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Clinical Legal Education Association

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July 22, 2010

Donald J. Polden, Dean (by email)
School of Law
Santa Clara University
Chair, Standards Review Committee

Margaret Martin Barry, Professor (by email)
Columbus School of Law
The Catholic University of America
Vice-Chair, Standards Review Committee

Re: Standards Review Committee's July 15, 2010 Draft re Security
of Position, Academic Freedom, and Attract and Retain Faculty

Dear Dean Polden & Professor Barry:

I write for the executive committee of the Clinical Legal Education Association (CLEA) to express our concerns regarding the document entitled "Draft, Security of Position, Academic Freedom, and Attract and Retain Faculty" dated July 15, 2010, which was posted on the web site of the Standards Review Committee on July 20, only three days in advance of the Committee's meeting to begin to discuss the issues it raises. This "Draft" proposes the elimination of the longstanding provisions in Standard 405 addressing tenure and other forms of security of position for law faculty.

First, it is troubling that this proposal, which raises issues that are fundamental to the structure of legal education, is posted so late that interested persons and organizations cannot provide comments prior to the Committee beginning its deliberations on those issues. It is also troubling that, although it appears to represent the viewpoint of only a single author (we note that the draft, on page 7, is written in the first-person singular and states that it is not endorsed by the subcommittee), this "discussion" document does not provide the Committee with any alternate points of view.

(CLEA is the nation's largest association of law teachers, representing approximately 800 dues-paying faculty at over 160 U.S. law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.)

We are also concerned that the author of this document misreads, and therefore misrepresents, the May, 2008 “Report of the Special Committee on Security of Position,” which reported to the Council on Legal Education. The Special Committee was charged with considering whether alternatives to tenure might adequately protect academic freedom in law schools. So it provided a possible alternative structure, but explicitly did not endorse or propose that alternative structure. The current draft repeatedly mischaracterizes the Special Committee’s “alternative standards” language as its "recommendations" and as "black letter" statements of its position. But at page 2 of its report the Special Committee makes clear that its approach was a thought experiment, “assuming *arguendo*” that the current standards were replaced. Then, at page 15, the Special Committee emphasizes that it does not recommend the alternative approach it was asked to develop. To suggest that its report constitutes direct support for the elimination of the provisions of Standard 405 is a disservice to its careful work.

As is already evident, there are many stakeholders who are deeply interested in the issues raised by this document. Indeed, they are so concerned that, even in advance of receiving the July 15 “Draft,” many have provided the Committee with their views. These include the Association of American Law Schools, the American Association of University Professors, the Society of American Law Teachers, and over a dozen law school deans and university presidents. None of their viewpoints is so much as referenced in the “Draft” and none of them have had the opportunity to comment on it. We hope that the discussion of these issues will proceed from now on with more notice of the Committee’s discussion documents, more clarity regarding the sponsorship of proposed changes in the standards, and more precision regarding the sources for the proposed changes.

We appreciate your attention to these matters and look forward to the observing the Committee’s meeting this weekend in Chicago, where we expect that the nature of the “Draft” will be further clarified in light of the issues noted above.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Kuehn". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Robert R. Kuehn, President

cc: Becky Stretch, ABA Section of Legal Education and Admissions to the Bar (by email)
Bucky Askew, ABA Section of Legal Education and Admissions to the Bar (by email)