July 19, 2008

Letter to the Council of Legal Education and Admissions to the Bar
Regarding Changes Proposed to Standard 405(c)

Dear Members of the Council:

We urge the Council to reject the proposed changes in Standard 405(c) and to enforce it as written. The proposed changes would permit schools to marginalize clinical educators and to exclude them from the informal and formal processes shaping the future of legal education. The point of the standard is to foster the integration of clinical and non-clinical faculty, a process that benefits all legal education. Integration will not occur unless most clinical teachers at a school have formal equality with the rest of the faculty. Unfortunately, despite how much has been accomplished by the clinical professoriate to reshape legal pedagogy and to invent new forms of legal knowledge and scholarship, a number of schools still do not integrate clinicians as full participants into their faculties, unless required to do so.

Most law professors hope that, through what and how we teach our students, we can improve the legal system. Clinical teachers bring a perspective often quite different from non-clinicians about the substance and process of legal education, including what theories and skills to teach, what values to transmit, what perspectives on law and legal practice matter, and how pedagogically to achieve educational objectives. Clinical teachers, by reaching students at the formative moment when they first take responsibility for clients in professional roles, play a particularly critical part in providing students with insights about professional values, professional identities, and the roles of the legal profession in society. At stake in the tiresome status debate are the critical questions whether clinical education will continue to flourish and whether the vantage point that clinical teachers bring to the academy will inform the mission of legal education.

Clinicians, like most other law professors, believe deeply that institutional decisions about what to teach prospective lawyers are a matter of great consequence. All recognize the healthy disagreement within faculties about the content and methodologies of the curriculum, the right qualifications for a person to secure a faculty appointment, and ways to evaluate scholarship. In approaching decision-making about each of these topics, faculty influence each other through full participation in the intellectual life of the institution and in the collective deliberative processes that lead to consensus and action.

In many ways, the daily, regularized inclusion of clinical faculty in the intellectual life and decision-making of a law school is the realization of formal institutional status. Faculty members share scholarly works at various stages of completion and reformulate ideas, drawing on the comments of others. They discuss teaching and attend each other's classes. They present papers to faculty fora. And through relationships built on a daily basis they influence each other. When clinical teachers are "on the faculty" and considered equal to their colleagues, their ideas are informed by and inform the ideas of the others. This interchange enriches the law schools at which it takes place. At schools where clinicians are unequal, this dialogue occurs much less frequently and carries distortions created by differences in status.

Participation in deliberations over the direction of our law schools and the intellectual communities they constitute is fundamental to our work as law reformers, critical thinkers, legal scholars, and teachers. Invariably disagreement and debate characterize much of law faculty decision-making. Those who advocate for positions that are unpopular with colleagues or disagree with the dean must calculate the risks. To the extent that a participant in these debates is dependent upon the favor of others to retain employment, as are teachers on renewable appointments, he or she lacks the full freedom to advocate for institutional change, particularly around important, strongly-contested issues within institutions. Therefore, when faculties make decisions, they can easily marginalize clinicians' perspectives on law, legal practice, legal institutions, professional responsibility, curricular structure, legal pedagogy, and legal scholarship.

At the same time that faculty members need the protections of tenure to ensure academic freedom vis-a-vis attacks on their views coming from outside the academy, clinicians need that same protection to contend for their positions within their own law schools. Without tenure or its equivalent, such freedom is not possible. Dismantling the status guarantees afforded by Standard 405(c), therefore, effectively denies clinicians the protection of their views in the process of shaping and carrying out the law school's mission. Debates over curriculum, scholarship, teaching, and service require an equal playing field.

Because clinical teachers supervise students representing poor and disenfranchised people and groups in matters that can be controversial, and because their scholarship is often written from the vantage point of the law's effects on the lives of the powerless, they are even more likely than other faculty to need the protection of academic freedom. Surely, the claim that clinicians' academic freedom survives intact without security of position defeats the notion that tenure is necessary to protect anyone.

We ask that members of the Council consider the accomplishments of clinical faculty over the course of the modern history of clinical education. When modern clinical education began to grow during the late 1960's and early 1970's, traditional legal educators derided it as a "side show," a fad that would fail. Instead, as the Carnegie Report, EDUCATING LAWYERS, powerfully documents, clinical education has enriched the academy with attention to different and formerly neglected aspects of legal knowledge, including practical understanding and professional judgment, as well as new teaching methods. Furthermore, in the view of the Carnegie Report, law schools' failure to integrate these forms of legal knowledge constitutes the striking deficit of legal education. As faculty work to balance the teaching of doctrine, practice, and theory in their courses and in the curriculum, the best clinics have become places to integrate seamlessly all three. As noted in the A.B.A. Report of the Task Force on Law Schools and the Profession (the MacCrate Report), "Unquestionably, the most significant development in legal education in the post World War II era has been the growth of the skills curriculum." The Report went on to say that clinical faculty were instrumental in this development and that clinical courses "occupy an important place in the curriculum of virtually all ABA approved law schools."

