

## THE GLOBAL CLASSROOM: INTERNATIONAL HUMAN RIGHTS FACT-FINDING AS CLINICAL METHOD

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*[T]o talk realistically about ‘Lawyering for Poor Communities in the Twenty-First Century,’ we must expand our frame of reference beyond the world of service-eligible client groups that we have traditionally represented in poverty law practices. We must expand our frame of reference to include all of the people who are being rendered destitute by current policies of global economic integration, regardless of which side of the territorial borders of the United States and other rich countries their bodies happen to fall on at any particular moment in time. At the same time that we open up our frame of reference, we must add the idea of global equity to the core normative commitments that motivate our work. We must open our eyes to a world in which rebellious clients – and their lawyers – are getting detained and disappeared, rather than evicted from their section 8 apartments and defeated in court. Yet as much as we might like to believe that the global thing is just a distraction, if we are serious about lawyering for poor communities in the twenty-first century, we have no choice but to expand our field of vision to include those places where disenfranchised populations are increasingly making their homes.*

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— Lucy E. White<sup>1</sup>

## I. INTRODUCTION

Clinical legal education began to take hold in the 1960's and 1970's.<sup>2</sup> Since then, legal clinics have prepared students to provide quality legal representation to indigent clients by focusing on social justice and the legal needs of under-served communities.<sup>3</sup>

Because of its emphasis on experiential learning and because

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1. Margaret Martin Barry, John C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: the Third Wave*, 7 CLINICAL L. REV. 1, 58 (2000) (citing Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813, 814 (1998)).

2. *Id.* at 11 (describing three phases or "waves" of the evolution of clinical legal education). Attempts to create alternatives to the casebook method, which was enshrined in American law schools during the first half of the twentieth century, defines the first phase. The second wave, which lasted from the 1960's until the late 1990's, saw a dramatic increase in the popularity of clinics because of "the demands for social relevance in law school, the development of clinical teaching methodology, the emergence of external funding to start and expand clinical programs, and an increase in the faculty capable of and interested in teaching clinical courses." *Id.* at 12. The third wave is the authors' term for the future of clinical legal education. *Id.*

3. Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 287 (2001) (describing benefits law students receive from practicing poverty law and the resulting positive effects on under-served communities and "systemic justice through strategic use of civil rights actions").

it offers students a broader context within which to apply their legal education, clinical education is a pedagogical method to which adult learners respond well.<sup>4</sup> Clinical legal education abandons Langdellian notions that the law is objective by requiring law students to think beyond abstract principles extracted from appellate opinions.<sup>5</sup>

In most law schools, the clinical experience still takes the form of domestic, direct-service client representation.<sup>6</sup> In the last decade, however, law school clinics have begun to expand their vision of social justice work to include clients beyond the United States' borders. Today, many clinicians have embraced both the increased internationalization of the curriculum and the momentum behind the global human rights movement by establishing international clinics that focus on asylum and other types of human rights efforts.<sup>7</sup>

The expansion of clinics to include those involving the application of international human rights in a non-direct-service situation prompts the question of which of the educational and social benefits of direct service transfer to the international human rights context. To address that question, this essay explores international human rights fact-finding as a clinical teaching method, and suggests that clinics providing opportunities for

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4. Abbe Smith, *Rosie O'Neill Goes to Law School*, 28 HARV. C.R.-C.L. L. REV. 1, 11 (1993) (characterizing clinical education as "a method of learning to learn from experience").

5. William P. Quigley, *Introduction to Clinical Teaching For the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 471 (1995) (describing the Langdellian casebook method of law instruction as "vicarious legal experiences" and the clinical method as "firsthand legal experience") (quoting David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71 (1979)). See also Fran Quigley, *Seizing the Disorienting moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 44 (1995) (stating "[t]he experiential nature of the clinical course brings abstract notions of justice to life and inspires classrooms or informal teacher-student or student-student dialogue on the relationship of the legal practice to the lives of clients and to society as a whole.").

6. Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and The Teaching of Empathy*, 7 CLINICAL L. REV. 273, 284 (2000).

7. Barry, Dubin & Joy, *supra* note 1, at 61 (quoting N.R. Manhava Menon, *National University of Juridical Sciences: In Pursuit of Quality and Relevance*, GLOBAL ALLIANCE FOR JUSTICE EDUCATION (GAJE) CONFERENCE 46 (1999)). At the inaugural conference of the Global Alliance for Justice Education (GAJE), clinicians, other interested law faculty, and activists from around the world gathered in Trivandrum, India, to form an organization devoted to changing legal education to reflect a social justice agenda.

students to conduct field work, or “live” human rights work, offer a unique, engaging learning experience that approximates the traditional direct-service model in critical ways.<sup>8</sup>

Part II of this essay provides a glimpse into several “live” international human rights clinics and programs currently operating in the United States.<sup>9</sup> Part III describes the Georgetown International Women’s Human Rights Clinic’s (“the Clinic”) Spring 2001 project, in which participants conducted a women’s human rights fact-finding mission in Poland.<sup>10</sup> Part IV explores the benefits of conducting live human rights field work in a clinical setting, noting that such an approach fosters empathetic lawyering, non-directive teaching, the ability to analyze both the legal and non-legal dimensions of a particular socio-legal problem, and other pedagogical goals.<sup>11</sup> Part V notes potential logistical and ethical concerns engendered by a “live” fieldwork approach.<sup>12</sup> Part VI, the conclusion of the essay, suggests that future clinical human rights fieldwork include clinic-to-clinic international partnerships.<sup>13</sup>

## II. LIVE HUMAN RIGHTS WORK: A SAMPLING OF PROGRAMS FROM AROUND THE UNITED STATES

Georgetown is not the first law school to experiment with hands-on, “live” human rights work for law students.<sup>14</sup> Fordham

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8. Human rights fact-finding is a method of investigation designed to determine whether a particular country is fulfilling its obligations under international human rights law. It typically consists of a series of interviews conducted with all of the relevant legal and non-legal actors followed by a written report, including recommendations to the government regarding how to improve compliance with international standards.

9. *See infra* Part II.

10. Professor Susan Deller Ross established the Clinic in 1998. Her unwavering commitment to women’s human rights has been a driving force for the Clinic since its inception.

11. *See infra* Part IV.

12. *See infra* Part V.

13. *See infra* Part VI.

14. *See generally* Philip Schrag, *Constructing A Clinic*, 3 CLINICAL L. REV. 175, 195 (1996). The Clinic is not the first clinic at Georgetown University Law Center to focus on international affairs and human rights. Students in the Center for Applied Legal Studies (CALs) assume primary responsibility for the representation of refugees who seek political asylum but whose requests have already been rejected by the U.S. government. Professors Philip Schrag and David Koplów, who have directed CALs at Georgetown since 1981, shifted the clinic’s focus from Social Security and Disability cases towards asylum litigation in 1995. Schrag and Koplów reinvented CALs in this manner because, among other things, “at Georgetown, many students were interested in international affairs, and

University's Crowley Program,<sup>15</sup> founded in 1997, has engaged law students in human rights fieldwork since 1998, when the program took six students to Turkey to conduct a fact-finding mission. The goal of that mission was to investigate "allegations of official harassment and persecution of judges and defense attorneys and its effect on the international rights to due process and a fair trial."<sup>16</sup> The Crowley program also conducted on-site investigations with law students in Hong Kong in 1999,<sup>17</sup> Mexico in 2000,<sup>18</sup> and Guatemala in 2000.<sup>19</sup> The program's most recent fact-finding mission took students to Ghana in June of 2001 to investigate women's property rights under customary and statutory law.<sup>20</sup> Following each of these two-week missions, students and other team members produced and disseminated a report of the mission's findings.

