



Foundation for Individual Rights in Education

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March 22, 2011

President James T. Harris III
Widener University
Office of the President
One University Place
Chester, Pennsylvania 19013

Sent via U.S. Mail and Facsimile (610-499-4196)

Dear President Harris:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, freedom of conscience, and freedom of association on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to academic freedom and freedom of speech posed by Widener University School of Law's prosecution of a tenured law professor for discrimination and harassment because of his protected expression. Although Widener is a private university not bound by the First Amendment, the university is morally and perhaps contractually bound by its stated commitments to academic freedom and free expression.

This is our understanding of the facts. Please inform us if you believe we are in error.

According to an affidavit filed at Widener Law by Professor Lawrence Connell on March 8, 2011 (enclosed with this letter), Widener Law Vice Dean J. Patrick Kelly approached him on December 10, 2010, and presented him with a binder containing various allegations that Connell had violated Widener's Faculty Member Discrimination and Harassment Code. (Affidavit, ¶¶ 102–03.) The allegations consisted of the following:

- (1) a letter of complaint from two students regarding my spring 2010 Criminal Law class, alleging four specific incidents of my "disrespecting racial minorities and women";
- (2) additional grounds conveyed orally on November 19 and 22, 2010 to Ammons and Kelly by the two complainants, as well as by two other students from my fall 2010 Criminal Procedure Section B;
- (3) assorted comments from course evaluations

written by students whose identities are unknown and incapable of being determined; and (4) a reference to a complaint filed in 1996 against me by a female student regarding comments about the student's classroom attire I was alleged to have made in a bar, during a private conversation, and outside the presence of the student. [Id., ¶ 68.]

On December 20, 2010, Kelly informed Connell that Widener Law Dean Linda L. Ammons had placed Connell on administrative leave. (Id., ¶ 112.) On February 24, 2011, Ammons wrote a "Statement of Reasons: Dismissal for Cause" letter recommending that Connell be dismissed from the university. In that document, Ammons lists what are apparently Widener Law's most significant allegations against him. These include his use of hypothetical examples of violent crimes in his criminal law courses that featured the names of law school faculty and staff, such as that of Ammons; his professional explication of legal cases in the classroom; the use of the term "black folks" with reference to African-Americans; and a variety of vague and unspecified allegations of supposedly "racist and sexist comments ... in the classroom."

Connell addressed all of the charges at length in his affidavit. In the affidavit, Connell explained how his presentations of hypothetical examples and a number of legal cases both in and out of class were misrepresented by a small number of complaining students. He also denied allegations such as calling a female police officer "honey," noted that there is nothing discriminatory or harassing about using the term "black folks," and denied making any racist or sexist comments in any classroom. Connell further explained that it is impossible to defend against such vague and ambiguous allegations as that a professor made "racist and sexist comments" in class.

To take just one example—his use of hypotheticals, or "hypos"—Connell explains, in relevant part:

[O]ur criminal law classes entail considerable discussion about the nature and relationship of an actor's mental state to his culpability. As a practical matter, the great bulk of cases and examples in which these relationships can be explored involve violent, assaultive conduct that often results in death. They involve reprehensible behavior and deplorable results. My approach, therefore, is to try and lighten the atmosphere by using absurd hypothetical problems to illustrate application of the rules. The hypotheticals often involve me, the students, and other law school actors familiar to the students. The law school actors have included, among others, Dean Ammons and her white male predecessors as well. The hypos engage the students, and the familiar characters enable them to remember the underlying rules and application. [Affidavit, ¶ 10.]

Even without the benefit of Connell's affidavit, on March 7, the Informal Committee of Inquiry handling his case at Widener Law recommended that the dismissal proceedings be dropped. The committee noted, however, that Connell might face a further disciplinary process for the same allegations.

Indeed, according to a March 16 public statement from Connell's attorney, Thomas S. Neuberger, the prosecution of Connell has continued; Ammons had two students "refile their prior false charges against Connell" on March 10.