To transmit the skills and values necessary to legal practice and to supplement the forms of legal knowledge that effective and responsible lawyers require, clinicians have created, as part of their scholarly achievements, theories about lawyering. An extensive bibliography of scholarship produced by clinicians, the successful peer-reviewed Clinical Law Review, and a three-decade-old tradition of vibrant conferences on clinical education, as well as generations of law students who view their clinical courses as central to their lives as lawyers, now help to define legal education. Could any of this have occurred without a permanent cadre of clinical teachers who have the status guaranteed by our existing standards?

With a few exceptions, the intellectual leadership of the clinical field, characterized by pedagogical inventiveness and scholarly boldness, has come from clinicians with tenure or equivalent appointments. Nearly all highly-regarded clinical programs, in the words of 405(c), are "predominantly staffed by" people with such appointments. This history proves the genius of a set of decisions made nearly 30 years ago with the adoption of this standard. The proposed changes take legal education backwards and endanger the achievements of this form of legal education. The Council should reject them.

Respectfully Submitted,

Claudio Grossman, Dean
Washington College of Law, American University

Michelle Anderson, Dean
CUNY School of Law

Katherine S. Broderick, Dean
U.D.C. David A. Clarke School of Law

Thomas Guernsey, Dean
Albany Law School

Joyce E. McConnell, Dean
West Virginia University College of Law

Aviam Soifer, Dean
William Richardson School of Law, University of Hawaii

William M. Treanor, Dean
Fordham University School of Law

Michelle S. Simon, Dean and Professor of Law
Pace University School of Law

John L. Sobieski, Jr., Interim Dean
University of Tennessee College of Law

Elliott S. Milstein, Professor of Law and Former Dean
Washington College of Law, American University

John D. Feerick, Former Dean
Fordham Universsity School of Law

Robert H. Smith, Professor of Law and Former Dean
Suffolk University Law School

The Honorable Kristen Booth Glen, Dean Emerita
CUNY School of Law

Lawrence C. Foster, Professor of Law and Former Dean
William S. Richardson School of Law, University of Hawaii

Richard S. Miller, Professor of Law Emeritus and Former Dean
William S. Richardson School of Law, University of Hawaii

Barbara Aronstein Black, George Welwood Murray Professor
of Legal History and Former Dean
Columbia Law School

Richard L. Ottinger, Dean Emeritus
Pace University School of Law

Ann Shalleck, Professor of Law
Carrington Shields Scholar
Washington College of Law, American University

Dean Hill Rivkin, College of Law Distinguished Professor
University of Tennessee College of Law

Wallace Mlyniec, Lupo-Ricci Professor of Clinical Legal Studies
Georgetown University Law Center

Claudia Angelos, Clinical Professor of Law
NYU Law School

Deborah Epstein, Professor of Law
Associate Dean of Clinical Programs,
Public Interest & Community Service
Georgetown University Law Center

Stephen Wizner, William O. Douglas Clinical Professor of Law
Yale Law School

Susan Bryant, Professor of Law
CUNY School of Law

Jane H. Aiken, Professor of Law
Georgetown University Law Center

Binny Miller, Professor of Law
Director of the Clinical Program
Washington College of Law, American University

Richard Wilson, Professor of Law
Washington College of Law, American University

Conrad A. Johnson, Clinical Professor of Law
Columbia University School of Law

David Chavkin, Professor of Law
Washington College of Law, American University

Brenda Smith, Professor of Law
Washington College of Law, American University

Susan Bennett, Professor of Law
Washington College of Law, American University

Elizabeth Cooper, Professor of Law
Fordham University School of Law

James H. Stark, Professor of Law
University of Connecticut School of Law

Bill Hing, Professor of Law
Director of Clinical Programs
University of California at Davis School of Law

Minna J. Kotkin, Professor of Law
Brooklyn Law School

Michael E. Tigar, Professor Emeritus of Law
Washington College of Law, American University

Mark Aaronson, Professor of Law
U. C. Hastings College of the Law
Paul R. Tremblay, Clinical Professor of Law
Boston College Law School

Randolph N. Stone, Clinical Professor of Law
Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School

Catherine F. Klein, Professor of Law
Director, Columbus Community Legal Services
The Columbus School of Law
The Catholic University of America

