

Finding the Goldilocks Zone: Negotiating Your First Employment Offer in Legal Academia

Darby Dickerson

I. Introduction

Being offered your first academic teaching position is a thrill. But receiving the offer can trigger anxiety and trepidation.¹ After learning the initial terms, questions about whether, what, and how to negotiate can loom large.² You may think that negotiating too aggressively could harm your chances of securing the position or building a positive relationship with your dean. On the other hand, not negotiating may mean leaving valuable consideration on the table, deflating your enthusiasm or self-confidence if you learn others at the same level earn more, or signaling to the administration that you lack the skill to negotiate. The goal should be to strike just the right balance—to find the Goldilocks Zone³—by negotiating the most important terms in a way that meets both parties’ needs.

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1. See Karen Kelsky, *Negotiating as Therapy*, THE PROFESSOR IS IN (Mar. 16, 2018), <http://theprofessorisin.com/2018/03/16/negotiating-as-therapy/> (“I’ve also come to understand that Imposter Syndrome actually ESCALATES at the time of the long-sought tenure track offer.”); see also Sindhumathi Revuluri, *How to Overcome Imposter Syndrome*, CHRON. HIGHER EDUC. (Oct. 4, 2018), <https://www.chronicle.com/article/How-to-Overcome-Impostor/244700> (providing suggestions for academics to “feel better about who you are and what you have done, and as a result, maybe even achieve more”).
2. Questions that may zoom through your mind are whether the offer is fair and equitable; whether the offer meets your needs; whether the school will rescind the offer if you negotiate, or negotiate too hard; whether you are annoying your future employer by asking for too much or pushing too hard; and whether you are selling yourself short. See Sauvik Das, *Advice on Tenure-Track Job Negotiations*, MEDIUM (Apr. 3, 2018), <https://medium.com/@scyrus89/advice-on-tenure-track-job-negotiations-7be9744a99df>; see also LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON’T ASK: NEGOTIATION AND THE GENDER DIVIDE* 8 (2003) (explaining that failing to negotiate means that women not only “sacrifice additional income” but may also “sacrifice some of their employers’ regard too”).
3. As Professor Rebecca A. Delfino has explained, “The ‘Goldilocks Zone,’ an idea developed

Of course, that's easier said than done. Negotiating a job offer is a complex, bespoke task. For this reason, all involved should avoid a cookie-cutter approach.⁴ Keeping that important tenet in mind, what follows is one law dean's perspective on negotiating your first full-time faculty appointment in legal academia. While the essay focuses on women planning to enter the legal academy, it also provides more general advice about typical terms of an initial offer and strategies for all candidates to reach the Goldilocks Zone and negotiate a win-win academic appointment.

II. Women and Negotiations

In my seventeen years as a law dean, I've been fortunate to hire dozens of faculty members. In that experience, I've found that men negotiate their offers more frequently and forcefully, and less self-consciously, than women. The experiences of others⁵ and research studies⁶ reinforce that my experience is not unique.

A. Why fewer women negotiate employment offers

Scholars have advanced myriad reasons why fewer women negotiate job offers than men. These include (1) the perpetuation of "rigid gender-based standards for behavior—standards that require women to behave modestly and unselfishly and to avoid promoting their own self-interest";⁷ (2) fear of

in the field of astrobiology, is a zone around a star in which just the right, Earth-like conditions exist for liquid water to remain without freezing or evaporating, so life can develop." Rebecca A. Delfino, *Prohibition on Successive Prosecutions for the Same Offense—In Search of the "Goldilocks Zone": The California Approach to a National Conundrum*, 54 AM. CRIM. L. REV. 423, 423–24 n.4 (2017).

4. Pete Nelson, *Receiving and Negotiating an Academic Job Offer*, U. ILL. CHI., <https://web.archive.org/web/20150926233910/https://research.uic.edu/sites/default/files/Receiving.pdf> (last visited June 20, 2019).
5. *E.g.*, Kelsky, *supra* note 1 ("It goes without saying that women struggle to negotiate the most. Women, socialized by a lifetime of being 'less than,' virtually never easily ask for the things to which they are entitled, without a great deal of encouragement and support through our work together. The process of working with me becomes a process of confronting the highly gendered fear of being seen as an improper woman, and an unacceptable human who has overstepped the bounds of 'correct' behavior.").
6. *E.g.*, Hannah Riley Bowles, *Why Women Don't Negotiate Their Job Offers*, HARV. BUS. REV. (June 19, 2014), <https://hbr.org/2014/06/why-women-dont-negotiate-their-job-offers>; Andreas Leibbrandt & John A. List, *Do Women Avoid Salary Negotiations? Evidence from a Large-Scale Natural Field Experiment*, 61 MGMT. SCI. 2016, 2016 (2015) ("We find that when there is no explicit statement that wages are negotiable, men are more likely to negotiate for a higher wage, whereas women are more likely to signal their willingness to work for a lower wage. However, when we explicitly mention the possibility that wages are negotiable, these differences disappear completely."); BABCOCK & LASCHEVER, *supra* note 2, at 1–16.
7. BABCOCK & LASCHEVER, *supra* note 2, at 11.

backlash;⁸ (3) lower expectations and a lower sense of personal entitlement;⁹ (4) differences in childhood rearing based on sex; (5) stereotype threat; and, (6) pay secrecy¹⁰ and exclusion from information-sharing networks.¹¹

In their influential book *Women Don't Ask: Negotiation and the Gender Divide*,¹² Linda Babcock and Sara Laschever explain that “powerful social influences . . . go to work the day a woman is born” and have a “broad impact on women’s behavior.”¹³ As a result of these influences:

- Women perceive that “their circumstances are more fixed and absolute—less negotiable—than they really are.”¹⁴
- Women often believe they are “stuck’ with their circumstances” instead of “looking for ways to improve a difficult situation.”¹⁵
- Women “hope that hard work alone will earn them the recognition and rewards they deserve” instead of “publicizing their accomplishments.”¹⁶
- Women believe “they will be invited to participate if their participation is wanted” instead of “expressing interest in new opportunities.”¹⁷
- Women believe that special opportunities and “allowable divergences from the status quo will be announced and offered to everyone.”¹⁸

Regarding backlash, studies confirm that women who negotiate job offers experience backlash more frequently than men because some employers perceive that negotiating violates the traditional gender stereotype of being a “sensitive, communal caregiver[].”¹⁹ Babcock and Laschever also observed

8. *Id.* at 96–97.

9. *Id.* at 41–61. Women “go into the work force expecting to be paid less than men, so they’re not disappointed when those expectations are met.” *Id.* at 42. See also Sarah Brown et al., *The Gender Reservation Wage Gap: Evidence from British Panel Data*, 113 *ECON. LETTERS* 88, 88 (2011) (explaining that women typically have a lower “reservation wage” than men; the “reservation wage” is “the lowest wage at which an individual is willing to work”).

10. Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 *ARIZ. ST. L.J.* 951, 958 (2011).

11. BABCOCK & LASCHEVER, *supra* note 2, at 11.

12. BABCOCK & LASCHEVER, *supra* note 2.

13. *Id.* at 18.

14. *Id.* (noting that many women assume “that someone or something else is in control.”). Babcock and Laschever explain the concept of “internal locus of control” and how that concept feeds into many women’s belief that “their circumstances are controlled by others while men are most likely to believe that they can influence their circumstances and opportunities through their own actions.” *Id.* at 2.

15. *Id.* at 18.

16. *Id.*

17. *Id.*

18. *Id.*

19. Project on Negotiation, *Should Women “Lean In” to Create More Value in Negotiations?* HARV. U. (Jan.

that women who rebel against accepted workplace norms “often risk being punished” and are sometimes labeled “pushy,” “bitchy,” or “difficult to work with.”²⁰

To help illustrate women’s lower expectations, Babcock and Laschever describe a survey of undergraduate business students:

After presenting them with information about salary ranges for the different types of jobs they would be qualified to take after graduating, [the researcher] asked them to identify which job they expected to obtain and what they thought their starting salary would be. Working from the same information, women reported salary expectations between 3 and 32 percent lower than those reported by men for the same jobs. There was no evidence that the men were more qualified for the jobs they chose—just that women expected to earn less for doing the same work.²¹

Babcock and Laschever trace these differences in perception to gender stereotypes children learn in childhood.²² These stereotypes teach girls that they have less control, are more vulnerable and need protection, and should focus on the needs of others.²³ They also fail to teach girls how to navigate certain social systems²⁴ and how to become more internally secure about their abilities and self-worth.²⁵

23, 2020), <https://www.pon.harvard.edu/daily/dealmaking-daily/should-women-lean-in-to-create-more-value-in-negotiations/> [hereinafter PON]; see also BABCOCK & LASCHEVER, *supra* note 2, at 119–21 (explaining that many women experience discomfort when negotiation is viewed as an adversarial process); Emily T. Amanatullah & Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women’s Fear of Backlash and Attenuated When Negotiating on Behalf of Others*, 98 J. PERSONALITY & SOCIAL PSYCHOL. 256 (Feb. 2010).

20. BABCOCK & LASCHEVER, *supra* note 2, at 11.

21. *Id.* at 42 (citing B.A. Martin, *Gender Differences in Salary Expectations When Current Salary Information is Provided*, 13 PSYCHOL. WOMEN Q. 87 (1989)).

22. *Id.* at 44.

23. *Id.* at 41–61.

24. *Id.* at 30 (“We heard many stories of how parents communicate this difference to their children. Martha, the career counselor, described a conversation she had with her husband about ‘how his father had taken the boys out and . . . taught them how to tip—basically, taught them how to slip the maître d’ money for good tables or give some money to the guys who were in the band to play a good song.’ She’d never met a woman who’d had a comparable experience . . . in which a parent or other authority figure took her out and showed her . . . ‘how to circumvent the system’ to get what she wanted.”).

25. *Id.* at 41–61. See also Sharon Rabin-Margalioth, *The Market Defense*, 12 U. PA. J. BUS. L. 807, 814–15 (2010) (discussing BABCOCK & LASCHEVER, *supra* note 2, in the context of the gender pay gap and summarizing that “[b]oys are encouraged to ask for things they want and tend to believe that they have control over the circumstances that shape their lives. Young girls are taught to focus on the needs of others and to apply less control in altering their own situation. Therefore, women are less inclined than men to come forward and demand raises, bargain over initial wages, or approach other employers to solicit competing job offers.”).

These persistent, nagging stereotypes can lead women to experience stereotype threat in the context of contract negotiations. “Stereotype threat” is “diminished performance due to an anxiety that one will confirm a preexisting negative stereotype about one’s identity group.”²⁶ It also “arises from situational cues signaling that a negative stereotype about one of one’s social identities is now relevant as a possible interpretation for one’s behavior and self in the setting.”²⁷ As one author has explained:

Importantly, one need not believe the stereotype to be affected: even if the individual herself does not hold a negative belief regarding her status, her consciousness of the *perceived* significance of the stereotyped status can undermine her confidence nonetheless. Stereotype threat is thereby self-evaluative: it stems from the subject’s own evaluative anxiety that *others* will judge her based on the relevant stereotype. Stereotype threat is simply the fear of confirming a stereotype, irrespective of the objective or subjective merit of that stereotype. Sadly, the result is that an individual will still experience stereotype threat even though she is completely cognizant that the underlying stereotype itself is inaccurate.²⁸

Because women who negotiate are perceived less favorably, the opportunity to negotiate an employment offer could be a situational cue that triggers the stereotype threat. When activated, the stereotype threat may dissuade women from negotiating or being assertive during negotiations.²⁹

Because women are less apt to negotiate, informational asymmetry, such as pay secrecy and exclusion from informal information-sharing networks—especially “[w]hen combined with excessively discretionary pay schemes”—can further “skew wage negotiation results against women.”³⁰ “Pay secrecy” refers to formal or informal policies “prohibiting employees from discussing their wages with coworkers.”³¹ These rules may be included in written policies or employee handbooks, or they may be “orally conveyed to employees at the time of hiring or at some later point in the employment relationship.”³² When pay secrecy conventions are in place, “pay discrimination can flourish, even in the absence of intentional sex discrimination.”³³ It is thus important

26. Jessica L. Roberts, *Rethinking Employment Discrimination Harms*, 91 *IND. L.J.* 393, 405 (2016). See generally Claude M. Steele et al., *Contending with Group Image: The Psychology of Stereotype and Social Identity Threat*, 34 *ADVANCES EXPERIMENTAL SOC. PSYCHOL.* 379, 380 (2002).

27. Roberts, *supra* note 26, at 405.

28. *Id.* at 406–07 (footnotes omitted).

29. *Id.* at 410. See generally David M. Amodio, *The Neuroscience of Prejudice and Stereotyping*, 15 *NATURE* 670 (2014) (explaining the neural basis for stereotyping).

30. Eisenberg, *supra* note 10, at 958. See also *id.* at 960–61.

31. Rafael Gely & Leonard Bierman, *Pay Secrecy/Confidentiality Rules and the National Labor Relations Act*, 6 *U. PA. J. LAB. & EMP. L.* 121, 124 (2003).

32. *Id.*

33. See Eisenberg, *supra* note 10, at 952.

to investigate ways to make offers regarding compensation more transparent during the negotiating process.³⁴

B. Managing expectations and potential backlash

Women, and especially women of color, are right to be concerned about gendered stereotypes and how they may impact negotiations.³⁵ But that concern should be put in context. It should not paralyze you. Instead, it should motivate you to gather information to understand the landscape and develop a solid negotiating strategy, topics addressed in Section IV.

