

Dear Colleagues,

For any great law school, the project of recruiting and retaining a first-rate faculty is of critical importance. So, too, is the project of making it possible for that faculty to flourish. When I became dean, I had spent my entire professional life seeking good colleagues, benefitting from their ideas and constructive projects, and working to make it possible for students to do likewise. For me, the highest single priority of the dean of UT Law was that of building and maintaining our faculty. That view was, I believe, widely shared.

At the outset, the fate of that project seemed imperiled: Bill Powers ascended to the presidency of the University; Doug Laycock joined Terry at Michigan; Mark Gergen left for Berkeley; Brian Leiter left for Chicago; Ernie Young went to Duke; and Sarah Cleveland, Philip Bobbit, and Ronald Mann set sail for Columbia. And we were at serious risk of more losses still, with schools from Harvard on down showing serious interest in members of our community.

But from that somewhat bleak moment on, we have had remarkable success. In a handful of years, we have hired sixteen tenure and tenure-track faculty. Seven came as entry-level hires. Five of those seven are women, and, in all, seven of our sixteen hires are women. Our nine lateral hires range from early mid-career to senior academics. We have enriched the diversity of our faculty, strengthened our profile in important areas such as law and economics, and added luster and scope to our community of teachers and scholars. Our colleagues -- including those who were at risk -- have turned their backs on other opportunities and made full-blooded commitments to our shared enterprise.

This has been a terrific run, and it has not been easy. The Appointments Committee and the faculty as a whole deserve enormous credit for the hard work, patience, collegial energy, and good judgment that have been required. For my part, I have committed great effort to the cause of recruiting the candidates that we as a faculty have decided to hire, and I have done everything I could to retain those among our colleagues who were most at risk of being drawn away. This has been an intense preoccupation of my deanship. Much more than compensation has been involved on my part in regard to our faculty project; but compensation is very much in the spotlight just now, so I will address that first.

**The Market for Law Professors, and Our Response.** In several of Sandy Levinson's emails, he describes the aggressive and generous compensation practices at Harvard, Yale and NYU. Those practices have become the norm, not the exception, among top twenty law schools. They are the practices with which we have had to contend in the course of our faculty-building. I cannot speak with confidence of Yale's fabled offers in the \$450,000 to \$600,000 range, but in our own experience, candidates whom we have wished to hire have been offered more than \$400,000 a year, along with other substantial emoluments of the sort I will describe below.

In the course of our hiring efforts, we have found ourselves in direct competition with Duke, Michigan, Northwestern, UCLA, UVA, Vanderbilt, Boston University, USC, and Cal Tech. These schools very much wanted to hire or hold on to the attractive candidates that we had set out to recruit. It was neither possible nor reasonable to match all the offers from rival schools, and in several cases we stopped significantly short when the price was too high; in two cases, candidates we had voted to hire accepted offers at other schools that were well beyond not merely what we were willing to pay but also well beyond the compensation package of anyone on our faculty. But, in general, I tried to meet the market. Salary, of course, has been the dominant compensation variable. Our salary commitments have needed to reflect the market in which they were forged.

Common to the compensation packages offered by other schools to the candidates that we have undertaken to recruit have been non-salary commitments with substantial financial entailments. We, too, have frequently included non-salary commitments, in the form of one-time loans. These have been accompanied with a promise on our part to defray the costs of repaying the loan in annual installments of five or seven years, provided that the recipient of the loan remains on our faculty. Typically, these loans are aimed at the purchase of a home, and have helped to settle our new colleagues and their families in Austin. In exchange for these loans, I have asked and received from the recipients a moral commitment to remain members of our community for at least five years.

Many of our lateral hires have received such loans. In some cases, I was responding directly to one-time bonus offers by other schools. In other cases, I was trying to meet generous offers made on other terms by competing schools. These other terms included, in addition to a high annual salary, substantial housing assistance, generous college tuition benefits, massive programmatic funds, and the prospect of university professorships. In one case, we extended a loan to an entry-level candidate. This was in the context of a highly competitive offer from a higher ranked school for a highly desirable candidate who might well have chosen away from us. In all of these cases, the loans aimed not just at recruiting new faculty, but at doing so under circumstances that would conduce to our new colleagues becoming long-term members of our community.

During this same period, some of our own colleagues came to be at immediate risk of departure. Harvard, Columbia, Berkeley, Michigan, Penn and UVA all began to recruit members of our faculty. The circumstances were such that there was good reason to suppose that many of these situations would progress to firm offers, and that our colleagues and their families -- on the scene, with firm offers in hand, housing sampled, and spousal opportunities explored -- would be lured away. The loan arrangements were intended to make it attractive for our colleagues and their partners to back away from the brink, and renew their commitment to remain members of our community.

Two of the loan arrangements were offered under less fraught circumstances. Each of these involved a young member of our faculty who had just received tenure and who was at risk of leaving. One had already visited at a very highly ranked school, and the other had begun to produce high caliber scholarship in an area of considerable importance to us, an area in heavy demand elsewhere. I viewed these two loans as sound law school practice, and would be pleased to persuade our other recently tenured colleagues to make commitments of the requisite sort. As is true of all good law schools, but most especially true at schools which have hired well and provided a nurturing academic environment, our junior colleagues will be at their most vulnerable immediately after tenure, when their files will have been carefully read by outside reviewers at predatory schools. A program that offers these young colleagues housing support would reduce the disparities likely to exist between them and their colleagues who were hired in early mid-career, and settle them more firmly in place.