The University of Michigan Law School has a well-established externship program in South Africa.<sup>21</sup> The program, which has

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hundreds of them had signed a petition urging the school to start a human rights clinic." *Id.* After investigating several possibilities for international affairs and human rights clinics, Schrag and Koplw chose asylum because "only asylum cases could meet [the] need to enable students to handle complete cases within a semester." *Id.*

15. Fordham University Online, at <http://www.fordham.edu/law/centers/crowley/main.htm> (last visited Feb. 4, 2001). A cornerstone of Fordham's Crowley Program is the annual human rights mission. Unique to Fordham Law School, the Annual Mission is an intensive two-year-long project to train a select group of students in the skills of human rights research, investigation, and advocacy. The project includes an end-of-semester fact-finding trip ("the Mission") to a subject country to investigate specific areas of human rights concern. *Id.*

16. FORDHAM UNIV., THE JOSEPH R. CROWLEY PROGRAM IN INTERNATIONAL HUMAN RIGHTS (2000). See also Joseph R. Crowley, *Justice on Trial: State Security Courts, Police Impunity, and the Intimidation of Human Rights Defenders in Turkey*, 22 FORDHAM INT'L L.J. 2129 (1999) (describing the findings of the mission to Turkey).

17. Fordham University Online, at <http://www.fordham.edu/law/centers/crowley/hongkong.htm> (last visited June 17, 2001). In Hong Kong, the Mission investigated the "strength of rule of law and the Hong Kong legal system two years after the transition from British to Chinese rule." *Id.*

18. Fordham University Online, at <http://www.fordham.edu/law/centers/crowley/mexico.htm> (last visited June 17, 2001). The mission investigated Mexico's criminal justice system to determine whether the system ensured fair trial standards, guaranteed due process and safeguarded prisoners' rights. *Id.*

19. Fordham University Online, at <http://www.fordham.edu/law/centers/crowley/guatemala.htm> (last visited June 17, 2001). The goal of the Guatemala mission was to investigate "impunity issues with regard to the stalled prosecutions culminating from the discovery and exhumation of mass grave sites dating from Guatemala's bloody civil war." *Id.*

20. Fordham University Online, at <http://www.fordham.edu/law/centers/crowley/main.htm> (last visited June 17, 2001).

21. University of Michigan Online, at <http://www.law.umich.edu/academics/>

been in operation since 1995, offers externships in South African governmental agencies and NGOs. During 1999-2000, twenty-five students participated in the program, working in the Parliament, Legal Resource Centers, law school clinics headquartered at various law schools in South Africa, and other human rights organizations under the supervision of South African attorneys.<sup>22</sup>

Michigan has also sponsored summer internships in Cambodia for the past five years through its Cambodian Law and Development Program.<sup>23</sup> The program is “dedicated to the interdisciplinary study of the role of law in the reconstruction of Cambodian society, and to providing Michigan students a ‘hands-on’ exposure to the field of law and development.”<sup>24</sup> The law school arranges placements for the students primarily with NGOs focused on human rights issues. Depending on the availability of Michigan faculty teaching in Cambodia, students have also arranged to receive credit for supervised externships with organizations in Cambodia.<sup>25</sup>

St. Mary’s School of Law, in San Antonio, Texas, provides an opportunity for students to conduct human rights fieldwork along the U.S.-Mexico border. Without requiring the students to travel great distances, the St. Mary’s International Human Rights Clinic has documented environmental abuses at the Texas-Mexico border.<sup>26</sup> St. Mary’s has also collaborated with the Human Rights Clinic at Columbia University to investigate gender discrimination in the maquiladoras<sup>27</sup> along the Texas-Mexico border.<sup>28</sup>

During the law school’s spring break in 2000, Columbia’s Human Rights Clinic traveled to Mexico with five students to meet with local NGOs and to conduct interviews with local workers.

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externshipsandindependentstudy/index.htm (last visited May 17, 2001).

22. *Id.*

23. E-Mail from Nick Rine, Professor of Law, University of Michigan to Johanna Bond, Georgetown University (May 19, 2001) (on file with author). The law school provides funding to cover travel and living expenses for three students.

24. University of Michigan Online *at*, <http://www.law.umich.edu/academics/externshipsandindependentstudy/index.htm> (last visited May 17, 2001).

25. *Id.*

26. St. Mary’s Law School Online, *at* <http://204.158.207.3/clinicalprgs.htm> (last visited May 17, 2001).

27. A maquiladora is an export assembly factory. *See generally* Sheryl Dickey, *The Free Trade Area Of the Americas and Human Rights Concerns*, 8 NO. 3 HUM. RTS. BRIEF 26, 26 (Spring, 2001) (describing the maquiladoras as “sweatshops”).

28. Telephone Interview with Arturo Carrillo, Lecturer in Law with Columbia’s Human Rights Clinic, in New York, NY (June 19, 2001).

Upon returning from Mexico, the students summarized their findings and drafted recommendations, which they disseminated among their local NGO partners.<sup>29</sup>

Columbia's Clinic conducted two other on-site visits with students involving a pending case before the Inter-American Court of Human Rights. The Clinic is collaborating on the case, which challenges the mass expulsions of Haitians from the Dominican Republic, with a number of organizations, including a local NGO.<sup>30</sup> The Clinic took students to Haiti and the Dominican Republic to meet with local NGOs, conduct numerous interviews to identify clients, and form a litigation strategy. Two students accompanied the Clinic faculty on the first trip in 2000. The Clinic then took a second group of students in January of 2001 to gather additional evidence for the case and update their pleadings.<sup>31</sup> The litigation is ongoing, and the Clinic faculty expects to take students back to Haiti and the Dominican Republic to work on the litigation next year.<sup>32</sup>

At the University of California at Berkeley School of Law (Boalt Hall), students in the International Human Rights Clinic have traveled to Bosnia and the Dominican Republic.<sup>33</sup> During the summer of 1999, several Boalt Clinic interns traveled to Bosnia and collaborated with Bosnian law students to conduct interviews of Bosnian judges as part of a project on justice, accountability, and reconstruction.<sup>34</sup> The project culminated in the publication of a report entitled *Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*.<sup>35</sup>

The Washington College of Law at American University's International Human Rights Clinic handles asylum cases and

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29. *Id.*

30. *Id.* The Human Rights Clinic at Boalt Hall Law School, University of California, Berkeley referred the case to the Columbia Human Rights Clinic. *Id.*

31. *Id.* The second group of students included four students, one teaching assistant, and one student translator. *Id.*

32. *Id.*

33. University of California at Berkeley Online *at*, <http://www.law.berkeley.edu/academics/clinicals/IHRLC.shtml> (last visited May 17, 2001).

