

**COMMENTS SUBMITTED BY THE AMERICAN BAR ASSOCIATION,
SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR,
COMMITTEE ON CLINICAL SKILLS**

To the

**AMERICAN BAR ASSOCIATION, SECTION ON LEGAL EDUCATION
AND ADMISSION TO THE BAR, STANDARDS REVIEW COMMITTEE**

On

SECURITY OF POSITION, ACADEMIC FREEDOM AND ATTRACT AND RETAIN FACULTY

DRAFT FOR APRIL 2, 2011 MEETING

The American Bar Association, Section of Legal Education and Admission to the Bar, Committee on Clinical Skills (“The Committee”) submits these comments in response to the latest Standards Review Committee’s (“SRC”) draft on Security of Position, Academic Freedom and Attract and Retain Faculty for the April 2, 2011 meeting. The Committee was established, in part, to review and make recommendations “with respect to the role of skills training in law schools including programs of instruction and the status of teachers.”¹

As the Committee explained in its submission to the SRC for the January 8-9, 2011 meeting, “[t]he committee’s mandate recognizes the interlocking nature of status with programs of instruction and the importance of status to a quality legal education.”² In that submission, the Committee urged the SRC to reject the proposed recommendations to eliminate security of position and governance rights provisions in Standard 405(c) and its Interpretations. The Committee explained that the proposed changes would be “harmful to legal education because [they would] leave clinical faculty without the security of employment that is needed for full participation in governance matters related to their respective law schools, including matters related to developing innovative curricular changes that are necessary to provide law students of the 21st century a sound legal education.”³

Unfortunately, the SRC’s latest draft for the April 2, 2011 meeting also proposes changes to Standards 206, 405 and 603 that, if adopted, would eliminate security of position from the Standards. The proposals also weaken severely the governance rights currently afforded full-time faculty, and therefore raise serious questions about the role that law school faculty would have in the important decisions

¹ American Bar Association, Section on Legal Education and to the Bar, Council and Committee Descriptions, *available at* <http://apps.americanbar.org/legaled/committees/committees.html>.

² Comments Submitted by Committee on Clinical Skills to the Standards Review Committee on Security of Position, Academic Freedom and Attract and Retain Faculty Draft for January 8-9, 2011 Meeting at 1, *available at* <http://apps.americanbar.org/legaled/committees/StandardsReviewdocuments/Comment-SecurityofPosition-ABACommitteeonClinicalSkills-January2011.pdf>

³*Id.*

impacting their respective law schools, including hiring, promotion and the curricular innovations necessary to provide the students the complex mix of analytical and practical skills necessary to practice law.

These revisions to the Standards would represent a negative sea change in legal education. As a result, several organizations and individuals have submitted comments to the SRC regarding these proposals. These comments offer various perspectives on these issues, as well as counter-proposals that would retain security of position protections and governance rights. In addition, several law schools—Georgetown University Law Center, Golden Gate University School of Law, University of Hawaii School of Law, the University of Baltimore School of Law, the University of Oregon School of Law, Loyola New Orleans College of Law, Cleveland Marshall College of Law, Suffolk Law School, Touro Law School, Duquesne University School of Law and University of Nevada Las Vegas School of Law—have passed faculty resolutions opposing these proposed changes to the security of position protections. It is not hyperbole to suggest that these issues are among the most hotly debated in legal education today.

There is no need for the Committee to repeat our reasons for opposing the proposed changes. Other organizations have explained in detail the ways in which stripping security of position protections and governance rights from the Standards are counterproductive. Obviously, the SRC will consider all of these submissions and the oral testimony at the forthcoming April 2nd hearing in moving forward on these issues.

Rather, the Committee writes to urge the SRC to carefully consider the potential impact these proposed changes would have on the diversity of our law teaching ranks. Law schools are required to strive for diverse faculty.⁴ The lack of diversity—particularly racial diversity—among law school faculty has long stained legal education. As a result, there have long been efforts to diversify law school faculty. These efforts recognize that diverse law faculty is necessary to provide a sound legal education.

Eliminating from the Standards all security of position protections will likely have a deleterious impact on law schools' abilities to continue efforts to diversity faculty. The lack of diversify is not confined to any particular category of law professors. For instance, the Legal Writing Institute (“LWI”) has previously explained to the Council of the Section of Legal Education and Admissions to the Bar that “[s]kills positions in general, and writing positions in particular, have been socialized as jobs held by female faculty members.”⁵ Therefore, LWI explained, [i]f the assurances and protections provided by current Standard 405(c) are watered down...the affected faculty will be largely female.”⁶

Diversity issues—particularly issues of racial diversity— also are particularly acute in clinical legal education. Data gathered in 2007-2008 illustrate this point. The Association of American Law Schools

⁴ American Association of Law Schools Bylaws, Section 6-3(c) (“A member school shall have to seek a faculty, staff, and student body which are diverse with respect to race, color, and sex.”).

⁵ Written Comments of the Legal Writing Institute to the Council of the Section of Legal Education and Admissions to the Bar, July 21, 2008, at 5.

⁶ *Id.* at 5-6.

Statistical Report on Law Faculty for 2007-2008 reported that 74.4% of law faculty identified as white.⁷ During that same period, however, the Center for the Study of Applied Legal Education reported that 86.6% of clinical law faculty identified as white.⁸

There is a strong link between security of position and the ability of law schools to attract and retain a competent faculty. As explained three years ago in the Report of Special Committee on Security of Position, most law professors “have attractive alternatives in the world of practice.”⁹ Thus, one way for law schools to hire talented professors, particularly talented attorneys of color, is to afford them a form of security of position that makes law teaching an attractive and viable alternative to their respective practices and other professional endeavors. In essence, very few lawyers or other professionals would leave a secure or somewhat secure position for an even less secure position.

For these reasons, the SRC should carefully analyze the impact these proposed changes would have—perhaps through a fact-finding process or study—on the ability of law schools to attract and retain a faculty that is diverse.

We again thank the Standards Review Committee for its important work on this project and continue to look forward to assisting in whatever ways we can.

Sincerely,

Barbara A. Fedders, Professor, University of North Carolina School of Law (Co-Chair)

Gemma Solimene, Professor, Fordham University School of Law (Co-Chair)

Committee Members:

Alicia Alvarez, Professor, University of Michigan Law School

Catherine Greene Burnett, Associate Dean, South Texas College of Law

Susan Bryant, Professor, City University of New York School of Law

Christine Cimini, Professor, University of Denver, Sturm College of Law

Thomas Guernsey, President and Dean, Albany law School

Ann Juergens, Professor, William Mitchell College of Law

⁷ Association of American Law Schools, Statistical Report on Law Faculty, 2007-2008 at 15, *available at* <http://www.aals.org/statistics/report-07-08.pdf>.

⁸ Center for the Study of Applied Legal Education, Report on the 2007-2008 Survey at 28, *available at* <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf>.

⁹ Report of Special Committee on Security of Position, May 5, 2008, at 11-12.

Donna H. Lee, Professor, City University of New York School of Law

Michael Pinard, Professor, University of Maryland School of Law

Peter R. Pitegoff, Dean, University of Maine School of Law

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