

# Lessons From Forty Years of Interference in Law School Clinics

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*Recently, there have been a number of well-publicized attacks on law school clinics over their legal representation of unpopular individuals and organizations, which brings them in opposition to powerful business and political interests. This article analyzes the effects of forty years of publicized interference in law school clinics on law clinic attorneys and clinical legal education, and the lessons that can be drawn from this extended history. The article includes a typology of outside interference in clinics, provides empirical support for the negative effects of this interference on the attitudes and actions of clinic attorneys, and argues that there are a number of important lessons from this historical and empirical analysis that can help avoid or minimize future efforts to interfere in the cases handled by law clinics. The article concludes that the legal profession and legal educators must do more to ensure that the important role law clinics play in access to legal assistance, especially to those who are unpopular or whose cause is controversial, is not hampered by the continuing specter of interference.*

## INTRODUCTION

Although a few law school clinics were developed in the first half of the 1900s,<sup>1</sup> the dramatic expansion of clinical programs began in the 1960s, a time of increased attention both to the legal needs of the poor and to the need for professional skills training for law students.<sup>2</sup> The 1960s and early 1970s also were times of social and political upheaval. As law clinics increasingly

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1. See, e.g., ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 162 (1983); Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 5-7 & n.6 (2000) (including a list of books, articles, and reports on the history of clinical legal education); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 *AKRON L. REV.* 463, 467 (1995).

2. See Barry et al., *supra* note 1, at 12-13; George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 *J. LEGAL EDUC.* 162, 172-73 (1974).

represented indigent clients on the controversial issues of the times,<sup>3</sup> politicians, law school alumni, business interests, and even university officials sought to influence or control the client selection and case-related decisions of law clinic attorneys.<sup>4</sup>

These efforts to interfere in law clinic practice have continued over the last four decades. They have ranged from pointed inquiries directed at law school officials or clinic faculty intended to influence case-related decisions, to threats to cut off clinic program funding or terminate a clinical teacher, to the actual denial of clinic funding or prohibition on handling certain types of unpopular or controversial cases or clients. Most efforts have occurred in the middle of ongoing representation, when the clinic attorney's professional loyalty to the client makes an attempt to direct or regulate the lawyer's professional judgment ethically improper.

This article documents the effects of interference on law clinic representation and identifies lessons that can be drawn from this extended history. Part I provides a typology of the more publicized instances of interference over the past forty years, examining both the sources and types of interference and the ways university and law school officials have reacted to efforts of those outside the legal academy to restrict the activities of clinics. Part II provides empirical support for the negative effects of this interference on the attitudes and actions of law clinic attorneys, showing that both the professional independence and the academic freedom of clinic attorneys are compromised. Part III argues that there are a number of important lessons from this historical and empirical analysis that can help avoid or minimize future efforts to interfere in the cases handled by law school clinics as well as the effects of those efforts within an institution. The article concludes that the profession and legal educators can and should do more to ensure that the important role of clinics in legal education and access to legal assistance is not hampered by the continuing specter of interference.

## I. A TYPOLOGY OF INTERFERENCE

Efforts to interfere in law clinic operations can be generally classified by the

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3. See Edmund W. Kitch, *Clinical Education and the Law School of the Future*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 5, 19 n.12 (Edmund W. Kitch ed. 1970) (reporting the shift by poverty lawyers from handling individual cases to concentrating on law reform and group representation); Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 524-25 (1981) (recounting the same change in the focus of federally-funded legal aid programs and the resulting political interference).

4. The early 1970s were also a time of significant attacks on the group representation and law reform activities of legal services offices. See Note, *The Legal Services Corporation: Curtailing Political Interference*, 81 YALE L.J. 231, 246-56 (1971). Congress subsequently imposed restrictions on the ability of Legal Services Corporation attorneys to represent some lower-income persons and to participate in impact litigation. See Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 FORDHAM L. REV. 2187, 2191-96 (1999); Robert R. Kuehn, *Undermining Justice: The Legal Profession's Role in Restricting Access to Legal Representation*, 2006 UTAH L. REV. 1039, 1043-54 (2006).

types of limitations attempted: case and client selection restrictions, funding restrictions, and practice restrictions. The abbreviated discussion below illustrates each of these categories of interference over the past four decades, with a longer history of publicized efforts to interfere in clinical education cataloged in Appendix 1.

#### A. CASE AND CLIENT SELECTION RESTRICTIONS

The willingness of law clinics to represent unpopular clients, for whom clinics often are the only available legal assistance, has led to numerous attempts by public officials to impose case and client selection restrictions on clinics. The first reported instance occurred at the University of Mississippi School of Law in 1968 where two untenured law professors, with the assistance of students in a new clinical program, worked part-time with the local legal services program on a lawsuit to desegregate public schools.<sup>5</sup> Under pressure from the legislature and state bar and at the direction of the University's chancellor, the dean of the law school, relying on a policy that permitted outside employment provided "it does not bring the employee into antagonism with his colleagues, community, or the State of Mississippi," prohibited the clinic professors from working with the program.<sup>6</sup>

The professors filed suit in federal court, alleging they had been denied equal protection of the law by being singled out for restrictions different from and more onerous than those imposed upon other professors who were not working with students on desegregation lawsuits.<sup>7</sup> In *Trister v. University of Mississippi*, the United States Court of Appeals held that the University had unlawfully discriminated against the professors as "the only reason for making a decision adverse to [the professors] was that they wished to continue to represent clients who tended to be unpopular. This is a distinction that can not [sic] be constitutionally upheld."<sup>8</sup>

The American Association of Law Schools (AALS) and the American Association of University Professors (AAUP) also responded with great effect. The AALS Committee on Academic Freedom and Tenure found that the violations of academic freedom were so serious that, in the absence of corrective action, the law school would be expelled from membership in the AALS—

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5. *Trister v. Univ. of Miss.*, 420 F.2d 499, 500-01 (5th Cir. 1969); Francis B. Stevens & John L. Maxey, II, *Representing the Unrepresented: A Decennial Report on Public-Interest Litigation in Mississippi*, 44 MISS. L.J. 333, 345 (1973); THE UNIV. OF MISS., AM. ASS'N U. PROFESSORS BULL. 75, 79, 84 (Spring 1970) [hereinafter AAUP BULLETIN].

6. *Trister*, 420 F.2d at 501-02; AAUP BULLETIN, *supra* note 5, at 76-78. This action was taken in spite of the law school faculty's unanimous vote to continue offering the two professors the ability to teach part time and work for legal services part time. *Trister*, 420 F.2d at 501.

7. *Trister*, 420 F.2d at 502.

8. *Id.* at 504.

apparently the only reported time the AALS has found that a member school violated the academic freedom rights of a law clinic teacher.<sup>9</sup> Similarly, an investigating committee of the AAUP found it was likely that the University's action violated the professors' academic freedom since the terminations occurred because the professors were engaged in civil rights activities.<sup>10</sup> In response, the University rescinded its policy and offered re-employment to the professors.<sup>11</sup>

A few years later, the law clinic at the University of Connecticut came under attack when it helped defend an antiwar protester, prompting complaints from local lawyers and a directive from the governor to rein in the clinic.<sup>12</sup> In response, the dean proposed that clinic professors be required to seek the approval of the dean or a faculty committee before accepting a case against a government official.<sup>13</sup> This effort resulted in American Bar Association (ABA) Informal Ethics Opinion 1208, which held that requiring clinic lawyers to seek the prior approval of the dean or a faculty committee "makes it likely that the independent judgment of the five clinic lawyers and their loyalty to their clients will be impaired. Thus the proposed limitations . . . violate the professional ethics and responsibilities of the dean and of the lawyer-directors of the clinic."<sup>14</sup> Instead, the governing body of a law clinic (the law school faculty, dean, university administration, and university board of trustees) "should seek to avoid establishing guidelines (even though they state only broad policies . . .) that prohibit acceptance of controversial clients and cases or that prohibit acceptance of cases aligning the legal aid clinic against public officials, governmental agencies or influential members of the community."<sup>15</sup> After the opinion was issued, the dean abandoned the oversight process.<sup>16</sup>

A number of state legislatures have also sought to restrict clinic representation. For example, in response to a civil rights suit brought by a law professor, a 1975 Arkansas appropriations bill made it unlawful for professors at the University of Arkansas School of Law "to handle or assist in the handling of any law suit in any

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9. AAUP BULLETIN, *supra* note 5, at 84-85.

10. *Id.* at 83-84.

11. *Id.* at 85; see also John Egerton, *Shake-up at Ole Miss*, CHANGE, Winter 1972-73, at 24, 28.

12. Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, 11 J.C. & U.L. 179, 184 (1984); Thomas Scheffey, *The Calm Within the Storm*, CONN. L. TRIB., June 12, 1995, at 1; E-mail from Joseph D. Harbaugh, Dean, Shepard Broad Law Ctr., Nova Se. Univ., to Robert Kuehn (Mar. 20, 2001, 06:20 EST) (on file with authors).

13. ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1208 (1972) [hereinafter ABA Informal Op. 1208]; see also Pa. Bar Ass'n Comm. on Legal Ethics and Prof'l Responsibility, Informal Op. 99-10 (1999) (stating that a law clinic attorney is "ethically obligated to take measures to protect your clients' interests in any area in which those interests might be somehow impaired by the contrary interests of the school as your employer").

14. ABA Informal Op. 1208, *supra* note 13.

15. *Id.*; see also ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 334 (1974) [hereinafter ABA Formal Op. 334]. For an extended analysis of the ethics of interference in law clinics, see Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 1971 (2003).

16. E-mail from Harbaugh, *supra* note 12.

of the courts of this State or of the federal courts.”<sup>17</sup> The Arkansas Supreme Court held that the prohibition violated the Equal Protection Clause, as there was no reasonable basis for applying the restriction to some but not all faculty classifications or for restricting faculty at only one of the state’s two law schools.<sup>18</sup>

A similar bill introduced in Colorado in 1981 prohibited law professors at the University of Colorado from assisting in litigation against a governmental unit or political subdivision.<sup>19</sup> The House of Representatives passed the bill but the Senate, after reporting it out of committee, postponed the bill indefinitely.<sup>20</sup>

A 1982 bill in Idaho sought to prohibit public universities from offering any course or clinical program in which a student assists or participates in suits or litigation against the state or its political subdivisions, unless the assistance is rendered on behalf of the state.<sup>21</sup> The legislature reportedly acted in response to a lawsuit filed by the clinic at the University of Idaho against the state department of transportation challenging a plan to expand a scenic highway.<sup>22</sup> The bill passed the House, but was defeated in a Senate committee.<sup>23</sup>

At the University of Tennessee, a clinic lawsuit against the state on behalf of prison inmates prompted the University’s Board of Trustees to mandate that “no suits of significance shall be brought by the UT Legal Clinic on behalf of any litigant against the State of Tennessee, its agencies or instrumentalities or any state official acting in his official capacity.”<sup>24</sup> As a result, the clinic does not

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17. *Atkinson v. Bd. of Trs. of Univ. of Ark.*, 559 S.W.2d 473, 474 (Ark. 1977); Schneider, *supra* note 12, at 184; E-mail from Mort Gitelman, Distinguished Prof. of Law Emeritus, Univ. of Ark. Sch. of Law, to Robert Kuehn (June 28, 2010, 14:00 CST) (on file with authors). Although the restrictions appear to have been aimed at outside employment, the prohibition was drafted so broadly that it could apply to the activities of law clinics and externship programs.

18. *Atkinson*, 559 S.W.2d at 474-77.

19. Schneider, *supra* note 12, at 185-86. The bill was a reaction to a lawsuit challenging a nativity scene filed by a University of Colorado School of Law professor with the help of students in his constitutional litigation seminar. *Id.*

20. *Id.* at 186 n.32. Later, Texas enacted similar measures to prohibit state employees from assisting parties opposing the state in litigation. See *Hoover v. Morales*, 164 F.3d 221, 223 (5th Cir. 1998). In a challenge to the state policies, the U.S. Court of Appeals for the Fifth Circuit held that the state had failed to meet its burden of showing how the involvement of faculty members in the cases would “adversely affect the efficient delivery of educational services.” *Id.* at 226. In addition, the court noted that the restrictions drew a distinction based on the content of the employee’s speech—the measures protected employees who acted as witnesses or consultants on behalf of the state, yet punished employees who assisted those who opposed the state in litigation. *Id.* at 227.

21. Schneider, *supra* note 12, at 186; see also H.R. 800, 46th Leg., 2d Reg. Sess. (Idaho 1982); Helen Chenoweth, *U of I Institute Questioned*, STATESMAN (Boise, Idaho), Aug. 15, 1981, at 6A.