34. *Id.*

35. *Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*, 18 BERKELEY J. INT'L L. 102 (2000). This report examines the influence of pressures faced by judges in Bosnian courts, the impact of their own losses and the contribution of nationalist views to the problems in the judicial system. *Id.* The Boalt Clinic has also been involved in challenging the Dominican Republic's treatment of children born to Haitian migrants. *Id.*

international litigation in several venues, particularly the Inter-American Commission on Human Rights. As part of its involvement in the lawsuit against former Chilean dictator, Augusto Pinochet,<sup>36</sup> the Clinic took two students to London to assist the Crown Prosecutor in arguing for Pinochet's extradition to Spain.<sup>37</sup> The students spent one week in London conducting research on applicable law and helping to formulate and draft arguments for the case. The Clinic has also taken two students to Panama for a week to conduct investigations for an ongoing environmental case.<sup>38</sup> Working with co-counsel in Panama, the Clinic filed a petition with the Inter-American Commission, and the students traveled to Panama in the spring of 2001 to meet with their clients and conduct further investigations for the case.<sup>39</sup>

Although the specific projects vary in terms of substance and duration, these clinical programs put a premium on experiential learning and reflect a trend toward placing students in the field to conduct international human rights work. International human rights fieldwork is particularly well-suited for such a clinical setting, because it heightens the experience of human rights practice by motivating students and improving their lawyering skills through client contact.

The point of this article is not to offer the Georgetown Clinic's experience in Poland as a model for clinicians hoping to combine human rights work and clinical teaching. Rather, it is a starting point for discussion of the pedagogical benefits and potential drawbacks of conducting "live" international human rights work within a clinical context.

### III. THE CLINIC EXPERIMENT WITH HUMAN RIGHTS FACT-FINDING IN POLAND

In the spring of 2001, as Acting Director of the Clinic, I

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36. Augusto Pinochet was indicted on charges that, during his reign, he was responsible for numerous political murders and other human rights abuses, both within Chile and in Spain. The case is still ongoing. For more information, see *Pinochet and Contreras Will not be Extradited*, SANTIAGO TIMES, Aug. 8, 2001, available at 2001 WL 5995912.

37. For more information about the International Human Rights Clinic, please see their website, American University Online, at <http://www.wcl.american.edu/clinical/inter.html> (last visited on June 27, 2001).

38. Telephone Interview with Jan Perlin, Practitioner-In-Residence at American University in Washington D.C. (June 15, 2001).

39. *Id.*

departed from the usual programmatic focus and experimented with a different type of women's human rights project.<sup>40</sup> After many months of fund-raising, I raised enough money to take my students to Poland for a human rights fact-finding mission. For the mission, the Clinic collaborated with Minnesota Advocates for Human Rights (Minnesota Advocates),<sup>41</sup> a U.S.-based human rights organization, and the Women's Rights Center<sup>42</sup> in Warsaw and Lodz and the Network of East-West Women-Polska (NEWW-Polska)<sup>43</sup> in Gdansk, local Polish non-governmental organizations. The students spent eight days of their spring break in Poland investigating and documenting domestic violence and employment discrimination as human rights abuses. They worked in three teams

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40. Previously, the Clinic worked with lawyers in Africa to support ongoing efforts to improve women's rights. Each year since 1993, the Leadership and Advocacy for Women in Africa Program (LAWA) has brought several fellows from Ghana, Uganda, or Tanzania to work and study in Washington, D.C. for eighteen months. Typically, the students in the Clinic provide research and write legislative memoranda or legal briefs. After several semesters of successfully collaborating with the Georgetown Clinic, our African partners needed time to work on implementation of our collaborative law reform efforts. In addition, the African NGOs needed time to prepare court documents, solicit feedback from other local NGOs on proposed legislation, develop strategies for lobbying and make necessary changes to the legislation based on the other NGOs input.

41. Minnesota Advocates Online, at <http://www.mnadvocates.org> (last visited Aug. 13, 2001). Founded in 1983, Minnesota Advocates is the largest, Midwest-based, NGO engaged in human rights work. Minnesota Advocates provides investigative fact-finding, direct legal representation, education and training. Minnesota Advocates has produced more than fifty reports documenting human rights practices in more than twenty countries; recent reports document domestic violence in Armenia, Moldova, Ukraine, and Uzbekistan. For more information, see the Minnesota Advocates' website and click on "publications"

42. The Women's Rights Center, a Warsaw-based organization with offices in several Polish cities, including Lodz, is a leading women's organization. The Center offers, among other things, legal and psychological assistance to domestic violence victims, and operates one of the only battered women's shelters in the country. The Center has published numerous guides and brochures aimed at teaching Polish women their legal rights. One of their most recent publications, translated into English, is a comprehensive look at the status of Polish women, entitled "Polish Women in the 90s." WOMEN'S RIGHTS CENTER, POLISH WOMEN IN THE 90'S (Urszula Nowakowska, ed., 2000).

43. Network of East-West Women Online, at <http://www.neww.org> (last visited on Aug. 19, 2001) (stating that "[d]emocracy without women is no democracy."). NEWW-Polska, which opened in Gdansk, Poland in 2000, is the Polish office of NEWW, an NGO dedicated to fostering partnerships between western women and their eastern counterparts. *Id.* (stating that "NEWW's mission is to empower women and girls throughout the East . . . and the West by dialogue, networking, campaigns, and educational and informational exchanges.") (supporting action and collaborative efforts "inspired by feminist principles").

of two students: two teams focused on domestic violence and one team focused on employment discrimination and sexual harassment. Our ultimate goal for the semester was to produce one human rights report documenting domestic violence, and another documenting employment discrimination and sexual harassment.

The students spent the first weeks of the semester preparing for the fact-finding mission. They studied general information about domestic violence and employment discrimination and then researched Poland's legal system, history, culture, women's rights movement and obligations under international human rights law. Also in preparation for the mission, the students conducted a number of simulated interviews in class. I designed the simulations to introduce students to the various types of people they might encounter during the fact-finding mission.

Once in Poland, the Clinic worked closely with representatives of Minnesota Advocates and the Polish NGOs to arrange interviews with all relevant parties and to arrange for interpreters during these interviews. For the domestic violence project, the interviews included prosecutors, judges, forensic doctors,<sup>44</sup> police officers, probation officers, women's rights advocates, and therapists working with victims and perpetrators. In addition to interviewing many of these professionals, the employment discrimination and sexual harassment research team interviewed the plaintiffs in Poland's first major sexual harassment test case.<sup>45</sup>

During the fact-finding mission itself, the students, faculty, and representatives of Minnesota Advocates and the Polish NGOs worked collaboratively on both the logistics of scheduling

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44. It was paramount for our clinical students to interview several forensic doctors because of the integral role these doctors play in Polish domestic violence cases. In the Polish system, domestic violence victims must have a forensic doctor examine them if they wish to pursue charges. Each doctor issues a medical certificate that, in addition to listing injuries, states what criminal provision the doctor believes applies to the case at hand. Forensic doctors determine the severity of victims' injuries pursuant to the criminal code; as a result, they are the gatekeepers of the legal system for victims of domestic violence.

