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A Clinical Model for Bringing International Human Rights Home: Human Rights Reporting on Conditions of Immigrant Detention

Gwynne Skinner[1]

This article was written as a response to a request by the *Seattle Journal for Social Justice* in hopes that it could serve as a model and inspiration to other law clinics throughout the country, which, like ours, are constantly seeking projects for their students that will not only provide an opportunity to develop good lawyering skills, but will also provide a transformative experience for students passing through a clinic's doors and make a difference to those for whom the law remains elusive. The article is also a response to the call to contribute to the collective body of knowledge coming from clinical legal education that strives to pursue social justice goals within clinical pedagogy.[2]

This article describes the design of the Seattle University School of Law International Human Rights Clinic and the model the Clinic developed and used in preparing an international human rights report regarding the conditions of immigrant detention at the Northwest Detention Center in Tacoma, Washington. The report continues to have a substantial impact on a very important human rights issue close to home—the treatment of both documented and undocumented immigrants. In addition, this article details why the project was chosen and how it was designed and developed. Finally, the article measures the project's pedagogical outcomes against accepted legal clinical pedagogical principles.

INTRODUCTION

A. Description of the Project

Voices from Detention: A Report on Human Rights Violations at the Northwest Detention Center[3] was a project of the International Human Rights Clinic (Clinic or IHR Clinic) at Seattle University (SU) School of Law, in cooperation with OneAmerica (formerly Hate Free Zone), a Seattle-based immigrant and human rights organization. The report was the first in-depth study of conditions at the Northwest Detention Center (NWDC) and one of the first in the country to systematically apply both international human rights law and domestic law to conditions found in immigration detention centers.

Although there existed several recent reports on conditions of immigrant detention,[4] only a handful consisted of interviews of current or former detainees.[5] The Clinic decided to conduct a more extensive human rights investigation and report. To date, *Voices from Detention* appears to be the most extensive in terms of the number of detainees interviewed.

This investigation was conducted by law students and faculty in the IHR Clinic and a staff member from OneAmerica during two semester-long clinics. Over the course of eight months in 2007–2008, we conducted forty-six interviews with forty-one detainees, one family member, and four attorneys representing detainees. We also took two official tours of the facility (one each semester), followed by a question-and-answer session with an Immigration and Customs Enforcement (ICE) official, the agency in charge of the facility, and officials with GEO Group Incorporated (GEO Group), the private firm contracted to run the NWDC. Students in the Clinic performed in-depth legal research regarding domestic and international human rights law, measuring the conditions they found against applicable law. They found certain conditions to be in violation of both the U.S. Constitution and international law. In particular, they found violations of the Fifth Amendment's due process clause, as well as conditions that

amounted to (1) violation of due process; (2) arbitrary detention, especially of refugees; (3) cruel, inhuman, and degrading treatment; and (4) violation of rights to family unity—all of which are prohibited by customary international law (CIL),[6] various international human rights treaties, or both. Treaties ratified by the U.S. which prohibit these acts include the International Covenant on Civil and Political Rights (ICCPR),[7] the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT),[8] and the Convention Relating to the Status of Refugees and its Protocol (Refugee Convention).[9]

B. Why This Project Was Chosen

In short, as the director of the IHR Clinic, I chose this project for several reasons. First, it offered students the ability to learn how international human rights law could be applied domestically for purposes of advocacy. Second, it provided the opportunity for students to engage in the type of work international human rights lawyers often do—human rights fact-finding and report writing. Third, it allowed students to develop numerous skills traditionally associated with clinical experience and important for the practice of law, such as interviewing, legal research and synthesis, factual investigation, legal analysis, legal writing, and collaboration. Fourth, it offered the potential to provide students with a transformative experience in the arena of equal justice and social justice advocacy, central to the mission of Seattle University School of Law,[10] and a recognized pedagogical goal of clinical law programs.[11] And fifth, it was simply needed.

Finally, I was aware of recently released reports documenting problems in immigrant detention centers elsewhere in the country.[12] This issue was also gaining increased exposure in the media.[13] Given these factors and my knowledge about problems with conditions at the local immigrant detention center (as discussed below), I felt this was a way for the IHR Clinic to localize an issue of national concern.

I. THE PROJECT'S ORIGINS AND EARLY DEVELOPMENT

A. A Need in the Community

A convergence of events, one of which was four years in the making, led the IHR Clinic to embark on this project. First, as the director of the Clinic, I had been seeking projects where we could "bring international human rights home" so that students could learn and experience the potential of using international human rights law to address domestic social issues. All previous Clinic projects had involved human rights abuses occurring abroad.

Second, when I began teaching the IHR Clinic in January 2005, I brought to the IHR Clinic a case I had filed while in private practice.[14] In that case, I represented two plaintiffs alleging abuses at the local immigrant detention center—the NWDC in Tacoma, Washington—with one plaintiff alleging physical abuse and the other alleging sexual harassment against the same guard without either having knowledge of the other's complaint. Both of these plaintiffs had been referred to me after word spread among the immigration bar that I was interested in legal cases regarding conditions, especially abusive conditions, at NWDC.

Finally, during this same time period, which was shortly after the new NWDC in Tacoma opened, local immigration lawyers reported the emergence of many complaints from detainees about the conditions at the NWDC. The complaints were many, including physical and verbal abuse, inedible food, lack of due process before being placed in segregation, and poor medical treatment. Many members of the local bar began documenting conditions and complaints of serious abuses.

However, for reasons inherent in working with a population that is so transient due to being transferred without notice to new detention facilities or being deported, such documentation had not gotten off the ground in any formal way. On one occasion, the IHR Clinic students and I met with those in the immigrant rights community to discuss devising a systematic way to

document conditions. In addition, detainees would call or write to me from time to time to complain about conditions. However, due to other fairly intense litigation in the Clinic, a project or legal case related to the conditions remained dormant for more than a year.

B. The Idea of a Report Documenting Conditions Takes Hold

Throughout this time, the conditions at the NWDC remained on my mind, and I was seeking a way to get the Clinic involved in the issue. As a clinical professor, I always seek to make my students' work as relevant as possible and I understood that work close to home would leave the greatest impact on their lives. Thus, I was striving to find a case or a project where we could "bring international human rights home." In addition, although I was also looking for potential litigation cases, I felt it was important to embark on a project other than litigation to give the Clinic some diversity in projects.

One day after reading a series of articles on human rights lawyering and fact-finding, it occurred to me that a report on human rights conditions at the NWDC was a perfect project for my students. Being an international human rights lawyer means many things. One very important and common form of international human rights work is human rights fact-finding and reporting.[15] Although I was aware of this and had engaged in a human rights fact-finding project in Africa, I had not actively considered pursuing a human rights reporting project domestically. Once I began formulating the idea of a fact-finding report measuring conditions of detention against international human rights standards, I realized such a project not only would "bring international human rights home," it would also offer the opportunity to teach students critical lawyering skills such as interviewing, fact-finding, legal research, collaboration, legal analysis and writing. In addition, it would do a great service for the community and for a group of individuals who are among the most marginalized and vulnerable in our

society. I then commited myself to having the IHR Clinic engage in such a project.

C. Overarching Challenge: Identifying Detainees to Interview

Numerous issues needed to be addressed before the project was ready for the IHR Clinic. Applying international human rights and domestic law to conditions of detention and arriving at a conclusion as to whether the conditions violated international human rights law and the U.S. Constitution, although not easy by any means, was something I felt the students could accomplish. However, planning a legitimate and well-thought-out fact-finding investigation would be more of a challenge. As part of the fact-finding, I knew we would need to interview a fair number of detainees about conditions.

Perhaps the largest challenge was identifying detainees to interview. Given the one-semester time restraint of the Clinic and the vast amount of information the students would need to digest for the project, I knew that for the Clinic to be successful in this project, the procedure for identifying detainees to interview and gaining access to them would need to be accomplished prior to the start of the Clinic. It became clear that in order to achieve this, we would need to collaborate with one or several organizations doing work in the detention center who would be able to provide or help acquire detainee identifying information. This is where the collaboration with another organization, OneAmerica, became especially critical.