22. Telephone Interview with Neil Franklin, Professor of Law Emeritus, Univ. of Idaho Coll. of Law (Apr. 26, 2002).

23. Schneider, *supra* note 12, at 186.

24. Minutes of Meeting of Bd. of Trs., Univ. of Tenn. 6-7 (Sept. 25, 1981) (on file with authors); see also Douglas A. Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 960 (1997); Julia P. Hardin, *Polishing the Lamp of Justice: A History of Legal Education at the University of Tennessee, 1890-1990*, 57 TENN. L. REV. 145, 193 (1990).

handle cases against the state where attorney's fees would likely be available.<sup>25</sup>

The most dramatic restriction on a clinical program's cases arose in Louisiana. When the Louisiana governor heard, in 1997, that Tulane Law School's environmental law clinic was raising environmental justice concerns over the proposed siting of a petrochemical plant, he unsuccessfully tried to get the president of Tulane University to intervene.<sup>26</sup> After Tulane refused to back down, three business groups, at the urging of the governor, sent letters to the elected members of the state supreme court complaining that the clinic's representation had harmed their economic interests and asking the court to restrict the ability of the clinic to provide free legal assistance.<sup>27</sup> In response, the Louisiana Supreme Court issued unprecedented restrictions to the state's student practice rule that effectively prevent clinic students from representing community organizations, limit individual representation to persons living near the federal poverty level, and prohibit contact with prospective clients.<sup>28</sup>

A federal lawsuit challenging the restrictions was dismissed by the district court without allowing any discovery, although the court acknowledged that political pressure may well have played a role in the new restrictions.<sup>29</sup> The Court of Appeals affirmed, holding that because the rule only prevented law students from assisting certain residents and did not restrict what licensed clinic attorneys may do or whom they may represent, the rule did not prohibit or punish speech.<sup>30</sup> The court also refused to find viewpoint discrimination in "an across-the-board, wholly prospective and viewpoint neutral general rule," regardless of the motivation or effect.<sup>31</sup> After the action of the Louisiana Supreme Court, critics of the Tulane clinic unsuccessfully sought to get the U.S. Court of Appeals for the Fifth Circuit and a U.S. District Court in Louisiana to impose similar restrictions on the types of clients that law clinics may represent.<sup>32</sup>

## B. FUNDING RESTRICTIONS

As direct attempts to prohibit law clinics from handling specific types of cases have been largely unsuccessful, legislators and university donors instead have

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25. E-mail from Douglas A. Blaze, Dean, Univ. of Tenn. Coll. of Law, to Robert Kuehn (Aug. 13, 2010, 10:13 CST) (on file with authors).

26. See Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33, 55-58 (2000).

27. *Id.* at 65-69; Christi Daugherty, *Target: Tulane*, GAMBIT WKLY. (New Orleans, La.), Oct. 13, 1997, at 9.

28. See LA. SUP. CT. R. 20 (Limited Participation of Law Students in Trial Work); see also Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 238-40 (1999).

29. *S. Christian Leadership Conf. v. Supreme Court of La.*, 61 F. Supp. 2d 499, 513-14 (E.D. La. 1999), *aff'd*, 252 F.3d 781 (5th Cir. 2001).

30. *S. Christian Leadership Conf. v. Supreme Court of La.*, 252 F.3d 781, 789-92 (5th Cir. 2001).

31. *Id.* at 795. The court did note that the motivation of the state can be a primary factor in judging the constitutionality of state action in some areas of First Amendment law. *Id.* at 792-93.

32. Kuehn & Joy, *supra* note 15, at 1985.

sought to interfere in clinic lawyering by threatening or actually withholding funding from the university or law school.

For example, in 1981, Iowa legislators filed a bill prohibiting the use of funds available for state educational institutions for legal assistance to any person bringing a civil action against the state or a political subdivision or for programs providing civil legal assistance to state correctional system inmates.<sup>33</sup> The proposed legislation, which was filed in retaliation for the University of Iowa law clinic's successful representation of prisoners in lawsuits against the state, was defeated.<sup>34</sup>

In 1987, the governor of Maryland conditioned receipt of funding for civil legal services providers, such as the law clinics at the University of Maryland, on an agreement not to sue state agencies.<sup>35</sup> The governor dropped the restriction in response to public criticism but did insist on a requirement that recipients provide the state with an opportunity to resolve any disagreement prior to the filing of a lawsuit.<sup>36</sup>

In 2010, in reaction to a lawsuit filed by the environmental law clinic at the University of Maryland against one of the state's largest employers, the Maryland legislature threatened to withhold \$750,000 in funding for the University until it provided details on law clinic clients, cases, expenditures, and funding.<sup>37</sup> After significant pressure from legal educators and the ABA, the legislature backed down, removing the funding restriction and narrowing the scope of the required report to non-privileged information about filed environmental law clinic cases.<sup>38</sup>

In Arizona, legislators repeatedly attacked funding for Arizona State University's law clinics after a clinic lawsuit over lack of access to prison law libraries led to a major victory and a sizeable attorney's fee award.<sup>39</sup> Resentment over the litigation prompted a proposed rider in the 1995 state budget that would have dropped all funding for the school's clinics, but the rider was eventually limited

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33. Schneider, *supra* note 12, at 185.

34. *Id.* at 185 & n.30; E-mail from Barbara Schwartz, Univ. of Iowa Coll. of Law, to Robert Kuehn (Mar. 22, 2001, 14:19 CST) (on file with authors). The bill explained that it "prohibits educational programs for [sic] providing any civil legal assistance to prisoners, thereby eliminating the legal assistance clinic at the university of Iowa law school." H.F. 374 (Iowa 1981).

35. Retha Hill, *Md. Moves to Head Off Suits by Poor; State to Withhold Legal Aid Funding*, WASH. POST, June 25, 1987, at D1.

36. See Robert Barnes, *Gov. Schaefer Patches Spat with Lawyers; Legal Aid Dispute Ends with Accord*, WASH. POST, July 23, 1987, at B5; Interview with Susan Leviton, Univ. of Md. Sch. of Law (Oct. 15, 2001).

37. Annie Linskey & Timothy B. Wheeler, *Lawmakers Decry UM Law Clinic's Farmer Lawsuit*, BALT. SUN, Mar. 27, 2010, at 1A; Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 4, 2010, at 12.

38. See Annie Linskey, *Funding Restored to Law Clinic; Lawmakers Reverse Decision Targeting School that Launched Suit; General Assembly*, BALT. SUN, Apr. 7, 2010, at 2A.

39. See E-mail from Gary Lowenthal, Ariz. State Univ. Coll. of Law, to Robert Kuehn (Apr. 2, 2001, 17:13 MST) (on file with authors).

to prohibit the expenditure of state funds for litigation on behalf of prisoners.<sup>40</sup>

An environmental law clinic at the University of Pittsburgh encountered similar attacks shortly after it opened in 2001. Upset over the law school's involvement in an earlier lawsuit that had stopped a timber sale, state legislators inserted language in the state's budget that prohibited the use of any taxpayer funds to support the new clinic. The provision was not expected to harm the clinic since it was funded solely from private sources.<sup>41</sup> A few months later, however, the clinic came under new attacks from business interests and politicians for representing citizens challenging a major highway project. In response to this pressure, the University decided to interpret the budget provision to require the clinic to pay the University's sizeable overhead costs, something that had never been charged to any other University unit and an amount that would bankrupt the clinic.<sup>42</sup> In the midst of the controversy, the University Chancellor, a former dean of the law school, prohibited the clinic from seeking additional private funding until it agreed not to take on controversial cases and proposed that the clinic reorganize as a public interest law firm and move off campus.<sup>43</sup> After criticism by the faculty senate, however, the University changed course and announced that the clinic would stay in the law school and be funded privately with the University's help.<sup>44</sup>

On a number of occasions, clinic opponents have argued that it is illegal for clinics to use taxpayer funds to represent private parties or to sue public entities. Beginning in the early 1980s, timber interests and their attorneys attacked the University of Oregon's environmental law clinic and were successful in getting the University president to sever the clinic's two-year joint operating agreement with the National Wildlife Federation on the rationale that the Federation's financial sponsorship of the clinic violated the University's policy of institutional

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40. See E-mail from Catherine O'Grady, Assoc. Dean for Clinical Affairs & the Profession, Ariz. State Univ. Coll. of Law, to Robert Kuehn (Feb. 1, 2010, 16:24 MST) (on file with authors); E-mail from Denise Cortez, Ariz. State Senate Res. Ctr., to Jeremy B. Cohn (July 1, 2010) (on file with authors).

41. See *State Senator Gets Symbolic Rebuke of Pitt Professor*, ASSOCIATED PRESS NEWSWIRE (Pa.), June 23, 2001; Act No. 38A § 11, Reg. Sess. 2001 (Pa. 2001); see also UNIV. OF PITTSBURGH SENATE, REPORT OF THE TENURE AND ACADEMIC FREEDOM COMM. ON THE ENVTL. LAW CLINIC 2 (Jan. 28, 2002) (on file with authors).

42. See Bill Schackner, *Law Clinic Sparks Debate: Academic Freedom Under Fire, Some Say*, PITTSBURGH POST-GAZETTE, Nov. 18, 2001, at B1; Don Hopey, *Law Clinic at Pitt Feeling Pressure; Controversy Swirls Over Environmental Clients*, PITTSBURGH POST-GAZETTE, Oct. 17, 2001, at B1.

43. See Elizabeth Amon, *School Law Clinics Spark Hostility*, NAT'L L.J., Apr. 1, 2002, at A5; Don Hopey, *Law Clinic a Liability for Pitt, Chief Says Nordenberg Criticizes Environmental Unit*, PITTSBURGH POST-GAZETTE, Nov. 8, 2001, at B1; Don Hopey & Bill Schackner, *Faculty Rips Pitt, Defends Law Clinic*, PITTSBURGH POST-GAZETTE, Jan. 29, 2002, at B1.

44. Terry Carter, *Law Clinics Face Critics: Business Interests Fire Up Challenges to Schools' Environmental Law Projects*, A.B.A. J., July 2002, at 24, 26; Don Hopey & Bill Schackner, *In Reversal, Pitt Decides to Keep Law Clinic Going*, PITTSBURGH POST-GAZETTE, Mar. 15, 2002, at A1; Bill Zlatos, *Pitt Reaches Deal to Keep Clinic*, PITTSBURGH TRIB. REV., Mar. 15, 2002, at A3.

neutrality.<sup>45</sup>

Even with this action, criticism continued, including a request by a legislator that the state attorney general determine whether the involvement of the clinic on behalf of private parties constituted an improper use of state funds.<sup>46</sup> The Oregon attorney general issued an opinion holding that “it is well established that a substantial public benefit [such as clinical legal education] is not defeated just because a private purpose also is served.”<sup>47</sup> The ABA’s Council of the Section of Legal Education and Admissions to the Bar also released a statement opining that attempts to interfere in law school clinical programs “have an adverse impact on the quality of the educational mission of affected law schools and jeopardize principles of law school self-governance, academic freedom, and ethical independence under the ABA Code of Professional Responsibility.”<sup>48</sup>

These opinions, and the report of a University committee that the clinic did not violate the University’s policy of institutional neutrality, did not appease critics, however.<sup>49</sup> Facing a legislative threat to defund the entire law school over the environmental law clinic’s activities, the clinic’s directors decided to move its operations off campus and to reorganize in 1993 as a nonprofit public interest law firm.<sup>50</sup>

When the law clinic at the University of North Dakota filed suit challenging a Ten Commandments monument outside city hall, a state legislator requested an opinion from the state’s attorney general on whether it was legal to expend taxpayer funds to sue another state-supported entity.<sup>51</sup> As in the opinion issued

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45. See Memorandum from John E. Bonine to the Faculty of Univ. of Or. Sch. of Law (Dec. 18, 1987) (on file with authors); REPORT OF THE AD HOC STUDY COMM. FOR THE ENVTL. LAW CLINIC, UNIV. OF OR. SCH. OF LAW 4 (Nov. 30, 1988) (on file with authors). A wealthy timberman threatened to cancel a \$250,000 gift for a new basketball arena unless the University disbanded the clinic. Jerry Kirshenbaum, *Tainted Gift*, SPORTS ILLUSTRATED, Feb. 9, 1981, at 17.

46. Letter from Donald C. Arnold, Chief Counsel, Or. Dep’t of Justice, to William E. Davis, Chancellor, Or. State Sys. of Higher Educ., and Max Simpson, Or. State Representative (July 11, 1983) (responding to Opinion Request OP-5498) (on file with authors).

47. Letter from Arnold, *supra* note 46, at 4. The opinion brushed aside claims that the actions of the clinic were improperly making the state a party to the environmental disputes, noting that the law clinic’s role as counsel for private parties did not make the university a party to the proceeding. *Id.* at 5.

48. Memorandum D8383-25 from James P. White, Consultant on Legal Educ., ABA, to Deans of ABA Approved Law Schools (Feb. 21, 1983), reprinted in ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 146 (2009-10).