Ascanio Piomelli, Professor of Law
U. C. Hastings College of the Law

Katherine Kruse, Professor of Law
William S. Boyd School of Law
University of Nevada Las Vegas

Jane Spinak, Professor of Law
Columbia Law School

Miye Goishi, Clinical Professor of Law Director, Civil Justice Clinic
U. C. Hastings College of the Law

Richard A. Boswell, Professor of Law
U. C. Hastings College of the Law

Phyllis Goldfarb, Professor of Law
Director of Clinical Programs
George Washington University Law School

Karen Musalo, Clinical Professor of Law
U. C. Hastings College of the Law

Susan Herman, Professor of Law
Brooklyn Law School

Frank S. Bloch, Professor of Law
Vanderbilt University Law School

Mark Spiegel, Professor of Law
Boston College Law School

Andrew Popper, Professor of Law
Washington College of Law, American University

Mary Lu Bilek, Associate Dean and Professor of Law
CUNY School of Law

Michael J. Wishnie, Clinical Professor of Law
Yale Law School

Margaret Montoya, Professor of Law
University of New Mexico School of Law &
2008-09 Haywood Burns Chair in Civil Rights
CUNY Law School

Gail E. Silverstein, Associate Clinical Professor of Law
U. C. Hastings College of the Law

Ian Weinstein, Professor of Law
Director of Clinical Education
Fordham University School of Law

Karen Tokarz, Charles Nagel Professor of Public Interest Law and Public Service
Director, Dispute Resolution Program
Washington University School of Law

Grande Lum, Clinical Professor
Director of the Center of Negotiation and Dispute Resolution
U. C. Hastings College of the Law

Philip Schrag, Professor or Law
Georgetown University Law Center

David J. Reiss, Associate Professor of Law
Brooklyn Law School

Chai Feldblum, Professor of Law
Georgetown University Law Center

Sameer M. Ashar, Associate Professor of Law
Director of Clinical Programs

Alan Minuskin, Clinical Associate Professor of Law
Boston College Law School

Alexis Anderson, Associate Clinical Professor of Law
Director, Legal Assistance Bureau
Boston College Law School

Frank Herrmann, SJ, Associate Professor of Law
Boston College Law School

Sharon Beckman, Associate Clinical Professor of Law
Boston College Law School

Maritza Karmely, Assistant Clinical Professor of Law
Boston College Law School
Dan Kanstroom, Clinical Professor of Law
Director, Human Rights Programs
Boston College Law School

Evangeline Sarda, Associate Clinical Professor of Law
Boston College Law School

Alan Minuskin, Associate Clinical Professor of Law
Boston College Law School

Robert Lancaster, The J. Noland and Janice D. Singletary Professor of Professional Practice
Director of Clinical Programs
Paul M. Hebert Law Center
Louisiana State University

Mitt Regan, Professor of Law
Co-Director, Center for the Study of the Legal Profession
Georgetown University Law Center

Sherman L. Cohn, Professor of Law
Georgetown University Law Center

Christine N. Cimini, Associate Professor of Law
Director of Clinical Programs
University of Denver Sturm College of Law

Andrew Schoenholtz, Professor of Law
Georgetown University Law Center

Donna M. Ryu, Clinical Professor of Law
U. C. Hastings College of the Law

J. L. Pottenger, Jr., Nathan Baker Clinical Professor of Law
Yale Law School

Barbara Schatz, Clinical Professor of Law
Columbia Law School

Michael Gottesman, Professor of Law
Georgetown University Law Center

Stacy Caplow, Professor of Law
Director of Clinical Education
Brooklyn Law School

Susan Carle, Professor of Law
Washington College of Law, American University

Marilyn Walter, Professor of Law
Brooklyn Law School

Wendy W. Williams, Professor of Law
Georgetown University Law Center

Leslie Bender, Professor of Law and Women's Studies
Syracuse University College of Law

Jeff Selbin, Clinical Professor
U. C. Berkeley School of Law

Joseph B. Tulman, Clinical Director
U.D.C. David A. Clarke School of Law

Michael Schwartz, Assistant Professor
Syracuse University College of Law

Beth Lyon, Assistant Professor
Villanova University School of Law

David Luban, University Professor and Professor of Law and Philosophy
Georgetown University Law Center

Abbe Smith, Professor of Law
Georgetown University Law Center

Arlene S. Kanter, Professor of Law
Syracuse University College of Law

Robert P. Mosteller, Chadwick Professor of Law
Duke Law School

Joan M. Shaughnessy, Professor of Law
Washington and Lee University School of Law

Mary Zanolli Natkin, Assistant Dean for Clinical Programs and Public Service &
Clinical Professor of Law
Washington and Lee University School of Law

