

December 23, 1997

Chief Justice Pascal E. Calogero, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Dear Chief Justice Calogero:

The Society of American Law Teachers (SALT) is an organization of over 700 law professors committed to ensuring that legal education and the legal profession engage in the task of promoting social justice. Encouraging and enabling greater access to the legal profession, transforming law school curricula to meet the needs of a just society, protecting academic freedom, and promoting legal services for underserved groups have always been central components of that mission. SALT members include educators who teach clinical legal skills. Moreover, because the American Bar Association requires accredited law schools to provide professional skills training, SALT members who are not clinicians do teach at schools which have clinical programs, and therefore are familiar with and supportive of such programs.

We write in response to the suggestions of the Louisiana Association of Business and Industry, the Business Council of New Orleans and the River Region, and the Chamber of Commerce, that this Court investigate the Tulane Environmental Law Clinic and amend the Louisiana Student Practice Rules so as to limit the ability of law students and legal clinicians to engage in clinical legal education and provide legal services. For the reasons set forth below, we urge you to reject these suggestions.

We have reviewed the briefs submitted to this Court by the Association of American Law Schools (AALS) and the Clinical Legal Education Association (CLEA). Those briefs thoroughly review the historical and contemporary status of clinical legal education, and the legal and ethical standards relevant to the request that is before you. We agree with and endorse the briefs submitted by AALS and CLEA. We wish, however, to emphasize several points.

First, the valuable role of academic freedom in maintaining vigorous levels of inquiry and expression in society cannot be overstated.

Academic freedom is both a constitutionally protected principle and an important practice. SALT has been an unfailing proponent of the principle that universities, including law schools, serve as laboratories for the development of independent inquiry and new ideas, especially unpopular ones. SALT has also been a primary proponent of the practice of keeping higher education, particularly curriculum, free from special interests. Clinical legal education is largely about the fostering of independent inquiry. The ability to make curricular choices with respect to cases and clients free from the pressures of dominant political forces is essential to the teaching and learning of independent inquiry, ethical lawyering, and other necessary legal skills.

In addition, we wish to emphasize that, if it is appropriate to address “balance” in academia at all, it is appropriate only at the level of an institution as a whole, and not in the context of a particular professor or class. Modern universities provide a number of services, both to for-profit businesses and to no-for-profit organizations. As the AALS and CLEA briefs explain, attempting to impose an outside standard of “balance” on a particular professor or class would compromise academic freedom and make it impossible, as a practical matter, for a professor to know what was allowed in the classroom or the teaching process. In the clinical context, many law schools have both defense and prosecution clinics. Obviously, due to conflict of interest concerns, the same professor cannot teach both. Requiring an individual clinic to have “balance” would simply mean that neither could be offered. That result would harm students, the practicing bar, and the public.

Second, the request that is before you arises not from some abuse of ethical or legal standards by the Tulane Environmental Clinic, but rather from the Clinic’s successful enforcement of statutory and administrative law adopted to protect the environment.

The regulated community is requesting that you punish and restrict the Clinic for its successful enforcement of the laws. Granting this request would contradict two valuable lessons of legal education: respect for the rule of law and the valuable role of lawyers in upholding the laws. As law teachers, we try to infuse students with respect for the rule of law and respect for the role they will play as officers of the court. The request that is before you has the potential to demonstrate that environmental laws cannot be enforced against those with the political and economic clout to go after the institutions, the attorneys, and law students who seek to insure compliance. In addition, the request may send the message that the linch-pin of the legal system -- the adversarial process -- can and should be bypassed.

Finally, attorneys (and law students) who represent unpopular clients or clients who oppose powerful interests are in particular need of support from the judiciary.

The court serves not only as a protector of the rule of law in our society, but also as a uniquely informed overseer of the ethical conduct of lawyers. Courts are particularly aware that every lawyer has an ethical obligation to represent clients zealously. The public, and even some members of the bar, may make the mistake of confusing an unpopular client with the lawyer who represents that client, and attempt to interfere with the provision of legal services to the client because of a disagreement with the position of the client. When this occurs, as it apparently has here, courts are plainly the most credible and authoritative voice for explaining the importance of distinguishing between the legal services provided by the lawyer and the position or actions taken by the client.

We urge the Court to reject the proposed amendments to the Student Practice Rules of Louisiana.

Thank you for considering our views.

On behalf of SALT,

Mike Axline
Professor of Law & Director
of Clinical Programs,
University of Oregon
School of Law

Lisa Ikemoto
Co-Chair, SALT Public
Positions Committee &
Professor of Law,
Loyola Law School