D. Partnering with Local Immigrant Rights Group

I knew of a small number of organizations in the Seattle area that worked with detainees and their family members that might be able to obtain information on detainees for us, such as names and alien numbers. One such organization I knew particularly well was Hate Free Zone (now OneAmerica),[16] one of Seattle's premier immigrant rights advocacy groups. I also knew from prior conversations with those at OneAmerica that it was

interested in doing work on detention conditions and that it had been working with families who had loved ones in detention. In addition, previous conversations with its executive director revealed that it was interested in incorporating international human rights norms and law into its domestic advocacy. It seemed to me that OneAmerica could be (and indeed ended up being) a critical partner. Not only could its advocacy, organizing, and media experience be extremely helpful, it could also work with its many community partners in gathering information on the detainee population.

I knew that as accomplished and capable as an organization like OneAmerica was, however, it did not have the personnel resources to take on a project like this. Through a former student, I learned that the U.S. Human Rights Fund[17] desired to support projects involving domestic incorporation of international human rights and that immigrant rights was one of its priorities. So in the spring of 2006, I approached OneAmerica about applying for a grant with the Human Rights Fund to support a project involving immigrant detention, including preparing a human rights report on the condition of immigrant detention. OneAmerica showed immediate interest, and we drafted the proposal over the summer, jointly submitting it in September 2006. Although not selected in the initial round of funding, we learned in the spring of 2007 that we were selected in a second round, with the Human Rights Fund wanting us to focus on mapping, advocacy training, preparing a human rights report, and distributing it as widely as possible. The grant allowed OneAmerica to hire a human rights associate who would be assigned to this project.

An associate was hired and began work on June 1, 2007. She spent her time over the summer, among other things, meeting with me to begin designing the project and building relationships with many advocates and community groups that would ultimately provide us information we would need regarding detainees. She and I also met with a small number of leaders in the local immigration bar, as well as one or two people we felt should be

informed of the project (such as the legal director of the local ACLU who had also been interested in this topic) to let them know a bit about what we were doing, although we asked that they keep the project confidential.

II. THE INITIAL PRE-CLINIC PLANNING OF THE PROJECT

As mentioned above, during the summer of 2007, I met with OneAmerica's newly hired human rights associate to plan how our project could come to fruition. There were three areas in which we had to prepare prior to the Clinic starting. First, we had to begin to compile a list of detainees to interview. Second, we had to decide how much, if any, information about the project we needed to share with ICE and the GEO Group during the fact-finding phase. Finally, we needed a clear understanding of how we and the legal interns could gain access to the detainees at the detention center.

We started with several questions. How would we go about identifying which detainees to talk to, let alone how to access them? How would we get their alien registration numbers,[18] which would be required in order to set up interviews with them? If we were not representing them, would we be allowed to meet with them? And how would we do all this without the GEO Group and ICE becoming aware of what we were doing? That raised a host of other questions, such as whether we could legally and ethically conduct the investigation without the GEO Group and ICE giving us permission or at least knowing about the project, and whether we even wanted to. We ultimately decided that if we wanted the fact-finding to be legitimate, accurate, and confidential and the detainees to be protected, we would have to do it without the knowledge of the GEO Group and ICE.

With regard to gathering a pool of detainees to interview, we discussed the possibility of simply putting the word out and letting detainees who had concerns contact us. But this raised two problems. First, it was likely that ICE and/or the GEO Group would find out about the investigation. Two possible repercussions from this were being denied access to detainees or

detainees being targeted by ICE or the GEO Group. Second, it was possible that putting the word out would skew the report, as it would include information only from those detainees who had concerns and who were able to contact us—English speakers sophisticated enough to reach us and/or those with enough money to pay for postage or make telephone calls. Thus, in addition to those detainees who were already contacting my office (due to my involvement in the prior litigation case) and OneAmerica about conditions, we also decided to (1) ask family members that OneAmerica knew had loved ones in detention for permission to contact the loved one and (2) to have OneAmerica reach out to various organizations that would have names of detainees to see if the organizations would be willing to share the information with us.[19] Many were so willing. With that, the process of compiling a list of detainees to interview began.

Second, because the students who were participating were not attorneys, we had to get special approval from ICE to allow the students into the attorney interview rooms at the NWDC to access detainees. Before each semester began, we obtained permission by simply requesting access to detainees via letter, and providing the necessary information for security checks, such as social security numbers. We did not disclose that were conducting a fact-finding investigation, but neither did we misstate what we were doing. We simply asked for permission to have the students enter the facility to interview detainees. They approved our request. Similarly, when we had to use interpreters inside the facility, we sent a letter asking that they be allowed into the facility, providing similar information for security clearance purposes. We never had a problem gaining access for anyone.

With some detainees identified for interviews and with access to the NWDC approved, the Clinic was ready to embark on the project.

III. PREPARATION, PLANNING, AND DEVELOPMENT OF THE PROJECT WITHIN THE CLINIC

A. Student Preparation

1. Creating the Buy-In

When a clinic undertakes a project, it is my view that, ideally, professors need student buy-in. By *buy-in*, I mean that the students agree there is a need for the project, agree that it fits within the clinic's mission and purpose, and believe they will benefit from working on it. Some clinics gain the buy-in by allowing students to choose the projects or cases in which their clinic will participate. However, at other times, it might be appropriate for the professor to decide on the cases or projects ahead of time, based on need and pedagogical reasons that might not always be clear or obvious to the students. If this is the case, it is important that student buy-in occurs.

In this case, students were enrolling in an international human rights clinic. Thus, it was important for students to understand the two important nexuses between this project and international human rights. First, the project would incorporate international human rights law because conditions at the NWDC would be measured not only against U.S. constitutional standards, but also against international human rights standards. Second, this project would be a human rights fact-finding report, an important and frequent activity undertaken by international human rights advocates. Although I routinely discussed human rights reporting in the seminar portion of the IHR Clinic, I explained to the students that this was an incredible opportunity to actually conduct one.

It was also important for the students to understand my reasons for picking this particular project. In that regard, we read numerous articles and reports concerning immigrant detainees, the deportation process, and a handful of prior reports discussing conditions of immigrant detention.[20] We also read reports and accounts of detainees and their families to try to understand the human impact of our immigration laws, which have resulted

in significantly more detention over the last few years.[21] The students also read articles on human rights fact-finding and human rights reporting.[22] The material was critical not only because of the discussion about the role of human rights fact-finding, but also because of the information concerning structuring an investigation, designing questions, synthesizing the responses, and reaching conclusions—in addition to information about the barriers one faces in human rights reporting.

In addition to the reading, we discussed how vulnerable the detention population is because detainees have little access to attorneys, how detainees are often afraid to speak up because of fears of retaliation, how they are often transferred to other locations, and that they are usually ultimately deported. Many who may have been the main breadwinner are separated from their families. They are vulnerable, afraid, and often powerless.

Of course, no amount of reading can have the same effect on a student, a lawyer, or anyone dealing with a vulnerable population as actually interacting with them. Thus, as expected, when students began interviewing and interacting with the detainees, their empathy, compassion, and desire to make the project a success increased.

2. Researching International Human Rights Law

Of course, students also studied international human rights law. We read and discussed numerous treaties, many of which were applicable to the topic at hand. In particular, we studied international law's due process requirements, its prohibition of cruel, inhuman, and degrading treatment (CIDT), arbitrary detention, and the right to family unity—all arguably found in the principles of customary international law, the ICCPR, the CAT, and other related documents—as well as the rights of refugees outlined in the Refugee Convention.[23]

In addition, we studied the U.S. constitutional rights to which all within U.S. borders—documented and undocumented immigrants alike—are

entitled, such as the procedural and substantive due process rights granted under the Fifth Amendment. We studied in depth the Fifth Amendment's right to be free from CIDT, which includes the right to be free from punitive conditions—those conditions amounting to punishment—in nonpenal institutions,[24] such as in civil detention facilities.