45. The plaintiffs in this case are several female nurses. The plaintiffs allege that the male director of their hospital repeatedly fondled, rubbed up against and called the nurses vulgar names. Although the incidents occurred only when the director was alone with each nurse, the prosecutor believed that there was enough evidence to charge the director with sexual harassment. The case is ongoing and is receiving a good deal of media attention in Poland. The nurses and many women's rights activists hope that this case will encourage a national dialogue on sexual harassment.

interviews and on the substantive interviews. Each research team traveled with myself or an experienced representative of our partner NGOs and an interpreter. Because the Clinic had only one week on the ground, the schedule was demanding, with each team conducting three to five interviews per day.

After returning from the mission, the students transcribed their research notes and began immediately writing sections of the human rights reports. The Clinic also organized a public education event at Georgetown designed to raise awareness within the law school and local communities about women's human rights in Poland. At the event, the students described their experience and presented the preliminary findings of their reports.

#### IV. THE BENEFITS OF "LIVE" HUMAN RIGHTS WORK

Live human rights work, or fieldwork, offers students a close-up look at how a national legal system functions and how national law and international human rights law impact peoples' everyday lives. It can be a transformative experience for students to work with their clients to navigate through a legal system that differs greatly from their own and to apply seemingly abstract international legal principles to very real, concrete circumstances. In this and other ways, human rights fieldwork offers many of the same benefits of domestic, live-client representation clinics. Fact-finding as a clinical teaching method accomplishes many of the pedagogical goals normally associated with clinics, including coverage of social justice education, systemic legal problems, empathic lawyering, issues of difference and privilege, sound legal judgment, collaboration, and inter-disciplinary approaches to legal problems.<sup>46</sup>

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46. See Robert Dinerstein, *Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 509 (1992). The AALS Committee on the Future of the In-House Clinic articulated nine pedagogical goals for clinical legal education, most of which illustrate the emphasis placed on experiential learning: developing modes of planning and analysis for dealing with unstructured situations as opposed to the "pre-digested world of the appellate case;" providing professional skills instruction in such necessary areas as interviewing, counseling, and fact investigation; teaching means of learning through experience; instructing students in professional responsibility by giving them first-hand exposure to the actual mores of the profession; exposing students to the demands and methods of acting in the role of attorney; providing opportunities for collaborative learning; imparting the obligation for service to clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people; providing the opportunity for examining the impact of doctrine in

Carrie Menkel-Meadow, one of the early and most successful crusaders for clinical legal education, has described the two primary clinical pedagogical goals as teaching the “micro “ and “macro” aspects of lawyering.<sup>47</sup> Menkel-Meadow identifies the micro-level goals as those involving the teaching of lawyering skills: “judgment, decision-making, interpersonal skills, the interaction of legal and non-legal factors in making legal decisions (both from the lawyer’s and the client’s perspective), and the constituent elements of lawyering tasks—question-framing, listening, drafting, persuading, fact gathering, synthesizing and marshaling information, investigating, problem-solving, and advising, to name a few.”<sup>48</sup>

Human rights fact-finding in the context of cross cultural collaboration invokes each of these skills and, in particular, requires one to perfect strategies for information gathering, interpersonal communication, and analysis of both the legal and non-legal dimensions of a particular socio-legal problem. Fact-finding and the concomitant report writing as a pedagogical enterprise also engages students in each of the “constituent elements of lawyering” that Menkel-Meadow identifies.<sup>49</sup>

At the second level, involving the “macro aspects of lawyering,” fact-finding offers students an opportunity to explore social justice issues; or as Menkel-Meadow describes, to question the “larger social purpose” toward which students will direct their new skills.<sup>50</sup> For example, as our students conduct the fact-finding mission, they have a chance to examine who benefits within the legal system and who does not, why judges interpret certain laws the way they do, and what role human rights lawyers may play in changing the system to address and eliminate human rights abuses. In many cases, the human rights abuses are severe, and students express compassion toward the victims and outrage at the system.

These emotions can be useful in exploring the social justice dimensions of the human rights abuses. This is an important way

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real life and providing a laboratory in which students and faculty study particular areas of the law; and critiquing the capacities and limitations of lawyers and the legal system. *Id.* at 508-12.

47. Carrie Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 ANTIOCH L.J. 287, 288-89 (1986).

48. *Id.*

49. *Id.* at 289, 297 (suggesting that the “case rounds” medical instructors use would also be effective for legal instruction).

50. *Id.*

in which human rights fact-finding lends itself to social justice education. Through interviews with actors both within and outside of the legal system, students hear anecdotal evidence of, for example, domestic violence or mistreatment of prisoners by the prison system. Within the fact-finding context, students are often motivated by individual stories in ways that parallel a direct-service clinical model. One doctor in Poland, for example, outraged students by reporting that he believed domestic violence victims routinely fabricated stories of abuse to obtain advantageous divorce settlements or tolerated the abuse because of sado-masochistic tendencies. By experiencing these attitudes first hand, the students were better able to conceptualize the problems victims face and were motivated by a sense of injustice to delve into the research with renewed intensity.<sup>51</sup>

In addition to motivation stemming from individual stories, extensive fact-finding also exposes students to systemic, macro-level problems within the legal system. Discussions of systemic problems often surface in the context of direct-service clinics. Unfortunately, the discussions sometimes fall by the wayside in a busy, litigation-oriented, setting designed to focus on providing legal redress for individual clients. In the human rights context when human rights abuses occur at the hands of private actors rather than the state, as in the case of domestic violence, a systemic inquiry is necessary to determine if a country is taking adequate measures to protect individuals from human rights abuse. The students in Poland, for example, amassed a great number of individual stories to determine how the system was functioning and whether Poland was meeting its international obligations.<sup>52</sup>

At this macro level, too, students conducted the investigation with the kind of passion that comes from identifying and strategizing about social injustice. Students expressed shock and dismay, for example, upon hearing time after time that victims of

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51. One forensic doctor explained that his role in a domestic violence investigation was to establish whether the woman had injured herself. Another doctor said that the victim often lies about the source of her injuries; for example, she might just want to accuse her husband even though he did nothing.

52. In cases of human rights abuse in which the state is not directly perpetrating the violation, the systemic inquiry determines whether the state has acted with due diligence to protect against such violations. Under this due diligence standard, the state must prevent, investigate, and punish acts that impair any of the rights that the state is obligated to protect under international human rights law.

domestic violence in Poland often continued to live with the perpetrator after divorce due to an extreme shortage of affordable housing in Warsaw or that many victims of sexual harassment in Poland had no choice but to remain in their jobs without redress due to high unemployment among women and rampant sex discrimination in employment. One student explained in a written assignment upon return to the U.S., “While I understood going over that many people in Warsaw couldn’t afford to move out of their apartments even when they are in an abusive situation, for example, hearing this from people there made it much more real.”<sup>53</sup> Another student wrote poignantly about interviewing a group of sexual harassment complainants in Poland: “Their individual stories were compelling and heartbreaking . . . I thought back to the first successful cases of sexual harassment in U.S. courts and hoped that the case of these nurses would be just as groundbreaking.”<sup>54</sup> The cumulative impact of the stories the students heard illustrated the prevalence of the problems and the systemic patterns and served as a motivating force for the students to contribute to the project in a way that advanced their own social justice goals.

