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Sent: Sunday, November 12, 2017 8:37 AM
To: Joshua Silverstein
Cc: FACFOCUS@ualr.edu; LeflerLeanne@uams.edu
Subject: Re: Today's Board Meeting

Dear Colleagues,

Let me share some additional background: I was the chair of UALR's Tenure Committee, I chaired UALR's Faculty Appeals Council, and I served on a faculty appeals hearing considering the appeal of a terminated professor (which later went before the Board of Trustees).

During that faculty appeals hearing, University Counsel made various claims about both the substance and procedure dictated by 405.1 that were simply wrong. When the hearing panel rejected University Counsel's assertions, Counsel repeated the same claim heard now: *this is our practice*. Our response was: *sorry, but that's not in the rules*.

Two examples: (1) Counsel repeatedly insisted on embedding an attorney from the AG's office on our *faculty* panel. We refused.

(2) Counsel tried to introduce hearsay statements of witnesses rather than having them testify. Counsel said that he didn't want to put the witnesses through the hardship of testifying. We refused. While, of course, testifying can be challenging, it's perhaps the most basic due-process right to have accusers in court.

Counsel now seeks to eliminate the ability to provide this very protection (notwithstanding their claims in their FAQs). The result would be that the very administrator seeking to fire the faculty member could come to the hearing and say "person X told me that the professor did these bad things." Sure, you could cross examine the administrator, but he's not the witness to the events at issue. So, that would be useless. It's like having a detective who interviewed witnesses testify at trial as to what those witnesses saw. No one thinks that's fair.

In fact, in a criminal trial, that's not only barred by the hearsay rule, it's also unconstitutional (under the Confrontation Clause). University Counsel now seeks to prevent another hearing panel from providing these due-process guarantees on which we insisted.

Finally, when Counsel became frustrated by the panel's operations, he stated that our decision was merely "a recommendation." While it is true that under the current rules the faculty review is only advisory, Counsel's comments suggested to me that he didn't hold in high regard the faculty's role in the process. Rather, he seemed annoyed that he had to engage in the exercise.

The proposed rules seek to further reduce the rather modest safeties currently in place. Indeed, I always found it odd that University Counsel acts as both prosecution in firing faculty, while at the same time advises the ultimate decision-maker (and recipient of the panel's "recommendion"), *i.e.*, the President.

Warmest, Rob