3. Developing Interviewing Skills

Interviewing is an extremely important skill for those who take on any legal case, not just fact-finding. Students in law clinics and practicing lawyers often have more than one chance to interview their clients to accumulate information (often gleaning additional information on the second or third interview). Here, however, interviewing took on added importance because the student team would likely have only one chance to gain the information they would need, given our time restraints and the number of detainees we felt necessary to interview for the report. Thus, we spent substantial time learning and practicing interviewing skills. We also knew we would likely be working with interpreters during many of the interviews, so we paid specific attention to conducting interviews using interpreters. Once the fact-finding began, a faculty person—either myself or the professor who co-taught the IHR Clinic—was present for all of the initial interviews and most of the remaining interviews,[25] and we gave detailed feedback to the students regarding their interview skills and areas that needed improvement so that their interviewing skills would continually improve.

B. Additional Student Planning

1. Preparing the Questions to be Asked

Although it was necessary to do some of the planning prior to student involvement, the students were very involved in structuring and planning the project. In addition to the preparation outlined above, the first step in the investigation was to plan the areas of inquiry and the questions. After

reviewing other reports on detention conditions and considering the previously-expressed concerns regarding detention conditions from those in the coummunity we had met with over the last few years, we brainstormed about what information we wanted and needed to know.

A committee of students drafted questions, relying on lessons learned from the reading material about human rights fact-finding. The students also took care to ensure that the questions were as objective and open-ended as possible. In this way, we could measure whether the detainee we were interviewing felt strongly enough about a condition to raise it with us without being asked any specific questions about that condition. Through this method, we were able to compile a list of their most pressing and immediate concerns. Students designed follow-up questions to ascertain whether the problem was one with which the detainee had specific experience and what that experience was, or whether it was something he or she had heard about. The students would then ask more narrow questions to get as much detail as possible about the specific concern raised. This was important for credibility, for comparative analysis, and for gaining a better understanding of the problem.

After drafting the areas of inquiry and specific questions, the students also drafted a preamble—information that would be given to the detainees before they agreed to be interviewed. The preamble indicated, for example, who we were, how we had obtained the detainee's name, what we were doing, that ICE and the GEO Group did not know about our investigation, and that we hoped to keep it that way. The students also agreed to inform the detainees at the outset that we would not be able to give them any specific legal advice about their immigration matters. This preamble was always read to the detainees before they were asked if they would be willing to participate in the fact-finding by answering a series of questions.

2. Ensuring Confidentiality

Confidentiality was an important issue for the Clinic to consider. Information told to an attorney is confidential when told for the client's purposes of seeking legal advice, which, of course, was not what was occurring.[26] Additionally, we did not want to keep the information confidential; in fact, we wanted to use it in our report. However, we also understood that it was important to protect the detainees who were giving us information. Therefore, we decided that the report would use pseudonyms and that the students would inform the detainees of this before asking them if they wanted to participate in answering our questions. Thus, that information was added to the preamble.

IV. EXECUTION OF THE PROJECT

A. Accessing Detainees

As the academic year commenced, students began their interviews fairly quickly, usually by the second or third week of the semester. Once we had detainee names and numbers, facilitated by our collaboration with OneAmerica and its contacts,[27] we were able to access the detainees by providing their names and alien numbers to the personnel at the NWDC and meeting with the detainees in the attorney rooms. We went to the detention center and asked to see a specific detainee, and after a wait that could last several hours, the detainee was brought to an interview room where we interviewed him or her.

When meeting with a detainee, neither ICE nor GEO officials ever asked why we were there or why we were meeting with the detainee, even though we did not have a notice of entry of appearance on file for any of the detainees. However, we in the Clinic agreed that we would answer truthfully if questioned. We probably could have answered that we were there to gather information and meet potential clients, given that one of the

secondary purposes of the interviews was to identify possible plaintiffs for potential litigation, if we found such was merited.[28]

Typically, the night before or the morning of the interview, the students would call ICE to ensure that the detainees with whom they hoped to speak were still in the detention center. If they were not, the student would simply move down the list. On a number of occasions, however, the detainees were not at the NWDC even though students had been told they were. On these days, the students were simply not able to complete an interview.

B. Interviewing Detainees

The students interviewed the detainees in teams. When the students first met with the detainee, they would introduce themselves and describe who they were and what they were doing. They would explain the process of information gathering, saying it was being done confidentially without the GEO Group or ICE knowing, and that the information would be attributable to pseudonyms. After giving them a chance to ask questions, the students would then ask if they wanted to proceed and be interviewed. In nearly all cases, they did. A few, however, declined to be interviewed.

As was planned, the students began by asking open-ended questions about the facility and its conditions, then asking nonleading follow-up questions, and then asking about specific conditions, also in a nonleading manner. At the end of the interview, the students again explained that what we were doing was confidential, but also gave the detainees our information so they could either contact us with more information or give our information to other detainees who might be willing to talk to us. Occasionally, we would get a call from someone wishing to speak with us who had been told about our investigation from another detainee.

In addition to those in detention, there were a small number of recently released former detainees we interviewed. In those situations, the students would arrange a time to meet with them and interview them in the manner described above.

We had also hoped to interview some family members. That turned out to be more difficult than we had imagined, either because we had a difficult time locating the families or because they were unwilling to talk to us. However, we were able to interview the wife of one man in detention. She provided additional insight into the visitation process and the effect of detention on family members.

Finally, we interviewed several local attorneys who routinely work with NWDC detainees. Those questions focused on issues including access to lawyers, barriers to representation, attorney-client confidentiality, and due process issues.

After each interview, the students would write an interview memorandum for each detainee, using a pseudonym. The second semester's students created a chart wherein information about conditions gleaned from each interview was kept for purposes of later creating statistical information.

We originally estimated that the Clinic would have the ability to interview approximately sixty detainees. Ultimately, because of the difficulty of accessing some of the detainees, the wait times, and misinformation by ICE regarding who was in the facility, the students spoke to forty-one detainees.[29]

C. Identifying Additional Detainees

During the second semester, given the problems with detainees being transferred, deported, or released, our list began to dwindle, and we needed to find a way to obtain more names of detainees to interview. In addition, especially after reading more material on human rights fact-finding, we began to have concerns that the report might be subject to attack given that we were primarily interviewing detainees who we knew to have specific problems or concerns. This problem arose because even though we were getting information from community organizations, they tended to give us the names of individuals who they knew specifically had concerns, even though this was not our original intent.

Although it was important and probably acceptable to take the information of some detainees who had specific complaints, we understood that it was also important to find a way to talk to an even greater number who did not seek us out. Thus, we felt that to have a legitimate fact-finding the Clinic would need to find a way to access detainees more directly. The students began planning how we would access more detainees, especially on a more random basis. The Clinic brainstormed with OneAmerica about ways to do this. As a result of these conversations, two things occurred. First, OneAmerica again requested that certain groups it knew routinely met with detainees share all the known names and numbers of the detainees in the detention center (or at least had been in detention recently). This proved successful enough to give us additional names; however, many of those detainees were no longer in the NWDC.

Second, the students in the second (spring) semester learned that ICE posted the names and alien numbers of those having their master calendar hearings outside the courtroom located on site at the NWDC, which was located adjacent to the lobby where we waited to be shepherded into the attorney interview rooms. Thus, on two occasions during the spring semester, the students entered the area outside the courtroom and wrote down the names and alien numbers of detainees on this list. On the second occasion, however, a guard at the center told the students they were not allowed into this area. It remains unclear to us why such was the case, but after that, the students complied and no longer went to that area. But it did allow us to get the names of several detainees.

