

LEGAL WATCH

Academic Freedom in the "Real World"

By Jonathan R. Alger

Even in this internet age, most people envision university teaching as a professor lecturing before a classroom full of students. The traditional classroom remains an important part of higher education, but today teaching and learning take place in a dizzying array of settings—from research laboratories to multimedia centers to law and medical clinics. With all this activity outside the classroom, questions have arisen about whether and how principles of academic freedom apply in nontraditional academic contexts.

At Tulane University, for example, a controversy broke out recently when a community organization sought assistance from the university's Environmental Law Clinic. The organization wanted help in opposing the construction of a plastics plant in a low-income, predominantly African American community—which already had more than its share of chemical facilities posing environmental and health risks. After faculty and students at the law clinic filed objections with the U.S. Environmental Protection Agency, the company decided to locate elsewhere.

The clinic soon became a victim of its own success. Angry business and political leaders pressured the Louisiana Supreme Court to tighten regulation of student practice. The court responded with a new rule restricting law clinic representation to individuals and groups that fall within narrow federal-poverty guidelines, effectively excluding many community and grassroots organizations.

Community groups, law professors, and students filed suit, claiming that the new restrictions violated the academic freedom of the faculty and students in the law clinic. The law professors asserted that the rule would inhibit teaching and learning by making it impossible for law school clinics to participate in many pedagogically valuable cases. A federal district court upheld the rule, drawing an artificial distinction between classroom teaching and clinical education in the "real world."

In rejecting the notion of unbridled discretion for clinical faculty to decide how and what to teach, the court suggested that academic freedom would otherwise allow, for example, "a professor supervising a criminal law clinic [to] determine that the best educational experience for students would be to first learn how it feels to be a criminal and to spend time incarcerated."

The district court's criminal law example is a caricature of academic freedom that does not comport with AAUP policy or legal precedent. Academic freedom is not without limits. It includes duties as well as rights—such as complying with the law, professional standards of the discipline, and ethical standards of the profession.

The case is now on appeal. In a brief filed with a federal appellate court, the AAUP joined the Association of American Law Schools and the Clinical Legal Education Association in arguing that academic freedom applies to teaching and learning outside as well as inside the traditional classroom.

Almost all law schools offer clinical courses for academic credit, and some require such coursework for graduation. These courses are supervised by faculty who recognize that research, analytical, and problem-solving skills can be most effectively taught when applied to real cases and clients. These faculty members are therefore responsible for a key component of the curriculum. They, too, need academic freedom to make decisions about how best to educate students; they should not be treated as second-class academic citizens.

The importance of academic freedom does not negate a state's legitimate interests in ensuring that future lawyers are trained properly or in providing legal services to the indigent. These interests can, however, be met with rules that focus specifically on these concerns and do not unnecessarily impede the ability of law clinics to provide the best possible teaching and learning experiences.

If academic freedom is intended to protect the learning process and the search for truth, it cannot be a privilege enjoyed solely by faculty and students in traditional classrooms. Clinical education in law, medicine, and other fields is just one of many facets of higher education today. Colleges and universities are increasingly called on to provide relevant, hands-on educational opportunities both on and off campus. To remain in keeping with the mission of the modern university, the notion of academic freedom must be broad enough to encompass the full range of teaching and learning activities that make up the whole of higher education.

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