March 31, 2010

Chancellor William E. Kirwan
University System of Maryland
3300 Metzerott Road
Adelphi, MD 20783

Clifford M. Kendall
Chair, Board of Regents
University System of Maryland
3300 Metzerott Road
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Dear Chancellor Kirwan and Chair Kendall:

I am writing to you in your leadership roles at the University of Maryland in the hopes of being of some help to the University in the context of recently expressed concerns about the activities of the clinical program at the University of Maryland School of Law, specifically the environmental law clinic. Before turning directly to clinical legal education, I will provide some brief background on the AALS.

The Association of American Law Schools is a non-profit voluntary association of 171 public and private law schools. Our purpose is to improve the legal profession through legal education. We also serve as the principal representative of legal education to the federal government, to national higher education organizations and to other learned societies. The University of Maryland School of Law was admitted to AALS membership in 1930 and has continuously been counted among our members for 80 years. Your new Dean Phoebe Haddon served as a member of the nine-person AALS Executive Committee for three years in the 1990’s and has been a member of the AALS Resource Corps.¹

Since its formation in 1900, AALS membership has been regarded as a significant indicator of the quality of a law school. The core values of the AALS shape the efforts of the Association as well as define the obligations

¹ The Resource Corps is a specially trained group of volunteer faculty who assist other AALS schools seeking resolution of specific institutional issues.
of its member schools. These core values combine to further excellence and innovation.\textsuperscript{2}

Among AALS's professional development programs, is a multi-day annual conference for clinical faculty. (In fact, this year's conference which will draw more than 400 faculty from all over the country will be held in Baltimore in May.) For many decades now the AALS has been proud of the fact that through the volunteer efforts of member school faculty, it has made significant contributions to the growth, evolution and excellence of clinical education in the field of law.

Clinical education in law schools began in the United States in the late 1960's in response to a concern that while legal education did an excellent job of training students in legal analysis, it needed to act to ensure that graduates were also well-prepared for other aspects of the representational roles that they serve as lawyers. Encouraged by significant funding from the Ford Foundation, a pilot group of schools hired experienced lawyers to become full-time teachers who would experiment to craft a new component of legal education.

Borrowing the term "clinical" from medical education, the idea that the pioneering clinical faculty pursued was the use of actual legal problems and cases to train law students in the skills that they need to become effective and ethical lawyers. Under the close supervision of full-time faculty, students learn through their representation about the demands and norms of the lawyer-client relationship, the multiple ways the legal system addresses disputes (including pre-trial and trial skills, negotiation and mediation), the structuring of transactions, and the broad roles of lawyers within society. Throughout each of these, faculties and clinical programs seek to have students struggle with legal problems in the context of the ethical responsibilities of representing clients. These approaches have become well accepted and respected in legal education.

Understandably, given the role of the legal profession (in contrast, for example to the health professions) to resolve conflicts, controversy accompanied this new form of legal education. Over the decades, clinical programs, particularly those in public law schools, have been the subject of criticism based on the nature of the cases they pursued on behalf of clients. In response, over the years, the AALS has entered cases as a friend of the court in circumstances where clinical programs were misunderstood or under attack. These included, for example, a case involving the timber industry in Oregon and an environmental case pursued by the Tulane environmental clinic involving a plant siting.

\textsuperscript{2} The core values emphasize both excellent teaching (across a rigorous and dynamic curriculum) and scholarship, noting its relationship to the creation and dissemination of knowledge. The core values also embody inter-related commitments to a self-governing academic community, to academic freedom, and to diversity of viewpoints. Member schools commit to support all of these objectives in an environment free of discrimination and rich in diversity among faculty, staff and students. The core values are framed by the idea that institutional autonomy should be honored whenever possible because wide latitude will encourage the development of strong and effective educational programs and learning communities. The core values combine to provide an environment where students have the opportunity to study law in an intellectually vibrant institution capable of preparing them for professional lives as lawyers instilled with a sense of justice and of obligations of civic responsibility.
For each formal reported case, there are many dozens of criticisms voiced less formally. As Dean of the law school at UCLA I found myself explaining to elected public officials why one publicly supported institution (the clinical program at the law school) was participating in litigation against the County of Los Angeles over the fact that the public sewer system was not in compliance with federal law, with the result that sewage would flow untreated into the Santa Monica Bay during heavy rainstorms.

