

Subject: Re: [Faculty] A Letter from Sidley Austin

Date: Wednesday, December 7, 2011 8:27:20 AM PT

From: Victor Silverman

To: Faculty

Colleagues:

The Board apparently asked for attorneys from Sidley Austin to address the concerns of the College and wider community about the legitimacy and legality of thereverification and dismissal of so many employees. The long (and presumablyvery expensive) letter we received Tuesday night from Sidely Austin attorneys Marketa Lindt and Ronald Cohen does little to resolve the issues that we have raised about the reverification of immigration status, both as a legal and a moral act.

Attorneys Lindt (who is an immigration law expert) and Cohen (who is not) intend specifically to refute the criticisms of the reverifications and firings offered by Michael Teeter and the National Employment Law Project among others.

The facts Lindt and Cohen cite, however, undercut the very basis of their argument. We will undoubtedly discuss the legal aspects of this further and I have nodoubt we will hear from other attorneys about this. But I wanted to point out some disturbing aspects of the situation that their communication has revealed.

The letter to the Board from a College employee, which supposedly started this whole mess, is at the center of the Sidley Austin argument. We don't have the letter and don't know its actually contents, nonetheless, Cohen and Lindt reveal some surprising facts about it.

They tell us that the letter writer claimed the College had a policy of not collecting I-9 forms and that the college had never verified the employmentstatus of employees. Had the college actually had such a policy or followedsuch practices, it would have indeed been a gross violation of immigration law. The Sidley Austin attorneys add that the "contents and surrounding circumstances described in the internal complaint made it sufficiently credible on its face." Actually, the only facts they do provide show the opposite.

First off, the letter writer had no direct knowledge of any violation of the law nor of the College's verification practices in general. Instead, the writer claimed

to have spoken to a senior administrator—unnamed—who told this employee of violations of a particularly outrageous and egregious sort. Then the employee communicated this to the Board. The Board is not a court of law, but this sort of hearsay is not very convincing in any situation—It is hardly the sort of evidence we would accept in an undergraduate paper: Someone without actual knowledge relays the statements of some unnamed other person who may or may not know anything more than the letter writer. That's a little odd, I would think.

Cohen and Lindt claim the letter writer offered details of the conversation with the senior administrator including specifics about dates and times of the conversation. However, simply having met with a “Senior Administrator” does not seem to me to offer credibility for these dramatic claims. Moreover, we never learn if the senior administrator actually was in a position to know the verification practices of the College's Human Relations office. The College has many administrators and only a few of them have direct knowledge of such practices. Was this senior administrator one of those? Was the senior administrator brought in to verify the claims? We never learn.

What sort of on-its-face credibility did the letter have that the College had never verified employment? We never learn. What are these surrounding circumstances? No information, other than dates and times of meetings, there either.

We are simply to accept Cohen and Lindt's assertions that the letter was credible. Yet as they admit, and every step of their investigation revealed, the claims in the original letter were falsehoods. How was it that the letter writer (with or without the connivance of some unnamed senior administrator) could concoct such stories in a way that they continued to be convincing after being repeatedly disproven? There is simply no evidence provided for this remarkable ability.

Could the Board or its investigators have seriously believed that the College actually did not check the employment status of any employees? This strains credulity—on the face of it. Easy investigations revealed that the letter writer's claims were untrue. The investigation need not have gone further.

But Sidley Austin's investigators, Lindt and Cohen tell us, wanted more than proof the letter writer had made things up—they wanted proof the College had verified. That meant looking at 1-9 forms, they claim. This is a simple enough task, though probably tedious. Verifying employment eligibility means, as all of

us employees know, filling out the I-9 form and providing some evidence of work eligibility ---passport etc. Once the investigators saw that there were indeed I-9 forms with documentation, they could have and should have been satisfied that the College's HR staff had indeed done their job.

Still the investigation continued because, Lindt and Cohen argue, complaints from employees may prove "inaccurate in certain respects, but still expose actual misconduct or situations that the business must rectify." Yet this is hardly the situation here. The letter writer was not merely inaccurate "in certain respects," they were entirely wrong. They also had no special knowledge of any misconduct or situations in need of rectification as the initial investigations revealed. Lindt and Cohen admit there was no basis in fact for the allegations from the letter writer. There was no policy and no practice of not verifying immigration status. That should have ended the entire episode.

Despite discovering at each step of the investigation, that the letter writer's claims were false, Sidley Austin's attorneys and the Board believed the investigation should continue. All that Sidely Austin's attorney needed to do was to establish that I-9s had been actually collected from employees before and during the Oxtoby administration, that there was no pattern of bad policy or practice. They admit this is what they found.

Nonetheless, Sidely Austin went on to check individual I-9 forms for completeness and legitimacy of documentation--this step was wholly unnecessary since there was no evidence of a pattern of bad conduct or policy. Then they demanded the reverification of the immigration status of dozens of employees they discovered to have faulty documentation, with particular emphasis on those who were involved in a labor dispute. (By the way, reverifying employees involved in a labor dispute goes against current internal ICE policy: they don't do it. The rules are less direct for an employer, but still clear. Cohen and Lindt pass over this issue all too quickly.)

This sad history indicates to me that another agenda may have been operating here, though I don't know what that strategy may have been — whether to cause an uproar that would embarrass President Oxtoby or to try to intimidate union supporters on the staff. Whatever the reasons, the results were both these things. President Oxtoby has been pushed into actions I imagine he deeply regrets and become the focus of widespread unhappiness. Sixteen people, many of them active in the dining hall union organizing campaign, have been fired. To me, these results betray a depressing willingness on the part of the unknown letter writer, the Sidley Austin attorneys, and the Board to

sacrifice people's livelihoods and the cohesiveness of our community to their agenda.

Victor

From: Teresa Shaw <Teresa.Shaw@POMONA.EDU>
Reply-To: Teresa Shaw <Teresa.Shaw@pomona.edu>
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Subject: [Faculty-Deans-Office] A Letter from Sidley Austin

Dear Pomona College Faculty:

Many of you have requested a response to issues raised in the letters from Michael Teter and the National Employment Law Project (NELP), which have circulated on campus this last week. I am forwarding a letter on this subject from Ron Cohen and Marketa Lindt at Sidley Austin.

Best,

Teresa

Teresa M. Shaw
Special Assistant to the President and
Secretary to the Board of Trustees
Pomona College