

March 24, 2004

Carl C. Monk  
Executive Vice President and Executive Director  
The Association of American Law Schools  
1201 Connecticut Avenue N. W.  
Suite 800  
Washington, D.C. 20036-2605

Dear Carl:

I am writing this letter to formally request that the Association of American Law Schools assist in a lawsuit that has been filed against Professor Laura Rovner, Director of the University of North Dakota School of Law Clinical Program, in both her individual and official capacities, by Mr. Martin Wishnatsky. Because Mr. Wishnatsky has sued Professor Rovner in her official capacity, he has also sued the law school and university. Mr. Wishnatsky objects to the fact that the UND School of Law Clinical Program rejected his request for legal representation. Although it is not exactly clear what Mr. Wishnatsky wants, the Relief Requested in paragraph 8 of his complaint states: "Plaintiff requests a declaration that Defendant has unconstitutionally limited Plaintiff's access to the services of the Clinical Education Program and an injunction to prohibit such conduct in the future."

A little background information on this situation may be helpful. It starts with the fact that the Civil Rights Project, a project of the UND School of Law clinical program, represents a number of plaintiffs who are suing the city of Fargo for its failure to remove a Ten Commandments statute from city owned property. As you can imagine, this has caused quite a controversy in our state. Mr. Wishnatsky has been openly hostile toward the clinic and Professor Rovner because of this litigation. He has even attacked her in the newspaper. Last semester, Mr. Wishnatsky wanted to sue Grand Forks because the city has erected a statute of the goddess Themis on top of its courthouse. He asserted that this violated his constitutional right not to have the state support religion. The clinic declined to represent him in this matter because the Civil Rights Project was not taking any cases due to a lack of resources and also because it was Professor Rovner's professional judgment that this case would not add any educational value to the students clinical education program. Professor Rovner also informed Mr. Wishnatsky that, even if these facts did not preclude the clinic from taking his case, the clinic still would not be able to represent him because they believed it would violate their ethical obligations. The basis

for this statement came from Professor Rovner's professional judgment that Mr. Wishnatsky's persistent and antagonistic actions against the clinical program and faculty involved with that program would preclude the possibility of establishing an effective attorney client relationship and that would ultimately impair the clinic's ability to adequately represent him.

Although I understand that the AALS does not routinely involve itself in court cases at the District Court level, especially at such an early stage, I believe the issues in this case are sufficiently significant to warrant doing so because failure to win on a Motion to Dismiss or a Motion for Judgment on the Pleadings will mean that this case will go forward, at least through some part of the discovery phase. The heart of this case deals with a professor's professional judgment and whether she, and the law school that employs her, will be required to defend those choices in court. This clearly implicates academic freedom. Although Mr. Wishnatsky is a well known plaintiff in our region who has not prevailed in most of his law suits, it is not certain that this case will be immediately dismissed, at least not before beginning discovery. Requiring a faculty member and her institution to submit to discovery about matters relating to her professional judgment in teaching and lawyering is very problematic.

I believe it is important for the court to hear from the AALS, as one of two accrediting bodies for the nation's law schools, that meaningful commitment to academic freedom and respect for a faculty member's judgment about matters of professional ethics and legal education is critical to academic freedom and should not be second guessed. This is especially important because the Assistant Attorney General, who is defending the lawsuit on behalf of Laura Rovner, the School of Law, and the University of North Dakota, will not be arguing academic freedom issues in his motion for judgment on the pleadings/summary judgment. He has requested assistance in that area from amici. Further, there is some precedent for involvement in this matter by the AALS. The AALS became involved at the District Court level, as an amicus when the Environmental Law Clinic at the University of Oregon law school was attacked for a case it filed in Idaho. The professional judgment of the faculty was apparently questioned in that matter.<sup>1</sup>

The Assistant Attorney General representing the School of Law and Professor Rovner filed an answer to the complaint yesterday. He anticipates filing a Motion for Judgment on the Pleadings and/or a Motion for Summary Judgment by mid April, and has requested amicus assistance on the academic freedom issues implicated in the lawsuit.

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<sup>1</sup> See Memorandum EC 82 – 67 from Joe Harbaugh to the Executive Committee recommending that the AALS file an Amicus brief in litigation filed in the Federal District Court of Idaho.

Carl C. Monk  
March 24, 2004  
Page 3

The Civil Rights Clinic at New York University School of Law intends to file an amicus brief in this case on behalf of both the Clinical Legal Education Association as well as the Society of American Law Teachers. If the AALS wishes to consider signing onto that brief, Professor Claudia Angelos (who directs the Civil Rights Clinic) can provide additional information about it.

If I can answer any questions about this matter, please do not hesitate to call me. My direct telephone number is (701) 777-2270.

Sincerely,

Candace M. Zierdt  
Interim Dean and Alan E. Gray Professor of Law

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