The bottom line is that law school deans expect you to negotiate, and neglecting to negotiate can negatively impact your entire academic career.³⁶ If you start with less money, it's common for that wage gap to continue.³⁷ When new deans arrive over time, some may equate your existing salary with your past performance, even if that's not true. This spiral can result in hundreds of thousands of dollars lost over a career.³⁸ In addition, women, especially women of color, fare poorly when it comes to noneconomic resources, such as how much time they spend in informal, and thus typically uncompensated, service activities, such as advising students.³⁹ Failing to negotiate your work package can exacerbate that disparity. I also find that women who did not negotiate well at the beginning eventually become bitter about their workload,

34. See *infra* § IV (suggesting ways to negotiate pay and ask about how compensation terms were generated).
35. SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 48 (2013) (“No wonder women don’t negotiate as much as men. It’s like trying to cross a minefield backward in high heels.”). For information about the difficulties of women of color entering legal academia, see MEERA E. DEO, *UNEQUAL PROFESSIONAL: RACE AND GENDER IN LEGAL ACADEMIA* 35-54 (2018).
36. Kelsky, *Negotiating as Therapy*, *supra* note 1.
37. Audrey Williams June, *3 Things a Faculty-Pay Survey Shows about Academic Jobs*, *CHRON. HIGHER EDUC.* (Apr. 10, 2019), <https://www.chronicle.com/article/3-Things-a-Faculty-Pay-Survey/246092> (confirming that “[g]ender equity remains an issue”).
38. See BABCOCK & LASCHEVER, *supra* note 2, at 131. See generally John Warner, *Equal Pay for Equal Work: Calculating ‘Fair Pay’ for Teaching*, *INSIDE HIGHER ED.* (Jan. 26, 2020) (introducing the Teaching Labor Wage Gap Calculator, “which determines the different per-course wages received according to rank and status, and then provides an adjusted wage (Teaching Labor Equity Wage) if that available pool of money were redistributed to reflect equal pay for equal work”).
39. See BABCOCK & LASCHEVER, *supra* note 2, at 130. See also Audrey Williams June, *The Invisible Labor of Minority Professors*, *CHRON. HIGHER EDUC.* (Nov. 8, 2015), <https://www.chronicle.com/article/The-Invisible-Labor-of/234098>; Patricia A. Matthew, *What Is Faculty Diversity Worth to a University?* *THE ATLANTIC* (Nov. 23, 2016), <https://www.theatlantic.com/education/archive/2016/11/what-is-faculty-diversity-worth-to-a-university/508334/>. See generally Maritza I. Reyes et al., *Reflections on Presumed Incompetent: The Intersections of Race and Class for Women in Academia Symposium—The Plenary Panel*, 29 *BERKELEY J. GENDER L. & JUST.* 195 (2014).

compensation and career advancement. Thus, it is important for both parties to remember the long-term consequences of negotiating the initial offer.⁴⁰

Research reflects that employers like and respect women who “negotiate assertively *for others*.”⁴¹ Employers were more inclined to view women favorably—and grant requests for higher compensation—when the woman candidate “communicated concern for organizational relationships” and when the explanation “seemed legitimate” in contrast to when a woman’s request for additional compensation was made without any explanation.⁴²

Using a “relational account”—an “I-We” approach—can increase a woman’s chance of negotiating a favorable contract.⁴³ To employ this approach, explain why your request has a communal effect by describing how granting your request will benefit the school, not just you personally.⁴⁴ One example would be to demonstrate that you have valuable lawyering skills to teach the students. Paraphrasing the explanation that Sheryl Sandberg used when negotiating with Facebook,⁴⁵ consider the following:

I am very excited about the possibility of joining the law school. And I appreciate the care you took in preparing the offer. But I do have some questions and would like to negotiate some points. You are hiring me to teach law students important lawyering skills, like negotiating contracts. I hope you will see my willingness to negotiate, and my skill at negotiating, as adding value at the law school.

40. E.g., Fiona Greig, *Propensity to Negotiate and Career Advancement: Evidence from an Investment Bank that Women Are on a “Slow Elevator,”* 24 NEGOTIATION J. 495 (2008).

41. Bowles, *supra* note 6 (emphasis in original).

42. *Id.*

43. *Id.* Facebook’s Sheryl Sandberg calls this a “[t]hink personally, act communally” strategy. SANDBERG, *supra* note 35, at 47. For women who feel that this approach reinforces gender stereotypes, consider the explanation of one Harvard researcher:

[T]his idea of using “relational accounts” or “I-We” strategies drives some women crazy. It makes them feel like they are bending to unjust stereotypes or simply being inauthentic. I sympathize with that reaction. We were surprised while doing the research that it would be so hard to make the backlash effects go away. But, every movement needs its idealists and pragmatists, and I am playing the pragmatist here.

Bowles, *supra* note 6.

44. Bowles, *supra* note 6.

45. SANDBERG, *supra* note 35, at 46 (“Of course you realize that you’re hiring me to run your deal team so you want me to be a good negotiator.”). See also Bowles, *supra* note 6 (suggesting, for a more junior candidate: “I don’t know how typical it is for people at my level to negotiate, but I’m hopeful that you’ll see my skill at negotiating as something important that I can bring to the job.”).

Another example is to “use the persistent gender gap in pay as a communal argument.”⁴⁶ By explaining that you are negotiating for a higher salary because women are often paid less than men, you have shifted from a personal to a communal approach. It may also cause the dean to look more carefully for gender bias in hiring practices.⁴⁷ That said, take care to communicate in a way that does not appear to accuse the dean or school of gender bias. And if you have access to data that shows the school does not have a gender pay gap, avoid this approach.⁴⁸

A similar strategy is to reframe what can be perceived as an adversarial exercise into a cooperative interaction.⁴⁹ Drawing from *Getting to Yes: Negotiating Agreement Without Giving In*,⁵⁰ use interest-based rather than a position-based bargaining by determining each side’s needs and attacking the problem collectively and creatively.⁵¹ Steps to shift to an interest-based negotiation include “asking diagnostic questions”; “sharing information about your own interests”; “unbundling or adding issues”; and “brainstorming about possible solutions rather than defending established positions.”⁵² When negotiating a faculty offer, using this problem-solving approach may include:

- *Asking* how faculty salaries are set generally;⁵³ how your specific salary offer is calculated, and how faculty may expect future pay increases to occur; whether entry-level salaries are lockstep or are based on other factors, such as prior practice or non-tenure-line teaching experience; what policies or other issues impact how compensation packages are set; and how the dean evaluates whether offers are equivalent.
- *Sharing* your interests and your reasoning for any counteroffers,⁵⁴ such as being treated fairly vis-à-vis other faculty members or tackling a specific issue, such as needing additional compensation during your bridge summer or matching an offer you’ve received from a comparable

46. PON, *supra* note 19. See also SANDBERG, *supra* note 35, at 47 (“I have advised many women to preface negotiations by explaining that they know that women often get paid less than men so they are going to negotiate rather than accept the original offer. By doing so, women position themselves as connected to a group and not just out for themselves . . .”).

47. PON, *supra* note 19.

48. See *infra* § IV(B) (discussing how to research salaries at law schools).

49. BABCOCK & LASCHEVER, *supra* note 2, at 123–26.

50. ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2011).

51. BABCOCK & LASCHEVER, *supra* note 2, at 123–24.

52. *Id.* at 124.

53. Related concepts are identifying objective criteria and procedures to discuss then with the other side. FISHER, *supra* note 50, at 82–95 (“Insist on Using Objective Criteria”).

54. See Jeffrey Loewenstein & Hyeran Choi, *Creative Agreements in Negotiation: When and Why Negotiators Redefine the Issues under Discussion*, 2015 ACAD. MGMT. ANN. MEETING PROC. 1, 3 (discussing the importance of information-sharing for negotiations).

law school, and *inviting* the dean to share the school's interests, such as ensuring that salary compression issues are not exacerbated.

- *Unbundling* concerns by breaking what appears to be a single issue into multiple issues. For example, assume one of your primary goals is developing a national presence as early as possible in your career but your offer is light on professional development dollars. One subissue is the availability of professional development funds within the law school. If the law school lacks sufficient funds, you may ask whether other university units—such as the Provost's Office, Office of the Vice President for Research, or Office of Diversity, Equity and Inclusion—could support part of your professional development needs for some period. But maybe the issue is that the school has set standard professional development budgets for all faculty members. If you have an administrative role—such as directing a legal-writing or clinical program—and need funds both to advance in that role and develop your scholarship interests, consider asking whether another programmatic budget (i.e., the operational budget for a particular area within the law school, instead of the faculty professional development or travel budget) could support some of your travel. If you need more research assistance, ask whether the school has an option to hire RAs for credit instead of pay. If the school has a specific travel budget with limits, but you need help paying for membership in a relevant professional organization, ask whether another budget could help cover that expense, so you're not paying out of pocket. If you need specific books or software to advance your research, ask whether the library or IT budget may support those additional costs. Another cost-free idea would be to ask the dean to help connect you with one or two experts in your field who would be willing to serve as external mentors.
- *Brainstorming* options to satisfy both parties' interests.⁵⁵ For example, if workload versus overall compensation is a concern, unbundle, and then generate ideas. If you have been assigned significant service obligations that will require you to devote attention to those tasks over the summer, consider asking for a twelve-month appointment instead of a nine-month appointment to distinguish your situation from others'. This approach would allow you to show your commitment to the school and acknowledge the dean's challenge to balance many faculty needs while seeking fair compensation for your work. If the dean indicates that keeping base salaries consistent is important for the institution, consider asking for a summer service stipend that will not be included in your base pay. Another approach would be to ask whether, in light of your significant service obligations, you can be exempted from other internal service assignments for some period. Still another trade-off would be to ask for additional professional development funds, a lighter

55. FISHER, *supra* note 50, at 58 ("Skill at inventing options is one of the most useful assets a negotiator can have.")

teaching load for two years instead of one, or an additional semester of pre-tenure research leave in light of your heavy service assignments.

The good news is that recent studies have confirmed that taking a cooperative approach to negotiating “actually produces solutions that are objectively superior to those produced by more competitive tactics.”⁵⁶ And women, as a group, are better at integrative bargaining than most men.⁵⁷

C. Pay disparity and the Pink Ghetto

Another point for women negotiating job offers is to understand law schools are not immune from wage gaps and compensation inequities. Within the past ten years, compensation equity cases at the University of Denver Sturm College of Law and the University of Texas School of Law have generated national headlines.⁵⁸

In addition, over the past two decades, legal education has experienced the rise of the Pink Ghetto. Women candidates are often hired into lower-paying,⁵⁹ lower-status jobs off the traditional tenure track.⁶⁰ This is especially true for place-bound mothers who can fall into the “mommy track.”⁶¹ Candidates

56. BABCOCK & LASCHEVER, *supra* note 2, at 165. *See also id.* at 164–65.
57. *Id.* at 169–70. *But see id.* at 173 (lamenting that “going into a negotiation with a cooperative approach can make it harder to withstand the onslaught of a more competitive approach”).
58. *See* Melissa Hart, *Missing the Forest for the Trees: Gender Pay Discrimination in Academia*, 91 DENV. U. L. REV. 873 (2014) (discussing the Denver case); Paula A. Monopoli, *The Market Myth and Pay Disparity in Legal Academia*, 52 IDAHO L. REV. 867 (2016) (discussing the Denver and Texas cases); Elizabeth Hernandez, *DU Law School’s “Fix” for its Gender-Pay Gap Revealed a Female Professor Makes \$30,000 Less than Her Peers*, DENV. POST (June 6, 2019), <https://www.denverpost.com/2019/06/05/du-sturm-college-of-law-pay-gap/>; Lara Korte, *UT Law Professor Sues School, Says She Was Unfairly Paid Less than Male Counterparts*, AUSTIN AM.-STATESMAN (Dec. 13, 2019), <https://www.statesman.com/news/20191213/ut-law-professor-sues-school-says-she-was-unfairly-paid-less-than-male-counterparts>.
59. *See* Ann C. McGinley, *Discrimination in Our Midst: Law Schools’ Potential Liability for Employment Practices*, 14 UCLA WOMEN’S L.J. 1, 13 (2005) (using a realistic hypothetical law school at which a first-year, tenure-track professor earned a nine-month base salary of \$85,000 and a \$10,000 summer stipend and a first-year non-tenure-track faculty member earned a nine-month base salary of \$50,000 and a \$5,000 summer stipend).
60. Marina Angel, *Women Lawyers of All Colors Steered to Contingent Positions in Law Schools and Law Firms*, 26 CHICANO-LATINO L. REV. 169, 175–76 (2016); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562–63 (2000); Hart, *supra* note 59, at 877 (“Gender inequity in law school faculties, as in other parts of the academy, begins with segregation and stratification.”); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 313–14 (2000); *see also* Teri A. McMurtry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 J. LEGAL EDUC. 575 (2017); *see also* Victor Essien, *Visible and Invisible Barriers to the Incorporation of Faculty of Color in Predominantly White Law Schools*, 34 J. BLACK STUD. 63, 68 (2003) (explaining that invisible barriers for faculty of color “begin[] with dubious teaching assignments whereby minority professors are asked to teach low-status courses like legal writing”).
61. *See* MARY ANN MASON & EVE MASON EKMAN, *MOTHERS ON THE FAST TRACK: HOW A NEW GENERATION CAN BALANCE FAMILY AND CAREERS* 67–89 (2007); KELLY WARD & LISA WOLF-

should be aware of this situation when applying for jobs or interviewing for specific positions. Be sure always to read the job description, which should indicate whether the position is on the tenure track. For those new to academia, you may seek help translating unfamiliar verbiage, such as “visiting assistant professor of law,” “lecturer,” “programmatic tenure track,” or “long-term contract, presumptively renewable.”⁶² Candidates who limit their search to a particular geographic area, especially without participating in the AALS Faculty Recruitment Conference,⁶³ might not realize they are interviewing for or accepting a position in a lower academic caste.⁶⁴

With these issues and possible approaches in mind, what follows are the terms of a typical entry-level offer and techniques to help you hit the Goldilocks Zone to reach a negotiated, mutually beneficial appointment.

III. Typical Terms of an Entry-Level Offer

It is important to understand the negotiating conventions in your field.⁶⁵ Because law schools differ in many respects—including mission, location, type (public versus private), status, size, and wealth—offers will also differ.⁶⁶ It’s important to understand and appreciate those differences, but this section describes potential terms in an entry-level offer for a law professor and what may be typical or unusual to negotiate.

WENDEL, *ACADEMIC MOTHERHOOD: HOW FACULTY MANAGE WORK AND FAMILY* 2 (2012) (presenting “a longitudinal study of women faculty members with children”).

62. See *infra* §§ III(A), (B) for a discussion of position status.
63. *Calendar of Upcoming Events*, ASS’N AM. L. SCH., <https://www.aals.org/events/past/> (last visited July 24, 2020); see DEO, *supra* note 35, at 26 (“Many women are unwilling or unable to relocate for work—a significant difference from many men, who pursue positions nationally with a legitimate interest and availability to take the position that best fits their professional goals.”).
64. See Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRECTORS 12, 14–15 (2008); see also Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 258–73 (1997) (presenting empirical evidence demonstrating a pattern suggesting that law schools may sort women into low-status courses, such as family law and legal writing, and reserve highly regarded courses, like constitutional law, for men); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 467 (2004) (“At the top are the tenured ‘doctrinal’ professors, roughly 70 percent of whom are male; at the bottom are legal writing professors, roughly 70 percent of whom are female.”).
65. Karen Kelsky, *The Professor Is In: Can I Negotiate?*, CHRON. HIGHER EDUC. (Mar. 21, 2017), <https://community.chronicle.com/news/1741-the-professor-is-in-can-i-negotiate>.
66. Kelsky, *Negotiating as Therapy*, *supra* note 2 (emphasizing that “all negotiations are individual and local”). For a good overview of the law school hiring process, including information about some offer terms described in this section, see Debra R. Cohen, Matchmaker, Matchmaker Make Me a Match: An Insider’s Guide to the Faculty Hiring Process (May 12, 2010) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=931995. See also Brian Leiter, *The Mechanics of the Academic Job Market in Law*, U. CHI. L. SCH. (Aug. 2009), <https://www.law.uchicago.edu/careerservices/academicmarketmechanics>.

