



SQUEEZE PLAY

By Jamie Smith

AS THEY GO TO BAT

for their underserved clients, legal clinics must balance responsibilities for educating students and upholding the public trust.

As the 2010 session of the State of Maryland's General Assembly neared its conclusion, faculty and students at the University of Maryland School of Law knew the work of its Environmental Law Clinic had raised the ire of several powerful state legislators. But nobody at the Law School realized just how much.

On March 23, amid Senate debate over the State of Maryland's Fiscal Year 2011 budget, an amendment was introduced that would have withheld \$750,000 in university funding until all 22 of the Law School's clinics submitted a report "listing and describing each legal case in the past five years in which they participated in a court action, including the client represented, complete delin- eation of the expenditures for each case, and the source of funds for each expenditure."

Senator Brian Frosh, who had worked closely with the Environmental Clinic during his eight years as Chair of the State Senate's environment subcommittee, rose to challenge the amendment's sponsor, Senator Lowell Stoltzfus. "What's this about?" Frosh asked.

Nominally, it was about a suit the Clinic had filed earlier in the month on behalf of an environmental group against poultry giant Perdue and a chicken farmer who supplies the company, contending that the defendants are illegally discharging pollution into rivers feeding the Chesapeake Bay. But to the Law School it was about issues that went much further: the rule of law and academic freedom chief among them.

"Lawyers must be able to fulfill their professional responsibility to provide effective representation, to protect client confidentiality, and to resist pressures that compromise their judgment and integrity," said Dean Phoebe Haddon. "To safeguard these vital principles, as well as academic freedom, it was crucial for us to speak out."

With the support of the American Bar Association, every national legal education association, more than 500 individual faculty members and deans from law schools around the country, and hundreds of letters, phone calls, and emails from UMDLaw alumni and students, the Law School ultimately persuaded legislators to drop the proposed budget amendment in favor of a report on public information about Environmental Law Clinic cases over the last two years, without any money being at stake. While a significant victory for the Law School, the episode highlighted the increasing scrutiny clinics at public law schools nationwide face as they balance their obligations to students and clients with the tremendous responsibility to act justly and responsibility when they use state funds to pursue legal action against private citizens and businesses.

"When there aren't enough public interest lawyers for certain underrepresented clients and interests, how do you allocate the limited resources of our legal clinic?" asks Professor Richard Boldt. "That's fundamentally the political issue. Farmers on the Eastern Shore would say: 'We're also underrepresented. Why represent the environmental group and not us?'"

Running into Opposition

The number of legal clinics nationwide continues to surge, as law schools seek to provide students real-life lawyering experiences that will provide a bridge between their classroom studies and the practical skills they will utilize as practicing attorneys. According to the Association of American Law Schools, there are now more than 1,200 clinical law faculty at almost 150 law schools across the country.



"Because legal clinics represent people or groups that can't otherwise afford lawyers, by definition this work often puts us in opposition to those who can, like government or powerful interests. As clinics take on controversial cases, more and more are running into opposition from industry groups and lawmakers," says Professor Michael Pinard, co-Director of UMDLaw's nationally ranked Clinical Law Program. "The debate over our Environmental Clinic is the latest concerning law school clinics' use of state funds and student attorneys to pursue cases that result in litigation."

Pinard says pressure stemming from such conflicts is forcing some less well-established clinical programs to rethink the way they operate. According to a forthcoming



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survey of clinical law faculty conducted by University of Michigan law professor Bridget McCormack, 36 percent reported concerns about reactions to their casework, and 15 percent said those types of concerns had affected their choices of cases. In the past year alone, numerous clinics across the country have encountered legal and political opposition. Within the past year alone, clinical law programs in Louisiana, Michigan, and New Jersey faced legal or legislative challenges.

In January, two months before the UMDLaw Environmental Clinic’s poultry farm lawsuit was filed, the Maryland State Builders Association sent a letter to the university system’s chancellor criticizing the use of public money to push the “narrow agendas of private special interest groups.” Sen. Stoltzfus agreed. In introducing his budget amendment, the Senator said that Maryland lawmakers would not send taxpayer money straight to environmental advocacy groups such as Assateague Coastkeeper and the Waterkeeper Alliance. So why, he asked, should they fund clinics that do their legwork?

While not accepting that characterization of the Clinical Law Program’s work, Boldt acknowledges the tremendous responsibility to act justly and in the public interest clinics take on when they accept state funds to pursue legal action that affects private entities.

“We’re making intentional choices about how to best balance the need to serve our community while providing sound educational experiences,” he says, pointing to the example of Professor Ellen Weber in establishing the Drug Policy and Public Health Strategies Clinic.

In the summer prior to initiating her clinic, Weber spent countless hours meeting with stakeholders, treatment providers, people in recovery, neighborhood associations, public health workers, and local and state elected officials. She asked them all about their most pressing issues and sought recommendations on actions the clinic could achieve, given its resources. Based on those answers, she then formulated a plan for the clinic that would allow it to best serve the public while providing a meaningful experience for the student lawyers working with her.