Clinical literature and adult learning theory use the phrase, “disorienting moment” to describe that moment when a student becomes disoriented in confronting a thought or experience that is outside of the student’s normal frame of reference. These disorienting experiences are optimal times for adults to learn from their experience as they challenge previous understandings of the world.<sup>55</sup>

Human rights fact-finding consists of a series of intensely disorienting moments. Although the Clinic students conducted extensive background research about Poland’s history, legal system, and socio-economic context before arriving in the country, they were inundated with new experiences and perceptions when they found themselves operating in a foreign legal system and endeavored to document human rights abuses within that legal system.

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53. *Reflections on the Poland Trip*, March 20, 2001 (student’s journal entry on file with the author; shared with permission of the student).

54. *Reflections on Human Rights Fact-Finding Mission to Poland* (student’s journal entry on file with the author; shared with permission of the student).

55. Quigley, *supra* note 5, at 51 (citing JACK MEZIRROW, ET. AL., *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* 12 (1990)).

Fact-finding, whether conducted by experienced human rights professionals or students, involves piecing together information about the law on the books and its actual implementation in peoples' lives. In reflecting on her experience in Poland, one Clinic student, for example, remarked:

It was one of the most amazing educational experiences I have had. Figuring out how each of the individual stories we heard fit into the bigger picture of the domestic legal structure and the international legal structure was intellectually challenging in a way that would not have been possible had we sat in a classroom and read books about it.<sup>56</sup>

The Clinic students often left initial interviews in Poland with many more questions than answers. Interviewees from different professional communities sometimes explained the law and social policy in contradictory ways. At one point, a member of one of our Polish partner organizations discovered that a word in our translation of the Polish Penal Code was incorrect, changing the meaning of a critical provision. Over the course of the fact-finding mission, students began to resolve ambiguities and discover consistent answers to nagging questions.

The experience of deciphering various interpretations of the law was "disorienting," making it fertile ground for adult learning.<sup>57</sup> Through disorientation, the students improved their lawyering judgment by adjusting their frame of reference to account for new experiences, analyzing why they reached a particular conclusion, and assessing alternative conclusions. With some encouragement, the students began to reflect upon what additional information they would have liked to elicit from a given interview and what additional questions they might have asked to elicit the information.<sup>58</sup>

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56. Videotape: Student Presentation of Preliminary Findings (Georgetown University Law Center March 27, 2001).

57. Quigley, *supra* note 5, at 51.

58. For example, one of the domestic violence teams met with a representative of the "Blue Card system," the organization that oversees Poland's state-mandated response to domestic violence calls. During the interview, the students learned that even though police document domestic violence calls on the Blue Cards, doing so initiates a social service, and not a criminal case. Knowing this, the team reconsidered a previous interview with a head of a local police department, wishing that they could have asked this officer what his understanding was of the difference between the Blue Card response and a criminal response. These reflections lead the students, at a subsequent interview

Fact-finding, or “live” human rights work, as clinical method also facilitates the development of empathy in the lawyer-client relationship. Stephen Ellman describes empathy in the lawyer-client relationship as follows:

Empathic lawyering aspires to a vision of lawyers capable of overcoming their own limitations of perspective to see or feel the world as others do, despite the differences of race, gender, class, culture, or simply identity that divide us from each other . . . To cross the gap . . . the lawyer generally needs more than just intellectual curiosity. She needs some sympathetic identification with those from whom her experience may otherwise separate her.<sup>59</sup>

It can be difficult for students to develop “empathic lawyering” or to “cross the gap” to which Ellman refers<sup>60</sup> in the international human rights context if their client is thousands of miles away. Without face-to-face contact with the client, it can be difficult for students to develop a meaningful understanding of the realities of the local legal system or the clients’ position within the legal system. Quigley asks provocative questions with reference to poverty lawyering within clinics in the United States:

How is a student to express understanding with a client’s fear of eviction without first being exposed to the scarcity of low-income housing in the client’s community? How is a student to express understanding of the implications of a client’s welfare benefits termination without first being exposed to the scarcity of good paying jobs and affordable decent child care faced by the client?<sup>61</sup>

By placing students in geographical proximity to those communities they hope to serve, live human rights work offers the opportunity for empathy and the rich understanding that goes along with empathic lawyering. It can be difficult to determine who the client is when a clinic and several NGOs collaborate in a non-direct-service setting. In the context of the Poland mission, the Polish NGOs acted as the “clients,” but it was a more fluid relationship than a typical direct-representation scenario.<sup>62</sup>

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with another police chief, to obtain this information.

59. Stephen Ellman, *Theoretics of Practice: The Integration of Progressive Thought and Action: Empathy and Approval*, 43 HASTINGS L.J. 991, 991-93 (1992).

60. *Id.*

61. Quigley, *supra* note 5, at 45-46.

62. Videotape: Student Presentation of Preliminary Findings (Georgetown

Although close client contact does not guarantee that students will relate empathically to their client, “face time” with the client dramatically increases the likelihood of developing empathy. Without “face time” with the client, students do not have the experience of meeting a client and seeing the client as a complex human being, or group of human beings, with problems that require the student to become invested in the solutions. Even when students represent organizational, rather than individual clients in the United States, they often have the opportunity to visit the organization or meet the organization’s constituency. Close client contact increases not only the students’ understanding of the client’s experiences and goals, but also increases the level of student engagement with the case or project. Jan Perlin, Practitioner in Residence at American University, who traveled to Panama with two students to meet with their client and conduct a fact investigation for their case, put it simply: “Meeting with the client was an epiphany for the students.”<sup>63</sup> Arturo Carrillo, Lecturer in Law in Columbia University’s Human Rights Clinic, observed that the fieldwork in the Dominican Republic dramatically improved his students’ lawyering skills.<sup>64</sup> After meeting with the clients extensively, Carrillo observed that the students had a much more sophisticated, deeper understanding of the harm the clients had suffered and were able to craft a more effective argument regarding reparations.<sup>65</sup> Carrillo also noted that in some students fieldwork plays a critical energizing and motivating role.<sup>66</sup>

In this sense, the Georgetown Clinic’s experiment with live human rights work inspired students in much the same way as a direct representation, live-client clinic. By meeting extensively with the local Polish organizations, the students developed empathy toward the clients, as well as a nuanced understanding of their goals. As a result of this personal connection, the students invested a great deal in the project and produced a thorough and high-quality written product.<sup>67</sup> In addition to improving their own

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University Law Center March 27, 2001).

63. Telephone interview with Jan Perlin, Practitioner in Residence at American University (June 15, 2001).

64. Telephone Interview with Arturo Carrillo, Lecturer in Law, Columbia Human Rights Clinic (June 19, 2001).

65. *Id.*

66. *Id.*

67. In structuring this fact-finding project, one important consideration was

performance as future lawyers, several students expressed enthusiasm for careers involving human rights work.<sup>68</sup> By spending time with our Polish partner NGOs, the students formed relationships and experienced feelings of responsibility, trust, commitment, and obligation to the “client” that are similar to those experienced in a direct representation, live-client clinical setting. That sense of obligation, both personal and professional, is a critical motivating force for clinical students.