A. Type and length of faculty appointment

Most universities have many types of full-time academic appointments, but the two main buckets are tenure-line and non-tenure-line. The job description states the type of faculty appointment, so review that carefully when applying.⁶⁷ The type of appointment will then drive the length of initial and later appointments or contracts, as well as other issues, such as pay and job security.

Many candidates desire positions that can lead to tenure. Tenure grants a professor an indefinite appointment at the university that protects the professor from being terminated except in extraordinary circumstances, such as a financial exigency or for-cause dismissal based on conduct articulated in a policy or handbook provision.⁶⁸ The first step toward attaining tenure is to obtain a tenure-track position.⁶⁹

Tenure-track positions can vary; for example, positions can be “regular” tenure-track or “programmatic” tenure-track. Programmatic tenure-track positions are most frequently found in legal-writing⁷⁰ and clinical⁷¹ programs. Programmatic tenure-track positions usually require that you continue to teach in that particular field, even if your package includes other courses. Programmatic tenure-track positions at some schools also emphasize

67. Ass’n Am. Law Sch., *Becoming a Law Teacher*, <https://teach.aals.org/> (last visited Aug. 4, 2020).
68. ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020–2021 app. 1 (2020), https://www.americanbar.org/groups/legal_education/resources/standards/ (“After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.”). See generally JULEE T. FLOOD & TERRY L. LEAP, *MANAGING RISK IN HIGH-STAKES FACULTY EMPLOYMENT DECISIONS* 80–107 (2018) (explaining the tenure contract).
69. Some schools may refer to these positions as tenure-earning, tenure-line, or tenure-eligible. *What Are the Types of Faculty Appointments in Higher Education?* HIGHER ED PROFESSOR (Aug. 27, 2015), <http://higher-ed-professor.com/2015/08/27/what-are-the-types-of-faculty-appointments-in-higher-education/>. See also Rodney E. Rohde, *Tips for Success on Your Path to Tenure*, ELSEVIER (Sept. 17, 2015), <https://www.elsevier.com/connect/tips-for-success-on-your-path-to-tenure> (describing the tenure track as a “six-year interview”).
70. The Legal Writing Institute’s website provides helpful resources regarding the status of legal-writing professionals. *The Professional Status Committee and Status-Related Advocacy*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy> (last visited June 26, 2019) and *ALWD/LWT Survey*, LEGAL WRITING INST., <https://www.lwionline.org/resources/surveys> (last visited June 26, 2019) are good places to start.
71. CLINICAL LEGAL EDUC. ASS’N, <https://clea.wildapricot.org/> (last visited June 26, 2019), and Robert R. Kuehn & David A. Santacroce, *The 2016-17 Survey of Applied Legal Education*, CLINICAL LEGAL EDUC. ASS’N (2017), <https://clea.wildapricot.org/resources/Documents/CSALE%20Report%202016-17.pdf>, are good sources for information about the status of faculty who teach in clinical programs. See also Bryan L. Adamson et al., *Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention*, 62 J. LEGAL EDUC. 115 (2012); Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012) (describing five models of clinical faculty status).

professional practice knowledge, teaching, and service over scholarship. Voting rights and pay for programmatic tenure-track positions may be equal to or less than those for regular tenure-track positions.

The tenure clock can vary by school, but five to seven years is standard.⁷² During this period, you will be given shorter appointments and will be reviewed on a schedule set forth in a policy or handbook.⁷³ Some schools give one-year contracts; some give two-year contracts; some give an initial three-year contract. At most schools, tenure-track faculty are reviewed on their teaching,

72. *Professor Rankings: From Adjunct to Emeritus*, THE BEST SCH. (Mar. 23, 2020), <https://thebestschools.org/magazine/professors-ranks/>. See also *Faculty Manual, Chapter I: Academic Titles at Vanderbilt*, VAND. U. (last visited June 13, 2019), <https://www.vanderbilt.edu/faculty-manual/part-ii-appointment-and-tenure/chi-academic-titles-at-vanderbilt/> (listing and explaining a wide variety of tenure-track and non-tenure-track titles). The ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 68, at app. 1 (emphasis added), provides:

Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

Tenure clocks can be tolled for good cause as defined in university policy. These might include extended illnesses, family or parental leave, and military or government-service leave. *E.g.*, *Faculty Affairs, Leaves & Tenure Clock*, DUKE U. (last visited June 27, 2019), <https://facultyaffairs.provost.duke.edu/leaves-tenure-clock>; Office of Faculty Affairs, *The "Tenure Clock,"* U. COLO. BOULDER (last visited June 16, 2019), <https://www.colorado.edu/facultyaffairs/career-milestones/reappointment-promotion-and-tenure/relevant-policies-and-procedures-2>. *But cf.* Heather Antecol et al., *Equal but Inequitable: Who Benefits from Gender-Neutral Tenure Clock Stopping Policies?* 108 AM. ECON. R. 2420, 2420 (2018) (demonstrating "that the adoption of gender-neutral tenure clock stopping policies substantially reduced female tenure rates while substantially increasing male tenure rates").

73. See generally FLOOD & LEAP, *supra* note 68, 89–91 (explaining the importance of faculty handbooks in the tenure and review process).

scholarship, and service.⁷⁴ The most significant review usually comes around the mid-point toward tenure⁷⁵ and may be coupled with an opportunity for a promotion in rank.

Non-tenure-line positions—also called “contingent faculty”⁷⁶—include visiting assistant professor, professor of practice, research professor, clinical professor, instructor, lecturer, academic achievement or bar preparation specialist (or director), and assistant professor non-tenure-track slots. Non-tenure-line positions are usually for a fixed term, which can range from one semester to five years. The positions may or may not be renewable. Renewable positions may start with a shorter initial contract of one or two years and then shift to longer periods, such as three to five years.

Contingent positions are less secure and typically pay less than tenure-track positions. They also have fewer (if any) governance rights, such as voting rights in faculty meetings, and are more easily impacted by changes in budgets and school priorities. Because they usually do not have scholarship expectations, faculty holding contingent positions may not be eligible for sabbaticals or summer research grants. In law schools, contingent positions are often teaching-intensive, meaning the faculty holding them teach more sections or more students per semester than tenure-track professors, or teach courses that require extensive feedback and individualized attention. They can also be service heavy and carry expectations to coach advocacy teams, advise students or student organizations, or participate in activities such as new student orientation.

If you are hoping to join an ABA-approved law school, Standard 405 of the ABA Standards and Rules for Approval of Law Schools addresses professional environment for full-time professors.⁷⁷ Standard 405(b) requires that law schools “have an established and announced policy with respect

74. *E.g., Regent University School of Law Faculty Appointment, Promotion, Tenure, and Evaluation Policy and Procedure*, REGENT U. SCH. L. (last modified Jan. 2011), <https://www.regent.edu/app/uploads/sites/3/2016/10/PT-Standards-2011.pdf>; *College of Law Tenure Standards and Procedures*, U. IOWA (last modified Mar. 13, 2008), https://law.uiowa.edu/sites/law.uiowa.edu/files/wysiwyg_uploads/coltenure.pdf. See generally ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 69, at Standard 404(b) (outlining the responsibilities of full-time faculty members); *id.* (“The law school shall periodically evaluate the extent to which the faculty discharges its core responsibilities under the law school’s policies and the contributions of each full-time faculty member to meeting the core responsibilities of the faculty.”); BRANNON P. DENNING ET AL., *BECOMING A LAW PROFESSOR: A CANDIDATE’S GUIDE* 16–20 (2010) (explaining more about law teaching, scholarship, and service).

75. *E.g., Loyola University School of Law Guidelines Governing Tenure, Promotion, and Mid-Probationary Review Determinations*, LOY. U. SCH. L. (last updated Apr. 2011), https://www.luc.edu/media/lucedu/law/faculty/pdfs/school_of_laws_standards_for_the_promotion_and_tenure_of_faculty.pdf; *Third-Year Probationary Review of Tenure-Track Faculty*, U. TEX. AUSTIN SCH. L. (last visited June 26, 2019), <https://law.utexas.edu/student-affairs/third-year-probationary-review-of-tenure-track-faculty/>.

76. *Contingent Appointments and the Academic Profession*, AM. ASS’N U. PROFESSORS (last updated 2014), <https://www.aaup.org/report/contingent-appointments-and-academic-profession>.

77. ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 68, at Standard 405.

to academic freedom and tenure.”⁷⁸ Other subsections describe security of position required for clinical faculty members⁷⁹ and legal-writing professors.⁸⁰

Converting a non-tenure-line to a tenure-line position is nonnegotiable in almost all contexts.⁸¹ Accepting a non-tenure-line position hoping that the school will love you and convert you to the tenure track can lead to disappointment. While conversions have occurred, either for individuals or entire programs,⁸² the strategy can also backfire and leave you in the lower-status, lower-paying position. But non-tenure-line positions can provide an entry-level option that will allow you to gain valuable experience to be more competitive for tenure-track positions at your school or at other schools a few years later.⁸³

78. *Id.* at Standard 405(b); *see also id.* at app. 1 (explaining that “[t]enure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability”).

79. *Id.* at Standard 405(c) states:

A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory prerequisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

See also id. at Interpretation 405-6 (explaining that full-time clinical faculty members should possess “security of position reasonably similar to tenure”).

80. *Id.* at Standard 405(d) states:

A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.

81. *See* Karen Kelsky, *Job X Is Not Job Y (And Wishing Won't Make It So)*, THE PROFESSOR IS IN: PEARLS OF WISDOM (Apr. 21, 2018), <https://theprofessorisin.com/2018/04/21/job-x-is-not-job-y-and-wishing-wont-make-it-so/> (“But, what CANNOT be negotiated are the fundamental terms of the job. An NTT job cannot be made into a TT job because you wish it so. A teaching-centric job cannot be made into an R1 job because you wish it so.”).

82. *E.g.*, Catherine Martin Christopher, *Putting Legal Writing on the Tenure Track: One School's Experience*, 31 COLUM. J. GENDER & L. 65 (2015).

83. Brad Arehart, *Advice on Becoming a Law Professor*, U. TEX. AUSTIN SCH. L. (last visited Jun. 27, 2019), <https://law.utexas.edu/career/paths/academic/advice-on-becoming-a-law-professor/> (explaining the value of a visiting assistant professorship in later securing a tenure-track position); *see also* Karen Kelsky, *The Professor Is In: Should I Turn Down a Tenure-Track Position?*, CHRON. HIGHER EDUC. (Mar. 28, 2018), <https://www.chronicle.com/article/The-Professor>

B. Title and rank

Title and rank are commonly intertwined. Within any school, titles and ranks are usually explained in a policy or faculty handbook.⁸⁴

Faculty rank is usually based on seniority and follows a progression. In ascending order, the usual progression is assistant, associate, and full.⁸⁵ These ranks can be used with tenure-track and non-tenure-track positions to form your title. For example, the title “assistant professor of law” is usually a tenure-track position, while the title “assistant clinical professor of law” could be a non-tenure-track or programmatic tenure-track position.

Titles may be negotiable.⁸⁶ Most entry-level tenure-track professors will start with an assistant professor title, although some schools start the progression at associate professor. If you’ve had a long stint in practice or multiple years of teaching at a law school full time but off the tenure track, some schools may be willing to start you at the associate level, even if the assistant level is traditional.⁸⁷

At some schools, the dean has discretion to negotiate titles, while others require faculty or provost approval (or both). If you try to negotiate and the dean has to obtain further approvals, it will likely slow down the process, so consider that when developing your negotiation strategy. Some deans may offer you an associate professor title to offset not being able to offer you as much salary as other schools may have. While the adage says that “titles are free,” remember that this public concession could upset professors who have been at the school longer but started with the traditional assistant professor title.

A 1997 law review article published the results of a survey of tenure-track law professors who started their positions between fall 1986 and spring 1991; the survey results demonstrated that “[a]fter controlling for age, work experience, academic credentials, and other factors . . . , both white women and women of color were significantly less likely than white men and men of color to win initial appointments as associate or full professors.”⁸⁸ If you desire to start as an associate professor, take time to research the rank at which other professors have entered at that school. One way to find this information is to review professors’ curricula vitae, which often appear on their school webpage. If it

Is-In-Should-I/242924 (advising a candidate between a visiting assistant professorship versus a tenure-track position).

84. See generally DENNING ET AL., *supra* note 74, at 7-11 (identifying the various types of faculty members in legal academia).
85. *What Are the Types of Faculty Appointments*, *supra* note 69. See also *Professor Rankings*, *supra* note 72 (describing other tenure-line positions, such as endowed and distinguished professorships).
86. E.g., 36 *Negotiable Items in an Academic Position* (last modified Nov. 10, 2016), <https://serc.carleton.edu/NAGTWorkshops/careerprep/jobsearch/negotiable.html>.
87. DENNING ET AL., *supra* note 74, at 96 (also noting that a higher rank often means starting at a higher salary).
88. Merritt & Reskin, *supra* note 64, at 205, 274-75 (quote at 274).

appears that others have entered with advanced standing, you can compare their career trajectory with yours. If your credentials appear similar to their entering credentials, you now have evidence to support your request to the dean.

Most commonly, though, “Associate Professor” is an advanced title that at many schools denotes a faculty member who has earned tenure.⁸⁹ If you are starting the tenure-track as an associate professor, be sure to clarify your tenure clock: Will you still receive the entire time allotted or will your tenure progression be expedited?⁹⁰ As you could imagine, there are pros and cons to both situations that you should explore with your dean and trusted advisors.

C. Base salary

For most people, base salary is among the most important considerations. Candidates entering academia from Big Law may be shocked to discover the pay decrease they can expect when entering academia, even on the tenure track.⁹¹ Many find the trade-offs worth every penny, but use the sources described in IV(B) to calibrate their expectations. Also put your expectations in geographic context. Remember that earning \$90,000 in one geographic location may stretch much further than the same amount in a different location.⁹²

In most institutions, faculty members receive only a few significant salary bumps: when promoted from assistant to associate, when awarded tenure (which could occur with a promotion in rank), when promoted to full professor, and, for a few, when named to an endowed professorship or chair. If your starting salary is lower than that of your peers, then the promotion and tenure pay increases, which tend to be lockstep, will not help your relative pay.⁹³ Second, contributions to retirement are tied to your base salary.⁹⁴ So every year your base pay is lower than that of your peers, your future earnings suffer.