Another benefit of identifying detainees from community groups and from hearing lists was that most of those identified in this manner did not speak English. Most, but not all, of those detainees who contacted us or who we were referred to by others—many of whom had specific complaints—were English speakers. Although we had assumed such was probably the case, it became more clear to us as time went on that those who spoke English had a much easier time understanding the rules of the

NWDC, could more easily file grievances or express their concerns, and otherwise function more easily. For those who did not speak English, especially those who did not speak English or Spanish, conditions and life in the detention center were even more difficult and problematic.[30] Thus, we understood that accessing and interviewing those who did not speak English was very important to the thoroughness of the report.

D. Additional Research and Investigation

In addition to interviewing detainees, the Clinic felt it was important to engage in additional research and fact-finding in order to prepare the human rights report. Although students in both semesters located and read the reports relating to other detention centers,[31] they were also able to locate and read annual reports by ICE about the NWDC specifically.[32] The students located and reviewed these assessments and determined that certain areas of concern—such as the telephone system, grievance procedures, and the handling of food—had been brought to the GEO Groups's attention before by ICE.

The students, especially those in the first semester, also did an enormous amount of research into understanding what laws or regulations applied to these federally-operated detention centers, such as the NWDC. They located the National Detention Standards,[33] but quickly realized the standards were not binding. As the students discovered, there was only one very vague regulation,[34] and no federal statute, that applied to immigrant detention conditions.[35] Thus, students were left to conclude that the only binding law regarding conditions of detention was that made by courts relying on the Fifth Amendment's due process clause.

Students in both semesters also determined that it would be helpful to tour the facility. We were able to accomplish this during both semesters. During the fall semester, our clinic joined a tour already arranged by a local group that had formed a roundtable to address issues of detention. During the spring semester, I simply asked the ICE official in charge of the facility

if the students could have a tour given that they were working on the issue of detention as a clinic project. He agreed. Both tours were very helpful, as the tours allowed the students to see the area that the detainees were discussing, gain a better understanding of the atmosphere, and even to dispel some myths or assumptions they had about the NWDC. In addition, following each tour, the students were allowed to ask questions of ICE and GEO Group officials. The answers to these questions primarily provided background information, but also helped clarify some issues for which there were discrepancies among detainees, and assisted the students in arriving at some conclusions.

V. ARRIVING AT CONCLUSIONS

During the first semester, the students were simultaneously conducting the interviews, engaging in additional planning, and conducting legal research. Toward the end of that semester, the team researching U.S. constitutional case law wrote two very useful memoranda regarding which conditions might be in violation of the Fifth Amendment. The other teams began writing preliminary portions of the human rights report involving international human rights law, and specific food guidelines that ICE's contract with the GEO Group mandated, requiring detainees to be provided with balanced meals and quantities of food outlined by the National Academy of Sciences.[36]

During the second semester, the students were again simultaneously conducting interviews and conducting additional legal research, but they were also busy arriving at legal conclusions and writing the report about violations of international human rights and U.S. constitutional law. The interviews ceased during the last few weeks so that the students could devote all their remaining time to drafting and editing the report. Each student agreed to draft a section or two of the report, with the concluding section being the last section written. There was a substantial amount of peer editing of the report among the students. This was a very helpful stage

and one where many students simply shined. The students during the last semester worked remarkably well together writing and editing the report.

Perhaps the most important part of the project was its conclusions—that certain conditions in the Northwest Detention Center violated both international human rights law and the U.S. Constitution. These conclusions were reached by students by applying the law they had researched to the facts, arriving at a consensus as to whether the conditions violated any law, and then, identifying which laws in particular. As with any law student or new lawyer, this was perhaps the most academically rigorous part of the project, along with arriving at an understanding of the domestic application of international law and how the Fifth Amendment's due process rights applied to the conditions within a civil institution. Thus, the project involved fairly complex law and legal analysis. Students spent a considerable amount of time organizing and coming to a consensus on their findings, along with possible recommendations.[37]

VI. THE COMPLETION OF THE PROJECT AND ITS IMPACT

As students were completing the writing of the report, some additional issues arose. First, questions arose as to whether the report could quote comments made by ICE and GEO Group officials during the tours, when they did not know about the report (although they did know and see that the students were taking notes). After much debate, the students came to the conclusion they could, but decided they would do so conservatively and not publish anything said that could be particularly embarrassing, unless it was critical information.

Second, many students believed it was important that the report contain some photographs. However, we were unsure how to go about getting such photographs. We were able to locate and get permission to use some photographs taken from outside the facility. We also located some photographs of the inside of the facility from newspaper articles, albeit somewhat dated, that we would have been able to purchase from certain

media outlets. But some students were concerned that those photographs were too dated and did not properly depict the areas of the facility we wanted to portray. After much discussion regarding ethical bounds, we decided that I would approach ICE's regional public affairs officer and simply ask if we could take photographs of the inside of the facility for a report the class was doing on detention. In other words, I would disclose the fact of a report, but not get into detail.

I did so. Interestingly, the regional public affairs officer did not question or make any inquiries regarding the report. My assumption is that she believed it was simply a class report. However, she explained it would be difficult and time consuming to allow us access to the facility, and instead offered to take pictures of places we wanted and send them to us. Upon discussing her response with the students and further deliberation, I e-mailed her again, this time explaining that the report might end up being released or make its way to the media. But the offer remained. In fact, she did ultimately send us pictures. However, due to other reasons, we decided not to have pictures of the inside of the facility in the report, but only pictures of the outside of the facility on the cover of the report.

Finally, other questions arose as to whether we should disclose to ICE the existence of the report and its conclusions and give ICE a chance to respond before finalizing the report. There was much debate about this. Ultimately, the students decided they were under no obligation to either inform ICE beforehand or give it a chance to respond. However, as a matter of courtesy, the students decided they did want to inform ICE, through a local or regional representative, of the findings and present ICE with recommendations. This meeting did occur, taking place approximately two months before the report was released in its final form.

As the semester was ending and the students were doing the final editing, the Clinic began to think about where this project might go next, who the report would be released to, and how we and OneAmerica could use it to advocate for change. In these regards, the students believed it should be

released as widely as possible. It would be made available on the websites of both the Seattle University School of Law Ronald A. Peterson Legal Clinic and OneAmerica. We also agreed with OneAmerica that holding a press conference and releasing it to the media was important. As a result, the communications director for OneAmerica taught one of the two-hour clinic seminars, discussing how to work with the press. In that seminar, the students were able to brainstorm about what the most important points in the report were and how to frame those points both for a savvy media and for the public.

In addition, the Clinic and OneAmerica wanted to ensure that the report was given to U.S. senators and representatives from Washington State and that we arrange meetings with their staff as soon as possible. As it happened, a few of the staff discovered that we were working on a fact-finding report after they inquired with OneAmerica concerning what it knew about the detention center's conditions; they were hearing about problems there as well. Neither we nor OneAmerica told them about what the report was likely to conclude, but we informed them that the report would be released in the late spring.

After the close of the semester, the other professor, OneAmerica's human rights associate, and I continued to do final editing of the report and drafted the executive summary. The executive director and communications director of OneAmerica reviewed the final drafts and made some additional editing suggestions, all of which were incorporated.

The report was released in early summer 2008. OneAmerica took the lead in organizing the press conference and wrote the press release, which included the Clinic faculty's input.

Several of the IHR Clinic's students who worked on the report were able to participate in the press conference, even having speaking roles. For those students able to participate, they had the opportunity to experience media advocacy, which is so critical to human rights work around the world. Shortly after the press conference, a student and I joined the executive

directors of OneAmerica and the Northwest Immigrant Rights Project (NWIRP), Seattle's leading nonprofit immigration service provider, in a meeting with the staff of several of Washington's U.S. senators and representatives. The student who was able to participate in that meeting gained important knowledge and experience concerning how human rights reports can be used in domestic political advocacy.

VII. How the Project Fit Within the Clinic's Pedagogical Goals

A. Identifying the Pedagogical Goals

As a clinician, when I am choosing a case or project for my clinic, I identify the clinic's pedagogical goals—the skills I am hoping students acquire—and try to determine how a project might meet the goals. After the project is completed, I then attempt to assess how well the case or project measured up to these goals.

