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Protecting the Academic Freedom of Law School Clinics

Joyce Saltalamachia

New York Law School, joyce.saltalamachia@nyls.edu

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Protecting the Academic Freedom of Law School Clinics

by Joyce Saltalamachia, AALS Deputy Director

The AALS has a long history of involvement in defending law school clinics against attacks and investigations that threaten their academic freedom. Ever since law schools first began employing real cases to teach students, the AALS has recognized the important value of providing students with skills instruction in a real-life, or clinical, setting. To support this, AALS Bylaws were adopted that specifically require schools to provide instruction regarding client representation (see e.g. Bylaw 6-9(c)). At the same time, the AALS has worked to protect the academic freedom of law school clinics to choose and represent clients as befit their educational goals.

On three occasions in the past the AALS has chosen to actively participate in on-going litigation involving individual law schools' clinics. In 1982 the Association filed an amicus brief in a suit involving the Pacific Northwest Resources Clinic of the University of Oregon (Thomas v. Peterson, Civ. Action No. 82-2056, USDC Idaho (1982)). This brief defended the right of the clinic to represent clients in court without the burden of needless discovery designed to involve the parent university as a real party in interest. Similarly, in 1989, the

Association filed a brief supporting the continuing ability of Rutgers Law School professors to represent clinical clients before state agencies (Re: Appearance of Rutgers Attorneys Before the Council on Affordable Housing on Behalf of The Civic League Plaintiffs, Docket No. 28,658, Supreme Court of New Jersey). Here, the New Jersey bar's Ethical Standards Commission was attempting to limit the Rutgers clinical faculty to practice only before courts, and not before administrative agency tribunals. The AALS asserted that the negative effect of such a rule would seriously harm the educational process of clinical instruction. More recently, the AALS, along with the AAUP and CLEA, submitted a brief opposing an attempt by the Louisiana Supreme Court to limit the types of cases that can be accepted by a law school clinic in that state (Southern Christian Leadership Conference v. Supreme Court of the State of Louisiana, Civ.A.99-30895, USCA 5th (1999)). Again, the educational importance of clinical teaching and the necessity for academic freedom in choosing clients made this case of paramount importance to the AALS.

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Kentucky in 1976, and an Assistant to the Solicitor General in the U.S. Department of Justice in 1981-84. He became Professor at Notre Dame Law School in 1994. He has been Dean of Boston College Law School since 1999.

He has served on the AALS Planning Committee for the Mini-Workshop on the Last Ten Years: What Your Students Know that You Should Know Too. He also served as Chair of three different Sections: Constitutional Law, Law and Religion, and the Section for the Law School Dean.

Dean Garvey has written numerous law review articles and books, with an emphasis on religious freedom and constitutional law. He was elected to the American Law Institute in 1982 and Institute for Judicial Administration in 1984.

BEVERLY I. MORAN

Beverly Moran received her A.B. from Vassar College in 1977, her J.D. from University of Pennsylvania in 1981, and her LL.M. from New York

University in 1986. In 1981, she became an Associate with Cullen & Dykman. In 1983, she became Executive Director of New York City Business Relocation Assistance Corporation. At University of Cincinnati, she became Assistant Professor in 1986, Associate Professor in 1989, and Professor in 1990. At University of Wisconsin, she became Associate Professor in 1991 and Voss Bascom Professor in 1994. She has been a Professor at Vanderbilt University since 2001.

She has served on several AALS planning committees, Committee on Professional Development, and Committee on Curriculum and Research. She has also served as Chair of the Sections on Africa and Minority Groups, and on the Board of the Society of American Law Teachers.

Professor Moran has written numerous law review articles and books, with an emphasis on Race and Tax Law. She is currently an elected member of the American Law Institute.

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In September 2003 the AALS once again played a central role in defending a law school clinic against outside political interference. This most recent challenge to academic freedom involved the Civil Rights Project (CRP), part of the Clinical Education Program of the University of North Dakota School of Law. In November 2002 the CRP was retained by five individuals who sought to have a Ten Commandments monument removed from Fargo, North Dakota, government property. This case was proceeding normally until January 2003 when the Clinical Director was contacted by a North Dakota State Representative who made an "official request" that the school justify under the laws of North Dakota the expenditure of public funds for a case such as this. The Dean of the law school was also contacted by the North Dakota House Majority Leader inquiring about the specifics of the Project. Nothing more was heard until late August when, apparently emboldened by the Alabama Supreme Court Ten Commandments controversy, the State Representative decided to make the Fargo case a local *cause celeb*, and mounted a media offensive against the "improper" activities of the CRP. He ultimately prevailed upon the North Dakota Attorney General to agree to issue an opinion on the question: "Is it legal under North Dakota law, for a Taxpayer and Public supported entity, in this situation, the University of North Dakota Law School and its affiliate, the Civil Rights Clinic, to expend public taxpayer dollars, to sue another public taxpayer supported entity, in this case, the City of Fargo, North Dakota?" The Attorney General agreed to take this matter on an expedited calendar and requested that interested parties send supporting materials no later than mid-September because he planned to issue an opinion by the last week of September.

AALS Executive Director Carl Monk was first alerted to this case on September 10 when the AALS was asked to sign on to a letter in support of CRP that was being prepared by representatives of CLEA and the AALS Clinical Section. Recognizing that this was a matter of primary importance to the entire organization, Dean Monk determined that it would be appropriate for the AALS to file its own letter with the Attorney General, based on reasoning and arguments developed for the earlier cases which defended the academic freedom of law school clinics to choose and manage their own cases.

Citing these earlier cases, along with law review articles, ABA Ethics Opinions and North Dakota's own Rules of Professional Conduct, a letter to the Attorney General was drafted and sent on September 16. The AALS letter and the CLEA letter were two of several documents sent in support of the work of the CRP. That the Attorney General found these documents, and the AALS letter in particular, to be influential is undeniable. On September 26 Attorney General Wayne Stenehjem issued a letter opinion affirming the right under North Dakota law for the University to fund a legal clinic and

for the legal clinic to represent individuals having claims against the state or its political subdivisions. In this letter AG Stenehjem cited several authorities, and some direct language from the AALS letter, that had been submitted to support to proposition that a vital part of clinical legal education is the representation of actual clients, and that state law and ABA Rules support the principle that controversial or unpopular clients should not be denied legal representation.

The importance of clinical legal education cannot be denied. In addition, academic freedom in all its forms is central to the mission of the AALS. The Association of American Law Schools is committed to upholding the academic freedom of law school clinics to choose cases and represent clients free from outside interference or influence. Law schools that may be under threat of any kind of outside interference, whether political or otherwise, are invited to solicit assistance from the AALS and have the value of our experience in defending these principles of legal education.

Annual Meeting to be held in Atlanta, Georgia

The 2004 AALS Annual Meeting will be held in Atlanta, Georgia from January 2 through January 6, 2004. All AALS functions and events of other organizations are scheduled at the Hilton Atlanta and the Atlanta Marriott Marquis. AALS Registration and the AALS Exhibit Hall will be located at the Hilton Atlanta.

Registration brochures have been sent to law school deans offices. Registration and Housing Reservation forms, and updated information about the Annual Meeting and online meeting registration, can also be found on the AALS website, www.aals.org.