In addition to motivating the students, human rights fact-finding as a clinical method forces students to confront issues of difference and privilege. Clinicians must encourage students to think about the position of the client in the legal system, the role of the lawyer, the impact of race, class, gender, sexual orientation, disability and other points of privilege.<sup>69</sup> In the fact-finding context, students begin the semester by researching the social context within the particular country under examination. By then traveling to the country and working closely with lawyers and activists in the country, students must confront their own presumptions about not only who the clients or local partners are but also what they hope to accomplish through the joint fact-finding enterprise. In the age of globalization, this inquiry often involves discussions of geo-politics and the distribution of global resources.<sup>70</sup>

It may be easier to engage students in a discussion of difference in the global fact-finding context than in the traditional direct services clinical model. In the fact-finding model, it can be

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how to ensure that the documentation would be useful for law reform and not simply sit on a shelf somewhere. For the project to be useful to the local NGOs, they had to be invested in it. In a project such as this, the partnership with local NGOs is critically important. It gives the project legitimacy, ensures that the project will be part of a larger, local movement for social change, and enriches the experience for students. For the partnership to be effective, the local NGOs must be involved in the planning process and must develop a sense of ownership over the project.

68. If clinic demand is any measure of student enthusiasm, applications for the clinic tripled the semester after the fact-finding mission. One could, of course, attribute this to the idea of a free spring break trip rather than an interest in human rights fact-finding.

69. See, e.g., Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993).

70. In the context of Poland, students discussed the impact of the Holocaust on Poland as well as the deleterious effect of the transition to capitalism on the economic position of women in Polish society.

so fundamentally disorienting to students to be transplanted to a foreign legal system that important differences are immediately apparent. In the traditional direct-services model, students may think that because they have some familiarity with the legal system, or the particular court within which they are practicing, they know everything there is to know about the legal system, their client, and their client's experience within that system.<sup>71</sup> A good clinical educator can challenge those assumptions in any clinical setting, but global human rights work is particularly well suited for an inquiry based on difference and privilege. Because cultural and other differences are often immediately apparent, however, students may embrace an "us/them" paradigm and become blind to more subtle points of privilege. Clinicians, therefore, should encourage students to think beyond the most immediate parameters of difference. Clinical human rights work invites a discussion about a lawyer's professional obligation to address human rights issues in a culturally sensitive manner while maintaining an uncompromising, rights-oriented approach.<sup>72</sup>

Teaching students to work collaboratively has become a fundamental tenet of clinical legal education.<sup>73</sup> Sue Bryant has detailed the benefits of collaborative work; she states:

Collaboration is a process that involves shared decision making by fellow collaborators; shared decision making allows for the development of ideas that then leads to emergent knowledge rather than to a simple summation of ideas. Collaboration is also a process that makes maximum use of the experiences and knowledge that each collaborator brings to the joint work.<sup>74</sup>

During the fact-finding mission in Poland, the students, faculty, representatives of Minnesota Advocates and the Polish NGOs worked collaboratively on a host of legal and logistical issues. As a firm believer in teaching collaborative methods, it was important to me that students learned to collaborate in a fast-paced

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71. See, e.g., Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1739 (1993).

72. DIFFERENT BUT FREE: CULTURAL RELATIVISM AND WOMEN'S RIGHTS AS HUMAN RIGHTS IN RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 79 (Courtney W. Howland, ed., 1999).

73. AALS REPORT, *supra* note 46, at 512. See also Sue Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1993).

74. *Id.* at 460.

setting that involved cross-cultural communication.

Each of the partners in this fact-finding exercise brought something unique to the table. The Polish NGOs offered expertise in the local legal system. Minnesota Advocates offered expertise in human rights fact-finding within Central and Eastern Europe. The clinic students brought enthusiasm, knowledge of international human rights obligations, interviewing skills and human resource power that enabled the team to conduct many more interviews than would have been otherwise possible. The faculty offered a combination of human rights fact-finding experience and teaching experience that contributed to the overall success of the mission and the students' educational development.

There were three levels of collaboration operating simultaneously: student to student; student to faculty; and clinic to client. The students worked in teams of two and collaborated at all stages of the semester. During the fact-finding mission, the students collaborated during interviews, with one student taking primary responsibility for asking the interview questions and the other taking primary responsibility for note-taking and identifying any outstanding questions that needed to be asked in that particular interview. Because the interview process can be both stressful and disorienting, the students tested each other's understanding of the results of each interview. At times their understandings of the law, its application, or who played which role in the delivery of social services differed. As a result, they determined that they needed to further probe the issues in subsequent interviews.

After the fact-finding mission, when students began to work on drafts of the human rights reports, they collaborated by making joint decisions about what should be included in the draft and how it should be structured. These discussions were protracted and sometimes contentious but, as Bryant suggests about collaboration generally, they undoubtedly improved the final product.<sup>75</sup> Like the faculty, the students also provided detailed feedback on each other's written drafts. As a result, the writing process was a collaborative effort as well.

Faculty and students also collaborated throughout the semester. During the mission, a faculty member or experienced human rights activist accompanied each team of students on their

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75. *See id.* at 493.

interviews. The faculty or activist conducted the first two interviews to allow the students time to observe, acclimate, and participate to the extent that they felt comfortable. After the first two interviews, the students were responsible for conducting the interviews themselves.

The third level of collaboration occurred between the Clinic (both students and faculty) and the “clients,” the NGOs. Both students and faculty joined forces with the U.S.-based NGO and the local NGOs to make decisions about whom to interview, what to cover in each interview, and how to write the reports. The collaboration with the Polish NGOs was critical to the success of the project—not only in ensuring the completion of the reports, but also in ensuring that they would be useful to local activists long after the clinic students had returned home.

The Polish NGOs collaborated in educating the students about Polish law, planning the research, and setting up the interview schedule, using their local contacts with lawyers, judges, doctors, employment agencies, and many other individuals whose work was relevant to the research. Several representatives of the NGOs joined the research teams and participated in interviews, providing translation when necessary. Representatives of the Polish NGOs reviewed drafts of the reports and proposed revisions.

Many of the informal conversations with representatives of the NGOs over dinner and breakfast informed the research and helped the report take shape. These informal exchanges of information were invaluable in building relationships with clients, and in improving the partners’ understanding of the local legal system, local culture, international human rights law, and fact-finding methodology.<sup>76</sup>

In working collaboratively with clients, Ann Shalleck observes, “the lawyer’s ability to act effectively for his or her client is dependent upon a relationship within which lawyer and client recognize each other as jointly involved in a common enterprise.”<sup>77</sup> One of the advantages of clinical fact-finding is that each of the

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76. Upon returning to the United States, the students wrote short journals about their fieldwork experience. Several students expressed both gratitude and awe toward several of the Polish women’s rights activists with whom the Clinic worked; they were inspired by local activists who were accomplishing so much with so few resources.

77. Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1035 (1997).

partners—local NGOs, U.S.-based NGO, and clinic students and faculty—makes a substantial contribution to the common enterprise.

Students practicing human rights work across continents and without personal contact with their clients rely heavily on external, secondary sources to provide necessary context for their cases or projects. By contrast, students who do fieldwork and interact with their clients “in the field” have firsthand knowledge about the legal system, their clients, and the social and historical context within which those clients operate. Without this contextual input, students may engage in constant second-guessing and feel as though they are litigating or advocating for legislative reform in a sociological vacuum. Live human rights work provides an opportunity for client contact and critical insight into the particular case or project.

When students rely too heavily on secondary sources instead of client contact for a context in legal representation two issues arise. First, students need to rely on this secondary information from outside sources, which makes it difficult for them to assess alternative answers or come to any conclusion on their own. Second, even when presented with a question that they can answer based on their limited knowledge of the legal system, they can feel crippled by their own unfamiliarity with the system. Live human rights work enables the students to be physically present to make observations about the social context within which the law operates; as a result, they have confidence in their own understanding of the legal system and naturally become more self-sufficient in their learning. When students have an independent source of knowledge, a clinical educator may facilitate adult learning by taking a non-directive approach to teaching.<sup>78</sup>

Clinicians have long-recognized the value of teaching students to approach problems creatively and to use inter-disciplinary

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78. A non-directive approach, which stresses student autonomy in decision making over supervisory intervention, enables students to “own’ the experience more deeply. As a result, the experience may provide a powerful basis for later reflection and understanding.” See Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 154 (1994). See also David F. Chavkin, *Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1542 (1998) (stating that “[t]he pedagogical impact on the student was far more nuanced and deliberative than would have been possible if intervention had occurred. The lessons for future growth were also far richer than they would have been had I intervened.”).

resources in problem solving.<sup>79</sup> Students, as a result, develop an appreciation for multiple legal and non-legal perspectives that aid them in later advocacy efforts—whether on behalf of domestic or international clients with complex legal and sociological needs.<sup>80</sup> One advocate of inter-disciplinary legal education remarks,

Society cannot expect lawyers to have the knowledge or skills that would allow them to identify each aspect of, and certainly not solve, problems from a multi-dimensional perspective, [but] . . . [i]t can expect lawyers to know how to work with people who together have the knowledge and skills required to assist a client in this way.<sup>81</sup>

Inter-disciplinary approaches expose students to non-legal sources of information and potential collaboration. In so doing, these approaches improve students' abilities to meet the often complex needs of their clients.

Another benefit of the live human rights model, and fact-finding in particular, is its inter-disciplinary approach. Although the documentation effort is not truly inter-disciplinary in the sense that a team of law students conducts the research, rather than a team comprised of, for example, law, sociology, and medical students, students learn the value of non-legal perspectives. In trying to assess, for example, how the legal system is or is not meeting the needs of victims of domestic violence in a particular country, the researcher cannot limit the inquiry to lawyers.

In Poland, for example, the Clinic students could not have hoped to fully understand how victims experience the legal system without interviewing doctors and other health care professionals. To fully understand the dynamics of domestic violence, the researcher needs to interview law enforcement officers, prosecutors, judges, defense attorneys, social workers, doctors and other health care providers, representatives from social service agencies, NGOs that work with victims of violence, victims themselves, religious leaders, and anyone else who may have contact with victims of domestic violence in the particular country. Students begin to understand that each of these individuals may contribute vital information to the documentation effort.

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79. Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 320 (1999).

80. Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 228-29 (2000).

81. Weinstein, *supra* note 79, at 320.

## V. CONSTRAINTS OF LIVE HUMAN RIGHTS WORK IN A CLINICAL SETTING

The most obvious limitation of clinical human rights fieldwork is financial. The cost of taking students to other countries for human rights work is, unfortunately, enormous. Although Georgetown supported the project in countless ways; the vast majority of the financial support for the project came from outside sources, including generous donations from foundations, individuals, and law firms. Because it requires a great deal of time and energy to raise money, the clinical educator must weigh the benefits of live human rights work against the expenditure of time spent fund-raising.

In considering this project, I focused on Central and Eastern Europe for a number of reasons. One factor was the strength of our local contacts there and their willingness to collaborate with us. Another was the need for documentation of this type in the region. Perhaps the most practical reason, however, was financial. It would cost less to take students there and, once there, to feed and house them than it would to take students to some other parts of the world. Without a substantial infusion of money, the Clinic could not undertake such a project in Africa or Asia.<sup>82</sup> With airfare upwards of \$1700, it is prohibitively expensive for most schools to take a group of students to conduct fact-finding in either of those continents. Notably, the University of Michigan has managed to send students to South Africa for several years, and Fordham's Crowley Program took students to conduct fact-finding in Ghana in June of 2001. For most law schools, however, the financial commitment limits the possibility of such work.

Another limitation is time. The Clinic planned this project for

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82. In previous semesters, the Clinic has successfully collaborated on international women's human rights projects with lawyers in Africa. However, those students communicated with our African partners through email and conference calls, and the clinic did not incur many expenses. Past Clinic projects have included: drafting proposed domestic violence legislation for both Ghana and Uganda; developing a Ghana Supreme Court challenge to facially discriminatory employment laws and regulations; drafting a complaint and brief to Uganda's Constitutional Court to challenge discriminatory interstate succession laws; drafting proposed employment discrimination legislation for Ghana and Uganda; developing proposed legislation to ban or to severely restrict polygamy, bride price and marital rape in Uganda; and drafting a complaint and brief for filing with the Uganda Constitutional Court challenging the husband-consent requirement for married women seeking to be sterilized.

the spring semester to take advantage of spring break and asked students to commit to spending their spring break conducting research abroad. Students were not able to miss other classes, which meant that the team had only seven days to conduct the investigation. As a result, we scheduled our days intensely, with each team conducting three to five interviews per day.<sup>83</sup> The students were exhausted by the end of the week, but the major impediment was not exhaustion. The difficulty was a pedagogical one.

It was difficult to schedule time for the students to reflect on what they were hearing, to process and synthesize the information about the legal system, to assess their strategies for information gathering and to make any necessary changes in their approaches. We tried to schedule time to de-brief in the evenings, but most of these conversations quickly turned to the logistics of the next day's schedule. Out of necessity, much of the reflection about individual interviews took place in the taxi on the way to the next interview. The students needed more time to reflect on their own interviewing skills, and they needed more time to reflect on the big picture. They needed time to determine how the substantive pieces of the puzzle were fitting together and what steps they needed to gather certain missing information. These "big-picture" conversations did sometimes take place—but they were often late at night, in the hotel rooms of the faculty and NGO experts, and outside the presence of the students. To maximize learning and collaboration and to give the students a more realistic picture of human rights fact-finding, the faculty should reserve some time each day for reflective discussions and ensure that students participate fully in them.

Another concern stemming from international human rights fieldwork relates to the "client." Clinicians have identified the problem of hierarchy normally associated with a lawyer-client relationship.<sup>84</sup> In some cases in the human rights clinical context, the Clinic acts as "lawyer" and the local NGOs as "clients." This requires the Clinic to negotiate a delicate relationship, particularly

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83. At times, our schedule was so full that students did not have time to eat lunch during the day. The two students I oversaw during our time in Lodz described to their colleagues how my scheduling zealotness resulted in their eating only small bits of packaged cheese on the train en route back to Warsaw.