FIRE cannot independently investigate the students' accounts—nor can FIRE even examine or evaluate the charges filed on March 10—because Connell is prohibited from naming the students or detailing their charges out of fear of being punished for retaliation. Widener's Faculty Member Discrimination and Harassment Code provides that “[d]issemination of information relating to the case should be limited in order that the privacy of all individuals involved is safeguarded as fully as possible [...] to protect the Complainant from retaliatory action by those named in the Complaint.” Retaliation can be punished with dismissal from the university. Yet, it is reasonable to assume that the March 10 charges are nearly the same as those considered by the Informal Committee of Inquiry.

These actions violate Connell's academic freedom and freedom of speech, two principles that Widener University explicitly promises to protect. Prominent on Widener's website is its “Mission & Goals” statement, which includes Widener's explicit commitment to academic freedom:

Ensure academic excellence by maintaining the university's commitment to academic freedom and by upholding faculty governance, especially in matters pertaining to pedagogy, curriculum, and scholarship.

In its bulletins and handbooks, Widener has also consistently committed itself to the principle that

Free inquiry and free expression in an environment of individual and group responsibility are essential to any community of scholars.

Widener Law has violated its goals and principles by prosecuting Connell for his protected expression. It is neither “discrimination” nor “harassment” to use relevant hypotheticals in class, to provide one's students with professional explanations of legal cases both in and out of class, or to use terms like “black folks” and “honey,” even if these allegations were true.

For example, President Barack Obama has used the term “black folks.” The first African-American to earn a doctorate at Harvard, W. E. B. Du Bois, used the term in his classic work *The Souls of Black Folk* as well as *The Gift of Black Folk* and *Black Folk, Then and Now*. In the past month, the term “black folks” has been used by columnist Arlene Jones in the *Austin Weekly News*, columnist Charing Ball in *The Atlanta Post*, scholar Boyce Watkins at the website thyblackman.com, and many others. It is a ubiquitous term that has no necessary relationship to discriminatory or harassing behavior.

Furthermore, the use of recognizable names in law school hypotheticals is a common practice among law professors. For example, prominent law professor Orin Kerr wrote on February 16, 2011, on the highly regarded law blog *The Volokh Conspiracy*:

One of the common ways that law professors keep students mildly entertained in class is by posing hypotheticals involving their professors and the Dean. [...] If A kills B out of revenge, that's just a boring hypothetical. But if the hypo involves the students' Torts Professor killing the Dean out of revenge [...] well, that's serious entertainment. It may

seem a bit morbid at first. But it's the opposite, I think. Putting Professors or the Dean in the place of real criminals and real victims makes the scenario so absurd that it adds a bit of levity to what is otherwise a very depressing topic. As a result, it's a common tool Criminal Law professors use when teaching first-year students the basic doctrines of criminal law. I suppose over the years I've murdered pretty much every 1st-year teacher—and certainly all my Deans—and they've all murdered me, too. (All during in-class hypos, mind you.)

Given the widespread and longstanding use of such hypotheticals in legal education, it is disingenuous for Widener Law and Ammons to suggest that this practice warrants prosecution of Professor Connell for discrimination or harassment, much less his dismissal for cause.

Frankly, the allegations against Connell are embarrassing to the university and its law school. All signs indicate that the allegations are at worst misconstrued and downright false, and at best so vague and ambiguous that they cannot form the basis of a prosecution for discrimination or harassment. To pursue these charges against Connell violates Widener's own commitments to academic freedom and free expression, chilling the expression of faculty members across the university. Furthermore, now that the process is following the procedures of the Faculty Member Discrimination and Harassment Code, Widener Law has turned the proceedings into a secret trial whereby Connell is threatened with further prosecution if he reveals information about the charges against him. Widener Law is treating a tenured faculty member in a way that no faculty member should be treated.

FIRE urges you to put a quick end to these proceedings before further damage is done to Widener's reputation. FIRE requests a response by Tuesday, April 12, 2011.

Sincerely,



Adam Kissel

Vice President of Programs

Encl.

cc:

Linda L. Ammons, Associate Provost and Dean, Widener University School of Law

J. Patrick Kelly, Vice Dean, Widener University School of Law

Michael J. Goldberg, Professor of Law, Widener University School of Law

Alicia Kelly, Associate Professor of Law, Widener University School of Law

Nathaniel Nichols, Associate Professor of Law, Widener University School of Law

Committee on Promotion, Tenure, and Academic Freedom, Faculty Council, Widener University

Thomas P. Neuberger, The Neuberger Firm