



Association of American Law Schools

VIA ELECTRONIC AND US MAIL

May 10, 2010

Senator Ann Duplessis, Chair
Committee on Commerce, Consumer Protection & International Affairs
Louisiana State Senate
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Dear Senator Duplessis:

I am writing to you in your leadership role as Chair of the Committee on Commerce, Consumer Protection & International Affairs of the Louisiana State Senate with regard to Senate Bill 549, which proposes to severely constrain university law clinics in your state. The Association of American Law Schools is gravely concerned about the impact the legislation would have on the education of law students who attend Louisiana law schools and the effect that it would have on the quality of the state's law schools. Before turning directly to our concerns about the proposal, I wanted to give you some brief background about our organization and its interest in your state.

Background

The Association of American Law Schools is a non-profit voluntary association of 171 U.S. law schools. Since the formation of the AALS in 1900, our purpose has been to improve the legal profession through legal education and we are proud of our record in that regard. The AALS is also the principal representative of legal education to the federal government, to national higher education organizations and to other learned societies.

Since its formation in 1900, AALS membership has been regarded as a significant indicator of the quality of a law school. Three Louisiana law schools have been admitted to AALS Membership: Tulane University Law School (since 1909), LSU's Paul M. Hebert Law Center (since 1924), and Loyola University New Orleans College of Law (since 1934). The

Southern University Law Center has recently applied for admission, and we look forward to evaluating the law school for AALS membership. The core values of the AALS shape the efforts of the Association as well as define the obligations of its member schools. These core values combine to further excellence and innovation.¹

AALS is also proud of its long history with your state and the city of New Orleans. The AALS Annual Meeting, the largest gathering of law faculty in the world, was first held in New Orleans in 1929. Since 1986 we have held six annual meetings in New Orleans. No other city has hosted us more often over this period, though Washington D.C. and San Francisco have equaled New Orleans in hosting the meeting. Just a few months ago, our 2010 Annual Meeting marked the AALS's return to Louisiana—an emotional one because the AALS was scheduled to meet in New Orleans the January following Katrina. In the hurricane's wake, working closely with the Section on Legal Education of the American Bar Association and the Law School Admissions Council, the AALS coordinated the temporary relocation of displaced law students. This helped the affected law schools to stabilize because in most cases they retained the students' tuition. More than 985 students were able to immediately continue at 136 different host law schools with the understanding that they would return to the Gulf as soon as their law schools were able to re-open. Over 168 generous law schools volunteered to participate in this effort. A number of law schools assisted in the recovery efforts by sending students and faculty from their clinical programs to help address the legal needs of those remaining in the Gulf. Our conference for clinical faculty was held in New Orleans in 2007, very soon after hotels began functioning again. The six AALS Annual Meetings held in New Orleans over the last 23 years have drawn over 18,000 faculty and guests to Louisiana. We plan to return soon, in January of 2013.

Before turning to the history and importance of clinical education in law and then to the specific proposals before you, it might be helpful to articulate a few of our larger concerns.

Your region of the country, perhaps more than any other in the 21st Century can appreciate the fragility of our natural environment and the interplay of human decision-making with natural forces. The issues involved are rarely simple or easy ones; but what we can say is that their resolution requires the careful application of laws developed by state and federal legislatures as interpreted in the courts. And all of those interested in the interpretation and application of the law should have access to unfettered legal advice.

Universities have been accorded a great deal of autonomy in our culture for good reason, and those reasons relate in direct ways to the fact that U.S. higher education including legal

¹ The core values emphasize both excellent teaching (across a rigorous and dynamic curriculum) and scholarship, noting its relationship to the creation and dissemination of knowledge. The core values also embody inter-related commitments to a self-governing academic community, to academic freedom, and to diversity of viewpoints. Member schools commit to support all of these objectives in an environment free of discrimination and rich in diversity among faculty, staff and students. The core values are framed by the idea that institutional autonomy should be honored whenever possible because wide latitude will encourage the development of strong and effective educational programs and learning communities. The core values combine to provide an environment where students have the opportunity to study law in an intellectually vibrant institution capable of preparing them for professional lives as lawyers instilled with a sense of justice and of obligations of civic responsibility.

education is the envy of the world. The fact that our Universities have been accorded freedom from interference has enabled them to act as agents of innovation. Most dramatically, this culture has produced scientific discovery and technological innovation. But it has also furthered law as the principal vehicle for furthering the democratic values of our society, and for developing ways to resolve conflict within the legal system, not outside of it. The autonomy of the American University has even reached constitutional status.