84. Abbe Smith, *supra* note 4, at 29 (citing Stephen Ellman, *Lawyers and Clients*, 34 UCLA L. REV. 717, 733 (1987)).

when the “clients” may be lawyers with more familiarity of the local, national, or international systems.

Because some of the tenets of international human rights have, at times, been used to promote Western ethnocentrism rather than a true human rights agenda, clinicians involved in cross-cultural collaboration must teach students to be sensitive to issues of power and subordination. The Clinic must teach students to collaborate with international “clients” in a productive and, most importantly, respectful way. As Abbe Smith points out in discussing domestic litigation, “ethical practice includes learning ‘reflectively from and with others,’ including clients.”<sup>85</sup>

A conflict of goals may arise between the U.S. NGOs and the local NGOs and/or between the Clinic and the NGOs. There may be some tension between the pedagogical goals of the faculty and the advocacy goals of the NGO. Representatives of the NGOs, for example, may be primarily concerned with simply getting the work done. Their faculty counterparts may be primarily concerned with getting the job done in a way that maximizes learning for the students. In Poland, for example, a logistical question arose concerning which team would cover a particular interview. From a purely practical standpoint, it made sense for one particular team to do it. I was concerned, however, that another team had not yet experienced that particular type of interview and wanted them to do it.

Safety is another concern in conducting live human rights work in a clinical setting. Safety considerations may limit student involvement to certain countries or regions. Even within a country, it may be safe to travel to the capital but not outlying areas. In addition to geographic considerations, there are also concerns specific to the substance of the project. I would, for example, be reluctant to involve students in a fact-finding mission designed to document trafficking in women because of the many ties to organized crime. Although students may be equally at risk in a live-client urban clinical setting, it is essential to thoroughly investigate the security risks before involving students in live human rights work.<sup>86</sup>

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85. *Id.* at 30 (citing Phyllis Goldfarb, *The Theory Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1673 (1991)).

86. In the case of Poland, the Clinic ensured that each student’s health insurance covered travel-related accidents and illnesses. In two cases, the Clinic purchased additional travel insurance for students.

Language barriers present another practical obstacle, yet one that can be easily overcome. In traveling to Poland, we relied heavily on our local partners to help locate interpreters. Because some of the issues related to domestic violence and sexual harassment were sensitive topics for discussion, we wanted interpreters with some familiarity with or sensitivity to the delicate issues with which we were dealing. Because students often require some time to adjust to working with an interpreter, we also wanted individuals who would be patient with the students as they adjusted to this new mode of communication.<sup>87</sup>

A final consideration, although not necessarily a limitation, is compliance with the law school's policy on conducting human subjects research. Many universities have an institutional review board (IRB) or some equivalent that is charged with ensuring that faculty and university affiliates conform to ethical standards in conducting human subjects research. Although law faculty have traditionally escaped the scrutiny of the IRBs, many schools are beginning to require that law professors also conform to the standards. A fact-finding effort that involves interviews will probably fall within the purview of the IRB, although this may vary from university to university.

## VI. THE FUTURE OF LIVE HUMAN RIGHTS WORK

The time limitations of a week-long trip suggest that either a yearlong clinic or a summer clinic would be more conducive to international fact-finding. Even a two-week mission, such as the Crowley program, comes closer to allowing faculty and students the necessary time for self-reflection and analysis of the substantive issues. As an alternative, faculty could structure a yearlong clinic so that half the students traveled to the mission site during a December-January break and the second half of the students traveled to the mission site during spring break.

Under this yearlong model, all of the students could spend the first semester conducting background research on the country, drafting the background sections of the report, researching the applicable international human rights law, and developing

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87. See generally Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 379-80 (2000) (describing the importance of utilizing a skilled interpreter, as well as the need to educate clinical students about the many difficulties inherent in language interpretation).

interviewing skills. The first group of students to travel to the country would be responsible for gathering significant information about the legal system and the particular issue under examination. Upon their return, they would be responsible for sharing this information and working with the other students to identify areas for further research. The second group of students could then conduct all of the necessary follow-up research and fill in critical information gaps. All of the students would share responsibility for producing a human rights report before the end of the year. Such a schedule would allow faculty and NGO experts to spend more time with students on skill development in a non-directive manner. Students would have time for much-needed self-reflection, which could improve the quality of both the human rights report and the students' learning experiences.

As more and more law schools around the world establish clinical programs, a natural expansion of this work might include partnering with a law school clinic in the country that is the focus of the fact-finding research. This would greatly enrich the experience by allowing U.S. law students to work closely with law students in other countries. The involvement of both U.S. and local law students would ensure that a greater number of students gained the capacity to conduct human rights fact-finding and that the local law students could later expand the fact-finding work to include other substantive areas.

One of the benefits of collaborating with local and U.S.-based NGOs is that the NGOs can carry on the work after the U.S. law students have finished the semester. Local law students will likely become invested in the project and may continue to work with the local NGOs on subsequent law reform and fact-finding efforts. Such collaboration might lead to a permanent partnership between NGOs and the law school, similar to Michigan's programs in South Africa and Cambodia, or between clinical programs at different law schools. Some human rights work, such as fact-finding, provides a useful alternative for clinical programs in countries in which there is not yet a student practice rule that would allow students to take primary responsibility for a case in a direct service clinic.

The funding community, particularly the Ford Foundation, played a critical role in the early success of the clinical movement in the United States.<sup>88</sup> Ford and other foundations have

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88. See Barry, Dubin & Joy, *supra* note 1, at 18-19 (stating “[d]uring the early

recognized the importance of clinics in the U.S. and are now channeling funds into the development of law school clinics abroad, hoping to create parallel clinical movements around the world.<sup>89</sup> To promote this project, U.S.-based clinical programs should explore mutually beneficial collaborative projects. Cross-continental collaboration is the next frontier in the movement to promote social justice through law school clinical programs.

## VII. CONCLUSION

Human rights fact-finding promotes many of the social and pedagogical goals of law school clinical programs. It does so in a way that energizes students and allows them to connect to the “client” in a meaningful way, impacting both their motivation and their learning process. Although barriers such as cost and time inhibit wide-scale human rights fieldwork, many schools have begun to recognize the clinical pedagogical value of human rights fact-finding, and human rights fieldwork more generally. Human rights fieldwork is a natural extension of the poverty lawyering credo to which clinicians have subscribed since gaining acceptance in the academy in the 1960s and 1970s. Clinicians in the United States have simply expanded the notion of poverty from our metaphorical “back yard” to include poverty and oppression beyond our national borders.

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part of the second wave of clinical legal education, the Ford Foundation fanned the flames of calls for law school programs to serve the needs of the poor.”)

89. *See id.* at 60 n.249 (describing how the Ford Foundation has financially contributed to the development of clinics in seven Chinese law schools). *But see* Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6 CLINICAL L. REV. 315, 317 (1999) (stating that the educational system in Romania is not conducive to clinical legal education).