December 20, 2013

Hon. Solomon Oliver, Jr., Chairperson  
Barry A. Currier, Managing Director of Accreditation and Legal Education  
ABA Section of Legal Education and Admissions to the Bar  
321 North Clark Street, 21st Floor  
Chicago, IL 60654-7958

Re: Comments on the Proposed Changes in Standard 405

Dear Judge Oliver and Mr. Currier:

We, the Faculty of the University of Puerto Rico School of Law, share the concerns of many of our colleagues who have already written to you urging to reject the proposed changes by the ABA Council on Legal Education to ABA Standard 405.1. It is our firm belief that the system of tenure currently required for ABA-accredited schools safeguards academic freedom in a way which cannot be overstated.

As it has been forcefully argued by many distinguished colleagues, the proposed changes to Section 405 will negatively impact the recruitment and retention of outspoken and nonconforming law professors. Academic freedom presupposes the space for unorthodox views and voices to be raised without fear of reprisals. The tenure system strengthens the underlying conditions necessary for academics to engage in the critical examination of the law and its role in our society. As such, it is essential for responsible teaching, scholarship and academic endeavors. We agree with those who have pointed out that the Critical Race Theory literature, for instance, would not have been possible without the protection of the tenure system.

Naturally, it is not the purpose of the Council to hinder the academic undertakings of political and ideological minorities, nor to exclude them from law schools. Still, we believe that the proposed changes to Section 405 will have those unintended consequences. It would be unrealistic to expect otherwise since topics such as poverty, inequality, gender and race, to name a few, are inherently controversial. Those who write about controversial subjects or teach employing nontraditional approaches to the law will step on
many toes along the way. Without tenure protection, they will have to look over their shoulders at all times, pondering whether there will be reprisals.

The Council’s proposed substitutes for tenure, though well intended are insufficient. In their October 8, 2013 letter, our colleagues have forcefully stated to you how tenure serves as a shield against discrimination. We wholeheartedly agree with them in their belief that "[t]enure’s substantive and procedural safeguards are bulwarks against discriminatory dismissals." Given the history of political intolerance and persecution in Puerto Rico, it is our duty to stress it.

We share your concern for the future of legal education and agree that some reforms are necessary to further our common goals. Nonetheless, we believe that the elimination of the tenure system is a step in the wrong direction.

Oscar Miranda Miller
Secretary

Vivian I. Neptune Rivera
Dean