But there is a clear and sound answer to those who understandably question the role of state clinical programs and that is this simple fact: The settings for law practice selected by law schools for clinical education are chosen based on their value as teaching vehicles. These settings range from small claims and landlord-tenant disputes to international human rights questions. In the environmental law field, Clean Water Act cases are among the various types selected because they provide students with hands-on experience working with a complex statute and different types of administrative materials.

One critical lesson for lawyers entering a field where they will undoubtedly face conflicts with important interests, is that they have a duty to be loyal to their clients, including the protection of all matters of confidentiality. As in all professional responsibility matters, clinics and law schools need to be able to convey the importance of the independence of lawyers from outside pressures, as compelling as those pressures may be. The Carnegie Foundation for the Advancement of Teaching in its recent important report Educating Lawyers, stressed the centrality of law schools’ teaching students what they term professional identity and purpose so that law students can assume, with a strong sense of responsibility and without cynicism, the many critical roles they play in fostering democracy. The Carnegie Report found that clinical programs were a major site within legal education for teaching this overriding aspect of being a lawyer. State-funded law schools have a strong interest, particularly if they are to achieve national prominence, in teaching these important and often difficult aspects of the role of the legal profession in society. Universities and law schools are in a critical position to convey the importance of these long-term objectives of a high quality educational system.

The quality of a Law School’s clinical program and in turn the reputation of the school will be damaged if it cannot ensure that its clinical programs can remain competitive with those of other schools around the country. Without question in the modern era, the presence of strong clinical programs enhances a law school’s ability to attract good students. The opportunity for students to engage in an actual case can lead to precedent-setting decisions. For example, as I write today, the U.S. Supreme Court is hearing an important constitutional and criminal law question that arose in the University of Houston Law Center’s Immigration Clinic.

As the AALS said last year in the context of attempts to apply a public records law to a state law school’s clinic:

>[P]ublic law school clinical law professors and their students practicing law in a clinical setting will not be able to competently or ethically represent clients if they must reveal client confidences that other members of the bar would be required to keep. As a result, clinical education, one of the most important educational
developments in law schools over the last 40 years, would not be viable in public law schools but would instead be limited only to private law schools.³

This is why Deans, University officials, organizations such as the AALS, and lawyers devoted to ensuring that ordinary legal processes are protected have been careful and effective in ensuring that clients represented by the clinical programs of state law schools are not disadvantaged, or that ordinary legal protections, such as lawyer-client confidentiality, are not impaired.

The state of Maryland, the University and all of the public officials, alumni and others who have contributed to the strength of the University of Maryland clinical programs can take pride in the excellence of your University in the field of clinical education. As I’m sure you know in rich detail in your leadership roles as Chancellor and Chair of the Regents, your law school’s achievements in clinical legal education have been consistently highly regarded for their effectiveness.

If the AALS can be of assistance to you relating to the questions that have been raised about the University of Maryland School of Law’s clinical program, we would like to be of help.

Sincerely

Susan Westerberg Prager
Executive Director
Chief Executive Officer
SPrager@aals.org

cc: Acting President E. Albert Reece, University of Maryland Baltimore
Dean Phoebe A. Haddon, University of Maryland School of Law

³ Brief of Amicus Curiae Association of American Law Schools in Sussex Commons Associates, LLC and Howard Buerkle v. Rutgers, The State University; Rutgers Environmental Law Clinic; and Rutgers University, Custodian of Records. MID-L-8465-06