as engage in teaching, research and service, the current probationary period fully meets their needs. That experience makes me uneasy about the current proposal to allow each academic unit to determine its own probationary period.

Before leaving this topic, I might note in passing that current UM policy ironically delegates one important issue in a way that threatens not only disparity but iniquity. If I read the committee's report accurately, practice varies on whether to conduct a second review in a later year following an initially negative first review. The committee itself seems persuaded – as I would be – that policy on this issue should at least be uniform. I would go further and urge that such a second try should be universally available, at least as so long as the initially rejected candidate wishes a second review, which will not always be the case. Here, then, is one area in which local autonomy may not best serve the interests of equity and academic freedom, as the committee itself recognizes.

Joint appointments also make me uneasy in this regard. One of the virtues of a uniform campus-wide probationary period is that both units must determine an interdisciplinary teacher's future at the same time. Even with uniform timing, that process is not without its perils; I have more than once had to define the status of a joint appointee whom both departments fervently wished to retain but to whom neither would grant tenure – that's a story for another day. If a joint appointee comes up for tenure in one school or department in year six but not until year eight or nine in the other, the problems would be greatly magnified. This is not a purely conjectural prospect, if you share my expectation that some academic units would keep the current probationary period while others would extend it. We hardly ever encounter joint appointments between clinical medical and basic science (or non-medical) departments, and when that does occur the process is manageable. I fear that if this became a common situation, much confusion would ensue.

There are several other serious concerns. While the prospect of granting proportional probationary credit for less than full-time faculty service has some appeal, problems would almost certainly arise at levels of both practice and policy. The University's current approach – essentially crediting full time or nothing – may seem rigid in some respects, but in my view reflects sound premises. The committee report proposes to assess the amount of time or number of years to be credited “at a rate equal to the appointment fraction.” The timing of mandatory review and notice of non-reappointment would be “calculated based on the accumulated years of service, rounded to the nearest integer.”

Apart from the inherent difficulty of explaining to a prospective new colleague just how these provisions work in practice, I sense here an assumption of a homogeneity – or interchangeability – that seldom exists in the real life of an

incredibly diverse and complex university campus. I mentioned earlier my eminent Indiana colleague Josef Gingold. He took upon himself the daunting task of instructing advanced violin students for no less than 39 hours a week. In the adjacent building was our most distinguished physicist, whose assigned teaching load was two hours a week. Of course most of the IU faculty had assigned loads somewhere in between. But any attempt even within a relatively homogeneous unit, much less across units, to set “a rate equal to the appointment fraction” seems to me perilous.

My concerns are, however, not only practical. Indeed, there may be helpful analogies – for example, the recognized AAUP policy that time spent teaching less than fifty percent of the normal departmental load should not advance the tenure clock, regardless of the person’s title. But that and other current policies are premised on the simple notion that one is either “on” the tenure track or “off” it for a given period, typically a year or at least a semester or quarter. The prospect of individualizing fractions of creditable time seems to me, in principle as well as in practice, a very risky business. Here as in other respects, I would urge that current University of Michigan policies contain sufficient flexibility to achieve most if not all of the committee’s declared desiderata.

Finally, let me conclude with a few words about those desiderata. Perhaps, indeed, I should have started there, but hoped first to address the specific proposals and then step back to assess the rationale. The quest for flexibility seems to me laudable – at least in so far as a system can be made more flexible without compromising or undermining certain safeguards for academic freedom that must remain inviolable (for which some might substitute “rigid.”) While it is indisputable that faculty responsibilities have become more diverse and demanding – hence, for example, the case for special treatment of clinical medical faculty – it is not clear to me why six or seven years inherently denies the twenty-first century professor an adequate opportunity to demonstrate his or her potential. That is especially the case when one takes into account the sources of flexibility I have noted earlier – and all of which I have actually invoked and used to a faculty member’s advantage.

Of the other stated goals and objectives, extensive comment from even a sympathetic visitor might seem presumptuous. As far as “nimble response to competition” I speak as one who over the years has lost almost every academic recruitment “competition” to the University of Michigan, including my faculty days at Berkeley; I’d say you are quite “nimble” enough as it is. On a more serious note, I would be concerned that trying to help a prospective Michigan faculty recruit understand how the revised rules worked might well give me, as the competitor, a new advantage in describing my simpler, old fashioned probationary rules. There is also something vaguely unseemly about the image of preeminent

research universities competing for faculty talent on the basis of which of them will postpone the tenure judgment for the longest time. Far preferable, if the probationary period should ever enter that equation, would be competition for the shortest time spent on the tenure track.

The final rationale is “building the diversity of the faculty.” I would respectfully ask whether personnel policy changes are needed at the university which the rest of the American academic community views as the strongest and boldest voice for diversity within its faculty and its student body. So, let me offer a friendly visitor’s caution: Your current policies are, in most respect, simply the best. With a few minor changes, I would keep them as they are. I now look forward to our discussion.