But the reasons for this autonomy are practical as well. The freedom of inquiry may be most effectively sustained if it is left to the judgment of those who are charged with the conduct of the University. It may be devastating to the ongoing strength of your Universities if support for them is eroded by ideas like those reflected in the proposed legislation, ideas that seek to deter certain programs by threatening removal of all state support for the University. Furthermore, the principle of deference to the autonomy of universities seems all the more important in circumstances where it is difficult to form consensus views about particular issues, or when there is polarization on a range of issues.

As you consider the legislation, it may also be helpful to explicitly recognize that inherent in the role of lawyer is the reality that being a lawyer often entails incurring the displeasure of some and sometimes large numbers of people in the community. This reality is one of the reasons law students need to be exposed to difficult and controversial matters while in law school.

The Educational Value of Clinical Education in Law Schools

For many decades now the AALS has been proud of the fact that through the volunteer efforts of member school faculty, AALS has made significant contributions to the growth, evolution and excellence of clinical education in the field of law.² Clinical education in law schools began in the United States in the late 1960's in response to a concern that while legal education did an excellent job of training students in legal analysis, it needed to act to ensure that graduates were also well-prepared for other aspects of the representational roles that they serve as lawyers. Encouraged by significant funding from the Ford Foundation, a pilot group of schools hired experienced lawyers to become full-time teachers who would experiment to craft a new component of legal education.

Borrowing the term "clinical" from medical education, the idea that the pioneering clinical faculty pursued was the use of actual legal problems and cases to train law students in the skills that they need to become effective and ethical lawyers. Under the close supervision of full-time faculty, students learn through their representation about the demands and norms of the lawyer-client relationship, the multiple ways the legal system addresses disputes (including pre-trial and trial skills, negotiation and mediation), the structuring of transactions, and the broad roles of lawyers within society. Throughout each of these, faculties and

² For 30 years the AALS has planned and executed a 4 day annual conference or workshop for clinical faculty. In recent years this has been attended by 400- 600 Faculty members and clinical program directors. In addition, the AALS holds programs for new clinical law teachers. The Clinical Section of the AALS provides a strong communication channel for interaction throughout the year, and has a mentoring program for newer clinical faculty.

clinical programs seek to have students struggle with legal problems in the context of the ethical responsibilities of representing clients. These approaches have become well accepted and respected in legal education.

Understandably, given the role of the legal profession (in contrast, for example to the health professions) to resolve conflicts, controversy accompanied this new form of legal education. Over the decades, clinical programs, most often those in public law schools, have been the subject of criticism based on the nature of the cases they pursued on behalf of clients. In response, over the years, the AALS has entered cases as a friend of the court in circumstances where clinical programs were misunderstood or under attack. For each formal reported case, there are many dozens of criticisms voiced less formally. For example, as Dean of the law school at UCLA I found myself explaining to elected public officials why one publicly supported institution (the clinical program at the law school) was participating in litigation against another public entity, the County of Los Angeles, over the fact that the public sewer system was not in compliance with federal law, with the result that sewage and other contaminants would flow untreated into the Santa Monica Bay during heavy rainstorms.

But there is a clear and sound answer to those who understandably question the role of clinical programs and that is this simple fact: The settings for law practice selected by law schools for clinical education are chosen based on their value as teaching vehicles. These settings range from small claims and landlord-tenant disputes to international human rights questions, to complex cases like those which apply elements of our environmental laws, such as the Clean Water Act.