49. REPORT OF THE AD HOC STUDY COMM. FOR THE ENVTL. LAW CLINIC, *supra* note 45, at 14.

50. See Alan Pittman, *UO Environmental Law Clinic Funding Axed*, WHAT’S HAPPENING (Eugene, Or.), Sept. 2, 1993, at 1; Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege*, 4 CLINICAL L. REV. 531, 534 (1998); Posting of John Bonine, jbonine@oregon.uoregon.edu, to envclinic@law.ua.edu (Oct. 13, 2001) (on file with authors).

51. Letter from Representative Jim Kasper, N.D. House of Representatives, to Wayne Stenehjem, N.D. Attorney Gen. (Aug. 27, 2003) (on file with authors); see also David Dodds, *Law School Won’t Stop Involvement in Federal Case: UND Dean Stands by Clinic in Face of Possible Attorney General Opinion*, GRAND FORKS HERALD (Grand Forks, N.D.), Aug. 27, 2003, at A1; Chuck Haga, *City is Sued to Remove Religious Monument Fargo’s 10 Commandments Plaque is at Issue*, STAR TRIB. (Minneapolis, Minn.), Oct. 30, 2003, at 1A.

earlier in Oregon, the North Dakota Attorney General explained that the clinic operated like a law firm representing individual plaintiffs, not the University, and that nothing in state law prohibited law students or faculty from representing individuals with claims against the state or its political subdivisions.<sup>52</sup> Similarly, opponents in a case brought by the environmental law clinic at Rutgers School of Law-Newark tried to get the clinic dismissed by arguing that its free representation of a nonprofit organization constituted an illegal gift of money by the state to a private entity.<sup>53</sup> The court rejected the motion, noting that the clinic served two valid public purposes: to assist in enforcing environmental laws, and to provide hands-on training in the practice of law.<sup>54</sup>

Funding pressure also has been a common tactic of critics of the Tulane Environmental Law Clinic. The first attack on Tulane's clinic occurred in 1993 after the clinic's director made a statement critical of the governor's plan to reduce the state tax on hazardous waste disposal. The governor quickly called the president of Tulane University and demanded that he "shut [the director] up or get rid of him" or else Tulane would lose state financial support for a new downtown arena for the University's basketball team, state financial assistance to Louisiana students attending Tulane, and the ability of Tulane medical students to gain access to state hospitals.<sup>55</sup> The University's president refused to get involved.<sup>56</sup>

Tulane's president also refused to get involved when some petrochemical companies decided to withhold donations to the University and not hire any Tulane graduates until it closed the environmental law clinic.<sup>57</sup> Nor did the University get involved when a later governor urged business leaders to withhold their financial support of the University and threatened to revoke Tulane

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52. Letter Op. 2003-L-42 from Wayne Stenehjem, N.D. Attorney Gen., to Representative Jim Kasper, N.D. House of Representatives, at 1 (Sept. 26, 2003) (on file with authors).

53. See Transcript of Motion at 5, 11, N.J. Dep't of Env'tl. Prot. v. City of Bayonne, No. C-118-97 (N.J. Super. Ct. Ch. Div. June 11, 1999) (on file with authors). A provision in the New Jersey constitution prohibits the donation of land or appropriation of money by the state to or for the use of any society, association, or corporation. N.J. Const. art. VIII, § III, ¶ 3.

54. Transcript of Motion, *supra* note 53, at 23, 36.

55. See Michael Dehncke, *Life in Louisiana*, DICTA (Tulane Law Sch.), Oct. 25, 1993; see also Josh Landis, *State and Industries Pressure Environmental Law Clinic*, HULLABALOO (Tulane Univ.), Nov. 19, 1993, at 1. At the time, one of the authors of this article was the clinic's director.

56. The president explained:

In the tradition of academic freedom, sometimes our professors express outrageous and provocative opinions. Often, people interpret those opinions not as expressions of academic freedom but as the university's position. That is a troubling misinterpretation . . . The truth is, we don't take sides . . . [O]ur professors conduct research and service across the spectrum of opinions. The only thing that is ever certain is that, at any given time, everyone on every side of an issue is likely to find the opinions and work of some faculty members at Tulane offensive, if not downright infuriating.

Eamon M. Kelly, *Kelly: Faculty Views are Their Own, Not Tulane's*, TIMES-PICAYUNE (New Orleans, La.), Sept. 30, 1993, at B6.

57. Kuehn, *supra* note 26, at 61-62.

University's tax-exempt status over the clinic's activities.<sup>58</sup>

Most recently, the petrochemical industry sponsored legislation in Louisiana that would require a university to forfeit all state funding for that fiscal year if any of its law clinics brought or defended a lawsuit against a government agency, represented any person seeking monetary damages, or raised state constitutional claims (subject to limited exceptions).<sup>59</sup> The bill was part of an eleven-point Louisiana Chemical Association plan to financially "kneecap" Tulane University into dropping its environmental law clinic. The plan included urging association members to cease donations to the University, curtailing recruitment of Tulane University graduates, contacting Tulane donors to urge them to cease their support, and enlisting the help of the state's Congressional delegation.<sup>60</sup> The bill was defeated in committee, after criticism that it would harm legal education and cut off access to environmental representation at the very time the state was suffering the consequences of BP's oil spill in the Gulf of Mexico.<sup>61</sup>

Many other unsuccessful efforts by alumni, donors, and politicians to intervene in law clinic matters have come with explicit or implicit threats to withhold funding. For example, in the early 1980s, an alumnus called the dean of Columbia University School of Law to complain about a lawsuit filed against his company by the school's housing discrimination clinic.<sup>62</sup> The dean responded that there was nothing he could or would do, explaining that clinic litigation decisions were made by the faculty running the clinic. When the clinic at Washburn University School of Law filed a class action challenging a City of Topeka towing ordinance, a city official called the University to complain.<sup>63</sup> In response, the law school's dean explained that it would be unethical for the clinic not to sue the city just because it was a governmental entity and a funder of the law school. An alumnus of the Northwestern University School of Law threatened that he would hold the University accountable for damages unless it made the law clinic withdraw from representing the attorney's former client in a lawsuit against that attorney.<sup>64</sup> While a 1996 age discrimination lawsuit brought

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58. Marcia Coyle, *Governor v. Students in \$700M Plant Case: Tulane Law School Clinic Threatens Construction of a Chemical Complex*, NAT'L L.J., Sept. 8, 1997, at A1; Susan Hansen, *Backlash on the Bayou*, AM. LAW., Jan.-Feb. 1998, at 50; Kuehn, *supra* note 26, at 55-56.

59. S.B. 549, Regular Session (La. 2010); see Katherine Mangan, *Louisiana Bill Would "Cripple" Law School Clinics, Deans Say*, CHRON. HIGHER EDUC., May 11, 2010, available at <http://chronicle.com/article/Louisiana-Bill-Would-Cripple/65480>.

60. See Karen Sloan, *Chemical Association Escalates Attack on Tulane Over Law Clinic*, NAT'L L.J., May 12, 2010, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202458112680&slreturn=1&hblogin=1>; see also Urbina, *supra* note 37, at 10.

61. Jordan Blum, *Panel Derails Law Clinic Bill*, BATON ROUGE ADVOC., May 20, 2010, at 1A.

62. E-mail from Lawrence M. Grosberg, Clinical Professor, N.Y. Univ. Law Sch., to Robert Kuehn (Nov. 14, 2001, 10:03 EST) (on file with authors).

63. E-mail from Carl Monk, formerly Dean, Washburn Univ. Sch. of Law, to Robert Kuehn (Feb. 23, 2006, 10:47 EST) (on file with authors).

64. *Doe v. Roe*, 958 F.2d 763, 766-67 (7th Cir. 1992).

by the law clinic at the University of Iowa was awaiting a decision by the jury, counsel for the opposing party called the University's general counsel and threatened to withdraw the company's funding to the engineering department if the case could not be resolved before the jury's verdict.<sup>65</sup> The general counsel said he would not do anything other than simply inquire into the status of the case, which the clinic subsequently lost and which did result in the company's termination of funding to the engineering department. The dean of the University of Illinois School of Law also refused to get involved in a 1997 clinic case after a law school alumnus and member of the school's advisory board called to complain about a class action filed by the clinic against the state agency represented by the alumnus.<sup>66</sup> Likewise, the president of the University of Michigan refused to intervene in a law clinic class action against the Michigan Department of Corrections after the chair of the Michigan Senate's appropriations subcommittee on higher education sent an e-mail questioning the appropriateness of the clinic's lawsuit against the state and warning that such suits could interfere with the University's legislative funding.<sup>67</sup> Recently, a Hofstra University trustee and \$1 million donor complained when the clinic sued his company over housing discrimination claims.<sup>68</sup> The University's president rebuffed the donor, stating that the clinic must exercise independent judgment in the case without considering the gift or any threat to withdraw it.<sup>69</sup>

### C. PRACTICE RESTRICTIONS

The third type of interference seeks to control or influence the decisions or conduct of law clinic lawyers while they are representing a client. The intended effect of such restrictions is to burden clinic lawyers with obstacles that are not faced by opposing attorneys, in order to render clinic representation less effective or to drive the clinic to abandon the client or case.

A stark example of this approach occurred after the law clinic at the University of Denver received a directed verdict in a housing discrimination case and was authorized to submit an attorney fee petition. The opposing attorneys, both graduates of the law school, complained to the dean about the clinic's handling of the case and were given a private meeting with the clinical program's co-directors without the knowledge of the supervising clinic attorneys on the case.<sup>70</sup> Based on

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65. Telephone Interview with John Allen, Clinical Professor, Univ. of Iowa Coll. of Law (Dec. 11, 2001).

66. Telephone Interview with George Bell, Assoc. Clinical Professor, Univ. of Ill. Coll. of Law (Apr. 11, 2006).

67. E-mail from Paul D. Reingold, Clinical Professor, Univ. of Mich. Law Sch., to Robert Kuehn (May 8, 2006, 07:45 GMT) (on file with authors).

68. See Rick Brand, *Suit Puts Hofstra Donor on the Fence*, NEWSDAY, Oct. 8, 2006, at A39.

69. Valerie Cotsalas, *A Pledge to Hofstra Is Caught in Controversy*, N.Y. TIMES, Oct. 7, 2006, at B3.

70. See Memorandum from Julie Field, Clinical Professor, Univ. of Denver Coll. of Law (undated memo to file titled "Meeting on October 9, 2002 with Heather Salg and Mary Gibbons") (on file with authors); E-mail

concerns raised at the meeting and on an alleged clinical program attorney's fee policy, the program co-directors directed the clinic attorneys not to request fees.<sup>71</sup> The supervising attorney responded that the client had a right to and had been promised the fees and that no policy against fee petitions had ever been communicated to the attorney.<sup>72</sup> The attorney asserted that he had a professional responsibility to the client and no choice but to file the fee petition, which he did.<sup>73</sup> The program co-directors subsequently wrote to the clinic attorney that his filing of the petition over their objections would have "clear consequences."<sup>74</sup> It did. The attorney had to leave the school at the end of the year when it failed to renew his contract.<sup>75</sup>

In Michigan, a prosecutor listed law students in the University of Michigan's Innocence Clinic as prosecution witnesses in an attempt to force the students to testify against their client.<sup>76</sup> The prosecutor offered no justification for disregarding rules of professional conduct that generally bar a prosecutor from forcing a lawyer to testify about a client, other than to claim that the student attorneys had interviewed a person who might exonerate the defendant.<sup>77</sup> The prosecutor ultimately dropped the case before the clinic's motion to strike the students from the prosecution's witness list could be heard.<sup>78</sup>

Currently, a real estate development company, frustrated by its inability to gain access to internal clinic documents about a clinic case involving the company through normal discovery means, is seeking to force the Rutgers School of Law-Newark law clinics to comply with a request under the state's Open Public Records Act.<sup>79</sup> The trial court rejected that effort, holding that the law school was

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from Doug Smith, former Professor, Univ. of Denver Coll. of Law, to Robert Kuehn (Sept. 8, 2004, 10:43 CST) (on file with authors).

71. Letter from Amy F. Robertson, Attorney for Doug Smith, to Paul Chan, Gen. Counsel, Univ. of Denver 2 (Nov. 12, 2002) (on file with authors); E-mail from Smith, *supra* note 70.

72. Letter from Robertson, *supra* note 71, at 3.

73. *Id.*; E-mail from Doug Smith, former Professor, Univ. of Denver Coll. of Law, to Julie Field, Clinic Co-Dir., Univ. of Denver Sch. of Law (Oct. 11, 2002, 13:31 MST) (on file with authors); E-mail from Doug Smith, former Professor, Univ. of Denver Coll. of Law, to Dean Robert Yegge, Clinic Co-Dir., Univ. of Denver Coll. of Law (Oct. 18, 2002, 10:16 MST) (on file with authors).

74. Memorandum from Julie Field and Bob Yegge, Clinic Dirs., Univ. of Denver Coll. of Law, to Doug Smith, former Professor, Univ. of Denver Coll. of Law (Oct. 16, 2002) (on file with authors).