Efforts of the sort we have undertaken to attract and retain faculty at UT go back at least as far as Mark Yudof's time as Dean. Competitive, off-scale salaries and forgivable loans were not my invention. One or both were employed by at least three of my predecessors here. They were, of course, not UT's invention: They are very prevalent among our peer schools, and, as I have emphasized, they define the market in which we have recruited our recent hires. The funds that have supported our loan arrangements have come from monies that have been raised and expressly endowed for academic excellence. I have raised the bulk of these funds – which total more than \$10 Million -- for exactly the purpose of recruiting and retaining faculty.

**Equity.** All that said, I may have not gotten every case right in the course of our sustained effort to build and hold on to our faculty. Given the importance of the objective, I was surely drawn to the side of generosity. And, whether perfectly calibrated or not, the compensation packages that have resulted from our hiring campaign have raised concerns about disparities in our overall salary structure, disparities which in some cases are attributable to long-standing, systematic judgments of the Budget Committee and former deans.

To some extent, the faculty as a whole have enjoyed the widely distributed benefits of a rising tide driven by our successful fundraising. Most members of the faculty received \$10,000 raises within weeks of my assuming the deanship. And, in a effort to raise the compensation of the faculty in a more targeted and equity-enhancing way, the Budget Committee and I agreed early on to raise the summer research stipends of all chair holders actively engaged in scholarship to 1/3 of their academic rate. This brought a substantial number of unquestionably deserving faculty well up in our salary chart, where they belong. In addition, a broad swath of our faculty who are actively engaged in scholarship have received the combined benefits of our available funds and my commitment to support scholarship. When legitimate scholarship needs have arisen, I have willingly underwritten: unusual and extensive travel; special administrative assistance, including transcription and translation; advanced research assistance, including graduate students and freelance consultants; teaching relief or sequencing;

the hosting of domestic and international conferences; and special library or database materials.

Still, at the end of the day, there is a kind of natural, syncopated cycle of equity to be hoped for, in which market hiring in effect recalibrates our salary scale. We have made progress, but we have been the victims of bad timing. During my deanship, the University as a whole has been on an austerity budget, and we at the Law School have been under tight constraints as to salary adjustments. For the academic year 2008/2009, the University froze all salaries. For the academic year 2009/2010, the University directed us to focus on questions of equity, but with a tight budgetary maximum. This permitted us to focus predominantly -- albeit with limited funds -- on gender equity, and on making other equitable adjustments as well. In the academic year 2010/2011, we were directed to use an overall 2% salary increase pool, but only for one time payments, with not lasting impact on salary. In the present academic year, 2011/2012, our salary recommendations were based on a 2% pool, as directed. This by no means constitutes a complaint about University policy, which has throughout been guided by a measured response to serious budgetary constraints. But it has hobbled our capacity to adjust our salary scale.

Of particular importance in this picture is gender equity. For the past several years, gender equity has been much on my mind and has been an important part of the work of the Budget Committee. Many of our equity-based raises have been directed at women members of our faculty, and we have conferred four chairs on women faculty in these years and offered a chair to a fifth. Beyond issues of compensation, I have placed the support of the Law School fully behind the Center for Women in the Law, underwriting a portion of the Center's expenses when it was not yet financially self-sustaining. And with regard to both hiring and retention, I have both encouraged the faculty to be, and personally have been, as flexible and creative as possible in service of hiring and retaining qualified women as colleagues. We have had notable success in doing so. Still, six months ago, Stefanie Lindquist and I agreed that we would be well served by having a Gender Equity Task Force, and posted our commitment to that venture on our website. In the section on "Going Forward", below, I will describe the composition and launch of our Gender Equity Task Force.

**Faculty Review.** Parallel to these events has been the question of the openness of our compensation commitments to faculty review. When I became Dean, at least three categories of compensation were not available for review by the Budget Committee: summer research stipends; most other salary supplements described in various ways, including "housing supplements"; and the loan arrangements described above. At the outset of my deanship, the Budget Committee urged me to make information about all aspects of our compensation available. I declined to do so. I was accustomed to a law school compensation environment typical of almost every elite American law school -- an environment in which faculty members could and did engage with the Dean about their own compensation packages, but did not know how that package compared to their colleagues' compensation. This is true even in a number of state schools, where

the official, reported compensation excludes key compensation arrangements, arrangements most typically associated with large-ticket housing support.