89. Karen Kelsky, *What's the Difference Between an Assistant, Associate and Full Professor? And Why Should You Care?*, PROJECT GRADUATE SCH. (Dec. 9, 2010), <https://projectgraduateschool.wordpress.com/2010/12/09/whats-the-difference-between-an-assistant-associate-and-full-professor-and-why-should-you-care/>.

90. *See infra* §III(P) (discussing credit toward tenure).

91. DENNING ET AL., *supra* note 74.

92. *See infra* § IV(B) (describing ways to research and compare salaries).

93. Stephen J. Aguilar, *Yes, You Should Negotiate*, INSIDE HIGHER ED (Mar. 13, 2019), <https://www.insidehighered.com/advice/2019/03/13/how-and-why-negotiate-starting-salary-opinion>; Chris M. Golde, *After the Offer, Before the Deal: Negotiating a First Academic Job*, ACADEME (1999), https://dtm.carnegiescience.edu/sites/dtm/files/AfterTheOffer_o.pdf.

94. Aguilar, *supra* note 93.

Unless the dean explicitly states that base salary is not negotiable, it rarely hurts to ask whether it is negotiable or to make a reasonable counter.⁹⁵ Do your research to determine what a reasonable counter may be.⁹⁶ Unless the school truly has no additional money or follows a lockstep process, deans will rarely reject a request for \$2,500 or less in base because continuing or restarting the hiring process will cost at least that much.⁹⁷ Ensure that any counteroffer you make is empirically based; deans are less likely to agree if your reasoning is along the lines of “because I need more” or “because I’m worth more.” Also, seeking to vault over people several years your senior, without an excellent reason, will be viewed dimly.⁹⁸ Excellent reasons are fact-sensitive but may include a higher offer from a comparable school or coming to academia from a judgeship, senior partnership in a well-known law firm, or a high-level government position.

At some point during the process of researching and negotiating your offer, learn the period your base pay covers, the period over which it is or may be paid, and when it is paid. In academia, base salary usually covers the fall and spring semesters, so nine or ten months. Some schools give you the option to spread that pay over the nine- or ten- month period, while others allow or require professors to spread the base pay over twelve months.⁹⁹ If you prefer not to discuss this more technical matter with the dean, contact the school’s human resources (“HR”) office.

At many schools, faculty members are paid just once a month. And some use deferred pay, where your first fall semester paycheck arrives in October. Most schools also have a set date for official appointments to begin; this topic is explained below in Section III(T). If you show up before that date, you likely will not be paid for that time, unless you negotiate an exception upfront. Most new faculty members will want at least one month to arrive at the new school, get settled in, and start class preparations in earnest. If your official appointment is later than your planned arrival, then you may be forced to choose between your need for a continuing paycheck with your desire to arrive at the new school. But as explained in Section III(E), consider requesting compensation for the “bridge summer,” the summer before your regular appointment begins.

95. Christine Kelly, *It Can Hurt to Ask*, INSIDE HIGHER ED (Mar. 17, 2014), <https://www.insidehighered.com/advice/2014/03/17/essay-how-negotiate-academic-job-offers> (suggesting that the candidate start with a question, e.g., “I was wondering if the salary is negotiable?” and advising that “[t]he other reason for asking is so you can create a dialogue. You aren’t making a demand; you are seeking information.”).

96. *Salary Evaluation and Negotiation: Academic*, VAND. U. (last visited Oct. 11, 2020) https://gradschool.vanderbilt.edu/career_development/academic/salary.php.

97. Am. Psychol. Ass’n, *How to Get the Salary Package You Really Need*, 48 MONITOR ON PSYCHOL. 78 (2017), <https://www.apa.org/monitor/2017/10/academic-salary>.

98. See *infra* text accompanying nn.168 & 181 (explaining salary compression and internal equity).

99. Karen Kelsky, *Explaining the 9-Month Contract*, CHRON. HIGHER EDUC. (July 12, 2016), <https://community.chronicle.com/news/1475-explaining-the-9-month-contract>.

D. Summer compensation

“It is now commonplace for [law] schools to offer summer stipends as incentives for doing research and writing over the summer.”¹⁰⁰ Summer compensation may differ depending on your rank and position. For example, a school may guarantee summer compensation to tenure-track professors if they submit an acceptable research proposal but may require tenured professors to compete for a limited number of research grants. Non-tenure-track professors may be offered summer teaching opportunities, but not summer scholarship opportunities. In addition, some schools may have administrative projects for which they offer summer compensation.

Summer compensation may be a set dollar amount, such as a \$10,000 research stipend or \$2,000 per credit hour taught, or based on a formula, such as two-elevenths of your base salary.¹⁰¹ The timing of summer compensation can also vary. For example, a school may pay half of a research stipend early in the summer but withhold the other half until the article has been completed, submitted for publication, or even accepted for publication. Deans will often explain the timing of payments, but if not, you should ask so you understand how to budget during the year.

For those entering a tenure-track position, understanding whether summer research funding will, or most likely will, be available each summer is important. If you have to compete for research funding or if you are promised research funding only the first couple summers, consider negotiating this point. For most new professors, preparing new classes, learning how to teach, and working with students will consume most of your time during the regular academic year. The best time to make substantial progress on your scholarship is over the summer. If you will not be receiving financial support and thus have to consider teaching or consulting over the summer, your progress likely will be hindered. Use the techniques from Section II(B) to persuade your dean why and how the institution will benefit by supporting your scholarship each summer pre-tenure.

If you are accepting a non-tenure-track position, you still may be eligible for summer support. Some schools allow non-tenure-line professors to apply for summer research support. Others offer summer sessions and the ability to teach courses for additional pay. Less frequently, the school may offer you summer pay to perform administrative work, like supervising an externship program. If summer compensation is not mentioned in your offer, raise it explicitly and ask whether you can have a guarantee of summer pay, whether for research or teaching, for the term of your contract. If you hope to move into a tenure-track position in the future, use your negotiation acumen to show

100. DENNING ET AL., *supra* note 74, at 91 (alteration in original).

101. *See id.* (For scholarship, “[s]ome schools provide for an extra month’s pay. Others pay a flat rate, generally somewhere between \$8,000 and \$15,000.”)

how supporting your scholarship, even as a non-tenure-track professor, could benefit the institution.¹⁰²

E. Starting date and bridge summer compensation

As noted in the prior subsection, most academic contracts begin between early August and early September (with the first paycheck usually arriving about a month later). You can ask to start earlier and to be compensated for that earlier starting date.

Some schools may allow an incoming professor to apply for a summer research grant or teach a summer course before the regular appointment begins. A few schools may even pay for the new professor to arrive early and spend time preparing for fall classes.¹⁰³ But this contract term is not standard and usually must be negotiated. Because it's a one-time cost for the school, it could be a nice negotiation point if you need financial assistance to bridge your summer between jobs.¹⁰⁴

The most beneficial arrangement for you is to receive funding to begin or continue your class preparation for the fall semester. Regarding a possible research grant, ask whether your research grant for the next summer is contingent on your completing the project from the bridge summer. In my experience, especially when someone is moving to a new city, it's difficult to complete an article while preparing multiple new classes and fulfilling daily responsibilities. You do not want to jeopardize future scholarship stipends. If you are offered an opportunity to teach, ask whether you can teach a course you will also be teaching in the fall.

If you are allowed to adjust your start date to June or July, you likely will be paid a stipend, not a salary, so don't assume you will receive one-ninth of your base salary. Stipends may range from \$5,000 to \$20,000 or may be a fraction of your salary, like two-elevenths.

F. Administrative compensation

Entry-level professors occasionally may also be asked to direct a program—such as a moot-court program, legal-writing program, or other academic program—or assume another significant academic task. Compensation for director positions most typically takes the form of a stipend that is not part

102. In the legal writing field, the Association of Legal Writing Directors (ALWD), the Legal Writing Institute (LWI), and Lexis have combined to provide a limited number of summer research grants for legal-writing professors whose schools do not offer them summer research opportunities. *ALWD Grants*, ASS'N LEGAL WRITING DIRECTORS (last visited June 16, 2019), <https://www.alwd.org/resources/grants>.

103. DENNING ET AL., *supra* note 74, at 94.

104. See Geoffrey Rapp, *Negotiating Your First Law Professor Job*, PRAWFSBLAWG (Nov. 30, 2006, 11:49 AM), https://prawfsblawg.blogs.com/prawfsblawg/2006/11/negotiating_you.html (making the case for asking for compensation during the bridge summer).

of your base salary. The stipend may be for just the academic year (fall and spring semesters), just the summer, or all twelve months, so you need to clarify that point.

At some schools, directors may be offered a reduced teaching load to compensate for the increased administrative work. Most commonly, the course reduction would be one per year. For additional factors, you should consider before accepting a significant administrative assignment, see *infra* Sections III(K) and (N).

Directors and other administrative appointees usually serve at the dean's discretion and can be removed at will. Administrative stipends usually are not counted when determining contributions to retirement accounts. You also do not get to keep the stipend after you leave the administrative position.¹⁰⁵ Occasionally, though, you can negotiate a "retreat salary," which is your base salary when you leave the administrative position, that includes at least a portion of your salary. To negotiate that type of arrangement, the school may require that you serve in the position for a certain number of years.

G. Future compensation

Future compensation in this context refers to increases to your base salary after your first academic year. You would typically raise this point only if you were disappointed in your base salary and were not able to negotiate favorably other financial considerations. When I have used this term, the ultimate offer includes a guarantee of a specific, minimum percentage raise for the second year.

Many deans, however, cannot commit to this type of term because they do not know what the next year's raise pool will be. Even if you do not negotiate this point, a candidate could ask the dean about what the raise pool history has been at the school, how past raise pools have been allocated (e.g., lockstep, merit, equity, or percentage raises versus set dollar raises), and whether the dean has a sense of what raise pools could look like in the near future.

Two other questions you may ask about future compensation are whether promotions to associate and full professor, or grant of tenure, come with a standard pay increase, and if so, how much.

H. Benefits package

Benefits packages usually are not negotiable.¹⁰⁶ Many schools have web pages that describe employee benefits, such as health insurance.¹⁰⁷ Alternatively, you

105. For these reasons, it is to the school's advantage to offer a lower base salary and a higher administrative stipend.

106. See also Brian Leiter, *What Do You Need to Find Out Now That You've Gotten a Tenure-Track Offer?*, LAW PROFESSOR BLOGS NETWORK: BRIAN LEITER'S LAW SCHOOL REPORTS (Feb. 20, 2020), <https://leiterlawschool.typepad.com/leiter/2020/02/what-do-you-need-to-find-out-now-that-youve-gotten-a-tenuretrack-offer.html> (discussing benefits issues).

107. See DENNING ET AL., *supra* note 74, at 91 (discussing health care in the context of entry-level

can ask to speak with the appropriate HR representative, who can also provide plan summaries or details. Four important benefits questions you should ask are:

- When does insurance coverage begin?
- “What is the university’s contribution to retirement?”¹⁰⁸
- When do employer contributions to your retirement plan begin and when do they vest?
- What is the school’s tuition benefit policy with regard to spouses or children?¹⁰⁹

If you will have a gap in insurance, some schools may be willing to cover a couple months of COBRA, while others may consider adjusting your start date. If insurance coverage begins on the first of the month after you begin, you may consider whether your start date could be adjusted to start on the last working day of the prior month.

I. Moving expenses

The best case is to negotiate for the school to reimburse the reasonable expenses associated with moving, which can be in the \$10,000–\$20,000 range. Unfortunately, that is not the norm, especially at public institutions.¹¹⁰ Instead, most schools impose a cap. In addition, while many deans will provide a maximum reimbursement level for moving expenses, they may not explain what is covered. Candidates should seek those details. Some schools may have a written policy on this topic. Or the dean may refer you to a business officer, HR representative, or associate dean for administration to answer these questions. Examples of pertinent questions include:

- Are commercial movers allowed? If so, does the school have a preferred vendor? If not, do you need to acquire and submit bids?
- Do moving expenses include traveling from your current home to your new home by car, plane, or other means? If driving, what is the mileage reimbursement? How many nights’ hotel might be covered? What is the per diem for food?¹¹¹
- If you need to store items, would that be covered?
- If you need to ship items, like books, would that be covered?
- Can the school pay any of the expenses directly?
- What is the deadline to submit your moving expenses?

law faculty).

108. Leiter, *supra* note 106.

109. *Id.*

110. DENNING ET AL., *supra* note 74, at 95.

111. These questions may be addressed in the school’s general travel reimbursement policies.

- Does the school have any short-term housing available? If so, what is the cost, and can that cost be waived?

Because moving expenses are a one-time expense, this can be a nice negotiation point if you are struggling to survive financially during the bridge summer.

J. Course package

“Course package” refers to the specific courses you are most likely to be assigned to teach, at least for the first several years. Preparing to teach a new course takes tremendous time and effort. Although you may eventually want to teach five or six courses in some type of rotation, try to limit your new pre-tenure preparations.¹¹²

At least some of what you will be asked to teach may be based on the job description and your interview. If the school advertised for a property law position and you applied for it, you can expect a major part of your package to be property law. If the school didn’t advertise for a particular area, most typically at least half your package will be courses the school needs to cover with a full-time faculty member. You can expect these to be required, and you can often expect large-enrollment sections. Usually, at least one course will be something related to your scholarly interest or something you’ve asked to teach. These are more frequently elective courses with smaller enrollments.

Most faculty want to teach both in the first-year and the upper-level curriculum and want to balance large and small sections. But do keep the school’s needs in mind. Deans need to cover the required curriculum, offer bar-tested courses, and cover other curricular needs. And they need all faculty to be team players to serve the students optimally. On the other hand, it is fine to request specific courses, especially if they relate to your research interests, and to let the school know if you are not comfortable teaching a particular course.¹¹³

K. Teaching load

Closely tied to your course package is your teaching load, which refers to how many courses and credit hours you can expect to teach in most academic years. In the legal academy, teaching loads tend to be lower at higher-ranking schools, which are often more research-oriented. Many deans automatically will give new professors a one-course reduction in the first year, which is standard at many schools. But don’t assume you will receive a light load if it’s not included in the offer; instead, ask for it. And if you have a preference of which semester you want to take the light load, ask for that as well.¹¹⁴

112. See Leiter, *supra* note 106 (discussing the importance of a stable set of courses pre-tenure); *but cf.* Rapp, *supra* note 105 (opining that because schools’ needs change, the value of negotiated teaching is questionable).

113. DENNING ET AL., *supra* note 74, at 93.

114. *Id.* at 94-95.

In addition, either the dean or associate dean may then attempt to allow the professor to repeat as many courses as possible during the first three to five years. The best case would be for the new professor to teach only one course during the first fall, to repeat that course the first spring, and to repeat one or both of those courses during year two.