75. E-mail from Smith, *supra* note 70.

76. Sandra Svoboda, *Murder Case Curveball: Prosecutor Wants to Question Law Students Who Worked on Defense*, METRO TIMES (Detroit, Mich.), Mar. 17, 2010, available at <http://www.metrotimes.com/news/story.asp?id=14895>.

77. *Id.* See generally MODEL RULES OF PROF'L CONDUCT R. 3.8(e) (2010) [hereinafter MODEL RULES] (prohibiting a prosecutor from subpoenaing a lawyer except under limited circumstances); MODEL RULES R. 1.6(a) (prohibiting a lawyer from revealing information relating to the representation of a client subject to limited exceptions).

78. See David Ashenfelter & Joe Swickard, *Wayne County Won't Retry Provience in Drug Killing*, DETROIT FREE PRESS, Mar. 24, 2010.

79. Mary Pat Gallagher, *Suit Tests If Rutgers Law Clinics' Files Are Subject to Disclosure Under OPRA*, N.J. L.J., May 5, 2008, at 1.

outside the scope of the Act and that clinic clients should not be disadvantaged by the nature of the entity that represents them.<sup>80</sup> An appellate court reversed the trial court's ruling and remanded the case to determine if the documents sought by the developer are protected from disclosure under specific exemptions in the Act.<sup>81</sup>

Another approach to limiting clinic attorneys aims to impose special ethics restrictions on clinic attorneys. In 1986, Rutgers School of Law–Newark confronted claims by clinic opponents that its representation of clients before state agencies violated a state conflict law which provides that no “state employee” may represent, appear for, or negotiate on behalf of any person or party other than the state in connection with any matter pending before a state agency.<sup>82</sup> The New Jersey Supreme Court held that applying the phrase “state employee” to clinic attorneys when the representation of a client brings them before a state administrative agency would misperceive the history of the conflict law and would violate its legislative purpose.<sup>83</sup>

After the unsuccessful effort in 1993 by the governor of Louisiana to pressure Tulane University's president to fire its environmental law clinic director, the attorney who ran the governor's department of environmental quality filed a complaint with the Louisiana Supreme Court alleging that the clinic had engaged in “political conduct” and overstepped its authority under the state's student practice rule.<sup>84</sup> The court quickly rejected the complaint, finding no basis to get involved.<sup>85</sup> The Oregon State Bar likewise dismissed an ethics complaint filed against two Oregon Law School environmental law clinic attorneys by an opposing attorney who claimed the clinic attorneys had selectively presented scientific studies to a judge and failed to report contradictory information.<sup>86</sup>

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80. *Sussex Commons Assocs. v. Rutgers Univ.*, No. MID-L-8465-06 (N.J. Super. Ct. Law Div. Oct. 7, 2008) (on file with authors).

81. *Sussex Commons Assocs. v. Rutgers Univ.*, 6 A.3d 983 (N.J. Super. Ct. App. Div. 2010), *see also* Peter Schmidt, *N.J. Court Says Public Law-School Clinics Aren't Immune from Open-Records Law*, CHRON. HIGHER EDUC., Oct. 26, 2010, available at [http://chronicle.com/article/NJ-Court-Says-Public/125094/?sid=pm&utm\\_source=pm&utm\\_medium=en](http://chronicle.com/article/NJ-Court-Says-Public/125094/?sid=pm&utm_source=pm&utm_medium=en). A similar public records request was filed against the domestic violence clinic at Rutgers School of Law-Camden. *See* E-mail from Ruth Anne Robbins, Clinical Professor, Rutgers Sch. of Law-Camden, to Jon C. Dubin, Professor, Rutgers Sch. of Law-Newark (Aug. 4, 2008, 18:41 EST) (on file with authors).

82. *In re Exec. Comm'n on Ethical Standards Re: Appearance of Rutgers Attorneys Before the Council on Affordable Hous. on Behalf of the Civic League*, 561 A.2d 542 (N.J. 1989); *see* N.J. STAT. ANN. § 52:13D-16(b).

83. *In re Exec. Comm'n on Ethical Standards*, 561 A.2d at 547-49; *see also* Michelle D. Carter, Comment, *Conflict of Interest—State Employees—Rutgers Law Professors May Continue Representation before State Agencies in the Exercise of the University's Clinical Education Program*, 22 RUTGERS L.J. 231 (1990).

84. Letter from Kai David Midboe, Sec'y, La. Dep't of Envtl. Quality, to Pascal F. Calogero, Jr., Chief Justice, La. Supreme Court (Oct. 15, 1993) (on file with authors); Bob Anderson, “Politics” Prompted Protest of TU Law Clinic, *Official Says*, BATON ROUGE ADVOC., Oct. 19, 1993, at B1.

85. Letter from Pascal F. Calogero, Jr., Chief Justice, La. Supreme Court, to Kai David Midboe, Sec'y, La. Dep't of Envtl. Quality (Nov. 18, 1993) (on file with authors); Bob Anderson, *High Court Rejects Midboe Request on Law Clinic Restraints*, BATON ROUGE ADVOC., Feb. 4, 1994, at 12C.

86. Bill Bishop, *Ethics Complaint Dismissed by Bar*, REG.-GUARD (Eugene, Or.), May 22, 1990, at 1C.

A unique effort to control the decision making of clinic attorneys occurred at the University of North Dakota School of Law. In 2002, its clinic filed suit on behalf of residents challenging a government display of a Ten Commandments monument.<sup>87</sup> A vocal critic of the law clinic then wrote a letter to the clinic stating that the “pagan religious” statute of the Greek goddess Themis on top of a courthouse offended him as a Christian and requesting that the clinic develop a lawsuit on the same basis as the clinic’s suit challenging the Ten Commandments monument.<sup>88</sup> The clinic declined the request for assistance, explaining that it was not taking any new cases at the time and that the critic’s persistent and antagonistic actions against the clinic would “adversely affect our ability to establish an effective client-attorney relationship with you and would consequently impair our ability to provide legal representation to you.”<sup>89</sup>

The critic then filed a pro se complaint in federal court against the clinic director, alleging that her refusal to provide legal representation violated his constitutional rights to free speech and equal protection.<sup>90</sup> The district court granted judgment on the pleadings for the defendant, holding that an attorney should not be compelled to represent a client where the attorney believes it would violate the attorney’s ethical obligations.<sup>91</sup> The U.S. Court of Appeals, however, reversed the dismissal on the pleadings, explaining that because the plaintiff alleged that the basis for denying representation was pretextual, he should be given an opportunity to prove his claim against the clinic director.<sup>92</sup>

A final example of interference with clinic lawyering involves St. Mary’s University. In 2002, its human rights clinic filed a complaint with the U.S. Department of Labor against the Mexican government alleging violations of the North American Free Trade Act, after first following what the clinic director believed was the school’s pre-filing notification policy and receiving the approval of the clinical program director.<sup>93</sup> A few days later, the clinic director learned

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87. Haga, *supra* note 51.

88. Letter from Martin Wishnatsky to Laura Rovner, former Dir. of Clinical Educ., Univ. of N.D. Sch. of Law (Oct. 29, 2003) (on file with authors); *see also Fargo Man Wants to Remove Goddess Statue*, BISMARCK TRIB. (Bismarck, N.D.), Nov. 1, 2003, at 8A; Lisa Davis, *Grand Forks County Courthouse Statute: Law School to Treat Case Like Any Other*, GRAND FORKS HERALD (Grand Forks, N.D.), Nov. 1, 2003, at B1; Martin Wishnatsky, Editorial, *If the Fargo Monument Goes, Themis Goes, Too*, GRAND FORKS HERALD, (Grand Forks, N.D.), Nov. 5, 2003.

89. Letter from Laura Rovner, former Dir. of Clinical Educ., Univ. of N.D. Sch. of Law, to Martin Wishnatsky (Nov. 12, 2003) (on file with authors).

90. *See Wishnatsky v. Rovner*, No. A2-04-01, 2004 WL 2236415 (D.N.D. Sep. 3, 2004).

91. *Id.* at \*1.

92. *Wishnatsky v. Rovner*, 433 F.3d 608, 610-11 (8th Cir. 2005). The case was remanded for further proceedings and then voluntarily dismissed by the parties.

93. Memorandum from Monica Schurtman, Co-Dir., Inst. on Int’l Human Rights, St. Mary’s Univ. Sch. of Law, to the Clinical Comm., St. Mary’s Univ. Sch. of Law 4-5 (Aug. 8, 2000) (on file with authors); Memorandum from Bill Piatt, Dean, St. Mary’s Univ. Sch. of Law, to Monica Schurtman, Co-Director, Institute on Int’l Human Rights, St. Mary’s Sch. of Law (Dec. 23, 1998) (on file with authors); *see also* Gary MacEoin, *Dissent Simmers at St. Mary’s Law School*, NAT’L CATH. REP., Feb. 16, 2001, at 6.

from one of the clients that the school's dean and associate dean had called to tell the client that the school was immediately withdrawing from the representation.<sup>94</sup> The dean's letter to the Department of Labor stated that the clinic would not be participating in the case and that the clinic director, in her individual capacity and not on behalf of the school, would represent the complainants, something which had never been discussed with the director.<sup>95</sup> At the same time, the school's associate dean came to the clinic's file room and began looking through the case files, over the objection of the clinic director.<sup>96</sup> The dean later stated that he withdrew the clinic from the case without discussing it in advance with the client or clinic director because the University had not authorized the filing and for budgetary concerns.<sup>97</sup>

## II. THE EFFECTS OF INTERFERENCE ON LAW CLINIC ATTORNEYS

Although extensive, the dozens of publicized instances of interference categorized above (and in Appendix 1) provide an incomplete record. Similar instances are often handled quietly by schools and go unreported. The Executive Director of the AALS recently opined, drawing on her many years as a law school dean, that for each formal reported case of interference in a clinical program, "there are many dozens of criticisms voiced less formally."<sup>98</sup> Given the number of law schools that are known to have been subject to interference of some kind, it is likely that there are few law schools where the dean has not, at some point, been called on the telephone or approached with a complaint about a law clinic's actions and a request, sometimes implicit, that the dean intervene.

And even in circumstances where there has been significant interference in law clinic activities, clinic lawyers may be afraid to expose those actions for fear of antagonizing legislators, alumni, or university officials. In addition, self-restraint

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94. Memorandum from Schurtman, *supra* note 93, at 6.

95. Letter from Bill Piatt, Dean, St. Mary's Univ. Sch. of Law, to Lewis Karesh, Acting Sec'y, Bureau of Int'l Labor Affairs, U.S. Dep't of Labor (July 7, 2000) (on file with authors).

96. Memorandum from Schurtman, *supra* note 93, at 6.

97. *Id.* at 7; Megan Kamerick, *Law School Finds Itself in the Thick of International Dispute*, SAN ANTONIO BUS. J., Aug. 11, 2000, at 16. Dramatic interventions in ongoing representation are not limited to clinics in the United States. In 2008, the provost of Tel Aviv University ordered one of the law school's clinics to stop representing workers seeking to unionize at the Weizmann Institute of Science after the president of Weizmann asked the University to order the clinic to drop the case. Ruth Sinai, *Rector Bars Law Clinic from Acting Against Other Schools*, HAARETZ NEWSPAPER (Tel Aviv, Israel), Dec. 11, 2008, available at <http://www.haaretz.com/hasen/spages/1045093.html>; Ruth Sinai, *Universities Ganging Up to Prevent Weizmann Institute Workers Organizing*, HAARETZ NEWSPAPER (Tel Aviv, Israel), Dec. 8, 2008, available at <http://www.haaretz.com/print-edition/news/universities-ganging-up-to-prevent-weizmann-institute-workers-organizing-1.259046>. In the face of widespread criticism, the president of the University overrode the provost's decision and approved the clinic's continued representation. E-mail from Stephen Wizner, Clinical Professor Emeritus, Yale Law Sch., to Michael Pinard, Co-Dir., Clinical Law Program, Univ. of Md. Sch. of Law (Dec. 10, 2008, 11:57 EST) (on file with authors).

98. Letter from Susan Westerberg Prager, Exec. Dir., AALS, to Senator Ann Duplessis, Chair, Comm. on Commerce, Consumer Prot., & Int'l Affairs, La. State Senate (May 20, 2010) (on file with authors).

by clinic attorneys with regard to their case activities may skew the degree to which outside interference occurs or influences law clinic operations. That is, for fear of encountering the very same interference documented here, clinic attorneys may impose their own restrictions on whom they represent or sue and on whether they seek attorneys' fees or other types of legal relief.<sup>99</sup> As one clinic attorney explained: "There is no question that we worry constantly that our willingness to represent unpopular clients and our success in suing governmental bodies will cost us our chances to provide high-quality clinical training to our students."<sup>100</sup> Another noted that she was careful to avoid high-profile cases.<sup>101</sup> Even attacks that fail can intimidate clinic attorneys and law school officials. The sponsor of the recent legislative effort to withhold funds from the University of Maryland boasted that, even in defeat, the University had gotten the message that "we'll be watching" if its clinics take legal action against other interests favored by legislators.<sup>102</sup>

In an effort to document the degree to which law clinic attorneys are either receiving or perceiving pressure to avoid taking on controversial matters or requesting certain relief, we conducted two surveys of clinical faculty on this topic. The survey results illustrate the effects of interference on clinic attorneys.