Over time, however, I came to recognize the importance of sharing full compensation information with the Budget Committee. Two years ago, in the academic year 2009-2010, I agreed to share all compensation information with the Budget Committee, subject only to the proviso that the loan arrangement information be shared with a subcommittee of the Budget Committee rather than the Committee as a whole. I asked for agreement on that proviso because a number of these arrangements involved health, and other sensitive family matters, and the beneficiaries of these arrangements had entered into them with the understanding that they would remain confidential. The Budget Committee agreed to proceed on this basis and, from 2009/2010 on, the Budget Committee has had all salary information and a subcommittee -- consisting of Bob Peroni as Chair, Ernest Smith, and Tom McGarity -- has had access to all information concerning the loan arrangements. The new Chair of the Budget Committee, Lynn Baker, and I had agreed at the beginning of this academic year that the entire Budget Committee this year would receive full compensation information including that concerning loan agreements.

**The Appointments Process.** To state the obvious: A strong faculty is the very heart of a fine law school. We teach, we do scholarship, we seek to move the world in constructive ways. Our ability to hire and hold on to superb colleagues over the last handful of years has had a radiant effect. It is in large part on the strength of that ability that we have been able to recruit wonderful students. The credentials of our students have soared, and this year, when the rate of applications to law schools threatens to drop by nearly 20 per cent, our early returns indicate that our applications will hold steady or rise. The promise of a great law faculty has been at the heart of my fundraising efforts. We are just short of having raised 80 Million dollars so far, and there are a number of promising gifts in the pipeline. Our national reputation is much enhanced by our faculty success, of course, and even the accursed US News rankings have nodded in our direction: Five years ago, we were ranked 17th by U.S. News; this year, we became the first law school in the modern history of the rankings to break into the charmed circle of the "T-14" or top 14 law schools. Our ability to hire superb colleagues is the strongest positive signal we can send to prospective deans and to ourselves. It would be a misfortune to squander our momentum of fine faculty hires by suspending our hiring this year.

We now have a process in place to assure Budget Committee participation in compensation decisions, including those made as we recruit new colleagues. We employed a variation of that process in our last active hiring year, and it worked well. In the 2009/2010 hiring season, the faculty voted to extend offers to two entry-level candidates and one lateral candidate. Before making offers to these candidates, I consulted with the whole Budget Committee and got advice about the compensation packages I should offer. I followed that advice, and returned briefly to the Committee with requests from the candidates. Since the lateral candidate requested a loan arrangement, I consulted with the subcommittee as to that request. I then returned to

the candidates with revised offers that had been approved by the Budget Committee and the subcommittee, and those were accepted. The process worked well: I found it helpful to have the advice of the Budget Committee and the subcommittee; and our final arrangements were entirely consistent with the Committee's advice.

The only change now contemplated involves placing all compensation information, including loan agreement information, in the hands of the Budget Committee as a whole, and consulting the Committee as a whole as to all questions of compensation. I am happy to be bound by the Committee's judgment. This seems a well-formed process to assure faculty oversight of the hiring process, compensation included.

**Going Forward.** This year's Budget Committee consists of Lynn Baker as Chair, joined by Stefanie Lindquist, Sandy Levinson, Tom McGarity, Scot Powe, Ernest Smith, Matt Spitzer, and Wendy Wagner.

Our Gender Equity Task Force will also be Chaired by Lynn Baker, joined by Stefanie Lindquist and Wendy Wagner. The charge of the task force is to examine all tenure and tenure-track faculty compensation information, including loan agreement information, to determine whether our compensation structure raises gender equity concerns, and, if so, to consider the shape and magnitude of the adjustments called for by those concerns.

Lynn Baker has begun the process of assembling in systematic form complete compensation data for the past six years, and the Task Force will begin its work in very short order. If the Task Force is of the view that its work will be facilitated by consulting with anyone in another part of the University, or by adding one or more members from another part of the University, I will support that judgment. Likewise, if the Task Force is of the view that its work will be facilitated by consulting with someone with experience elsewhere in the legal academy, or by adding one or more members from elsewhere in the legal academy, I will support that judgment.

The Task Force will initially report its findings and recommendations to the Budget Committee as a whole, and to me, but its findings and recommendations will ultimately be shared with the entire tenured and tenure-track faculty. For my part, I will do everything possible to see that the Task Force and its recommendations are given a high priority in our compensation decisions. Many of the Task Force's recommendations, of course, will necessarily be addressed to my successor. It is my hope that she or he too will take the Task Force's recommendations to heart.

I will encourage the Budget Committee to supplement its ordinary functions this year with two additional responsibilities: First, I would like the Committee to consider whether there are other structural equity concerns besides gender in our compensation picture, and, if so, to consider the shape and magnitude of the adjustments called for by those concerns. Second, I would like the Committee to consider mechanisms by which these adjustments and any called for by the Gender Equity Task force can be made. I have in mind mechanisms like the temporary freezing of some group of salaries and

using the funds thus made available to begin to make the adjustments called for. As in the case of the Gender Task Force, if the Budget Committee is of the view that its work will be facilitated by consulting with one or more persons in another part of the University or elsewhere in the legal academy, I will support that judgment.

In the meantime, I encourage you all to remember how important it is that you do everything possible to support our sense of community and mutual respect. It is very important for the future of the Law School that all of our colleagues feel welcome and supported, and that prospective deans see the underlying good health and robust promise of the University of Texas School of Law.

I will stop here, in the hope that these remarks contribute to a constructive and civil conversation going forward.

Faithfully yours,

Larry Sager