Mary Marsh Zulack, Clinical Professor of Law
Director of Clinical Programs
Columbia Law School

Timothy Stoltzfus Jost, Robert L. Willett Family Professor
Washington and Lee University School of Law

Ann MacLean Massie, Professor of Law
Washington and Lee University School of Law

Naomi Jewel Mezey, Professor of Law
Georgetown University Law Center

Martin Guggenheim, Fiorello La Guardia Professor of Clinical Law
Former Director, Clinical and Advocacy Programs
NYU Law School

Joseph M. Connors, Clinical Professor
Albany Law School

Susan Deller Ross, Professor of Law
Georgetown University Law Center

Emily Hughes, Associate Professor of Law
Washington University School of Law

Meredith Rapkin, Reuschlein Clinical Teaching Fellow
Villanova University School of Law

Calvin Pang, Professor of Law
William Richardson School of Law, University of Hawaii

Deborah Anker, Clinical Professor of Law
Harvard Law School

Lawrence M. Grosberg, Professor of Law
Director, Lawyering Skills Center
New York Law School

James L. Cavallaro, Clinical Professor of Law
Harvard Law School

M. Isabel Medina, Ferris Family Professor of Law
Loyola University New Orleans, College of Law

Richard Abel, Emeritus Professor of Law
UCLA School of Law

Robert Vaughn, Professor of Law
American University, Washington College of Law

Barbara A. Schwartz, Clinical Professor of Law
University of Iowa College of Law

Gary Blasi, Professor of Law
UCLA School of Law

Carrie Menkel-Meadow, A.B. Chettle Jr. Professor of Law, Dispute Resolution,
and Civil Procedure
Georgetown University Law Center

David R. Ginsburg, Executive Director and Lecturer in Law
Entertainment and Media Law and Policy Program
UCLA School of Law

Paula Galowitz, Clinical Professor of Law
New York University School of Law

Darren Rosenblum, Associate Professor
Pace University Law School

Vanessa Merton, Professor of Law & former Associate Dean for Clinical Education
Pace University School of Law

Bridget J. Crawford, Professor of Law and Associate Dean for Research and Faculty Development
Pace University School of Law

Deborah M. Weissman, Reef C. Ivey II Professor of Law
Director of Clinical Programs
University of North Carolina-Chapel Hill School of Law

Robert Stumberg, Professor of Law
Harrison Institute for Public Law
Georgetown University Law Center

Kevin Ruser, Clinical Professor of Law
Director of Clinical Programs
University of Nebraska-Lincoln College of Law

James Parry Eyster, Assistant Clinical Professor
Ave Maria School of Law

Brenda Bratton Blom, Director, Clnical Programs
University of Maryland School of Law

Gerald P. Lopez, Professor of Law
UCLA School of Law

Ellen Weber, Professor of Law
University of Maryland School of Law

Benjamin H. Barton, Associate Professor
Director, University of Tennessee Legal Clinic
University of Tennessee College of Law

Melissa L. Breger, Clinical Professor of Law
Albany Law School

John Copacino, Professor of Law
Georgetown University Law Center

James V. Feinerman, Professor of Law
Georgetown University Law Center

John L. Barkai, Professor of Law
Director of Clinics
William S. Richardson School of Law, University of Hawaii

Ralph Michael Stein, Professor of Law
Pace University School of Law

Jeffrey D. Bauman, Professor of Law
Co-Director Center for the Study of the Legal Profession
Georgetown University Law Center

Maureen E. Laflin, Professor of Law
Director of Clinical Programs
University of Idaho College of Law

Frank A. Bress, Professor of Law
New York Law School

James H. Stark, Professor of Law
University of Connecticut School of Law

Todd Fernow, Professor of Law
University of Connecticut School of Law

Jon Bauer, Clinical Professor
University of Connecticut School of Law

Tim Everett, Clinical Professor
University of Connecticut School of Law

Diana Leyden, Clinical Professor
University of Connecticut School of Law

Teemu Ruskola, Professor of Law
Emory University School of Law

Rima Sirota, Associate Professor
Georgetown University Law Center

Monica Schurtman, Associate Professor
University of Idaho College of Law

Nancy D. Polikoff, Professor of Law
Washington College of Law, American University

Jeffrey G. Miller, Vice Dean for Academic Affairs
Pace University School of Law

Jamin Raskin, Professor of Law
Washington College of Law, American University

Jenny Roberts, Assistant Professor of Law
Syracuse University College of Law

Linda C. Fentiman, Professor of Law
Pace University School of Law

Mark C. Niles, Professor and Associate Dean
Washington College of Law, American University

Janie Chuang, Assistant Professor
Washington College of Law, American University