New professors often get excited about teaching a variety of new courses, and schools often have needs in a variety of areas. But take things slowly and focus on deepening your expertise and mastering the pedagogy instead of rushing to teach a variety of subjects.

Some schools have a workload policy that provides information about expected teaching loads and often other work, such as scholarship and service expectations.¹¹⁵ Research or ask whether the school you are considering has one, and take time to understand it.

L. Teaching schedule

Most frequently, teaching schedules are determined on a semester-by-semester basis by an associate dean. It is usually fine to ask to speak with the associate dean before accepting your offer. You can also ask the dean or an associate dean what a typical schedule looks like or whether it's possible to have a least one day to devote to scholarship each week.

Some schools have guidelines about how many days per week faculty are assigned to teach. For example, one school where I served as dean tried to assign everyone to teach three days per week and also attempted to give each professor either Monday or Friday as a non-teaching day. Another school expected professors to teach four days per week.

In dual-division schools—schools that offer both day and evening programs, or that offer weekday and weekend programs—professors are often expected to teach during the evening in a rotation. If you prefer to teach in the evenings, you can voice that preference, because many professors prefer a day-only schedule.

I would not advise attempting to negotiate a specific teaching schedule—that could reflect inflexibility or paint you as a prima donna not willing to take the school's or students' needs seriously. But if you have special needs or concerns—especially related to health or religion—you can raise those. It's more difficult to raise child care concerns, because so many faculty have similar issues. For disability-related issues, follow the school's accommodation policy and procedures.

115. *E.g.*, *Northeastern University School of Law Workload Policy*, NORTHEASTERN U. (Mar. 2018), <https://provost.northeastern.edu/app/uploads/SOL-Workload-Policy.pdf>. See generally Ashley Greenberg & Sarah Moore, *Faculty Workload Policies at Public Universities*, U. KY. (Feb. 2013), https://www.uky.edu/ie/sites/www.uky.edu/ie/files/uploads/BP_Faculty%20Workload%20Policies%20at%20Public%20Universities.pdf; Josh Douglas, *Faculty Teaching Load*, PRAWFSBLAWG (Dec. 9, 2014, 10:44 AM), <https://prawfsblawg.blogs.com/prawfsblawg/2014/12/faculty-teaching-loads.html> (see comments).

M. Pre-tenure teaching release or research leave

Some law schools have policies or traditions about pre-tenure teaching releases or research leaves. These releases or leaves also may be governed by university policy. These policies are designed to give junior faculty more time to focus on their scholarship before their tenure vote.¹¹⁶ Research-oriented schools may offer this option as a matter of course, but they may be more infrequent at teaching-intensive schools. The option usually is offered only to those who have a significant scholarship requirement.

N. Service assignments

Service assignments may include law school and university committees,¹¹⁷ university committees, and other administrative assignments, such as coaching a moot-court team or advising a journal.

Generally, law schools try to light-load tenure-track professors on committee service during their first several years. On the other hand, non-tenure-line professors tend to have heavy service loads, especially if they do not have a scholarship expectation.

Committee assignments are not ordinarily part of an offer letter. But significant non-committee administrative appointments are.

If you're going to receive an administrative appointment, you typically know about it before the offer. But sometimes it comes as a surprise. Either way, ensure you understand the assignment.¹¹⁸ Below are some questions you might explore:

- Is there a written job description or written expectations for the position?
- What is the anticipated time commitment?
- Is it a nine- or twelve-month commitment?¹¹⁹
- Who was the last incumbent, and may I speak with that person?
- Will I be light-loaded on committee assignments?
- How many years would I be expected to hold the position?

116. See Leiter, *supra* note 106 (“A term off after every three full years of teaching is a very good leave policy; some schools have even better policies, most have less generous leave policies.”).

117. For information about committee service in academia, see Peter Monaghan, *Making Committee Service Count*, CHRON. HIGHER EDUC. (Feb. 12, 2017), <https://www.chronicle.com/article/Making-Committee-Service-Count/239165>, and John Lemuel, *Death by Committee*, CHRON. HIGHER EDUC. (Jan. 9, 2007), <https://www.chronicle.com/article/Death-by-Committee/46651>.

118. See *supra* Section III(F).

119. Kelsky, *Explaining the 9-Month Contract*, *supra* note 99 (discussing how much summer service you should provide if you are not being paid for it).

- Will I have administrative support for this assignment?
- Could I anticipate an ongoing course reduction in exchange for this assignment?¹²⁰
- Does the position carry additional competition?

If you are in a tenure-track position, consider carefully—and discuss with trusted advisors and the dean—how the administrative assignment will impact your ability to meet the tenure standards.¹²¹ Especially at a research-oriented institution, service is not valued as highly as research or teaching.

Some have analogized committee and administrative service more generally to housework in the sense that service is “often feminized, devalued, unpaid, and invisible labor, even as it keeps our institutions functional.”¹²² On the other hand, “service work can be a means of obtaining professional and cultural capital on a campus.”¹²³ For that reason, context is crucial.¹²⁴ Are you being asked to assume a service role because other people have refused? Will the assignment make attaining tenure or contract renewal more difficult? Or, will the assignment afford you a platform to demonstrate a more complete skill set, effectuate meaningful change, and enhance your reputation in a way that will bolster your application for tenure or renewal?

On a personal note, I have held significant administrative positions since my first day in the academy. Although I had to work very hard to ensure that my teaching and research were strong, the increasingly significant administrative assignments allowed me to develop leadership skills, help more students, enhance my schools’ reputations in strategic areas, and work with and learn from senior administrators, and exposed me to different areas of my law school and university to see how they impact the mission and operation, and much more. It was these experiences, more than my teaching or research, that helped me to become a dean. Was I always fairly compensated for the work? Probably not. But I enjoyed the assignments, which helped me understand that academic administration was my passion and led me to interesting and well-compensated decanal positions.

120. This point may be answered by a workload policy. See *supra* note 115 and accompanying text.

121. See also Karen Kelsky, *Service with a Smile*, CHRON. HIGHER EDUC. (June 26, 2017), <https://community.chronicle.com/news/1838-service-with-a-smile> (warning new faculty to understand whether their contract includes percentages of time they must devote to research, teaching, and service and to avoid doing more service than assigned in the contract percentage).

122. Helene Meyers, *Faculty Service and the Difference Between Opportunity and Exploitation*, CHRON. HIGHER EDUC. (Mar. 14, 2018), <https://www.chronicle.com/article/Faculty-Service/242822>.

123. *Id.*

124. *Id.*

O. *Funds for travel, research assistants, and professional development*

Offers may include information about items such as funds for travel, research assistants, or professional development. Professional development expenses might include bar dues, dues in professional organizations, software, books,¹²⁵ offprints of your journal articles,¹²⁶ equipment, or costs to comply with CLE requirements in the jurisdiction where you are admitted (if the state does not exempt full-time law professors). If an offer doesn't address these matters, it could be that the school has a policy that covers them, or that all faculty are treated in a similar manner, and it's not traditional to include that information in the appointment letter.¹²⁷

Some schools set a minimum that all professors get for travel, RAs, and professional development. Others allow professors to request what they need from a central pool. Some schools provide additional money if you are presenting at a conference.¹²⁸ Still others work with the university vice president for research and offer "start-up" packages that cover conferences or other research needs. "Start-up" packages, however, are more common in other fields that require items like laboratory equipment.

Travel and professional development can be a win-win area to negotiate. These expenses do not roll into your base and are not permanent. You can also make an excellent case that investing in you through an increased allocation will help you develop more quickly as a teacher and scholar. For example, if the dean says that professors are allotted \$2,500 for travel, you may ask for \$5,000 for the first several years so you can travel to two or three conferences per year. Traveling to more conferences will allow you to make more contacts in your field and learn more about teaching and scholarship expectations and techniques—thus benefiting the school.

When hiring someone for a new entry-level position, I always offer to pay for the individual to attend either the AALS Workshop for New Law Teachers in June or the Workshop for New Law School Clinical Teachers in May, and

125. DENNING ET AL., *supra* note 74, at 92 (explaining that some schools allow individual professors to have a book budget while others require that all books be ordered through the library and that all books purchased with school funds belong to the school).

126. *Id.* Offprints are bound copies of law journal articles; many professors will distribute offprints of articles they author to other scholars in the field, or sometimes to lawmakers. Because some journals will offer you only a few offprints at no charge, having your school cover this cost "is no small perk." *Id.* Of course, with the advent of PDFs and SSRN, reimbursement for offprints is not as critical as it was several years ago.

127. *Cf.* Karen Kelsky, *The Professor Is In: When the Promise of Research Support Falls Flat*, CHRON. HIGHER EDUC. (May 7, 2019), <https://www.chronicle.com/article/The-Professor-Is-In-When-the/246253> (describing how to manage "the expectations of job candidates who had been led to believe that research support would be part of their job offer"); Michael Simkovic, *Other Things to Think About if You Have Multiple Tenure Track Offers* (Dec. 17, 2019), <https://leiterlawschool.typepad.com/leiter/2019/12/other-things-to-think-about-if-you-have-multiple-tenure-track-offers-michael-simkovic.html> (identifying the ease of expected travel as one consideration).

128. DENNING ET AL., *supra* note 74, at 92.

do not count those costs toward the first-year travel budget. If your offer does not include this option, ask the dean to consider funding your attendance.¹²⁹ These conferences are a great way to learn more about being an effective law professor and meet other new professors from other schools. These peers can provide great support during your quest for tenure, and beyond.

P. Credit toward tenure (years or scholarship)

Most schools will grant credit toward tenure only for full-time teaching at an ABA-approved law school. Some also require that you have been teaching on a tenure track. Negotiating this point can be tricky. First, school policy may limit the dean's discretion to negotiate this point with you. Second, you need to be sensitive to others on the tenure track and how you may be viewed for "jumping ahead." Third, real risks exist in asking for credit. If you get that credit, you will be on an expedited path to tenure and will have less time to meet the tenure requirements. Advanced standing may also mean that you will be subjected to a more extensive review in your second or even first year—before you have had time to establish relationships with students and your faculty colleagues.

Safer options include exploring whether you can go up for early tenure if you meet the tenure standards ahead of schedule or whether you could be granted the option of credit toward tenure but not have to exercise that option for two or three years.

Some new professors ask that certain published scholarship be included in their promotion or tenure dossier. The general rule is that anything you have published before you start your tenure-track job does not count toward tenure.¹³⁰ Be sure to check the school and university policies, which could limit the dean's discretion to negotiate. On the other hand, this "ask" doesn't cost the dean any money, so it can be an easy one for the dean to grant. But ask yourself whether multiple external reviewers—whom you may or may not have input into selecting—are likely to provide favorable reviews. Also consider how the placement of your piece compares with that of others on the tenure track just ahead of you. If they have all published in a Top 50 journal and your placement is a Top 100, you may not want it included in your promotion or tenure dossier. Also consider the signal this request may send regarding your commitment to produce scholarship or your ability to receive summer research grants. And if you request credit for previously prepared scholarship, remember to explain the reason for your request.

Q. Decision date

The dean will typically give you a date by which you must accept the offer. The dean may indicate that the date is firm or flexible. The amount of time you

129. *See id.* at 94 (also advising candidates to get this commitment in writing).

130. Karen Kelsky, *Does It Count for Tenure?*, CHRON. HIGHER EDUC. (Apr. 12, 2016), <https://community.chronicle.com/news/1356-does-it-count-for-tenure>.

have can vary widely, from a day or so up to a month. Variables impacting the decision date can include:

- Whether the school has other acceptable candidates for the position (if you are the sole remaining finalist, you likely will be extended more time to decide);
- The vote differential between you and the next acceptable candidate (if the vote was close, the school would not want to lose the second candidate if you reject the offer); and,
- The time of year (for example, if the offer is extended in mid-December, you may have several weeks, into January, to decide).

The Association of American Law Schools' *Statement of Good Practices on Recruitment and Hiring of Entry-level Faculty Members* explains the conventions in the legal academy and competing factors to be balanced:

The practice of making offers that expire after a specified date or period of time is common in legal education. When a school has specific hiring needs and a short list of candidates who in the school's judgment meet those needs, it is often necessary to place a time limit on a candidate's ability to accept the offer to ensure that if the preferred candidate declines the offer, other acceptable candidates will still be available. AALS survey data indicate that when schools place time limits on offers, they are typically for periods of two weeks or longer, often with some willingness communicated to the candidate that the deadline might be extended at the candidate's request. But situations exist when a school will feel compelled to require a response to an offer in a shorter time frame with less flexibility, particularly if the list of available candidates that can fill a specific need is very short and the candidates are highly sought after. Response periods of less than one week should rarely be used, however, because they impose a heavy burden on a candidate trying to make an important decision that will have a significant impact on the candidate's future.¹³¹

Yale Law School provides the following wise advice to its alumni/ae seeking to enter legal academia:

[O]ffering schools recognize that your request for a significant delay in responding to the offer is likely due to your hopes for a better offer. A few weeks is typically fine, a few months may or may not be. Ask for what you need, but be ready to read the tone of the response. Consider offering to close down some of your opportunities, if the offering school will keep the offer open a bit longer. However, some schools today are playing hardball and you may be forced to decide between the bird in the hand and the one in the bush.¹³²

131. *Recruitment and Hiring of Entry-level Faculty Members*, ASS'N AM. L. SCH. § II, <https://www.aals.org/about/handbook/good-practices/entry-level-faculty/> (emphasis added) (last updated July 12, 2017).

132. *Entering the Law Teaching Market*, YALE L. SCH. (2018–2019), https://lawyale.edu/sites/default/files/area/departement/cdo/document/cdo_law_teaching_public.pdf.

If you receive and accept a callback interview at a law school, you should be thinking about whether you would like to join that faculty and what you would want to see in an offer. To do this, you could ask mentors about the school, research the city, and talk seriously with your family about whether they support the move. If you decide you would not accept any offer from the school, you should withdraw from the search.¹³³

If you receive an “exploding offer” that requires you to accept on less than one week’s notice, or that expires before the AALS Faculty Recruitment Conference begins,¹³⁴ counter with a reasonable extension. If you are truly an attractive candidate to the school, the school would not want to lose you over an unreasonably short decision date.¹³⁵

R. Return visit with a partner or spouse before accepting the offer

Usually, only the candidate participates in the callback interview. But if you have a spouse or partner, that person often wants to visit the new city to learn more about housing and school options and the general atmosphere.

When you receive the callback offer, you could ask whether your spouse or faculty may join you to learn more about the city. Do clarify that you understand that your significant other will not participate in interview activities. As a dean, I offer this option, because I want to ensure the candidate has as complete information as possible about our school and city. When the significant other joins, it signals that the candidate is serious about our position.