Perhaps the first set of goals by which to be guided in clinic design are the MacCrate standards, a set of skills the MacCrate Report[38] found to be significant to the practice of law: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, (8) litigation and alternative dispute resolution procedures, (9) organization and management of legal work, and (10) recognition and resolution of ethical dilemmas.[39]

The MacCrate standards are important, and other types of work we had done in the IHR Clinic, especially human rights litigation, almost always measured up to the MacCrate standards. In a project such as this one, where there were no clients (although there was a group of people whose interests we hoped the project would advance) and no clear opportunities for negotiation, litigation, or alternative dispute resolution, so some of the skills set forth by the MacCrate Report were not applicable. However, most of the

skills were, and I always have the MacCrate standards in mind regardless of the project upon which my clinic is about to embark.

Based on the MacCrate standards and my own experience, there are several pedagogical goals that I expect each chosen project to accomplish. These goals are as follows: (1) learning the substance of some aspect of international human rights law on a project of academic rigor; (2) learning and practicing interview skills; (3) collaborating with other team members, especially in the area of problem solving; (4) improving legal research and legal synthesis; (5) improving legal analysis and legal writing; (6) conducting factual investigations; (7) learning about office organization and management of legal work; (8) gaining empathy and understanding about the lives of others; and (9) having a transformative experience regarding equal/social justice. Moreover, with each project or case I choose, I hope—but cannot always predict with any degree of certainty—that an ethical or professional dilemma will present itself for the students to grapple with and resolve.

There are two additional pedagogical goals that I hope to accomplish if the project provides the opportunity to do so, both of which are increasingly critical to human rights work. One is collaborating with an outside organization and experiencing both the power and complications that can arise from that. The second is coming to understand the power of the media in human rights advocacy and the importance of being able to work with the media if possible. This project provided the opportunity to do both.

B. Assessing How the Project Measured Up to Pedagogical Goals

Overall, I was very pleased with how well this particular project achieved the Clinic's pedagogical goals. Foremost, it provided the students an opportunity to learn about and engage in human rights fact-finding, an important human rights tool and a type of advocacy amongst the most prevalent in the international human rights field. Having had this experience

will be critical for those clinic students who will seek employment in the international human rights field.

1. Learning International Law

With regard to the specifically identified goals, this project required that the students learn substantive aspects of international human rights law, given that the goal of the project was to measure the conditions they found against international law and domestic constitutional law. In particular, they had to learn the law regarding detention, punishment, and due process rights mandated by the Refugee Convention, as well as due process rights and the prohibition CIDT set forth in the ICCPR, the CAT, and by customary international law. The students also had to learn about reservations to treaties, which the United States has attached to the ICCPR with regard to, *inter alia*, CIDT.[40] Moreover, they had to learn about the role of customary international law in U.S. domestic law. They learned this law by conducting legal research and applying the law to the conditions of the detention center, as well as through preparation for, and discussion in, the seminar portion of the Clinic.

The scope of the international law that students learned, however, was somewhat narrow and limited. That was the only downside to this project. To make up for this, we discussed many other areas of international human rights law in the seminar portion of the Clinic, and students were expected to review numerous international law instruments and sources in order to identify which international human rights laws were implicated in the project. In this way, they were exposed to other international human rights law that they were unable to directly apply in their work on the project.

In addition, projects should be academically challenging, pushing learning to its limits. This project, through which students were learning about international law, provided an opportunity for academic rigor, another important principle of clinical legal education.[41]

2. Interview Skills

The project also provided students the opportunity to learn and practice interview skills. Critical to interviewing skills is active listening—where the speaker is informed that the listener understands both the verbal and emotive elements through the listener's appropriate eye contact, body language, verbal recognition, and displays of empathy. This skill is important not only because it can put the speaker at ease and build rapport, but also because it may illicit more crucial information. With regard to this project, not only did the Clinic provide training on interviewing skills, including active listening and working with an interpreter, but each student had the opportunity to conduct numerous interviews and nearly all had the opportunity to work with an interpreter. Moreover, in nearly all the interviews, the other professor or I was present. This provided an opportunity for constant and repetitive feedback on interview skills, and each student's interview skills improved with each interview. There are few other types of clinical projects that provide the opportunity to conduct so many interviews with the type and extent of feedback we were able to give.

3. Collaboration

Collaboration is an essential skill to learn in the practice of law and an important tenet of clinical legal education.[42] Moreover, collaboration with outside organizations is increasingly necessary in international human rights work.

a) Collaboration with Other Team Members

The project provided an opportunity to experience layers of collaboration with other team members. The opportunity to collaborate is one most law courses do not provide, so it is a unique pedagogical goal of most clinics, and one I closely watch and monitor. This project offered something even more unique, though, with regard to collaboration.

Typically in the IHR Clinic, we work in teams of two or three. In this project, the entire class worked together. At least once a week, and sometimes more often, the team would get together to plan, brainstorm, organize, or report. This took on added intensity during the second semester as the project was being completed. Although there was tension at times, the class worked remarkably well through any disagreements or divergent ideas. They were respectful of each other. They also quickly learned how important it is to carry through with one's responsibilities because often the entire class was depending on a student's completing his or her part of the puzzle. This was especially true in the writing of the report.

In addition to the team working together, often two or three students would work together on separate pieces of the project, so that they were collaborating with one or two others, in addition to the entire team. And finally, they interviewed in teams of two. Each team was responsible for writing a memo of their interview and entering the information into the chart of responses we were maintaining. Thus, they were collaborating with the same person all semester on interviewing and writing.

These layers of collaboration gave students exposure to working with different sized groups and with many different peers.

b) Collaboration with Outside Organizations

In this project, the Clinic collaborated closely with OneAmerica, and in particular, its human rights associate. The associate attended nearly every class, contributed to the discussion regarding areas about which to inquire, attended several of the interviews, and coordinated and assigned the list of detainees to interview. She also helped edit portions of the students' writing of the report. The importance of working with another organization in human rights work was discussed in the seminar portion of the class; in particular, we talked about the often critical assistance such an organization can give in human rights work, both domestically and abroad. In this project, students soon realized how critical OneAmerica's relationship with

other community organizations and families of those in detention was to our ability to get names of detainees to interview. They also were cognizant of OneAmerica's role in assisting the writing of the grant and the fact that the grant allowed the hiring of the human rights associate to do much of the essential work of OneAmerica with regard to this project.

In addition, members of the executive team of OneAmerica became more involved toward the end of the project, including editing the Executive Summary and parts of the report. The students saw how its organizational mission was incorporated into the report. Moreover, when the communications director from OneAmerica came for a two-hour class to discuss media strategies, this critical role of OneAmerica became quite clear. Students realized that the Clinic was simply not in a position to adequately harness the power of the media to publicize the report. In this way, they also came to understand the value of collaboration with an outside organization with this expertise.

Finally, sometimes working with outside organizations can create tension and stress, especially with regard to divergent goals or interests.[43] This did occur in a very slight way just as the report was being finalized, but it was after the students had concluded their role. Although the issue of tensions and divergent interests was discussed in general in the seminar portion, students did not get a chance to experience any of the tensions that often occur, or to work through them. Ideally, this is something I would hope would occur in the Clinic, although it did not in this project.

4. Improving Legal Research and Legal Synthesis

With this project, students had to do relatively sophisticated research, which included research on treaties and customary international law, domestic constitutional law, and how CIDT under the Fifth Amendment's due process clause was defined in civil institutions, as opposed to penal institutions under the Eighth Amendment. In addition, the students conducted significant legal research to determine whether any regulations

existed that would apply to the detention center, what the detention standards were, and whether they were binding. The students also researched the federal nutritional guidelines, which the contract between ICE and the GEO Group required that GEO follow. The research was challenging, and the students were pushed to do as much as possible. The legal synthesis of what the research produced, always a struggle (it seems) for students, was a constant challenge. We, the professors, were constantly pushing students to synthesize the information they were learning. The project provided an opportunity to improve legal synthesis skills and to understand the importance of proper legal synthesis.