AALS Comments on the Proposed Legislation

The central purpose of the proposed legislation appears to be to severely curtail clinical education. One critical lesson for lawyers entering a field where they will undoubtedly face conflicts with important interests is that they have a duty to be loyal to their clients, including the protection of all matters of confidentiality. As in all professional responsibility matters, clinics and law schools need to be able to convey the importance of the independence of lawyers from outside pressures, as compelling as those pressures may be. The Carnegie Foundation for the Advancement of Teaching in its recent important report *Educating Lawyers*, stressed the centrality of law schools' teaching students what they term *professional identity and purpose* so that law students can assume, with a strong sense of responsibility and without cynicism, the many critical roles they play in fostering democracy. The Carnegie Report found that clinical programs were a major site within legal education for teaching this overriding aspect of being a lawyer. Law schools have a strong interest, particularly if they are to achieve national prominence, in teaching these important and often difficult aspects of the role of the legal profession in society. Universities and law schools are in a critical position to convey the importance of these long-term objectives of a high quality educational system.

Senate Bill 549 appears to be aimed at all of Louisiana's law schools, public and private. Thus, if enacted, legal education in Louisiana would suffer significantly, for without doubt,

the quality of a Law School's clinical program and in turn the reputation of the school will be damaged if it cannot ensure that its clinical programs can remain competitive with those of other schools around the country. Without question in the modern era, the presence of strong clinical programs enhances a law school's ability to attract strong students, but even more important, clinical experiences contribute to the process of helping engaged students become good lawyers. Thus, the proposal is likely to erode the strength of the entire program of affected law schools.

This is why Deans, University officials, organizations such as the AALS, and lawyers devoted to ensuring that ordinary legal processes are protected have been careful and effective in ensuring that clients represented by the clinical programs are not disadvantaged, or that ordinary legal protections, are not impaired.

One of the most disturbing aspects of the legislation before you now is that it seeks to remove what is perhaps the most important legal concept in our democracy--the idea that the federal and state constitutions govern us as a society. How can any client be adequately represented if his or her lawyer cannot use your state constitution in the case? And how can any law school or lawyer undertake representation of a client, with all that the responsibilities of representation embody, if that law school or lawyer has to agree to take one of the essential tools of law out of the representation? It would be inherently unethical for any law school clinical program to agree to do so.

There are other issues of concern in the details of the proposed legislation, which suggest that university based clinics could not ethically take cases. These include: (a) the prohibition on seeking monetary damages. (How might this stricture square with the countless cases in process in Louisiana law schools arising from Katrina related claims?) (b) the creation of "oversight" of clinics by committees of both Houses of the Legislature. (Is it possible to preserve confidentiality if the term oversight is to have meaning?) and (c) the fact that "cases" may appear to fall into one category, but as facts are determined during a representation may actually reveal that the case also has elements of one of the prohibited categories of representation.

The State of Louisiana, your Universities and all the public officials, alumni and others who have contributed to the strength of Law School clinical programs in Louisiana can take pride in the achievements of your Universities in the field of clinical education. To impair these law schools harms not only them, but the future potential of Louisiana itself, for the complexity of modern life requires excellence in training in all the professions. Local lawyers who understand local culture and traditions bring added capacities to their communities and their clients. If SB 549 becomes law there will be multifaceted effects. Who will choose to seek legal education in Louisiana? What will happen to the Louisiana students who leave the state for law school? What percentage of them will return? For those who do, how will they compensate for their lack of familiarity with your civil law traditions? What will be the impact on the students who cannot afford to leave home, or who care for family members in Louisiana?

Conclusion

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Without question, rich and varied clinical experiences have become an integral aspect of an effective legal education. We hope that you will ensure that they will continue to be an important component of legal education in Louisiana. If the AALS can be of help to you as you assess the potential impact of the proposed legislation, please have a member of your staff let me know.

Sincerely

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cc: Dean Brian Bromberger, Loyola University New Orleans College of Law
Interim Dean Stephen M. Griffin, Tulane University Law School
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