“All our clinical faculty take their responsibility seriously and undertake a range of activities to formulate practices

that balance the competing interests of clients, students, and the public. We are careful and thoughtful and continually rethink the choices we are making,” Boldt says. “It’s a process that never ends.”

Debate in Annapolis

On March 1, the Environmental Clinic had filed a Clean Water Act citizen lawsuit on behalf of its client, the Assateague Coastal Trust, alleging that runoff from the farm where Alan and Kristin Hudson raise chickens for Perdue was fouling the Pocomoke River. Three weeks later, Sen. Stoltzfus introduced his legislation, saying he was acting to protect not only a vital industry, but also a small business that could not afford to defend itself in litigation brought by the publicly supported School of Law.

“I don’t think that having an interest in clean air, clean water, safe neighborhoods, a healthy and productive Chesapeake Bay, is a special interest, or somehow at odds with the interest of the state,” Barrett replied, arguing that the Clinic was acting in the government’s interest. “We’re not doing anything other than trying to make sure that the laws that Congress and our state legislature passed are actually implemented.”

Critics saw the legislation as little more than an attempt by elected officials to look out for the private interests of powerful constituents. In comments to the *Washington Post*, Senator Frosh likened the amendment to the threat, “If you guys are getting involved in issues that we don’t like or you’re bothering people that we do like, we want you to shut up.”

Frosh and a number of his colleagues rallied to the Law School’s defense. Sen. Lisa Gladden, a public defender and 1991 UMDLaw graduate, spoke movingly about how her clinical experience as a student had shaped her career and changed the course of her life. Other lawmakers pointed to the Clinical Law Program’s national reputation for excellence, and the 110,000 hours of free legal services it provides each year to needy Maryland citizens. Ultimately, these supporters engineered passage of compromise language that reduced the scope of the reporting requirement, but still withheld \$250,000 in conditional funding.

Meanwhile, two other amendments, withholding up to \$750,000 and requiring UMDLaw to report on all clinics,

were pending in the House. Convening an ad hoc group of faculty and administrators, Dean Haddon swung into action. Her seemingly impossible goal: to convince the General Assembly to drop all budget amendments that tied funding to reports on the Clinic.

“This law school is a public trust. We have always responded to requests for information from the General Assembly when asked, and always will. But we are careful in case those requests broach confidentiality or other professional responsibility-related issues,” says Dean Haddon. “Clinical faculty must have the freedom to choose the cases their students will work on without fear of reprisal. Lawyers, including clinical faculty and student-attorneys, have ethical obligations to provide effective representation and to protect the confidentiality of their clients, obligations that could be difficult or impossible to carry out in the face of legislative action.”

An Outpouring of Support

Support for the Law School—and by extension, clinical legal education—was swift and widespread.

UMDLaw alumni published letters to the editors in local papers and organized efforts to contact legislators. Following a teach-in, current students drafted opinion pieces and hand-delivered letters—bearing hundreds of signatures—to every member of the General Assembly.

The issue drew national attention within the legal community. The American Bar Association’s president issued a statement arguing against interference with clinical legal education. More than 500 law faculty and deans signed a letter in support. The *Washington Post* and *The New York Times* not only wrote news stories about the issue, but also editorialized in support of the Clinic.

Numerous legislators were at first surprised, then overwhelmed, and finally swayed by the outcry of opposition. A week after the Senate acted, the House voted to strike its budget amendments regarding the Clinic. Ultimately, a conference committee charged with resolving the differing versions of the bill agreed to a “budget narrative” that still requires UMDLaw to report on Environmental Clinic cases over the last two years that have resulted in court action but does not attach any funds to the requirements.

“As educators, we recognized what a wonderful opportunity this was to educate both sides about what was at stake. Ultimately we achieved that goal,” said Dean Haddon. “We understand that we are a public institution and must be accountable to the lawmakers and the taxpayers for the work we do. But we also have a responsibility to provide our clients the best representation possible, and to offer our students the best educational experiences we can.”



A Teachable Moment

As the General Assembly debated, the Clinic organized a teach-in to educate students about the issues of professional responsibility that were at stake, and to ensure they had the most accurate and up-to-date information.

Professor Doug Colbert provided a national and historic survey of attacks on clinical law programs. Professor Brenda Bratton Blom updated students on the latest developments and the Law School’s intended response. Feeling it inappropriate to suggest student action, the faculty left the room.

In two hours, the Student Bar Association had drafted a letter to the General Assembly, scheduled staffing for a table where students could sign on, and gathered almost 200 signatures. Later that week, when student leaders hand delivered copies of the letter to every state lawmaker, more than 350 students had signed.

“This has been a stark lesson for students,” said Blom. “Democracy is robust but fragile. And access to justice for people who don’t normally have it can be very threatening to those who do. That’s why it’s so important for us to guarantee.”

—Jamie Smith