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SALT

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TO: The Hon. Solomon Oliver, Jr., Council Chairperson,
Barry A. Currier, Managing Director of Accreditation and Legal Education,
Section on Legal Education and Admissions to the Bar

From: Society of American Law Teachers

Date: September 27, 2013

RE: Comment on Standard 405

The Society of American Law Teachers (“SALT”) writes to express its opposition to proposed changes to Standard 405. A full-time tenured faculty is a critical and necessary component to a quality legal education. SALT urges the Council to strengthen, not weaken, legal education by continuing to expect schools to provide tenure or comparable security of position to full-time faculty.

A quality legal education requires schools to discuss complex and often controversial problems; to explore these problems in an experiential setting; to use the rules of law but also to question them; and to combine traditional and new approaches to pedagogy. To achieve all of this, law faculty must be free to innovate; to develop and implement missions reflecting the needs of their students; to support, directly and indirectly, access to legal services for the public; and to impress upon students their role as public citizens as they become practicing lawyers.

Tenure—the long-term commitment of schools to their faculty—makes this innovation and critical inquiry possible. As is true with respect to other academic disciplines, society benefits from tenure because tenure encourages wide-ranging, unconstrained, intellectual exploration, where inquiry is driven by individual viewpoints and research plans. But tenure in the legal academy serves additional, unique functions; it encourages study and critique of the legal profession itself and our system of justice, and allows faculty (and their students) to write, teach, and litigate both against and in support of the interests of the powerful and entrenched. The expansion and development of clinical and, to a growing extent, legal writing instruction is a testament to the importance of tenure, as clinical and legal writing faculty have gained greater security of position protections and attendant institutional commitment and attention within law schools.

These programmatic gains have been achieved because of the current standards’ explicit mandate of security of position for clinical faculty, including at least five-year presumptively renewable contracts, and the security of position accorded legal writing faculty in a few law schools (but only a few) in the absence of

a mandate for those faculty. The proposed versions of Standard 405 contain no explicit protections for security of position for any faculty and, therefore, threaten the advances achieved and supported by the current Standards and the status of all faculty, not just clinical and legal writing instructors. Tenure and presumptively renewable contracts protect academic freedom more completely than any policy statement protecting academic freedom can or does. Requiring only an announced policy protecting academic freedom or requiring such (undefined) security of position as necessary to safeguard academic freedom, as the proposals would do, is insufficient, as years of experience in the academy, in law schools and elsewhere, demonstrate. Knowing the law school can decline to renew an appointment unless the faculty member proves the action was a violation of academic freedom will deter many from exercising that freedom. Legal education as a whole will be undermined if the mandate of tenure is undermined, and those faculty who have achieved greater protections and institutional commitment over the years may see those advances stalled and reversed.

It would be a mistake to assume that so long as some law schools provide tenure and operate out of a vision of a broad concept of education, society obtains the same benefits when other law schools operate without tenure. Law schools serve local as well as national communities and constituencies, and these local communities of students, lawyers, and citizens will suffer if the rules do not mandate the same aspirations for all. Similarly, law schools with missions defined with special focus on race, religion, or class often provide services to underserved communities, and tenure ensures an effective space for innovation and inquiry for populations at those law schools and the communities they serve.

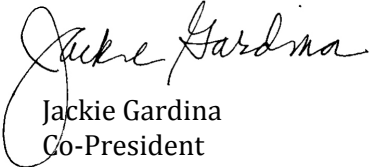
As has long been recognized in the discussions of the purposes of tenure, tenure is critical because of its consequences for society and, in our context, the legal profession. Tenure enables law teachers to demonstrate to law students and lawyers how legal practitioners at all levels can question, critique, experiment, and innovate. Tenure allows law teachers to freely question, critique, and innovate in ways not possible for practitioners constrained by the economics of their law practice, and to share their insights broadly. Law teachers regularly engage and collaborate with the bar in clinical advocacy, practice-oriented scholarship in state and local bar newsletters, presentations to practitioners including CLE events, and participation on amicus briefs. Through these mechanisms, the public benefits from the protection afforded by tenure to legal academics. Tenure facilitates productive adaptation in all aspects of the practice of law.

The suggestion that tenure be removed as a mandate in the accreditation standards arises in part as a response to the economic difficulties law schools, law students, and the legal profession are now facing. But tenure is not the problem and removing tenure is not the appropriate answer. The economic difficulties the profession and the academy face have many sources: a correction in the market's assessment of how to value legal services and legal education, the overall recession, misleading job statistics publicized by law schools, restructuring of some aspects of legal practice and the resulting uncertainty about legal jobs for graduates, concern about student loan practices (undergraduate as well as law school), publicized attacks on the behavior and scholarly production of particular academics, critique of legal education as not practical enough, and attacks on public

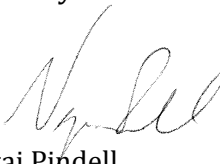
financing of law schools whose faculty and students have challenged powerful interests in their communities. The economic difficulties law schools face at the moment thus have little to do with tenure. Tenure, once earned, guarantees that the faculty member will only be fired for cause and is not by itself a guarantee of any particular salary. Tenure protects against unwarranted terminations and thus supports innovation and long-term development; it does not stand in the way of change or impair a school's ability to respond to economic circumstances.

The conversation around tenure sometimes creates fault lines between and therefore divides the various communities within legal education (doctrinal, clinical, and legal writing faculty; faculty and administration; students and faculty; academic and practicing legal professionals), but we all have a shared interest that transcends our differences: the delivery of quality legal education to all law school students. Legal education, like higher education generally, includes preparing for a vocation, learning to communicate, building character, preparing for citizenship, promoting diversity, preparing for a global society, and acquiring the perspective to address the challenges of a dynamic, troubled world and envision a better future. SALT calls on law schools, indeed higher education institutions as a whole, to recognize that we are at a critical juncture in how higher education is being articulated and valued. Weakening tenure and security of position provisions would be a short-sighted response that would undermine crucial aspects of the purposes that legal education serves.

Submitted on behalf of the Society of American Law Teachers by



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