5. Improving Legal Analysis and Legal Writing

The project provided students with a great opportunity to engage in and improve legal analysis and writing. In many ways, this was the heart of this project, as the project entailed students applying international and domestic law to the conditions they were finding to determine whether there were violations of the law. After the legal research and synthesis of the law, students engaged in in-depth analysis to come to conclusions about whether the conditions were violative of the law. This entailed significant discussion. In practice, all of the students in both semesters had the responsibility to research some aspect of law, synthesize it, and share it with the group. Then, approximately half of the students each semester were engaged in writing about what the law required. The other half were responsible for writing about the background of detention policy, or the results of the investigation itself. When all of this was done, we discussed as a class during the second semester whether there were violations. After intense discussion, there was almost always universal agreement with the conclusions that were made. Those who wrote the summary for a particular topic then wrote a conclusion about whether the facts they found violated the law. Then this was reviewed by the students who had written descriptions of the law. Thus, everyone was involved in both legal writing

and legal analysis. This project was a great success in meeting this pedagogical goal.

6. Opportunity to Engage in Factual Investigation

Clearly, the project provided an opportunity to both plan and engage in a factual investigation, given that it was a fact-finding report. In addition to learning how to conduct interviews, students read and learned about strategic issues involved in a human rights fact-finding and were able to put such knowledge into action. They did this by helping to decide who to interview and how to get names of detainees to interview, and in helping to formulate the areas of inquiry and questions. But they realized there was more to the factual investigation than this. They located and read prior annual ICE reports on the facility, located and read news reports on conditions at the NWDC, engaged in a tour of the facility, and asked questions of ICE and GEO Group officials after the tours.

There was also a fair amount of discussion regarding what other types of investigation we should conduct. One student suggested the class locate and interview either former or current guards or others who worked in the facility. For a variety of reasons, including concerns about confidentiality and practicalities of time, this did not come to fruition.

From a pedagogical perspective, I was happy with the students' involvement regarding their planning of questions, ways to broaden the pool of detainees to interview, their questions of ICE and GEO officials, and other types of research they conducted. In an ideal world, I would have liked students to have been involved in the overall planning of the investigation at an earlier stage, but given the time constraints and realities of a legal clinic, this was not accomplished. I also would have liked more discussion earlier regarding other types of investigative activities to engage in. However, I felt that failure was mine and not the students'.

7. Opportunity to Learn about Office Organization and Management of Legal Work

One of the pedagogical goals of most clinics is to have the students acquire at least a minimal understanding of office organization and management of legal work. This is sometimes more challenging in a clinic that does not engage in more traditional legal work such as litigation or transactional work. However, regardless of the project, students are expected to create and organize both hard and electronic files and maintain them appropriately, regardless of whether they are legal research files, correspondence, documents, or attorney notes; keep track of their time; understand and respect confidential information of their project and other cases within the larger clinic; understand the role of support staff and use the support appropriately; maintain office hours; and generally follow the office procedures set forth in the larger clinic's office manual.

Because there was no client in this case, students did not have an opportunity to draft an engagement letter or create and file client correspondence. Nor were the issues of attorney-client privilege information applicable to this case (although there was with the clinic as a whole). But students were expected to comply with all other tasks associated with office organization and management. In this way, the project met this pedagogical goal.

8. Gain Empathy

One goal I have for my clinic is that students, through their work, arrive at an appreciation for the realities of the lives of those they serve and that they gain empathy and learn the importance of empathetic lawyering.[44] I attempt to get them to see what life is like through the eyes of those with whom they are working. For students, many (but not all) of whom come from a relatively privileged and middle-class background, it is easy to forget the day to day struggle many people face and the effect this has on them. Empathy is a very important attribute to acquire for anyone who

works with people, but it is especially critical for those who serve certain populations who exist at the margins of our society. [45]

Empathy, of course, is not something that can be forced, and lecture after lecture cannot transfer it. It must be something organic, something that comes from "locating" oneself into the shoes of another, or at least attempting to. Often the beginnings of this "relocation" come when one interacts with,[46] and actively listens to, someone else. Even this, though, by itself may not result in empathy. "Location" has to be an intentional experience. It is often by preparing oneself ahead of time for active listening, as well internally reflecting on the experience, that leads to empathy. As a teacher, I can provide the interactive experience and encourage the necessary reflection through discussion and questions. This is what I attempt to do. In addition, I try to create the tools, patterns, and habits so that such empathy can be acquired more easily and routinely in the future as well.

In the Clinic, students had numerous opportunities to interact with detainees. It was clear that most detainees were depressed, and all were in real psychological or emotional pain.[47] Many detainees wept as soon as the students began talking with them simply because no one else from the outside had met with them or spoken to them, let alone seemed to care about what they were going through. The students were greatly affected by this, although it was apparent in some more than others. We spent a fair amount of time talking about what it must be like to be in the detention center, a very gray place (literally and figuratively), away from family and friends. Of course, trying to assess whether the conditions of the detention center arose to CIDT—whether the conditions as a whole were punitive in nature, for example—was what primarily led to this discussion. But it did provide a chance for students to seriously contemplate what it was like to be in the detention center, in combination with other aspects of specific detainees' lives that must have made simply existing day to day very

difficult and at times very painful.[48] This in and of itself was a very transformative experience for most students.

9. Having a Transformative Experience in the Area of Social Justice

The opportunity for transformative work—work that will make a difference to a great number of people—in the area of social justice is a recognized goal of some clinical law programs.[49] This project provided such an opportunity to create a human rights report and use it to advocate for change in detention policy and/or to improve conditions for thousands. Being able to engage in transformative work is important to me, personally, as a human rights lawyer. Although I am unsure if I believe transformative work should be a goal for clinical work at law schools, I do believe when you have the opportunity to do so, it is a great experience for students. In fact, much, but not all, of the work we did in the IHR Clinic was transformative work in that it sought to change or impact the larger law in some way.

However, a diferent but related goal for clinics, especially for an international human rights clinic, is to engage in a project that will be a transformative *experience* for students in the way they see the role of law and access to justice in a democratic and socially just society, a well-recognized pedagogical goal.[50] As mentioned above, social justice is also part of the mission of the Seattle University School of Law.[51]

What I try to impart to my students is that an important role for lawyers is to think critically about the law in terms of equal access to justice. It is thinking critically about the law that leads one to advocate for improving it in a way that results in greater social justice. In that vein, we discuss access to justice and how, basically, the detainees did not have such access. I also hope that students take away from the Clinic the importance of access to justice to the optimal functioning of our democracy.

Exposing the students to the current immigration and detention laws, detention conditions, as well as the lack of any binding regulations

governing the conditions of detention centers, provided an opportunity for the students to think critically about the law. Their interviews with detainees provided an opportunity to see the impact of the law from the detainees' perspective. Most, if not all, of the students reported being transformed by this experience. They came to realize not only the degree of suffering by the detainees, but also that there were no legally binding regulations regarding conditions. They learned, too, that few had meaningful access to lawyers and thus justice, even if they could pay for an attorney. In addition, they realized that many lacked a clear understanding of the rules of the facility, let alone immigration law, due to language barriers.

10. Understanding the Role Media Can Play in Human Rights Advocacy

The media, of course, can play a very large, and often crucial, role in human rights work and advocacy. It can expose problems and human rights violations, give press attention to human rights reports, and place pressure on government. Knowing how to effectively work with the media is essential. This includes knowing what "hook" will catch the attention of the media, how to keep the media focused on the issue or problems you want them to stay focused on, and how to frame an issue through the media to get the attention of the public in a favorable way.

I often discuss the role of the media in the seminar portion of the class, but rarely does the Clinic have the opportunity to experience working with the media. In this project, not only did the students get to hear and learn from OneAmerica's communications director about working with the media, but the students were actively involved in discussing what the hook would be for the media and for the public. We discussed how to present the issues for the best possible exposure. It was not a work in the abstract or in theory. It was very real.