But not all deans are inclined toward that pre-offer option, and schedules often do not work out. If you receive an offer and want to visit again, ask. It’s not an atypical request. After you ask, explain why the visit is important. But understand that the visit likely will need to happen quickly. And if you receive an offer with a short deadline to accept, the visit may not be possible. Because many entry-level law school offers come in November or December, your visit may need to occur during a period when campus is closed or most faculty are away. While you can still explore housing options, you may not be able to meet with any or many of your future colleagues.

S. A house-hunting trip before your contract begins, and housing or mortgage assistance

Many schools will cover the reasonable costs for you, or you and your partner or spouse, to visit the area for two or three days a few months before

133. See also Karen Kelsky, *The Professor Is In: The Ethics of Backing Out*, CHRON. HIGHER EDUC. (Mar. 13, 2018), <https://community.chronicle.com/news/2017-the-professor-is-in-the-ethics-of-backing-out> (discussing the ethics of renegeing on a job offer you have accepted).

134. *Recruitment and Hiring of Entry-level Faculty Members*, *supra* note 132, § I (“When a law school offers a teaching position to an individual listed in the Faculty Appointments Register, it is unfair to the prospective appointee and to other member schools to make an offer that expires sooner than four weeks from the conclusion of the Faculty Recruitment Conference. (This four-week timetable applies only to offers made to individuals who listed themselves in the Faculty Appointments Register.)”).

135. See DENNING ET AL., *supra* note 74, at 98-99.

you begin to secure accommodations. Again, if this term isn't offered, ask. Also look up or ask for the school's travel reimbursement policy so you know what the school considers to be reasonable.

Some schools offer faculty housing or home-buying assistance. When I was dean at Stetson Law, we offered new faculty the opportunity to rent campus-owned houses for below-market rates for one or two years. This program gave new faculty members the opportunity to learn the area before committing to buy property, and also benefited the school. Being literally across the street meant that faculty were more accessible to students and attended more on-campus events. And, many faculty members ultimately purchased homes in the neighborhood.

Schools in areas with high housing costs may also offer mortgage assistance or other home-buying assistance programs.¹³⁶

T. Official start date

You need to know when your contract begins, when you should arrive on campus, when your office will be ready, and when you will receive your first paycheck.¹³⁷ If it is not posted on the school's website, you should ask for a copy of the academic calendar and ask about other important dates you will need to know for the first semester. As just a few examples:

- Are there deadlines for any HR or other paperwork you need to submit (e.g., consent for a background check or your biography for a faculty web page) before your official start date?
- Will the law school or university be holding an orientation for new faculty, and, if so, when?
- When are your textbook orders due?
- When is your syllabus due?
- Have the dates and times of monthly faculty meetings been set?
- Are there other faculty meetings, such as a faculty retreat, you should calendar?
- Are there other special events you should be prepared to attend, such as a convocation, presentations by high-profile speakers, faculty/staff welcome-back dinner, etc.?

136. *E.g.*, Office of the Provost, *Housing Assistance*, SANTA CLARA U.; <https://www.scu.edu/provost/policies-and-procedures/support-for-faculty/housing-assistance/> (last visited Mar. 29, 2020) (describing rental and purchase assistance programs); Faculty Staff Housing, *Frequently Asked Questions*, STANFORD U., <https://fsh.stanford.edu/faq/index.shtml> (last visited Mar. 29, 2020); Faculty Housing, *Faculty Home Buying Assistance Program*, U. OF SAN DIEGO, <https://www.sandiego.edu/faculty-housing/faculty-home-buying-assistance-program.php> (last visited Mar. 29, 2020); Faculty Manual, *Chapter 3: Other Benefits*, VANDERBILT U. (describing the Faculty Home Purchase Plan), <https://www.vanderbilt.edu/faculty-manual/part-vi-faculty-benefits/ch3-other-benefits/> (last visited Mar. 29, 2020).

137. Golde, *supra* note 93.

While these items are not part of the actual negotiation, showing you have thought about them signals you plan to be a good university citizen. Follow up on these items with the appropriate associate dean as the semester draws near because the school often changes dates and announces them via listserv, which you're not likely to be on until after you arrive on campus.

On rare occasions, a candidate may need to request a delayed start date. Realize that schools are not obligated to grant your request, and the request could result in the offer being rescinded.¹³⁸ Also know that a delay will burden most schools because they still have to cover the classes you were going to be slated to teach.¹³⁹ Only once has a candidate raised this issue with me. In that situation, the candidate's discharge from the military was delayed unexpectedly by six months.

U. Spousal hire or relocation assistance

The “two body” issue is a tricky one, but it's not uncommon.¹⁴⁰ It is, however, an issue that impacts women more frequently than men because “women are more likely than men to have academic partners”¹⁴¹ and because empirical research shows that “relocation decisions tend to improve husbands' and impair wives' career development.”¹⁴²

If your spouse is also a professor, or if you are moving to an area where your spouse may have trouble finding a job in the spouse's chosen field, you may consider requesting a spousal, or “spousal equivalent,” hire.¹⁴³ This means that

138. Karen Kelsky, *Can I Negotiate a Delayed Start Date?* CHRON. HIGHER EDUC. (Nov. 8, 2016), <https://community.chronicle.com/news/1602-can-i-negotiate-a-delayed-start-date>.

139. *Id.*

140. Londa Schiebinger et al., *Dual Career Academic Couples: What Universities Need to Know*, STAN. U. at 1 (2008), https://gender.stanford.edu/sites/g/files/sbiybj5961/f/publications/dualcareerfinal_o.pdf (indicating that “great challenge facing universities. Academic couples comprise 36 percent of the American professoriate—representing a deep pool of talent”). See generally BOARD TRUSTEES U. ILL., *ACADEMIC COUPLES: PROBLEMS AND PROMISES* (Marianne A. Ferber & Jane W. Loeb eds., 1997) [hereinafter *ACADEMIC COUPLES*].

141. Kelly J. Baker, *On ‘Poor Husbands’ and Two-Body Problems*, CHRON. HIGHER EDUC. (July 15, 2014), <https://community.chronicle.com/news/609-on-poor-husbands-and-two-body-problems> (citing Londa Schiebinger, *Dual-Career Academic Couples: What Universities Need to Know*, STAN. U. (2008), https://gender.stanford.edu/sites/g/files/sbiybj5961/f/publications/dualcareerfinal_o.pdf).

142. Alan Benson, *Re-Thinking the Two-Body Problem: The Segregation of Women into Geographically-Dispersed Occupations*, 51 *DEMOGRAPHY* 1619, 1620 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4225008/pdf/nihms634830.pdf>.

143. See David A. Bell, *The Intricacies of Spousal Hiring*, CHRON. HIGHER EDUC. (May 13, 2010), <https://www.chronicle.com/article/The-Intricacies-of-Spousal/65456>; Female Science Professor, *The A to Z of Dual-Career Couples*, CHRON. HIGHER EDUC. (July 4, 2011), <https://www.chronicle.com/article/The-A-to-Z-of-Dual-Career/128096>; Robin Wilson, *Faculty Couples, for Better or Worse*, CHRON. HIGHER EDUC. (Oct. 21, 2013), <https://www.chronicle.com/article/>

you would ask the university to hire your “trailing spouse,”¹⁴⁴ whether at the law school or in another college or administrative unit. Spousal hires are big asks, especially when you are an entry-level candidate:

Spousal hires or job placements are a much larger ask, because you are asking the institution for the additional and continued financial support of another person. If you want your spouse to have a tenure-track position, for example, then you are effectively doubling the financial commitment of the college or university *and* asking your unit to use some of its political capital to hire your spouse. It’s a big request, and you should treat it as such.¹⁴⁵

If your partner is also a law professor, your challenges may be compounded because your colleagues-to-be may object to having a trailing partner foisted on them. Fears may range from the trailing partner’s not adding anything and taking a slot that could be filled by someone else in a needed area or with superior credentials to having one spouse always take up the causes or injuries of the other.¹⁴⁶ On the flip side, I have been at schools that have hired trailing spouses who not only perform well, but eventually outperform the other spouse (which can cause its own political issues).

Many candidates do not raise the issue of a potential spousal or partner hire until after they receive an offer. While that can be a smart move, finding a suitable spousal placement can take significant time. If the school extends you an offer with a quick deadline, sufficient time to negotiate and finalize the

Faculty-Couples-for-Better-or/142481 (both providing an overview of the spousal hiring process, and the pros and cons of spousal hires); Julie Miller Vick & Jennifer S. Furlong, *The Logistics of a Dual-Career Search*, CHRON. HIGHER EDUC. (Mar 14, 2012), <https://www.chronicle.com/article/The-Logistics-of-a-Dual-Career/131140>; see also DEO, *supra* note 35, at 26–27 (describing complexities of the “two body” problem for women of color in the legal academy). If you have a significant other and are not married, the “two body” job search can be even more complicated at some schools. Karen Miller-Loessi & Deborah Henderson, *Changes in American Society: The Context for Academic Couples*, in ACADEMIC COUPLES, *supra* note 141, at 37 (confirming that “geographic moves may be even more difficult for same-sex and male-female cohabitating couples because they have even less legally or socially sanctioned claim to support services from the organization than do married couples”); Dorothy C. Miller & Anita Skeen, *POSSLQs and PSSSLQs: Unmarried Academic Couples*, in ACADEMIC COUPLES, *supra* note 141, at 106 (discussing university life and “spousal equivalents”).

144. Vera Taz, *The Trailing Spouse Track*, CHRON. HIGHER EDUC. (Sept. 22, 2004), <https://www.chronicle.com/article/The-Trailing-Spouse-Track/44729>. *But cf.* Lisa Douglas, *The Trailing Ex-Spouse*, CHRON. HIGHER EDUC. (Dec. 6, 2007), <https://www.chronicle.com/article/The-Trailing-Ex-Spouse/46616> (explaining complexities that arise when spouses in the same department separate).

145. Aguilar, *supra* note 93; see also Elaine W. Shoben, *From Antinepotism Rules to Programs for Partners: Legal Issues*, in ACADEMIC COUPLES, *supra* note 140, at 226 (discussing legal issues associated with partner hires). For additional information and caveats about spousal hires, see Karen Kelsky, *How to Negotiate Your Tenure Track Offer*, THE PROFESSOR IS IN (Feb. 11, 2016), <https://theprofessorisin.com/2016/02/11/how-to-negotiate-your-tenure-track-offer/>.

146. See DENNING, ET AL., *supra* note 74, at 97–98.

spousal hire may not exist. If you truly will not accept a position unless your spouse is also hired by the university, consider raising this issue with the dean during your on-campus visit so you can understand whether that option truly exists. If it does, the dean can begin working with the provost and any other college or unit director to effectuate the appointment (which may require your partner or spouse to go through an interview process).¹⁴⁷

You do have options short of asking the university to hire your spouse or partner for an indefinite period. Some schools will offer job-search assistance for the relocating partner. This assistance can range from the dean or faculty members using personal contacts to help the partner connect or interview with local employers to the HR department offering assistance with resume review and interview preparation or access to career service databases listing open positions.¹⁴⁸ Other schools may be willing to consider a bridge position—such as a one-year visiting position, a fellowship, or a scholarship into a degree program—to provide short-term assistance for the trailing partner. Bridging positions can also be the precursor to helping your partner find a more permanent position within the university.¹⁴⁹

V. *Joint appointment*

If you hold a Ph.D. in addition to a J.D., a joint appointment in another school or college within the university might be a consideration. A joint appointment means you work in two different departments or colleges within a university; if it's a tenure-track appointment, you may be seeking to earn tenure in both places, or one may be designated your tenure home.¹⁵⁰

You should apply only to joint appointments that are approved and announced.¹⁵¹ A joint appointment is not typically something you negotiate after you've received an offer from one school. On the other hand, given the increasing number of J.D./Ph.D. candidates entering legal academia,¹⁵² many

147. *Id.* at 98 (encouraging “open and honest communication” on this issue and suggesting that “gently inquiring about employment opportunities during the callback is appropriate”).

148. Am. Ass'n U. Professors, *Recommendations on Partner Accommodation and Dual-Career Appointments*, 97 BULL. AM. ASS'N U. PROFESSORS 81, 83 (2010).

149. *Id.*

150. Karen Kelsky, *How to Interview for a Joint Appointment*, CHRON. HIGHER EDUC. (Nov. 30, 2015), <https://community.chronicle.com/news/1210-how-to-interview-for-a-joint-appointment>. See generally Maura Borrego & Lynita K. Newswander, *Analysis of Interdisciplinary Faculty Job Postings by Institutional Type, Rank, and Discipline*, 5(2) J. PROFESSORIAL 1 (2011) (describing benefits and challenges with joint appointments).

151. See *supra* 62 (advising candidates to read job descriptions carefully).

152. See Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506 (2016) (explaining the evolution of law school's hiring J.D./Ph.D. faculty members); Joni Hersch & W. Kip Viscusi, *Law and Economics as a Pillar of Education*, 8 REV. L. & ECON. 487, 489 (2012) (examining the faculties of twenty-six highest-ranked law schools and finding that 352 of 1318 current law professors (twenty-seven percent) have Ph.D. degrees); Sarah Lawsky,

schools now address this issue during initial callback interviews with dual-degreed finalists.

But if you've not discussed this issue with the dean before receiving the offer, consider deferring the question until you have accepted the position, and maybe even until you've completed at least one year of service. This will give you an opportunity to learn more about the other department or college, build relationships in both departments or colleges, and learn more about the mechanics of joint appointments at your university.

W. Secondary or courtesy appointment

If you do not want the formality or complexity of a joint appointment, or if you would not qualify for a joint appointment but your teaching or research interests are interdisciplinary,¹⁵³ you could seek a secondary or courtesy appointment in another school or college within the university. The type of appointment is school-dependent, but options include affiliated faculty and adjunct faculty. This type of arrangement can be effectuated later, so it may not be worth attempting to negotiate it up front, especially if you have a short decision window. Other colleges often will be more excited about the arrangement after you have some teaching experience and have published multiple articles.

X. Outside work or consulting

Consulting or other outside professional work can enrich your teaching and research, but entry-level tenure-track professors should be wary of seeking permission to engage in outside work or consulting for at least the first few years—other than potentially to wind down a few specific matters or keep another license active.

Of course, other exceptions exist; if you feel strongly that continuing to engage in other work is important to developing as a professor, consult with your trusted advisors to develop a strategy to raise this issue with the dean. Understandably, the dean may question your priorities if you ask to engage in regular consulting. So be prepared to explain both how the outside work will benefit your teaching or scholarship and assure the dean that you will limit the

Spring Self-Reported Entry Level Hiring Report 2019: Doctrinal, Fellowship, Doctorate, PRAWFSBLAWG (June 6, 2019, 4:44 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2019/06/spring-self-reported-entry-level-hiring-report-2019-doctrinal-fellowship-doctorate.html> (reflecting an increase from sixteen percent to fifty-three percent during the period 2012 to 2019 of law professors hired with a doctorate).