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99. Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855, 857 (1999) (warning that the experience of the Tulane environmental law clinic merits caution by clinics at public law schools); David E. Rovella, *Law Students Urged to Take Death Cases*, NAT'L L.J., Dec. 7, 1998, at A9 (referencing the attack on the Tulane clinic, the Dean of Northwestern University School of Law expresses concern if clinics handle appeals of death row inmates); E-mail from Law Clinic Program Director to Robert Kuehn (Apr. 11, 2001) (on file with authors) (explaining that clinic decided against seeking fees in a lawsuit against the state because of concerns about a legislative funding backlash and requesting that the director's identity be kept anonymous).

100. Beverly T. Watkins, *Limits Urged on the Litigation that Law Schools May Undertake in Clinics*, CHRON. HIGHER EDUC., Jan. 26, 1983, at 8.

101. Caille M. Millner, *HLS Center Watches La. Court Case*, HARVARD CRIMSON, Mar. 9, 1999, available at <http://www.thecrimson.com/article/1999/3/9/hls-center-watches-la-court-case>.

102. Nicholas Sohr, *State Delegate to UMd. Law Clinic: "We'll Be Watching,"* MD. DAILY REC., Apr. 7, 2010, available at <http://mddailyrecord.com/eyeonannapolis/2010/04/07/state-senator-to-umd-law-clinic-well-be-watching/> (quoting Maryland General Assembly Delegate Norman Conway). As Professor David Luban observed about the failure to shut some clinics down:

If the [clinic] attacks failed, they were near misses, and eventually some will succeed. Indeed, they may already have succeeded in one of their aims, because clinic directors will undoubtedly hesitate before taking on volatile cases that may provoke dangerous backlash against the clinics or their law schools. Obviously, the degree to which clinicians self-censor cannot be known, but everyone in clinical education with whom I have discussed the subject agrees that self-censorship exists. In effect, the assaults on environmental-law clinics function like SLAPP [Strategic Lawsuits Against Public Participation] suits, intimidating law school administrators and clinic directors even when they fail.

David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209, 240 (2003).

## A. DECEMBER 2005 SURVEY

By and large, law school administrators do not participate in the case selection decisions of their clinic attorneys. In 2002, the Political Interference Group of the AALS Section on Clinical Legal Education surveyed clinical law programs to find out how law clinics made case selection decisions.<sup>103</sup> The survey found that only clinic attorneys and students participate in case selection decisions at 87% of the schools; the other 13% use advisory boards, but final decisions are made by the clinic's attorneys and students. However, at least two schools, in reaction to attacks on Tulane's environmental law clinic, have given the dean a role in pre-approving potentially controversial clinic cases.<sup>104</sup>

The simple survey conducted by the Political Interference Group failed to provide information on the effects of interference episodes on clinic attorney case decisions. So, as preparation for the 2006 AALS annual meeting on "Practicing Law in the Academy, Clinics, Clinical Faculty and the Principles of Academic Freedom," a more extensive survey was sent to law clinic attorneys asking basic questions about the freedom they had in case and class material selection. Approximately 300 surveys were sent by e-mail in December 2005 to clinic attorneys at every AALS member law school. Between one and three members at each school were randomly selected. The clinics represented by those surveyed were varied, and no single type of clinic was singled out for participation.<sup>105</sup> The survey questions asked about the attorney's status within the institution and perceptions about faculty and administrative influence on clinic casework and course materials.<sup>106</sup>

One hundred forty-seven clinic attorneys, nearly half of those contacted to participate, completed and returned the survey.<sup>107</sup> Their responses were revealing. A high number of those who completed the survey reported experiencing interference or worrying about interference from the law school's administration or other faculty. Specifically, 12% reported interference from faculty or

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103. POLITICAL INTERFERENCE GRP., AALS SECTION ON CLINICAL LEGAL EDUC., SUMMARY OF SURVEY ABOUT LAW CLINIC INTAKE GUIDELINES AND DECISIONMAKING (2002) (on file with authors). Twenty-six schools responded to the survey.

104. See DEP'T OF CLINICAL LEGAL STUDIES, UNIV. OF S.C. SCH. OF LAW, CLIENT MATTER SELECTION POLICY TO ADDRESS POTENTIAL CONFLICTS WITH INSTITUTIONAL INTERESTS (Nov. 2000) (on file with authors); Chris Saporita & Andrew Yoder, Practicing for the Earth: Training Law Students Through Environmental Law Clinics 12 (July 18, 2002) (unpublished report) (on file with authors) (noting policy formerly in effect for environmental law clinic at Washington University).

105. The method of selecting respondents involved going through the AALS Directory of Law Teachers school-by-school and choosing a faculty member, or more than one for schools with larger clinical faculty, to participate in the survey.

106. The e-mail survey is on file with the authors.

107. This response rate, and the rate for the May-October 2008 survey, compares favorably to other online surveys. See Tse-Hua Shih & Xitao Fan, *Comparing Response Rates from Web and Mail Surveys: A Meta-Analysis*, 20 FIELD METHODS 249, 257 (2008) (finding the mean response rate for Web-based surveys is 34%).

administration in their casework.<sup>108</sup> A far greater number, over 36%, answered that they have worried about the faculty or administration's reaction to their casework, even if they had not experienced actual interference. Perhaps not surprisingly, clinic attorneys at public law schools showed greater concern about the reactions of faculty and administrators than at private schools: 44% of clinic attorneys at public schools were worried about reactions to their casework, whereas 29% of attorneys at private schools expressed such worries.<sup>109</sup>

Moreover, such worries had concrete effects. Almost one in six clinic attorneys reported self-censoring their choices about case selection as a result of their concerns about potential reactions to their casework.

#### B. MAY-OCTOBER 2008 SURVEY

The results of the 2005 survey convinced us to conduct a more extensive survey in 2008 to test some of the same interference issues in a format that would allow more meaningful analysis. The 2008 survey was sent to 947 law clinic attorneys who were listed in the AALS Section on Clinical Legal Education or Clinical Legal Education Association (CLEA) membership databases, and they were given three months within which to respond.<sup>110</sup> Three hundred thirty-two clinical faculty responded, a 35% response rate.<sup>111</sup>

The responses regarding questions about interference from administrators were revealing. When asked whether the dean or clinical program director (the faculty member with oversight responsibility for the various clinics at the school) ever suggested that the clinic attorney avoid a particular case, over one in five (22%) answered "yes," with 9% answering yes with respect to at least the dean and 15% answering yes with respect to at least the clinical program director. Respondents were asked to explain their answers and reported that deans had expressed concerns over suing a major donor to the law school, representing a defendant who was convicted of killing a university student, and filing lawsuits against attorneys, class actions, or impact litigation. The fact that deans have sought to influence or control the case selection decisions of 9% of clinic attorneys is particularly revealing, since at the time of the survey only one school was known to have a formalized role for the dean in such decisions and no school

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108. Unless otherwise noted, all reported results from the 2005 and 2008 surveys were statistically significant to the 95% confidence level with  $P < .05$ .

109. This result was significant at  $P < .07$ , just under the 95% confidence level. The survey found no statistically significant difference between public and private law school clinic attorneys in terms of the prevalence of actual interference by the faculty or administration or whether the worries about interference had affected choices about cases.

110. We used the databases to send e-mail requests to all members of either organization to complete the survey using the internet-based SurveyMonkey.com. The survey is on file with the authors.

111. A "goodness of fit" test on the survey, comparing it to the ABA's list of accredited law schools, showed that the results are representative of the universe of law school clinic attorneys on the basis of the public/private status of schools.

had identified its dean as being a member, with appropriate state bar licensing, of its clinical program legal office.

Aside from direction by the dean or clinical director, clinic attorneys often avoided a case on their own initiative because they believed school administrators would rather that they not take the case. Over 10% of respondents engaged in this form of self-censorship by avoiding a case because they suspected the clinical program director or the dean would prefer that the clinic attorney not handle the matter. One respondent commented that the clinical director wanted to avoid politically-charged cases.

When respondents were then asked if they had ever witnessed or been informed of direct interference in the work of a colleague, 30% indicated they had. Seventeen percent responded that they had witnessed or been informed about such direct involvement by the dean, and 16% answered that they had witnessed or been informed about such actions with respect to the clinical program director.

Clinic attorneys are plainly aware of their law school administration's mindfulness of opinions by outsiders about their work. In response to questions about how mindful the dean is to various groups' opinions, 66% said that the dean was mindful of potential donors, 61% stated the dean was mindful of alumni opinions, 37% as to the state legislature, 36% as to state courts, 33% as to the state bar and 31% as to businesses. Thus, clinic attorneys believe that deans are most likely to be sympathetic or respond to concerns or complaints about clinical program activity expressed by potential donors and alumni.

The responses to a survey question about law school governance were striking. This question asked clinic attorneys to describe their ability to contribute to matters of law school governance and asked them to choose from among three possible answers: "I feel I can express dissenting views on controversial law school governance issues without fear of reprisal"; "I feel I cannot express dissenting views on controversial law school governance issues without reprisal"; or "I avoid expressing dissenting views on controversial issues because I am not confident there will be no reprisal."

The answers reveal that the extent to which clinic attorneys feel they can contribute to matters of law school governance is plainly tied to the attorney's security of position within the school. First, there was an overall sense of alienation by law clinic attorneys and lack of ability to participate fully in law school decisions—over 29% of clinical faculty reported either not being able to express dissenting views or avoiding expressing dissenting views on matters of school governance. Seven percent replied that they could not express dissenting views at all without reprisal, and 22% avoided expressing dissenting views on their own because they feared possible reprisal.

Even more striking was the direct correlation between security of position or "status" within the law faculty and the freedom a clinic attorney feels to speak up on matters of governance. Respondents were asked to identify their employment

status among various categories: short-term contract (three years or less), long-term contract, clinical tenure or clinical tenure track, tenure or tenure-track, or adjunct.<sup>112</sup> Those on short-term employment contracts were most likely to feel unable to contribute when compared to long-term contract faculty or tenured faculty. Forty-four percent of short-term contract attorneys responded that they either could not express or avoid expressing dissenting views, while 18% of long-term contract attorneys and 13% of tenured clinic attorneys expressed these views. Since clinic attorneys on long-term contracts were more likely to feel unable to contribute to governance than tenured attorneys, the common perception that law faculty with tenure feel most able to express dissenting views on law school governance was borne out by the survey results. Also, not unexpectedly, clinic attorneys on tenure track (whether regular tenure track or clinical tenure track) and soon subject to a vote on their long-term employment status within the legal academy expressed almost as much fear of speaking out as short-term contract attorneys.

The finding that those with less security of position are unable to express dissenting views is especially significant given the high number of law clinic attorneys in lower-status positions within law schools. Based on a 2007-08 survey of clinic attorneys at ABA accredited law schools, a majority of law schools, over 56%, rely on at least one clinic attorney on a short-term contract.<sup>113</sup> Specifically, over one-fourth of all clinic attorneys are employed on short-term contracts of less than five years.<sup>114</sup> This number increases to over 40% when adjuncts and clinic staff attorneys are included.<sup>115</sup> Attorneys on long-term contracts represent 18% of full-time clinic faculty, with 11% holding clinical tenure or on clinical tenure track and 23% holding a tenured or tenure-track position.<sup>116</sup> As the employment status of clinic attorneys is plainly tied to their ability to dissent, employment status is also likely tied to the degree of concern attorneys have about handling controversial cases that was revealed in the 2005 and 2008 surveys. That is, with so many clinic attorneys in lower status employment positions within their institutions, there is reason to believe that the same fear of speaking up on law school governance matters manifests itself in significant self-censorship (or fear) of controversial or unpopular clients or cases by attorneys with less secure positions.

Even with more attention paid to drafting the 2008 survey questions, there

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112. The survey question further divided the short-term contract category (three years or less) into three sub-categories: short-term non-renewable contract, short-term renewable contract, and short-term that will convert to a long-term contract following future review.

113. CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION: REPORT ON THE 2007-2008 SURVEY 29 (2008), available at <http://csale.org/files/CSALE.07-08.Survey.Report.pdf>.

114. *See id.*

115. *See id.*

116. *See id.*

were still imperfections that confound the results. For example, the survey includes responses from field placement (externship) teachers who, by the nature of their appointment, rarely struggle with interference issues and always answered “no” (or “N/A”) to survey questions about such interference. Hence, the problems faced by clinical faculty that work in live-client law clinics are understated in the survey results.