Even more exciting, several of the students were able to participate in the press conference that OneAmerica organized for the release of the report. The report received quite a lot of national coverage.[52] I think the students themselves were a bit shocked as to how much exposure and impact the report had. They experienced the power of the media first hand. I can imagine only few projects in which a clinic could engage that would meet this pedagogical goal as well as this one.

11. Addressing Ethical Issues

As mentioned above, I always strive to have the students experience and grapple with one or more ethical or professional responsibility issues during the course of the Clinic.

This project presented several ethical and professional responsibility issues for the students to address. At the outset, students grappled with the nature of their relationship with the detainees. They knew that they were not establishing attorney-client relationships, and we discussed the fact that, since the detainees were not going to be giving information for purposes of legal advice, the information they gave would not be protected by the attorney-client privilege. We would use pseudonyms, which offered some protection, of course. At the same time, students wanted to be able to help the detainees if they needed it. But we could not give legal advice; that was not our role. After struggling with the issue, the students decided they would give a list of resources, mostly legal resources, to the detainees if requested.

The discussion regarding whether we should tell ICE about our investigation, the issue regarding using pictures the public affairs officer had taken, and the questions about what information we could or should attribute to the ICE and GEO officials given during the tours were all ethical and professional issues with which the students were presented. Struggling with these issues helped clarify for the students both the ethical role of attorneys and the role of professionalism.

VIII. A FINAL REFLECTION: LEARNING FROM OUR MISTAKES

In addition to reviewing pedagogical goals, it's important for clinical professors to reflect on projects with an eye to improvements. With this project, the Clinic did a good job of keeping the focus on conditions of immigrant detention when, at times, it seemed the project was growing into one about immigration policy more broadly. However, a few things could have been done differently to enhance the experience.

First, like with many projects, this one was bigger and took more time than we had initially contemplated. Moreover, the report itself took more time and effort than anyone had expected. The Clinic is a four-credit-per-semester clinic, so that helped immensely; I cannot imagine doing a similar project with less than a four-credit-per-semester clinic.[53]

Second, preparing the report over two semesters with two different sets of students was not ideal. A year-long clinic with the same students both semesters would have been easier and more efficient for a project of this scope and magnitude.

Third, there would have been less pressure on the students in the second semester if more of the report—especially the sections outlining the applicable law—could have been drafted toward the end of the first semester or, alternatively, if we would have started writing the report earlier in the second semester. As it was, we had to stop interviewing detainees the last few weeks just to concentrate on the report. We may have had fewer detainees interviewed in the prior weeks, but we could have continued to interview detainees those last few weeks, so the same number could have been interviewed. This would have created less pressure on the students who were busily trying to finish the report. They did an outstanding job completing it, but there likely would have been less editing done by myself, the other professor, and the human rights associate.

Finally, the project would have been an even better experience if I had talked earlier in each semester about fact-finding and conducting

investigations generally and allowed the students more of an opportunity to plan or contribute to planning the investigation on a less ad hoc basis.

In the end, however, the human rights fact-finding and the report regarding conditions of immigrant detention by the Seattle University School of Law International Human Rights Clinic was a success by many measures. It produced a well-received and well-publicized human rights report that we hope is making, and will continue to make, a real difference in the lives of immigrants in detention. The project also met the Clinic's pedagogical goals. We hope the project can serve as a model to other clinics that are looking for projects that bring human rights home.

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[2] Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 26 (2006).

[3] SEATTLE UNIV. SCH. OF LAW INT'L HUMAN RIGHTS CLINIC & ONEAMERICA (FORMERLY HATE-FREE ZONE), VOICES FROM DETENTION: A REPORT ON HUMAN RIGHTS VIOLATIONS AT THE NORTHWEST DETENTION CENTER IN TACOMA, WASHINGTON (2008), *available at* http://www.law.seattleu.edu/documents/news/archive/2008/DRFinal.pdf [hereinafter VOICES FROM DETENTION].

[4] WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN & LUTHERAN IMMIGRATION & REFUGEE SERV., LOCKING UP FAMILY VALUES: THE DETENTION OF IMMIGRANT FAMILIES (2007), *available at* http://www.lirs.org/LockingUpFamilyValues.pdf [hereinafter LOCKING UP FAMILY VALUES]; SUNITA PATEL & TOM JAWETZ, ACLU NATIONAL PRISON PROJECT, CONDITIONS OF CONFINEMENT IN IMMIGRATION DETENTION FACILITIES (2007), *available at* http://www.aclu.org/pdfs/prison/unsr_briefing_materials.pdf; ACLU OF S. CAL. & THE NAT'L IMMIGRATION LAW CTR., U.S. IMMIGRATION DETENTION SYSTEM: SUBSTANDARD CONDITIONS OF CONFINEMENT AND INEFFECTIVE OVERSIGHT, *prepared for* THE UNITED NATIONS SPECIAL RAPPORTEUR ON

THE HUMAN RIGHTS OF MIGRANTS (2007); ACLU OF N.J., BEHIND BARS: THE FAILURE OF THE DEPARTMENT OF HOMELAND SECURITY TO ENSURE ADEQUATE TREATMENT OF IMMIGRATION DETAINEES IN NEW JERSEY (2007); FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT & ACLU, MANDATORY DETENTION, PROLONGED DETENTION, AND INDEFINITE DETENTION OF NONCITIZENS IN THE CUSTODY OF THE DEPARTMENT OF HOMELAND SECURITY (2007); NAT'L IMMIGRANT JUSTICE CTR., BRIEFING PAPER: ACCESS TO COUNSEL AND DUE PROCESS FOR DETAINED IMMIGRANTS (2007); NAT'L IMMIGRANT JUSTICE CTR., BRIEFING PAPER: THE SITUATION OF IMMIGRANT WOMEN DETAINED IN THE UNITED STATES (2007); HUMAN RIGHTS WATCH, CHRONIC INDIFFERENCE: HIV/AIDS SERVICES FOR IMMIGRANTS DETAINED BY THE UNITED STATES (2007), *available at* http://www.hrw.org/sites/default/files/reports/us1207web.pdf. In March of 2009, after submission, but before its publication, Amnesty International released a report on immigrant detention titled *Jailed Without Justice*. Many of its conclusions mirror those of our report in a nearly idential way. AMNESTY INTERNATIONAL, JAILED WITHOUT JUSTICE (2009), *available at* http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf [hereinafter JAILED WITHOUT JUSTICE].

[5] *See* ACLU OF N.J., *supra* note 4 (having interviewed approximately twenty-five detainees held in various facilities); HUMAN RIGHTS WATCH, *supra* note 4 (having interviewed twelve former and current detainees); LOCKING UP FAMILY VALUES, *supra* note 4 (having talked to an unspecified number of family members detained in various facilities). Other reports that discussed conditions relied on emails and other correspondence, media reports, hearing testimony, or other material summarizing conditions. As mentioned in note 4, the recent Amnesty Report also consisted of detainee interviews, interviewing twenty such detainees. JAILED WITHOUT JUSTICE, *supra* note 4, at 53.

[6] Customary International Law, or CIL, is defined as that law which "results from a general and consistent practice of states followed by them from a sense of legal obligation." RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102 (2) (1987).

[7] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR].

[8] Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/39/51 (Dec. 10, 1984) [hereinafter CAT].

[9] Convention Relating to the Status of Refugees, *adopted* July 2–25, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Nov. 1, 1968, 19 U.S.T. 6224, 606 U.N.T.S. 267.

[10] As its website reads, "Seattle University School of Law, the largest and most diverse law school in the Northwest, is dedicated to the twin priorities of academic excellence and education for justice. The School of Law is home to talented faculty of committed teacher-scholars and prides itself on its academic rigor, its devotion to social justice and its commitment to personal and practical education that prepares its graduates for a lifetime in law at the service of justice." The School, Seattle University School of Law: Seattle, Washington, http://www.law.seattleu.edu/The_School.xml (last visited Mar. 8, 2009).

