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Lawbeat
News

***24 LAW CLINICS FACE CRITICS**

Business Interests Fire up Challenges to Schools' Environmental Law Projects

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ENVIRONMENTAL LAW CLINICS have sprouted like mushrooms at law schools across the country in recent years. And while the students have saved wetlands, rivers, spotted owls and the like, these days the clinics are spending more and more time defending another endangered species: themselves.

The scenario has become common: A law clinic brings pressure that slows down what some consider economic development; then the other side brings pressure to slow down the law clinic.

At the University of Pittsburgh clinic, which opened in 2000, the problems began when one teacher represented a group trying to stop commercial logging in a national forest. It grew worse when the clinic then represented a group opposed to a new expressway expected to revive an economically depressed area of Pennsylvania.

The clinic's leaders say they were just helping enforce federal laws calling for environmental impact statements. But the timber cutters and backers of the road project saw it differently. They claimed the state-supported clinic was working against state interests.

Criticism is not new for law school clinics. A generation ago they drew the wrath of state legislatures for getting involved in desegregation cases in the schools. After that it was for trying to uphold prisoners' rights.

But those dustups were almost entirely political. It is different now--and more frequent. Environmental law, and thus environmental law clinics, can indeed thwart or slow down economic development. So their critics are often corporations and organizations that know how to make themselves heard-- particularly with legislatures and elected supreme courts.

"More recently it has been the business interests, those with an economic interest, spurring attacks on clinics," says Peter A. Joy, president of the Clinical Legal Education Association, a 700-plus-member group of law school clinicians. "Since the late 1980s or early '90s," he says, "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."

And most of the fire has been aimed at the environmental law clinics. "They've gone after clinics at Colorado, Michigan, Rutgers, Tulane, Texas Southern and others," says Robert Kuehn, former director of the embattled environmental law clinic at Tulane Law School in New Orleans.

In one of the more celebrated cases, after years as a splinter in the palm of the timber industry, the environmental clinic at the University of Oregon School of Law had its funding threatened by the

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state legislature. The clinic moved out on its own as an independent entity in 1993 as a result.

AT LOGGERHEADS WITH THE LEGISLATURE

NOT LONG AFTER THE PITTSBURGH CLINIC OPENED, THE legislature specified that no state funds could be used for it because a faculty member represented a group opposed to logging in the Allegheny National Forest. That wasn't a problem because the clinic is privately funded. But when the clinic decided last year to represent a group opposed to the construction of the Mon-Fayette expressway, pressure from the legislature and others prompted university officials to assess the clinic \$62,000 *26 a year as overhead costs for its facilities and to prevent the clinic from seeking outside funds to pay for it.

That doomed the clinic, until the events gained the attention of the Association of American Law Schools, as well as the American Association of University Professors. In March, the administration swallowed hard and reversed itself, deciding to back the clinic and ignore political pressure to sever ties and move it off campus.

"We feel good about how things have changed, but this is not risk-free," says David J. Herring, the law school's dean, who realizes the legislature may bring added pressure. "The principles of the legal profession are, to me, even more powerful than concepts of academic freedom in this instance. The fundamental question has been asked throughout this controversy: 'What are we teaching law students when we decided not to represent people who otherwise would not have a voice because of this legislative pressure?'"

Now all are waiting to see whether the legislature tries again to use its purse strings like a bullwhip. And the monied interests behind logging and the new expressway are pushing for just that.

The Mon Valley Progress Council, a special-interest group backing the road, has begun a letter-writing campaign to put more pressure on the legislature.

"The clinic's obstructionist tactics can cause real damages to businesses seeking to expand markets," says Joseph P. Kirk, executive director of the council. "The state-sponsored university should be held accountable."

Typically, law students working in clinics like the one at Pittsburgh have simply forced the government to observe its own regulations, such as preparing environmental impact statements before approving construction, roadways or logging.

These clinics have proliferated in recent years at schools around the country. There are 29 environmental law clinics now, many of them started after 1996, when the ABA made clinical experience a requirement for law schools seeking accreditation.

Even without the ABA mandate, the growth of environmental law clinics would not have been surprising, given the sweeping laws Congress has passed since the environmental movement took hold in the late 1960s.

But the escalating battle over those laws has become, in part, a battle over the clinics themselves.

"These fights for survival are such a drain on a clinic's energy," says Rena I. Steinzor, director of the University of Maryland Environmental Law Clinic. Several years ago her clinic entered into a "treaty" with the state government by agreeing to give notice before launching litigation against the state—similar to that required before suing the federal government under environmental laws.

Another notorious battle took place a few years ago at Tulane. That law clinic was successful in keeping a huge plastics manufacturing plant out of a low-income, predominantly black area that already was swamped with toxic waste from other industries. But, says former director Kuehn, "We won the battle and lost the war."

Though Tulane is a private university and not dependent on state funds, political and business interests used various means--including an organized boycott of Tulane and its job-seeking graduates--to eventually neutralize the clinic, Kuehn says. They persuaded the elected justices of the state supreme court to change the rules governing representation by law students to make it "difficult, if not impossible, for the clinic to provide that type of free representation," adds Kuehn, who now runs a similar program at the University of Alabama School of Law.

STRATEGIC DECISIONS

WHILE MOST ENVIRONMENTAL LAW CLINICS ENGAGE IN litigation, some don't, while others find indirect ways of involvement. The director of Yale Law School's environmental clinic, Daniel C. Esty, says the outside pressures are lessened by keeping the clinic's students and staff from being attorneys of record.

"We represent groups that have a legal dimension already," says Esty, who is concerned that excessive environmental litigation has scared some business enterprises away from legitimate projects on old industrial sites for fear of cleanup costs and other difficulties.

But students do get involved in litigation. The clinic has done a lot of work for the Connecticut Fund for the Environment, for example, which has its own legal arm.

That is a pedagogical decision as well as a strategic one, say other clinicians who liken the Yale arrangement to working as a summer clerk in a law firm. Many prefer direct, hands-on litigation experience in their clinics.

While there was muted joy in Pittsburgh when the administration finally backed the clinic, it is still seen as an ongoing battle. "I think we sense that, as much as we celebrated this, it's not going to go away," says Robert Luneburg, director of the law school's Environmental Law, Science and Policy Certificate Program.

But for now, "We're staying put, staying in-house," says clinic director Thomas Buchele. "While the university at first wasn't supportive, it ultimately did turn around and do the right thing, in some ways being more supportive than at other schools."

The only question now for the fast-growing network of clinic directors who help each other in these battles is which school will be next. "It is absolutely inevitable that this will happen again somewhere," says Maryland's Steinzor.

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