A second problem stems from the question that sought to record the length of time a person has taught in a law clinic. Length of service, of course, can often be a proxy for security of position. Moreover, the longer one has been teaching in a law clinic setting, the more likely she is to have encountered some interference. However, because the survey did not ask for the status of the respondent at the time of the interference, but rather only for the status at the time the person completed the survey, it was not possible to draw out the relationship between security of position and the prevalence of interference.

One other imperfection related to a question asking if either the dean or clinical director was mindful of various groups outside the law school. The question was aimed at determining whether law clinic attorneys were conscious of the extent to which deans or clinical directors were attentive to the concerns or complaints of certain groups and whether this resulted in clinic attorneys making decisions differently as a result. Most comments to this question suggest, however, that when respondents replied that deans or clinical directors were mindful, they believed that the mindfulness was positive. For instance, most respondents explained that administrators were interested in pleasing external groups as a way to generate publicity for their clinical programs or schools or to receive funding for the law school or clinics. Yet, if deans and clinical program directors are most interested in pleasing certain external groups, then it is also likely that they would be quite interested in appeasing those groups should they register a concern or complaint about a law clinic or clinic attorney’s activities.

As a final observation, while the response rate was more than adequate for an online survey and useful for drawing out some themes, a significant number of faculty did not respond to either survey. Although confidentiality was promised, some of the respondents with the greatest expressions of concern about interference also expressed the most concern with the confidentiality of their responses. This raises the question whether many clinic faculty chose not to respond to the survey out of similar and perhaps even greater concerns about their responses remaining confidential and not getting back to their school administrators. As expected, a review of the comments to the questions suggests that those who articulated the least concern about interference generally were from schools which provide clinic attorneys with the greatest security of position and have well-known cultures of valuing clinical faculty and protecting them from interference.

### III. LESSONS FROM FORTY YEARS OF INTERFERENCE

Although incomplete, the examples of interference and resulting faculty perceptions of interference chronicled here are representative and provide a basis for some important lessons. First, it is interesting to note apparent changes in the motivation for such interference over time. The earliest attacks, as evidenced at the Universities of Arkansas, Connecticut, Iowa, and Mississippi, were based largely on objections to law clinics taking sides in what were viewed as political disputes. Not surprisingly, these early critics, usually state politicians, focused their complaints on clinic lawsuits against the state and its political subdivisions, rather than clinic actions against the federal government or private parties.

The typology suggests that fewer objections are heard today against clinics taking action against a state or political subdivision. It is not clear whether this trend can be explained by a culture shift as politicians, the bar, and university officials have come to accept the role of law clinics in disputes with the state, or whether clinic attorneys have retreated from many of the large, public policy disputes they were involved in the 1970s and 1980s, in part because some clinics have chosen to limit their involvement in controversial lawsuits against the state or have been forced to do so. The recent attack on the University of North Dakota law clinic demonstrates that if the underlying legal matter is politically controversial, the backlash against the school can still be significant.

Meanwhile, there has plainly been increased interference in law clinics driven by financial concerns since the 1970s. As Professor Peter Joy observed, money has driven most attacks on law clinics since the 1980s.<sup>117</sup> The highly-publicized attacks on law clinics at Maryland, Oregon, Pittsburgh, and Tulane were fueled by companies and their sympathetic political allies who stood to lose significant profits if the clinic cases were successful. The latest effort to use the public records act as a weapon against the Rutgers clinics also has a substantial financial motive.

Yet the financial motive for attacking law clinics does not have to be the millions of dollars at stake in those clinic cases. The efforts at Denver and Iowa to get clinic attorneys to mollify their litigation positions illustrate that the loss of even a few thousand dollars by a client or law school alumnus can trigger an attack on a law school clinical program.

A second pattern that emerges from the examples chronicled herein is that state-funded law schools are the predominant target, especially of “external” interference from outside the university.<sup>118</sup> This is likely due to the belief of some

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117. “Since the late 1980s or early ’90s, I can’t think of any instances of clinics coming under fire that, when analyzed, you don’t find money behind it in some fashion.” Carter, *supra* note 44, at 24.

118. Although sixty percent of ABA accredited law schools are private, only five of the twenty different law schools with publicized instances of clinic interference identified in the Appendix are private schools. See generally *ABA-Approved Law Schools*, ABA, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Oct. 13, 2010).

that it is inappropriate for one taxpayer-funded entity to sue another or for a publicly-funded entity to appear to take sides in a policy or legal dispute, especially if its position could be viewed as contrary to that of the state or its political subdivisions. As the legislator who introduced the recent bill in Louisiana to revoke state funding to any university whose law clinic brought suit against any government entity stated: “Philosophically, I’m opposed to taking taxpayer money and then turning around and suing taxpayers. If you’re going to take money from the taxpayers and the government, you ought not be able to sue the taxpayers and the government.”<sup>119</sup>

The control that governors and state legislators have over the budgets of state universities makes publicly-funded law schools particularly vulnerable to outside interference. Although the early, heavy-handed efforts of politicians in Arkansas, Colorado, and Mississippi to restrict clinic program representation were unsuccessful, more indirect efforts through the use of budget riders were imposed on Arizona State and Pittsburgh, yet failed in Louisiana and Maryland once the proposed budget restrictions were publicized.

Clearly, clinics at publicly-funded law schools must be alert to the potential for outside interference by state politicians.<sup>120</sup> In fact, based on the survey responses, clinic attorneys have taken note. As the 2005 survey showed, clinic attorneys at public law schools were significantly more likely to worry about the reaction of administrators to their casework than attorneys at private law schools.<sup>121</sup>

Yet, the problems at Denver, St. Mary’s, and Tulane demonstrate that private law schools are vulnerable to interference too. In the case of Tulane, the inability to pressure the private university through the state legislative process led to a concerted effort of university donors and alumni to financially boycott Tulane and to enlist the Louisiana Supreme Court in their fight. The internal disputes at Denver and St. Mary’s illustrate that regardless of whether a law school is public or private, university or law school officials may be motivated to interfere if they believe that the clinic’s actions threaten the institution’s other important interests, particularly those that are financial in nature.

Third, although most interference in law clinics is from external sources,

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119. Karen Sloan, *Battleground Over Law School Clinics Moves to Louisiana*, NAT’L L.J., May 3, 2010, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202457607971&slreturn=1&hblogin=1> (quoting Senator Robert Adley); see also Leslie A. Gordon, *Taking Their Pains to the Clinic: Legislators Punish Law School Clinics for Suing Community Businesses*, A.B.A. J., Oct. 2010, at 20.

120. See Askin, *supra* note 99, at 857 (cautioning public law schools about the experience of the Tulane environmental law clinic); see also Jerome B. Falk, Jr. & Stuart R. Pollak, *Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services*, 24 HASTINGS L.J. 599, 600 (1972-73) (observing that the controversy over the actions of a California legal services office demonstrates “[t]he vulnerability of publicly funded legal services programs to political interference—increasing in proportion to the effectiveness of the lawyers’ work”).

121. See *supra* note 109 and accompanying text. The 2008 survey, however, did not find any statistically significant difference between public and private law schools in the prevalence of actual interference from the dean or clinical program director. *Id.*

university and even law school officials can be a problem, even before any outside interference has taken place. The 2005 survey found that the faculty or administration had interfered in the casework of a significant number of clinic attorneys and that over one third were worried about the reaction of the faculty or administration to their casework. The 2008 survey found that the deans of 9% of respondents had “suggested” that the clinic attorney avoid a particular case, and over 10% of attorneys had avoided a case because they suspected the dean or clinical program director would prefer the faculty member not handle the matter.

In the Denver, Mississippi, and Pittsburgh law clinic examples, although driven by external pressure from alumni, politicians, or business interests, clinic attorneys had to battle with law school officials for the right to continue their cases without interference. In those situations, university officials gave in to external pressures and believed that sacrificing certain values of the legal profession and legal education were justified in order to prevent a perceived loss to the university. Thus, both the concern about and the reality of “internal” interference in law clinic case decisions are substantial.

In the cases of Denver and St. Mary’s, the internal interference appears to have been fueled, in part, by a disagreement over the proper role of law school officials in clinic case decisions. At these schools, the clinic attorneys and law school officials both believed they were acting within their appropriately-defined professional roles. Apparently, the role of law school officials in ongoing clinic cases at those schools was not spelled out in advance, resulting in actions not in accordance with an attorney’s professional responsibilities and the duties that an attorney owes a client. A clear statement of the limited role of the law school dean and clinical program director in an individual clinic attorney’s professional decisions could help avoid this internal interference, as one of us has argued elsewhere.<sup>122</sup>

A fourth observation is that appeals to principles of academic freedom have not often been effective or respected, either outside or within the university setting. Externally, those involved in the attacks on the Maryland, North Dakota, Pittsburgh, and Tulane law clinics did not agree that academic freedom gave a law professor or law school the right to pick and choose clients and cases for the good of the clinic’s approved educational mission. It is often argued by law clinic faculty that their choice of clients and cases is the equivalent of a non-clinic law professor’s protected choice of textbooks or other teaching materials and should be accorded the same academic freedom protections.<sup>123</sup> However, this view has

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122. See Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 J. LEGAL EDUC. 97 (2009) (noting the appropriate roles for law school faculty and administrators in decisions about law clinic cases).

123. See *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 554 (1992); COMM. ON POLITICAL INTERFERENCE, AALS SEC. ON CLINICAL LEGAL EDUC., POLITICAL INTERFERENCE IN LAW SCHOOL CLINICAL PROGRAMS 12-13 (Nov. 1982) (on file with authors) (proposing adoption of an ABA

not seemed to resonate with those outside the legal academy. To many, academic freedom, if it is respected at all, simply does not extend beyond what one may say in the classroom or write in a professional publication.<sup>124</sup>

Even within law schools, administrators and faculty have not always understood the academic freedom concerns of law clinic attorneys. This has been especially true when that freedom to choose and manage cases conflicts with a dean or faculty's concerns about the best interest of the law school. At these crossroads, even law school faculties may be unwilling to support the clinical professor. For example, some members of the Oregon law school faculty proposed that the best way to deal with attacks on its environmental law clinic was to shut down the clinic.<sup>125</sup> The dean of the law school at Pittsburgh initially supported the idea of drafting a policy to avoid cases that might upset state legislators.<sup>126</sup>

Although those outside academe have often ignored appeals to academic freedom, courts and attorneys general reviewing restrictions on clinics have observed the important role of law clinics in contemporary legal education. In rejecting a claim that Rutgers law clinics could not represent parties before state boards, the New Jersey Supreme Court observed that “[c]linical training is one of the most significant developments in legal education” and refused to believe that the state legislature “ever would have intended to disable a clinical program at our State University.”<sup>127</sup> Similarly, the Oregon attorney general wrote that “[t]he virtues of clinical legal education are now universally accepted, both in its service and pedagogical settings,” noting that law clinics had been endorsed not only by the president of the ABA but also by the Chief Justice of the United States Supreme Court.<sup>128</sup> In turn, the attorney general concluded that the decision about what balance or mix of cases or projects a clinic should handle to educate students “is a policy choice left to the faculty.”<sup>129</sup>

Supreme courts in all fifty states and the District of Columbia, as well as most federal courts, have indicated their support for the role clinics play in legal

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accreditation standard stating that, in the interest of principles of academic freedom, “choice of individual cases and methods of handling those cases . . . must be left to the discretion of teachers in charge of the clinic or litigation related program, provided such choices serve the educational objectives of the enterprise”), *reprinted in* Schneider, *supra* note 12, at 197 n.88.

124. Robert R. Kuehn & Peter A. Joy, “*Kneecapping Academic Freedom*,” 96 *ACADEME* 8 (Nov./Dec. 2010) (arguing that “academic freedom is not well respected or understood when student learning bumps up against real world disputes”).

125. See Pittman, *supra* note 50, at 2.

126. Bruce Steele, *Controversy Threatens Funding of Pitt Environmental Law Clinic*, *U. TIMES* (Pittsburgh, Pa.), Oct. 25, 2001, at 1.

127. *In re Exec. Comm’n on Ethical Standards Re: Appearance of Rutgers Attorneys Before the Council on Affordable Hous. on Behalf of the Civic League*, 561 A.2d 542, 543 (N.J. 1989); see also Transcript of Motion, *supra* notes 53-54 and accompanying text (noting the importance of clinical legal education in opinion and refusing to prohibit law clinics at Rutgers from providing free legal representation).