153. *E.g.*, *UIC Faculty Handbook*, U. ILL. CHI. § V(D)(1) (last revised July 25, 2013), <https://facultyhandbook.uic.edu/appointments/>; Office of Provost, *H. Primary vs. Secondary Faculty Appointments*, U. N.C. CHARLOTTE (last visited July 10, 2019), <https://provost.uncc.edu/academic-budget-personnel/handbook/h-primary-vs-secondary-faculty-appointments> (“[T]hese appointments are used to recognize interdisciplinary contributions to research or teaching. No tenure is possible through the unit making a secondary appointment.”).

work so that it never inhibits your ability to meet your teaching, scholarship, and service activities.¹⁵⁴

I have found that new professors grossly underestimate the time it will take to prepare for each class. Many professors find that it takes an average of six to ten hours of initial preparation for each hour in the classroom. Taking the high end of that estimate, class preparation alone can demand thirty hours a week, assuming you are prepping for just one class. Then, you need time to develop assessments, grade, meet with students, answer student questions by e-mail, phone, text, tweet, or other means, develop relationships with other faculty and staff, work on scholarship, engage in committee or other service, attend meetings and conferences, care for your personal needs, and sleep. So, thinking that you are going to be able to use nights and weekends for consulting is often just a delusion.

That being said, campus culture and policies, and the type of position you will hold,¹⁵⁵ are some factors that will determine whether you can (or should) engage in outside work or consulting. The school may have a specific policy or guidelines on faculty consulting;¹⁵⁶ it also may have policies on conflict of interest and conflict of commitment that may impact whether and when you can engage in outside work.¹⁵⁷ In addition, if you accept a position at a law school accredited by the American Bar Association, your school must comply with that organization's accreditation standards.¹⁵⁸ Standard 402 concerns the size of the full-time faculty and states in part that "[a] law school shall have a sufficient number of full-time faculty to enable the law school to operate in

154. See *Law Professors in the Discharge of Their Ethical and Professorial Responsibilities*, ASS'N AM. L. SCH. § IV (last updated July 12, 2017), <https://www.aals.org/about/handbook/good-practices/ethics/> ("Law professors are frequently in demand to participate in activities outside the law school. Such involvement may help bring fresh insights to the professor's classes and writing. Excessive involvement in outside activities, however, reduces the time that the professor has to meet obligations to students, colleagues, and the law school. A professor thus has a responsibility both to adhere to a university's specific limitations on outside activity and to assure that outside activities do not significantly diminish the professor's availability to meet law school obligations. Professors should comply with applicable laws and university regulations and policies concerning the use of university funds, personnel, and property in connection with such activities.").
155. For information and advice about legal writing professors serving as consultants to law firms, see E. Joan Blum & Kathleen Elliott Vinson, *Teaching in Practice: Legal Writing Faculty as Expert Writing Consultants to Law Firms*, 60 MERCER L. REV. 761 (2008).
156. Carol Frances, *Faculty Consulting: Issues, Policies, Characteristics of Faculty Who Consult*, ST. U. (last visited July 10, 2019), <https://education.stateuniversity.com/pages/1967/Faculty-Consulting.html>; e.g., *Administrative Policy: Outside Consulting and Other Commitments*, U. MINN. (last revised Dec. 9, 2019), <https://policy.umn.edu/operations/outsideconsulting>.
157. E.g., *Policy on Conflict of Interest and Conflict of Commitment*, NW. U. (Jan. 2018), https://www.northwestern.edu/coi/policy/core_coi_policy.pdf; *Conflicts of Interest and Conflicts of Commitment*, U. MICH. (last updated Sept. 15, 2015), <https://spg.umich.edu/policy/201.65-1>.
158. ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 68.

compliance with the Standards and carry out its program of legal education.”¹⁵⁹ Interpretation 402-2 then states:

Regularly engaging in law practice or having an ongoing relationship with a law firm or other business creates a presumption that a faculty member is not a full-time faculty member under this Standard. This presumption may be rebutted if the law school is able to demonstrate that the individual has a full-time commitment to teaching, research, and public service, is available to students, and is able to participate in the governance of the law school to the same extent expected of full-time faculty.¹⁶⁰

Deans will have differing comfort levels on whether they want to risk a professor’s not being counted as full time because of outside work.

If you are on a nine-month appointment, consulting during the summer may pose less of a problem if you remain in compliance with the conflict-of-interest policy, but tenure-track faculty should ensure they leave ample time to fulfill scholarship expectations. Also, summer research grants may stipulate that you devote a substantial amount of your time to the funded project.

Consulting or engaging in other outside work during the regular academic year may pose additional difficulties. You need to ensure you are not neglecting your teaching and students, or your service and scholarship obligations.¹⁶¹ In that regard, school conflict policies often limit outside work to the equivalent of one business day per seven-day week.¹⁶²

Conflict policies or school rules may control the extent to which any school resources, such as office or meeting space, equipment, administrative or student assistance, or supplies, may be used when faculty are engaging in outside work.¹⁶³ If the rules are silent, the best practice is to reach an agreement with your dean in writing or to keep any use *de minimis*.

The bottom line on this item is to exercise caution and realize the pitfalls in continuing other work while transitioning into the legal academy.

Y. Administrative assistance

Administrative assistance typically is not addressed in an entry-level offer. Multiple faculty usually share an assistant with other professors.¹⁶⁴ But if you are being assigned a significant administrative role, assistance is something about which you can ask during the negotiation process. It’s doubtful that

159. *Id.* at Standard 402.

160. *Id.* at Interpretation 402-2.

161. Frances, *supra* note 156.

162. *E.g.*, *COI Guidance on Consulting and Other External Engagements*, CORNELL U, <https://researchservices.cornell.edu/resources/coi-guidance-consulting-and-other-external-engagements> (last visited July 11, 2019).

163. Frances, *supra* note 156.

164. DENNING ET AL., *supra* note 74, at 92.

the school will hire a new assistant for you unless you are bringing grant or other funding with you to support that person's salary and benefits, but you may be able to negotiate a percentage of an existing staff person's time to assist with your work. If staff assistance is not a possibility, consider whether a student can assist you. Although student assistants typically are less reliable than staff members, especially as final examinations approach, the school may have work-study money it could use to pay a student to assist you.

Z. Mentor or mentor committee

Many law schools will appoint a mentor or mentor committee each year for junior faculty.¹⁶⁵ This process typically occurs outside the offer letter, but the dean may ask for your input. Even if you are not assigned the specific individual whom you have requested, remember that that person is still your colleague. You can still build a mentor-mentee relationship outside the official committee structure.

IV. Techniques to Hit the Goldilocks Zone

With a better understanding of what an entry-level offer may include, the next step is to determine how to approach your specific negotiation.

A. Understand your negotiating partner

Most typically, the law school dean will extend the offer, although other options may include an associate dean, the head of HR, or a vice provost for faculty affairs. Occasionally, the call letting you know you were the top-ranked candidate may come from the chair of the faculty recruitment committee. But the best assumption is that you will be negotiating with the law school dean.

An important point is to understand the law dean's role in the hiring process and in the university structure. Selecting new faculty is a shared process.¹⁶⁶ The law faculty, often through a faculty committee, screen, interview, and recommend candidates for on-campus visits. The dean may or may not be involved in the selection or initial interview process. During the callback, or on-campus interview, each candidate typically gets to visit with the dean, especially if the dean was not part of the initial interview. After all candidates for a position have completed their on-campus interviews, the faculty—or, more accurately, members of the full-time faculty who hold a certain status or

165. GMP, *Support on the Tenure Track*, INSIDE HIGHER ED (July 7, 2010), <https://www.insidehighered.com/advice/2010/07/07/support-tenure-track> (describing formal and informal mentoring in academia); e.g., Office of the Provost, *Faculty Development & Mentoring*, U. ILL., <https://provost.illinois.edu/faculty-affairs/faculty-development-mentoring/> (last visited July 11, 2019) (describing topics such as the benefits of mentoring, mentoring relationships, mentoring programs, and role of the mentee).

166. ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 68, at Standard 201(b) (“The dean and the faculty shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of members of the faculty.”).

rank—vote to determine which candidates are acceptable for the position. This faculty process often includes ranking all acceptable candidates.

Depending on school policies and traditions, the dean may or may not participate in or vote at that faculty meeting. After the faculty votes, the dean makes an offer. At some schools, the dean can select from any candidate the faculty deems acceptable. At other schools, the expectation is for the dean to offer the position to the top-ranked candidate. At still other schools, the dean must or is expected to coordinate with a provost or vice provost before extending any offer. In most university settings, the law dean straddles the law faculty and the provost and attempts to act in the law school's best interest while juggling sometimes competing demands.

More often than not, the dean concurs in the faculty's choice of the top candidate. Both seek to attract and retain the best faculty possible. If a dean objects strongly to any candidate, the dean often will communicate that to the faculty or recruitment committee at an earlier stage of the process. Similarly, deans usually hope to avoid a failed search. Recruiting faculty is an important but expensive and time-consuming process. By the time the faculty recommends the finalists, deans are usually eager to conclude the process. In addition, a failed search may mean that the law school loses that particular line or will have a much more difficult time in a later search.

For these reasons, deans usually have a strong incentive to fashion the best offer possible.¹⁶⁷ As such, deans typically craft thoughtful, fair offers they hope to excite the top candidate and convince that candidate to accept.

But deans are human. We bring our own preferences and biases to this process. On occasion, a dean may prefer a lower-ranked acceptable candidate and may make a less attractive offer to the top candidate to move more quickly to the dean's favored candidate. But it's difficult to predict this situation, and it can damage the negotiations and future relationship if you assume that the offer has not been extended in goodwill. For example, if you receive an "exploding" offer that requires you to accept or lose the offer in just a day or so, you may think that the dean prefers the next candidate. But the reverse could be true. Or, the school may have two closely ranked candidates. You are the first choice, but if the second candidate has a deadline to accept another job, the school could simply be trying to ensure that it can hire one of the top two candidates. In that situation, the exploding offer says more about the second candidate and the school's needs than you.

Although deans may hope that a candidate simply accepts the initial offer, most expect some level of negotiation. Experienced deans may signal which terms are not negotiable by explaining how they are set. For example, if a dean has no room to negotiate base salary, the dean may explain that all entry-level professors start at the same base salary or that the dean has studied faculty compensation and has extended you an amount that is equitable.

167. Roger Sinclair, *A Dean's Take on Salary Negotiation*, CHRON. HIGHER EDUC. (Aug. 24, 2006), <https://www.chronicle.com/article/A-Deans-Take-On-Salary/46747>.

Speaking of equity, many law schools struggle with compression issues, where junior faculty make more than more experienced faculty or where the gap between junior and senior faculty is quite tight. Candidates should be familiar with this concept and how it could impact them. Not only could it mean that a dean has limited ability to negotiate your base salary, but leapfrogging colleagues who will be voting on your promotion and tenure can damage relationships, especially in public systems where salaries are public.¹⁶⁸

Knowing that equity is important, understand that deans often have more flexibility when you ask for something that lasts only one or two years, when it will not impact all faculty in the same way, or doesn't require a cash outlay. Consequently, it's usually easier to negotiate moving expenses, pre-tenure travel budgets, a pre-tenure research leave, or a course package. But again, each school is different and some deans may be constrained on even these matters, whether by budget, policy, or politics.

It's also easier for a dean to negotiate when you articulate a specific need or desire and explain the reason for your request. It's even better when you have evidence to support your request. For example, if you have a competing offer from a comparable school that includes a higher base salary or some other provision not included in the offer you are negotiating, share that with the dean. If the dean believes you have a better package from another school, armed with your evidence, the dean may be willing to approach the provost for additional resources or an exception from a standard practice.

You also need to understand the institution. Public institutions usually have more rules and constraints than private institutions. Free-standing law schools often have the most freedom to craft individual packages. Deans at law schools with a teaching focus look askance if you ask for lighter loads after the first year, and deans at research-focused law schools pause if you attempt to negotiate the scholarship expectation.¹⁶⁹

Deans are individuals. Each will have a style and preference. Ask your mentors if they know the dean. Read the dean's biography. Search for articles and presentations to see if you can glean the dean's personality. Although you can also seek information from current faculty members, do use appropriate caution, as they may report your queries to the dean.

168. Kelsky, *Can I Negotiate?*, *supra* note 65 (“Tailor your negotiating strategy. The worst mistake any new hire can make is to attempt an R1 negotiation at a tiny college, or a tiny-college negotiation at an R1. In the former case, you deeply offend the department with what are tone-deaf requests that appear uncollegial and entitled In the latter case, you end up with salary and support that are far less than what you actually merit, and what your other colleagues who did negotiate correctly enjoy.”); Sinclair, *supra* note 167 (“Ignoring internal equity issues will only ensure that the new hire will join a department of sullen and grumbling colleagues. And that new hire will be unhappy the following year, should a new faculty member come in with an even higher salary.”).

169. Kelly, *supra* note 98.

Below are some of my preferences and attitudes when negotiating entry-level faculty offers. Having interacted with many other deans, I suspect many of these preferences are widespread.

- I work hard to craft offers that will persuade a candidate to say “yes.”
- I expect people to negotiate and welcome negotiation when people are thoughtful about their priorities.
- I appreciate when candidates understand that the negotiation is not all about them, but also impacts their faculty colleagues. I also appreciate when candidates understand that I may be bound by rules, traditions, budget constraints, or other factors.
- I like people to ask questions, but prefer that they compile those questions and send them in a single e-mail or ask to discuss them in a phone call. It helps to know the questions or concerns in advance, because I often need to research the questions or gather questions from others at the school.
- I prefer when candidates share their priorities and interests so we can brainstorm options. Asking for more without context makes it difficult for me to revise the offer.
- If candidates attempt to negotiate almost all of the terms, I question whether they really want the job or will be a good fit.
- If candidates tell me they are negotiating simply because someone told them they should, I tend to hold firm unless they can give me specific reasons I should consider their counter.
- Last-minute surprises, like a previously unmentioned request for a spousal hire, can, at best, delay the process or, at worst, end the process.
- Exercising poor judgment, like treating the dean’s office staff poorly or posting an offer on social media before having accepted it,¹⁷⁰ may result in the offer’s being withdrawn or may damage the relationship.¹⁷¹

B. Conduct research

In addition to understanding the person with whom you will be negotiating, conduct research so you can better understand the offer and determine how and what to negotiate. Beyond the more general advice to consult with mentors, faculty from your alma mater,¹⁷² friends who may have already

170. See David D. Perlmutter, *Academic Job Hunts from Hell: The Contract Minefield*, CHRON. HIGHER EDUC. (Mar. 22, 2016), <https://chroniclevitae.com/news/1332-academic-job-hunts-from-hell-the-contract-minefield>.

