Scholarship and advocacy have joined together in Professors Robert Kuehn’s and Peter Joy’s firm support of the need for law school clinical programs to operate in an environment free from interference in client and case activities.

Kuehn, co-director of the law school’s Interdisciplinary Environmental Clinic, and Joy, vice dean of the school and co-director of the Criminal Justice Clinic, are critics of an increasing trend toward judicial and legislative interference in the work of law school clinics.

The two have been studying the issue for the several years and recently published an article in the Journal of Legal Education, “Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility.” [view at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1483374] Among recent media and blog coverage, The New York Times this past spring quoted Kuehn on the subject and referred to a survey he and a faculty member at another law school contributed to in which clinical faculty expressed concerns about the potential repercussions of accepting controversial cases. [View New York Times article]

Most recently, clinical programs have felt a backlash in both Louisiana and Maryland, where state legislatures have attempted to restrict law students and clinics, preventing them from accepting certain clients or working on cases in certain areas, such as those raising environmental claims against polluters.

As president of the Clinical Legal Education Association, Kuehn wrote letters to both the Maryland General Assembly and the Louisiana Senate, which advocated for an end to interference with the work of the law school clinics in those states. In his plea to the Maryland representatives, Kuehn stressed that proposed restrictions in that state “demonstrate a failure to understand the professional responsibilities of lawyers and the structure of contemporary legal education. … As with other professions, hands-on work is a necessary part of a solid, responsible legal education. Every law school in America is required to provide its students with real-life practice experiences.”

Joy also participated in fighting the legislative effort in Maryland by circulating a letter addressed to the Maryland General Assembly that was signed by nearly 500 law faculty and more than 50 law school deans. In the letter, Joy pointed out that the Maryland clinic “represents people who lack access to justice, including poor Marylanders who would otherwise have no access to courts.”

Similarly, in Kuehn’s letter to the Louisiana Commerce, Consumer Protection, and International Affairs Committee, he criticized provisions in a bill that “demonstrate a failure to understand the importance of providing access to legal representation to all citizens, rich or poor.”

Such legislative measures and other attacks have had “a chilling effect on many clinics,” Kuehn says. Kuehn’s co-authored national survey indicates that one in three clinic faculty feared the reactions their work could create either at their own university or by outside groups, including legislatures. Additionally, one in six felt obligated to refuse unpopular clients.

Joy and Kuehn observe that the outside interference faced by clinics is similar to that experienced by other lawyers who represent poor or unpopular clients. However, despite this history of frequent interference, very little scholarship on the issue exists outside of Joy and Kuehn’s joint work. In their recent Journal article, the two examine the ethical considerations of
interference in legal cases and how law school administrators and faculty should handle that interference.

As Joy wrote in an op-ed for a Louisiana paper, “[T]he legal profession has a professional obligation to make legal services available to everyone.” Law school clinics help to serve this purpose, he and Kuehn argue, and to restrict them is to restrict access to justice.