128. Letter from Arnold, *supra* note 46, at 4.

129. *Id.* at 9 n.11.

education by adopting law student practice rules as a means to “encourage law schools to provide clinical instruction.”<sup>130</sup> A recent Carnegie Foundation Report on legal education concluded “that the best available knowledge points toward context-based education [i.e., clinical education] as the most effective setting in which to develop professional knowledge and skills.”<sup>131</sup> The ABA’s law school accreditation standards now mandate that each law school offer substantial opportunities for live-client or other real-life practice experiences.<sup>132</sup> Legislators defending law clinics from legislative restrictions have taken note of the importance of law clinics in training future lawyers.<sup>133</sup>

A fifth observation is that arguments based on legal ethics and professional responsibility are appropriate to deflect outside interference and can be successful. The ethical responsibilities of all attorneys to provide legal representation to those who cannot afford assistance and to not deny representation to unpopular or controversial clients are relevant to many of the instances of outside interference since the purpose, or at the very least the practical effect, of that interference is to deny certain clients or causes any legal assistance.<sup>134</sup> Attacks on these important professional responsibilities should motivate the legal profession and law faculties to recognize that clinic attorneys, in taking on such cases and clients, are simply fulfilling their ethical obligations. In the case of the attack on the Pittsburgh clinic, these important professional values, and the duty of the law school to teach and model these values, ultimately persuaded the university chancellor to abandon his efforts to force the clinic out of the law school. At North Dakota, the attorney general relied on these principles in determining that state law did not prohibit the actions of the law clinic in suing political subdivisions of the state. The ABA too has relied on these professional responsibilities in urging legislatures not to impose restrictions on clinics.<sup>135</sup>

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130. *Proposed Model Rule Relative to Legal Assistance by Law Students*, 94 REP. A.B.A. 290 (1969) (stating the dual goals of the ABA’s Model Student Practice Rule as “providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction”); see Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLINICAL L. REV. 493, 496-97 (2002) (identifying the adoption of student practice rules).

131. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 125 (2007). A national, longitudinal study of early-career lawyers found that law clinic training was more useful to new lawyers making the transition to the practice of law than most other law school experiences, particularly typical law school doctrinal courses. See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 102 (2009) (analyzing the most recent results of the ongoing After the JD survey).

132. ABA, *STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS*, Standard 302(b)(1) (2009-10).

133. See, e.g., Brian Witte, *Md House Democrats Reject \$830 Million in New Cuts*, ASSOCIATED PRESS, Apr. 2, 2010, available at <http://www.businessweek.com/ap/financialnews/D9EQTMHG0.htm>.

134. See MODEL RULES R. 1.2(b) & cmt. 5, 6.1.

135. Former ABA President Carolyn Lamm stated:

I call on lawyers in every state to remember their professional obligation to uphold the independence of their profession, and speak out against intimidation whenever they see it. Just as lawyers who represent unpopular clients are fulfilling the responsibilities of all lawyers, so too are law students who assist clients in clinical legal programs.

Ethical prohibitions against interference in the professional relationship between an attorney and client and respect for the independent professional judgment of the clinic attorney also make interference in ongoing cases improper.<sup>136</sup> The efforts to restrict the Connecticut clinic were successfully defeated after the ABA issued an ethics opinion holding that efforts of the law dean and faculty to control the independent judgment of the clinic lawyers were improper. At Columbia, Hofstra, Illinois, and Iowa law schools, school officials were able to deflect criticism of clinic activities by appealing to the uncontroversial principle that it is ethically improper for the dean to attempt to control the professional decisions of a clinic attorney in an ongoing case.

History shows, surprisingly, that many law school alumni have little respect for these ethical restrictions. Time after time, attorneys, not just government or business officials, have sought the law school dean's intervention in ongoing clinic cases. Those attorneys sometimes defend their requests as simply an allegedly unselfish concern that clinic actions were harming the law school or that clinic attorneys were acting unprofessionally. However, their efforts appear to be motivated by the interests of that attorney or her client. Whatever the real reason, some attorneys are willing to use their own or their client's special status as an alumnus or university donor to cross ethical lines. At best, a number of attorneys mistakenly view the dean as simply the senior partner in the law clinic firm who retains ultimate control over the litigation decisions of clinic attorneys, even where the dean is not an attorney of record or even licensed in the state.

This incorrect perception that law school officials can and should control the professional independence of clinic attorney creates a dilemma for law deans. If the dean seeks to exercise some control over whom the clinic may represent, then the dean can be perceived as answerable for unpopular clinic clients and cases. As the 2002 Political Interference Group survey found, there was no school at which the dean participated in law clinic case selection decisions at that time, although a very few schools have granted the dean a role in pre-approving potentially controversial clinic cases.<sup>137</sup> Yet, even when the dean is not specifically given that role, the most recent survey of law clinic attorneys indicated that the dean of almost one in ten clinic attorneys has told or suggested to the attorney that she avoid a particular case.<sup>138</sup>

Unfortunately for deans, if the dean does appropriately steer clear of clinic case selection decisions, then the dean may end up having to defend clinic

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ABA, Statement of ABA President Lamm Re: Proposed Legislation Affecting Funding for University of Maryland School of Law (Apr. 1, 2010), *available at* <http://www.abanow.org/2010/04/statement-of-aba-president-lamm-re-proposed-legislation-affecting-funding-for-university-of-maryland-school-of-law>.

136. See MODEL RULES R. 1.8(f), 5.4(c); see also RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 134 (2000) [hereinafter RESTATEMENT].

137. POLITICAL INTERFERENCE GRP., *supra* note 103.

138. See *supra* note 109 and accompanying text.

activities over which she has no control, and with which she may well disagree, to alumni, university officials, or legislators. In the end, law school administrators must understand that even though they may be able to exercise some general control as part of the design of the clinic over which clients the clinic may ultimately represent, once an attorney-client relationship is established with a clinic client, ethics rules do not allow the dean to direct or regulate the clinic lawyer's professional judgment.<sup>139</sup> Communicating this very limited role in plain terms to those outside the law school should help avoid some efforts of opposing attorneys and others to influence ongoing clinic cases.

Clinical program directors generally respect the professional independence of individual clinic attorneys and avoid involvement in ongoing cases. At the same time, however, clinical program directors may appropriately intervene in some complaints against clinic attorneys. Usually, a law clinic client enters into an attorney-client relationship with the clinic, not just with the particular clinic attorney who may be handling the case and supervising the students.<sup>140</sup> Thus, where the clinic program director has supervisory authority over the attorneys in the clinical program, the program director does have a role to play in case decisions and should, in particular, be prepared to intervene in the case to mitigate or avoid any unethical conduct.<sup>141</sup> Where the clinical program director is part of a team of lawyers in a particular clinic, that director has an appropriate role to play in clinic case decisions, regardless of whether there is a concern about unethical conduct.

Yet, in none of the publicized instances where clinical program directors or deans intervened in a clinic case was the clinic supervising attorney engaging in a violation of rules of professional conduct. More commonly, the clinic attorney's judgment, rather than his ethical behavior, was subject to question. In those situations, notions of academic freedom and respect for the clinic attorney's judgment regarding what is best for the clinic client and student dictate that the most appropriate way to avoid possible disputes over the handling of a particular case, and subsequent claims of improper interference, is for the clinical program to define the role of the clinic program director in ongoing cases in advance of any representation.<sup>142</sup>

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139. See ABA Formal Op. 334, *supra* note 15 (holding that "there should be no interference with the lawyer-client relationship by the directors of a legal aid society after a case has been assigned to a staff lawyer"); ABA Informal Op. 1208, *supra* note 13 (holding that the governing board of a law clinic, which includes the law school faculty, dean, university administration and board of trustees, "must be particularly careful not to interfere with the handling of a particular matter once it is accepted").

140. See ABA Formal Op. 334, *supra* note 15 ("It must be recognized that an indigent person who seeks assistance from a legal services office has a lawyer-client relationship with its staff of lawyers which is the same as any other client who retains a law firm to represent him. It is the firm, not the individual lawyer, who is retained.").

141. See MODEL RULES R. 5.1(c); RESTATEMENT, *supra* note 136, § 11(3)(b).

142. See Kuehn & Joy, *supra* note 122, at 121-22. See generally Executive Committee, AALS, Statement of the Association of American Law Schools in Support of Academic Freedom for Clinical Faculty (Jan. 3, 2001),

Beyond instances of actual interference in ongoing clinic cases, clinic program directors and deans frequently do seek to influence the individual case selection decisions of clinic attorneys, with the survey showing that one-fifth of faculty have experienced case “suggestions” from school officials. The ABA ethics committee has warned that even broad guidelines that prohibit the acceptance of cases in order to avoid aligning the clinic against public officials or influential members of the community are improper.<sup>143</sup> Again, while only a few schools explicitly limit their clinic cases to avoid possible controversy, a significant number act on an ad hoc basis to direct the clinic attorney’s case selection decisions.

The publicized instances of interference and survey data provide support for the belief that the status of a clinical teacher may be important in avoiding or successfully fending off interference, especially internal interference from law school and university administrators. Commentators have argued that clinical professors, even more so than non-clinic professors, need the enhanced job security that comes from tenure because they handle cases and clients that may be upsetting to some politicians, alumni, or influential members of the community.<sup>144</sup> However, a majority of those who teach in law clinics do not enjoy the protections of tenure. A significant number are on contracts that may be terminated, often simply at the will of the dean, should their clinic case activities, or even comments on issues of law school governance, prove discomfoting to law school or university administrators.<sup>145</sup> The insecurity many clinic attorneys feel about their positions is enhanced by the fact that law clinics can be expensive to operate and are viewed by some non-clinic faculty as less academically legitimate than traditional law school courses.<sup>146</sup> As shown by the 2008 survey, clinical faculty on short-term contracts are far less likely to express dissenting views within their institutions than their colleagues with long-term contracts and tenure, and those on long-term contracts and clinical tenure are less likely than those with the traditional tenure status bestowed on non-clinical “classroom”

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available at [http://www.aals.org/about\\_handbook\\_sgp\\_clin.php](http://www.aals.org/about_handbook_sgp_clin.php) (“The Association reaffirms that academic freedom is critical to achieving the objectives of clinical legal education and that the principle of academic freedom applies equally to clinical law faculty.”).

143. ABA Informal Op. 1208, *supra* note 13. A 1982 report on political interference in law clinics by the AALS Section on Clinical Legal Education recommended that the ABA adopt a law school accreditation standard mirroring the ABA’s ethics opinion: “Law schools should seek to avoid establishing guidelines that prohibit acceptance of controversial clients or cases or that prohibit acceptance of cases aligning the clinical program against public officials, government agencies or influential members of the community.” COMM. ON POLITICAL INTERFERENCE, *supra* note 123, at 13, *reprinted in* Schneider, *supra* note 12, at 197 n.88; *see also* David Berreby, *Report Scores “Political Interference” in Clinics*, NAT’L L.J., Feb. 28, 1983, at 4. The ABA has not adopted the proposed standard.

144. *See, e.g.*, James J. Fishman, *Tenure: Endangered or Evolutionary Species*, 38 AKRON L. REV. 771, 786-87 (2005); Schneider, *supra* note 12, at 180-82.

145. *See supra* notes 113-16 and accompanying text.

146. *See* Schneider, *supra* note 12, at 181-82, 205; SULLIVAN ET AL., *supra* note 131, at 88, 198.

professors.

The review of publicized cases indicates that untenured clinical professors were the primary target of interference from university or law school administrators. Internal interference with clinic decisions at Connecticut, Denver, Mississippi, and Pittsburgh was directed toward untenured clinic attorneys in the first few years of their teaching careers and often serving at the will of the law school dean.<sup>147</sup> This was likely not a coincidence. Undoubtedly, the strength of the law school and university's commitment to academic freedom and to the ideals of the legal profession also play a significant role in the extent to which law school and university officials defend a clinic attorney from outside interference. It also is the case that tenured faculty, who have a more powerful voice on governance issues within their institutions, can be more effective in influencing their administrations to resolutely resist pressure than clinic attorneys appointed with less professional status.

In addition, the lower status of clinic attorneys at many law schools may lead to a lack of respect for or appreciation of the attorney's actions by the law faculty or dean or may simply create a certain alienation or distance that contributes to an inability of the faculty or dean to understand fully and defend the clinic's actions. This combination of vulnerable employment status and weaker faculty support makes clinic attorneys generally, but untenured ones in particular, more vulnerable to internal interference and lack of institutional support when a clinic comes under external attack.

Finally, the survey data underscore the obvious point that status for clinic attorneys also is important to ensure that the voices of those who teach in law clinics are heard on law school governance issues. The data demonstrate that the current ABA law school accreditation norm of separate but relatively equal status between law clinic and non-clinical faculty, or, in the parlance of the ABA, separate but "reasonably similar," is not equal and is not working.<sup>148</sup> Even with the protections of ABA Accreditation Standard 405(c), clinic attorneys on long-term contracts and clinical tenure do not participate in governance discussions to the same degree as their tenured colleagues by a noticeable margin. Their "lesser" status makes them much less able to speak up or dissent about law school governance than comparable faculty with tenure. These results argue not only for retaining Accreditation Standard 405(c), since the survey shows that it does result in greater ability to participate than those who do not have this level of

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147. The new environmental law clinic director at Pittsburgh explained how he felt when his dean told him it was "incredibly stupid" for the clinic to take a controversial case: "I think it would be hard not to feel threatened by the dean of a law school telling you that when you're on a one-year contract that he renews." Tom Stabile, *Conflict Envelops Pitt Clinic*, NAT'L JURIST, Jan. 2002, at 15.

148. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 405(c) (2009-10) (stating that a "law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure").

security of position, but also for strengthening the language or better enforcing the provisions regarding governance to make sure that the ABA's goal of "reasonably similar" participation in law school governance by clinic attorneys is actually realized, not just stated in an accreditation interpretation.<sup>149</sup>

### CONCLUSION

Although efforts to influence law clinic decisions about cases and clients have ebbed and flowed over the last forty years and have varied in approach, interference is an ongoing concern. Even clinics that may not handle controversial cases or clients are vulnerable to the ire of an opposing attorney or party with a connection to the law school or influence in the legislature. As the publicized cases of interference in law clinics demonstrate, "[a]ny law school clinic is just one controversial case, one unpopular client, one angry legislator, alumnus or opposing attorney, or one unsupportive dean or university official away from attempts to interfere in its case and client selection."<sup>150</sup>

As the survey data reveal, clinic attorneys often react to the specter of interference by self-censoring what they do about potential cases or say in matters of law school governance. The lesser security of position and status of law clinic attorneys within the legal academy compound these concerns, both making clinic attorneys more vulnerable to employment-related sanctions and less able to speak out internally on law school matters.

Countering this interference is the responsibility of the legal profession, AALS, and law schools themselves. The ABA, state bars, and courts need to educate attorneys about the important role law school clinics play in advancing the profession's ideal of legal representation for all in need of assistance, regardless of whether the person is able to afford legal services or has a controversial cause. The legal profession also needs to underscore the fact that the professional independence of law clinic attorneys must be respected and that opposing attorneys should not seek, or have their clients seek, university or law school intervention in ongoing law clinic cases. Where public officials or others do threaten to restrict the activities of law clinics, the ABA and state bars should vigorously defend clinics and use their influence to discourage or defeat such restrictions, as the ABA recently did when the law clinics at the University of Maryland and Tulane were facing attacks from their respective state legislatures.<sup>151</sup>

Because some law schools have not always respected the professional

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149. *Id.* at Interpretation 405-08 ("A law school shall afford to full-time clinical faculty members participation in faculty meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members.").

150. Kuehn & Joy, *supra* note 15, at 1992.

151. See ABA, Statement of Carolyn B. Lamm, President, American Bar Association Re: Louisiana Senate Bill 549 to Restrict Law School Clinic Activities (May 12, 2010), available at <http://www.abanow.org/2010/05/>

independence of clinic attorneys or defended their clinics from outside interference, the ABA and AALS should strengthen law clinic independence by adopting a provision in their accreditation and membership standards that reiterates the duty of law schools to defend clinics from interference and to avoid denying clinic assistance to controversial clients or causes.<sup>152</sup>

Finally, law schools must model the legal profession's ideals of service to unpopular causes and professional independence, regardless of whether it is made a condition of accreditation, and they must be particularly sensitive to the vulnerable employment status of clinic attorneys who fall under attack for their clinic work. The surveys show that schools, and deans in particular, need to do a better job of respecting the independence of law clinic attorneys and avoid acts or statements that might be perceived as restricting their professional judgment.

Although these measures by organizations will not stop all interference in law school clinics, they would greatly lessen their occurrence and help to protect the important role law clinics play in advancing legal education and justice for all.

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statement-of-carolyn-b-lamm-president-american-bar-association-re-louisiana-senate-bill-549-to-restrict-law-school-clinic-activities; ABA, Statement of ABA President Lamm, *supra* note 135.

152. COMM. ON POLITICAL INTERFERENCE, *supra* note 123, at 12, *reprinted in* Schneider, *supra* note 12, at 197 n.88.

## APPENDIX

## PUBLICIZED INSTANCES OF LAW CLINIC INTERFERENCE

School	Year	Source of Interference	Description	Resolution
Univ. of Mississippi	1968	University, Legislature, Bar	Clinical professors terminated under outside employment policy	Court: termination unlawful; employment policy rescinded <sup>153</sup>
Univ. of Connecticut	1971	Governor, Bar	Dean proposed that clinic cases be approved by dean/faculty	Policy rescinded because of ABA ethics opinion 1208 <sup>154</sup>
Univ. of Arkansas	1975	Legislature	Legislative rider: no professor can handle or assist any lawsuit	Court: statute unconstitutional <sup>155</sup>
Univ. of Tennessee	1977	Lt. Governor, TVA	Pressure to drop clinic lawsuit vs. TVA	Clinical professor removed case from clinic and handled on own <sup>156</sup>
Univ. of Colorado	1980	Opposing party	Critical of advocacy group working out of law school	Dean successfully deflected criticism <sup>157</sup>
Univ. of Oregon	1980	Business/alumnus	Critical of environmental clinic; withheld \$250,000 donation	University president severed ties with outside sponsor <sup>158</sup>
Univ. of Tennessee	1981	Atty Gen., Trustees	Challenged clinic request for attys fees in suit vs. state	New Trustees policy: no significant suits vs. state <sup>159</sup>
Univ. of Colorado	1981	Legislature	Proposed legislation: law professors cannot assist in lawsuits vs. govt	Legislation not enacted <sup>160</sup>
Univ. of Oregon	1981	Businesses	Critical of outside sponsorship of enviro law clinic	University president: clinic must sever ties with outside sponsor <sup>161</sup>

153. *Trister v. Univ. of Miss.*, 420 F.2d 499, 500-01 (5th Cir. 1969); Stevens & Maxey, *supra* note 5.

154. *See* Schneider, *supra* note 12, at 184; Scheffey, *supra* note 12.

155. *Atkinson v. Bd. of Tr. of Univ. of Ark.*, 559 S.W.2d 473, 474-75 (Ark. 1977); Schneider, *supra* note 12, at 184.

156. *See* Kuehn & Joy, *supra* note 15, at 1979.

157. *See id.* at 1978 n.27.

158. *See* REPORT OF THE AD HOC STUDY COMM. FOR THE ENVTL. LAW CLINIC, *supra* note 45, at 4; Kirshenbaum, *supra* note 45, at 17.

159. *See* sources cited *supra* note 24.

160. Schneider, *supra* note 12, at 186 n.32.

161. REPORT OF THE AD HOC STUDY COMM. FOR THE ENVTL. LAW CLINIC, *supra* note 45, at 4.

School	Year	Source of Interference	Description	Resolution
Univ. of Iowa	1981	Legislature	Proposed legislation: no education funds for litigation vs. state	Legislation defeated <sup>162</sup>
Univ. of Connecticut	1981	State official	Threatened legislation to restrict criminal clinic	Legislation never introduced <sup>163</sup>
Univ. of Idaho	1982	Legislature	Proposed legislation: no courses where assist in suit vs. state	Legislation only passed one chamber of legislature <sup>164</sup>
Univ. of Oregon	1982	Businesses	Sought to depose clinic and dean over funding	Court: depositions allowed <sup>165</sup>
Univ. of Oregon	1983	Businesses	Alleged clinic illegally using public funds for private benefit	AG opinion: educational goals are public benefit <sup>166</sup>
Univ. of Oregon	1986	Opposing attorney	Ethics complaint alleged clinic's selective evidence misled judge	Ethics board: complaint was without merit <sup>167</sup>
Rutgers Univ.-Newark	1987	State	Claimed state law prohibited clinic from appearing opposite agency	Court: no violation of state conflict of interest statute <sup>168</sup>
Univ. of Maryland	1987	Governor	Proposed that funding be contingent on not suing state	Withdrawn but clinic must notify state before it sues <sup>169</sup>
Northwestern Univ.	1990	Attorney	Attorney for the Defendant in case pressured university to withdraw; sued clinic attorney	University rebuffed pressure; suit vs. clinic attorney dismissed <sup>170</sup>
Univ. of Oregon	1993	Businesses, Legislators	Legislative threats to defund the law school over clinic actions	Clinic moved off campus; now operates as public interest firm <sup>171</sup>
Tulane Univ.	1993	Governor	Threatened to cut state funds over director comments	University president: director has academic freedom <sup>172</sup>
Tulane Univ.	1993	State agency official	Asked state supreme court to investigate clinic activities	Court: no reason to exercise oversight <sup>173</sup>

162. Telephone Interview with Allen, *supra* note 65.

163. Schneider, *supra* note 12, at 186.

164. *See id.* at 186; Chenoweth, *supra* note 21.

165. Schneider, *supra* note 12, at 187.

166. Letter from Arnold, *supra* note 46.

167. Bishop, *supra* note 86 at 1C.

168. *In re Exec. Comm'n on Ethical Standards*, 561 A.2d 542, 543 (N.J. 1989).

169. Hill, *supra* note 35.

170. *Doe v. Roe*, 958 F.2d 763, 766-67 (7th Cir. 1992).

171. Pittman, *supra* note 50, at 1; Joy & Weisselberg, *supra* note 50, at 534.

172. Kelly, *supra* note 56, at B6.

173. Kuehn, *supra* note 26, at 75-76; Daugherty, *supra* note 27, at 9.

School	Year	Source of Interference	Description	Resolution
Arizona State Univ.	1995	Legislature	Threatened to cease all funding of law clinics	Rider: clinic prohibited from prisoner suits vs. state <sup>174</sup>
Rutgers Univ.- Newark	1997	Opposing party	Challenged clinic's right to represent non-profits	Court: clinic help is not improper donation of public funds <sup>175</sup>
Tulane Univ.	1997	Governor, Businesses	Threatened to cease funding, donations	State supreme court: imposed limits on clinic representation <sup>176</sup>
St. Mary's Univ.	2000	Dean	Unhappy with human rights case vs. Mexico	Dean unilaterally withdraws clinic from case <sup>177</sup>
Univ. of Pittsburgh	2001	Legislature, Businesses	Threatened to reduce university funding over forest lawsuit	Budget: prohibits use of state funds for environmental clinic <sup>178</sup>
Univ. of Pittsburgh	2001	Businesses, University	Threatened to reduce funding and close clinic over opposition to highway	University switched stance and refused to restrict clinic <sup>179</sup>
Univ. of Denver	2002	Alumni/Opposing attorneys	Complained after clinic sought fee award in successful case	Clinic attorney ordered not to seek fees; did and position was not renewed <sup>180</sup>
Univ. of Houston	2002	District Attorney	Refusal to hire students who participated in innocence clinic	After news reports, District Attorney's office denied it discriminates <sup>181</sup>
Univ. of North Dakota	2003	Legislator	Complaint to AG that clinic couldn't represent clients vs. state	AG: nothing in educational statutes prevented such suits <sup>182</sup>
Univ. of North Dakota	2004	Law clinic critic	Rejected client claims bias in clinic's case selection criteria	Court: plaintiff allowed to put on proof of discrimination <sup>183</sup>

174. Kuehn & Joy, *supra* note 15, at 1980.

175. Transcript of Motion, N.J. Dep't of Env'tl. Prot. v. City of Bayonne, *supra* note 53.

176. *See* sources cited *supra* note 55.

177. *See* sources cited *supra* note 93.

178. *See* sources cited *supra* note 42.

179. *See* sources cited *supra* note 43.

180. Memorandum from Field and Yegge, *supra* note 74; Letter from Robertson, *supra* note 71; E-mail from Smith, *supra* note 70.

181. Rebecca Luczycki, *DA Hiring Policy Questioned*, NAT'L JURIST, Oct. 2002, at 27.

182. *See* Letter Op. 2003-L-42, *supra* note 52; Dodds, *supra* note 51.

183. *Wishnatsky v. Rovner*, 433 F.3d 608, 610-13 (8th Cir. 2005).

School	Year	Source of Interference	Description	Resolution
Hofstra Univ.	2006	Alumnus/Trustee	Threatened to withhold donation after suit against trustee's properties	University president: rebuffed attack, citing academic freedom <sup>184</sup>
Rutgers Univ.- Newark	2010	Opposing party	Public records request for clinic internal documents	Court: clinics are not exempt from public records law <sup>185</sup>
Univ. of Michigan	2010	District Attorney	Listed innocence clinic students as witnesses for prosecution	DA dropped case after witness list was challenged <sup>186</sup>
Univ. of Maryland	2010	Businesses	Legislative rider to condition funding on report of clinic cases, expenditures, and funding	After public pressure, amended to drop funding conditions and limit extent of report <sup>187</sup>
Tulane Univ.	2010	Businesses, Legislator	Legislation to strip state funding to universities if clinics sue or defend certain cases	Defeated in committee <sup>188</sup>

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184. Rick Brand, *Suit Puts Hofstra Donor on the Fence*, NEWSDAY (Melville, N.Y.), Oct. 8, 2006, at A39.

185. *Sussex Commons Assocs. v. Rutgers Univ.*, 6 A.3d 983 (N.J. Super. Ct. Law Div. 2010).

186. Svoboda, *supra* note 76; Ashenfelter & Swickard, *supra* note 80.

187. Urbina, *supra* note 37; Linskey, *supra* note 38.

188. Urbina, *supra* note 37; Blum, *supra* note 61.