171. I have rescinded only one offer, but that was for a lateral candidate. I almost rescinded one offer when an entry-level candidate told me he wanted to negotiate every point because his mentor told him he needed to. He eventually prioritized his interests, and we successfully negotiated an offer that he accepted.

172. E.g., *Academia*, STAN. L. SCH., https://law.stanford.edu/areas_of_interest/academia/#slsnav-helping-sls-grads-join-the-academy (last visited June 15, 2019).

entered academia, and resources such as the AALS website,¹⁷³ below are some more specific resources.

Check the law school and university web pages for faculty handbooks and policies governing faculty pay, workload, and performance.¹⁷⁴ At public law schools, these sources are typically readily available on the website. At private universities, you may need to ask for copies. Within a university, the provost's page is the most likely place to find university-level faculty policies and information about the possibility of spousal hires.¹⁷⁵

Because of a 1995 consent decree between the Department of Justice and the American Bar Association,¹⁷⁶ the ABA's Section on Legal Education and Admission to the Bar no longer collects information relating to faculty compensation. Since that time, it has become more difficult to determine how salaries and compensation compare across law schools and to determine the salary structure at most private law schools.

That being said, faculty salaries at most public law schools are available,¹⁷⁷ although some lag a year or so behind, and some reflect only base salaries as opposed to total compensation.¹⁷⁸

In addition, the Society of American Law Teachers (SALT) publishes salary surveys.¹⁷⁹ For the most recent survey, eighty-one law schools are represented, although only fifty-seven submitted new information for the 2017–2018 academic year.¹⁸⁰ Even if your school is not listed, reviewing the SALT data can provide some sense of starting salary ranges by region, and, if you cross-reference against *U.S. News & World Report*, by rank. You can also compare schools that might have similar characteristics, such as being an urban public school or a suburban private school. The SALT survey provides average salaries for assistant professors, pre-tenure associate professors, and tenured professors, allowing you to understand salary ranges and potential

173. See *supra* note 67.

174. FLOOD & LEAP, *supra* note 68, at 89–97.

175. E.g., *Resources for Prospective Faculty*, U. PA., <https://provost.upenn.edu/faculty/prospectivefaculty> (last visited June 9, 2019); *Strategic Hiring Initiative for Dual-Career Couples*, U. WIS.-MADISON, <https://facstaff.provost.wisc.edu/strategic-hiring-initiative/> (last visited June 9, 2019).

176. *Justice Department and American Bar Association Resolve Charges That the ABA's Process for Accrediting Law Schools Was Misused*, DEP'T JUST. (June 27, 1995), https://www.justice.gov/archive/atr/public/press_releases/1995/0257.htm.

177. E.g., *Academic and Administrative Appointments (Gray Book)*, U. ILL., https://www.bot.uillinois.edu/resources/gray_book (last visited June 9, 2019).

178. E.g., *Government Salaries Explorer*, TEX. TRIB., <https://salaries.texastribune.org/> (updated July 1, 2020).

179. E.g., Society of American Law Teachers, *2017–18 SALT Salary Survey*, 2018 SALT EQUALIZER 1 (Oct.), <https://www.saltlaw.org/wp-content/uploads/2018/11/SALT-salary-survey-2018-final.pdf>.

180. *Id.*

compression issues. Finally, the SALT survey includes information about summer research stipends.¹⁸¹

Another publicly available source of salary information is the *Chronicle of Higher Education*.¹⁸² Using this source, you can search by college, state, sector, or Carnegie classification. It's quite easy to find salary information for free-standing law schools with a college name search but more difficult to find information about law schools within universities. Law faculty typically make more than professors in the arts and sciences, but less than law faculty in medicine or business.¹⁸³ You can use that guide to get a rough sense to evaluate your offer.

The American Association of University Professors publishes an Annual Report on the Economic Status of the Profession that provides valuable information about faculty salaries generally, but does not break down salaries for law faculty.¹⁸⁴ Researching a private school's 990 may, if any law faculty are listed, give you a sense about the upper limits of senior faculty compensation.¹⁸⁵

Understanding whether law faculty are part of a union may also help you understand whether salary and other benefits are negotiable.¹⁸⁶ One point to remember is that in some states or university systems, law faculty could be exempt from the main faculty union.¹⁸⁷

You should also consider the cost of living where the school is located, and the tax structure. A lower offer from a law school in a small town, especially in a state with no state income tax, may translate into more take-home pay than a higher offer from a school in a large city or with a high tax structure.¹⁸⁸

181. *Id.*

182. *Chronicle DATA*, CHRON. HIGHER EDUC., <https://data.chronicle.com/> (last visited June 9, 2019).

183. See also DENNING ET AL., *supra* note 74, at 90.

184. American Association of University Professors, *The Annual Report on the Economic Status of the Profession, 2017-18*, ACADEME, Mar.-Apr. 2018, at 4, https://www.aaup.org/sites/default/files/ARES_2017-18.pdf.

185. *E.g.*, *Form 990*, AVE MARIA SCH. L. (2016), http://990s.foundationcenter.org/990_pdf_archive/383/383519708/383519708_201706_990.pdf; *Form 990*, U. CHI. (2016), <https://www.scribd.com/document/367932439/University-of-Chicago-Form-990-FY-2016>.

186. FLOOD & LEAP, *supra* note 68, at 80-107 (explaining the impact of collective bargaining agreements on individual faculty contracts); Sinclair, *supra* note 167 ("Furthermore, in places where faculty members are represented by a union through collective-bargaining contracts, many salary parameters (such as summer pay rates) are contractually set with little scope for negotiation."); see also *Collective Bargaining*, AM. ASS'N U. PROFESSORS, <https://www.aaup.org/issues/collective-bargaining> (last visited June 9, 2019).

187. Illinois Human Resources, *Frequently Asked Questions (FAQ)*, U. ILL., <https://humanresources.illinois.edu/assets/docs/AHR/faculty-Sept-14-FAQs.pdf> (last visited July 11, 2019) (explaining that law faculty are exempt from the main faculty collective bargaining units).

188. Rapp, *supra* note 104.

Finally, if you fear a rescinded offer, you can research your school on the Academic Jobs Wiki, “Universities to fear.”¹⁸⁹ At this point, no law schools appear on this non-exhaustive list. I have heard of very few rescinded offers in legal academia, although I have heard of more schools using exploding offers to force candidates to accept or reject offers quickly, with little or no opportunity to negotiate meaningfully.

C. Identify your needs and establish your priorities

It’s rarely, if ever, a wise strategy to negotiate every term of an offer. Instead, you must set your priorities. Do so, take time to identify your needs, establish your priorities, anticipate the school’s interests and concerns, and attempt to value different parts of the package.¹⁹⁰ In my experience, those who negotiate most successfully with me focus on three or four items, with one or two being presented as the most important to the candidate.

The logical starting point is your compensation package, especially your base salary.¹⁹¹ Beyond base pay, think about both the relative value and importance of the items you choose to negotiate.¹⁹² As a federal bankruptcy judge in Louisiana once told me, “Pigs get fed, and hogs get slaughtered.” Translated into this context, if you are seeking a spousal hire, that may be the only major point you raise. If the dean perceives that you are not happy with multiple parts of the offer, the dean may either assume you will be a high-maintenance professor or otherwise a poor fit for the school and halt negotiations.

One final point: On the major items, like base pay, what you negotiate is (hopefully) what you will receive. Do not assume that you can renegotiate later. If you truly need something specific to be successful in the position, ask before you sign.¹⁹³

D. Think about the process, develop your BATNA, then practice

The process of negotiation can be as important as the substance. Of course, you want to be professional, respectful, ethical, and solution-oriented at all times. The way you negotiate will likely set the foundation for your career at the school.¹⁹⁴

189. *Universities to Fear*, WIKIA, https://academicjobs.wikia.org/wiki/Universities_to_fear (last visited July 11, 2019).

190. FISHER, *supra* note 50, at 82-95.

191. *See supra* § III(C) (discussing the basics of base salaries).

192. *See supra* § IV(A) (discussing parts of the offer that may be easier for a dean to adjust).

193. *See* Karen Kelsky, *Did They Lowball Me?*, CHRON. HIGHER EDUC. (Mar. 30, 2016), <https://chroniclevitae.com/news/1344-did-they-lowball-me> (addressing a question by an academic faculty member who accepted a job without negotiating, learned that colleagues were making more, and now wants to renegotiate and emphasizing that “it’s on the candidate to negotiate a job offer at the time it is made”).

194. *See* Brianna K. Randall, *Academic Job Offer and Salary Negotiations*, U. WASH., <https://grad>.

You should not try to negotiate until you actually have been given an offer.¹⁹⁵ This means not attempting to negotiate during your on-campus interview. However, if you need a spousal hire or some other unusual accommodation, consider whether you should raise that in advance.¹⁹⁶ If you are hoping for an offer from one school but receive one from another school, it is appropriate to contact your preferred school to let the dean know you have received another offer,¹⁹⁷ reiterate your strong interest, and communicate the other school's deadline.

Before you begin negotiating, think carefully about what you will do if you fail to reach an agreement.¹⁹⁸ As Fisher & Ury explain:

The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is the alternative? What is your BATNA—your Best Alternative To a Negotiated Settlement? *That* is the standard against which any proposed agreement should be measured. That is the only standard that can protect you both from accepting terms that are too unfavorable and from rejecting terms it would be in your best interest to accept.¹⁹⁹

Developing your BATNA forces you to disaggregate and realistically assess your alternatives and select your most attractive alternative if negotiations fail. It also helps you assess your relative bargaining power. You will judge every other option against that BATNA. For example, if you already have another offer that you would be happy to accept, that is likely your BATNA. If the offer you are negotiating turns out more favorably than your BATNA, that's a strong signal to accept the offer. But if it's less favorable than your BATNA, that's a signal you should either keep negotiating or decline the offer and take the BATNA.²⁰⁰

uw.edu/for-students-and-post-docs/core-programs/mentoring/mentor-memos/academic-job-offer-and-salary-negotiations/ (last visited June 9, 2019).

195. Audrey Williams June, *Negotiating Tactics for Women*, CHRON. HIGHER EDUC. (Nov. 27, 2011), <https://www.chronicle.com/blogs/onhiring/negotiating-tactics-for-women/29883>.

196. For the pros and cons, see *supra* § III(U).

197. Never lie about having an offer from another school, or the terms of that offer. See Jack Stripling & Megan Zahneis, *The Big Lie: A Professor Schemed to Get a Raise and Win His Department's Respect. Instead, He Wrecked His Career.*, CHRON. HIGHER EDUC. (Sept. 4, 2018), <https://www.chronicle.com/interactives/big-lie> (describing a professor who faked a counteroffer).

198. FISHER, *supra* note 50, at 102.

199. *Id.*

200. Due to space constraints, this discussion of BATNA is truncated. Candidates should consider studying *Getting to Yes: Negotiating Agreement Without Giving In*, especially the chapter on BATNA and trip wires. See FISHER, *supra* note 50, at 99–108.

If you receive the offer verbally, ask whether the dean can send you a written summary or term sheet so that you ensure you understand the key terms and can consider them.²⁰¹ Also, don't try to negotiate the offer the same day you receive it, or before you've received it in writing.²⁰² It is fine to show excitement and thank the dean for the offer and to ask questions, such as how the school determines salaries and other compensation.

Advice varies about whether to conduct negotiations via e-mail or phone. Personally, I think a combination works best: discussing key points so tone is heard and both sides can ask follow-up questions but then reducing points to writing.

If you are negotiating by phone, or even by Skype or Zoom, practice. Find a person in academic, HR, or with hiring experience, and role-play the anticipated session. As one academic career counselor advises:

Ask the other person to take it seriously. Get them to push your buttons and practice responding calmly and moving things in a positive direction away from conflict and emotionalism. Get them to explain why they can't give you what you want. That gives you some practice on drawing them out so you can figure out what to say to remove whatever roadblock they raise. You can always say, "I understand that you can't give me what I want right now, but how close can you come?"²⁰³

Role-playing can also help you crystallize your own priorities and how to best articulate them for maximum effect.

201. See Kelsky, *How to Negotiate*, *supra* note 145 ("Inexperienced, brand new Ph.D.s have no ability to instantly absorb the elements of an offer and evaluate them, let alone compose effective negotiating responses to them. You need time to study them, discuss them with mentors, and craft your replies. While old school (and usually male) faculty strongly favor the phone, my equally strong belief is that for every new Ph.D., but particularly for women and minorities, and first generation scholars, etc., it is critical that you preserve the breathing space of email, while also being hypervigilant to issues of tone (which so often can go awry in email.[])").
202. See Aguilar, *supra* note 93 ("If the first phone call is headed in that direction, however, try to sidestep it by saying something like, 'I'm not prepared to discuss the details of the offer over the phone just yet, but I am happy to do so after I've read it over in writing.'"); Kelsky, *Can I Negotiate*, *supra* note 138 ("Please don't allow your panic and inexperience to pressure you into hasty decisions. Your first tenure-track offer is one of the most significant moments of your whole life, and certainly of your career. Take time to consider it carefully, and confer about it with trusted mentors and your family."); Kelsky, *How to Negotiate*, *supra* note 145 ("Do not, under any circumstances, accept the offer the same day they make it. When they call or email, answer pleasantly and politely, 'Oh thank you. That is good news. I'm so pleased.' And then say, 'I'd like to know more about the offer. When can we discuss the details, and when can I expect a written contract?' If the [school] tries to push you for a commitment, simply repeat, 'I am very happy for the offer, but I will need to discuss the terms and see the contract before I can make a final commitment. I very much look forward to discussing this further. I hope we can begin soon.'").
203. June, *supra* note 195.

V. Conclusion

Hopefully, the information and advice above shows that it is possible to reach the Goldilocks Zone when negotiating a first academic appointment. To recap the most important points:

- Plan to negotiate the offer, but focus on a few terms that impact your highest priorities;
- Start with a presumption that the dean crafted your offer in good faith and understand that the dean is working within a system that has constraints;
- Ask questions before countering;
- Conduct research to understand what a reasonable counteroffer might be in the context of the specific school;
- Remain professional and solution-oriented at all times;
- Frame your requests with a communal attitude that shows you have the school's best interest in mind;
- Explain why you need something more or different to succeed; and
- Measure your progress and final offer against your BATNA.

In addition, seek advice and input from trusted sources. Academia has archaic and sometimes puzzling policies and traditions. Seeking the perspective of a professor from your alma mater or friend who is already on a law faculty can help you design your negotiating strategy to reach a win-win solution and embark on a fulfilling academic career.