[11] Carasik, *supra* note 2, at 25; Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 120 (2005); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1011 (2004); Rose Voyvodic & Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor*, 14 WASH. U.J.L. & POL'Y 101, 102, 107 (2004); Jon Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1474–75 (1998); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 39 (1995). Part of the social justice mission also includes the ability to engage in transformative work: "implementing advocacy strategies that provide enduring, meaningful and systematic relief for marginalized communities." Carasik, *supra* note 2, at 25.

[12] *See supra* note 4 (identifying these reports).

[13] *See*, *e.g.*, Rachel L. Swarns, *2 Groups Compare Immigrant Detention Centers to Prisons*, N.Y. TIMES, Feb. 22, 2007, at A17; Associated Press, *Group Seeks Shutdown of Illegal Immigration Detention Center in Texas*, FOX NEWS, Feb. 27, 2007, http://www.foxnews.com/story/0,2933,253699,00.html (last visited Mar. 23, 2009); Michele Deitch & Sunita Patel, *U.S. Shrouds Immigration Detention Center in Secrecy*, NEW AM. MEDIA, June 14, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=2e9c6cb16159e5202fa6ae8311f4680b; Paul Hill, *Lifting the Curtain: Immigrant Detention Centers in U.S. Charged in Abuse*, PEOPLE'S WKLY. WORLD, Oct. 22, 2005, http://www.pww.org/article/articleview/7950/.

[14] Gutierrez v. Correctional Services Corporation, No. C04-5721-FDB (W.D. Wash. filed Nov. 1, 2004).

[15] *See* Diane Orentlicher, *Bearing Witness: The Art and Science of Human Rights Fact-Finding*, 3 HARV. HUM. RTS. J. 83, 84–85, 134 (1990); Hurst Hannum, *Implementing Human Rights: An Overview of NGO Strategies and Available Procedures*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 37 (Hurst Hannum, ed. 2004) ("Objective and thorough fact-finding lies at the heart of human rights work."). The websites of Human Rights Watch, Amnesty International, and Human Rights First demonstrate that human rights reporting is a primary function of human rights organizations. *See* Human Rights Watch, http://www.hrw.org (last visited Mar. 10, 2009); Amnesty International, http://www.amnesty.org (last visited Mar. 10, 2009); Human Rights First, http://www.humanrightsfirst.org/index.aspx (last visited Mar. 10, 2009).

[16] OneAmerica, http://www.weareoneamerica.org/ (last visited Mar. 23, 2009).

[17] U.S. Human Rights Fund, http://www.ushumanrightsfund.org/ (last visited Mar. 23, 2009).

[18] Alien Registration Numbers are identification numbers given to all immigrants who come in contact with ICE. Typically, one needs to have this number in order to access a detainee at the detention center. *See* U.S. Immigration and Customs Enforcement, Tacoma DRO Page, http://www.ice.gov/pi/dro/facilities/tacoma.htm#hours (last visited Mar. 25, 2009) (providing visitation information).

[19] For purposes of confidentiality and protection of such groups, I will keep the names of the community organizations private.

[20] *See supra* note 4; *see also* LUTHERAN IMMIGRATION & REFUGEE SERV. & DETENTION WATCH NETWORK, OVERVIEW OF U.S. IMMIGRATION DETENTION AND INTERNATIONAL HUMAN RIGHTS LAW ON THE USE OF DETENTION IN THE U.S., *Briefing Materials Submitted to the U.N. Special Rapporteur on the Human Rights of Migrants* (2008), *available at* http://www.aclu.org/pdfs/humanrights/detention_deportation_briefing.pdf; U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ASYLUM SEEKERS IN EXPEDITED REMOVAL: EXECUTIVE SUMMARY (2005), *available at* http://www.uscirf.gov/images/stories/pdf/asylum_seekers/execsum.pdf; HUMAN RIGHTS WATCH, FORCED APART: FAMILIES SEPARATED AND IMMIGRANTS HARMED BY UNITED STATES DEPORTATION POLICY (2007), *available at* http://www.hrw.org/en/reports/2007/07/16/forced-apart-0; DEP'T OF HOMELAND SECURITY, DETENTION OPERATION MANUAL, http://www.ice.gov/pi/dro/opsmanual/ (last visited Mar. 25, 2009).

[21] *See*, *e.g.*, HUMAN RIGHTS WATCH, *supra* note 20; Nina Shapiro, *They Could Be Citizens and They Might Be Deported*, SEATTLE WKLY., Apr. 26, 2006, *available at* http://www.seattleweekly.com/2006-04-26/news/they-could-be-citizens-and-they-might-be-deported/; Gutierrez, *supra* note 14, at Dkt. No. 1.

[22] The articles were: Orentlicher, *supra* note 15; Julie Mertus, *Considerations for Human Rights Fact Finding by NGOs*, http://academic3.american.edu/~mertus/HR%20fact-finding.htm (last visited Mar. 10, 2009).

[23] For example, the ICCPR has due process provisions stating that "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." *See* ICCPR, *supra* note 7, at art. 9. In addition, the U.N. Principles for the Protection of Detained Persons, article 17, states that detained persons shall be entitled to the assistance of legal counsel. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Annex, 76th plen. mtg., U.N. Doc. A/RES/43/173 art. 17 (Dec. 9, 1988) [hereinafter U.N. Principles for the Protection of Detained Persons]. CIL also arguably mandates due process in such circumstances—prolonged detention cannot be "arbitrary," in other words, there must be due process before there can be prolonged detention. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (e) (1987).

Both the ICCPR and CAT prohibit anyone from being subjected to cruel, inhuman, or degrading treatment (CIDT). ICCPR, *supra* note 7, at art. 7; CAT, *supra* note 8, at art. 16. CIL also prohibits cruel, inhuman, and degrading treatment. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(d) (1987). The definition of CIDT is not found in the CAT or ICCPR. With regard to CIDT in the U.S., the only guidance as to the definition is found in the U.S. reservations to the CAT, which state that CIDT is that which is prohibited by the U.S. Constitution's Fifth Amendment. *See* U.S. Resvs., Decls., & Understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 136 CONG. REC. S17486-01 (daily ed. Oct. 27, 1990); U.S. Resvs., Decls., & Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01, reservation 1(3) (daily ed. April 2, 1992) [hereinafter U.S. Reservations to the CAT]. According to U.S. case law, CIDT occurs when the alleged cruel, inhuman, or degrading treatment constitutes "punishment"; this is

a decision of the fact-finder, such as a judge or jury. *See, e.g.,* Bell v. Wolfish, 441 U.S. 520, 535 (1979).

The right to family unity is arguably contained in the ICCPR, which protects the interference with family. ICCPR, *supra* note 7, at art. 17; *see also* U.N. Principles for the Protection of Detained Persons, *supra*, at art. 19 (requiring that detained people have the right to be visited by and correspond with members of his or her family). Family unity may also be emerging CIL. *See, e.g.,* Sonja Starr & Lea Brilmayer, *Family Separation as a Violation of International Law*, 21 BERKELEY J. INT'L L. 213 (2003).

In addition, the Refugee Convention contains specific rights that protect those detainees seeking asylum, including the right not to be held in detention longer than necessary to obtain their identity (unless they pose a threat to society) and access to legal assistances. *See* Convention Relating to the Status of Refugees, *supra* note 9, §§ 16, 26, 31.

[24] *See* Bell v. Wolfish, 441 U.S. at 535; Jones v. Blanas, 393 F.3d 918, 932 (9th Cir. 2004).

[25] It is considered best practice for a clinic to allow a student to interview a client alone, with a faculty member either watching through a one-way mirror or later watching a taped version of the interview. However, such observation was not possible here. Therefore, during the interview, we typically would sit as quietly as possible and not intervene unless it was necessary. Although not best practice, on a few occasions we did intervene to ensure all information was gathered appropriately. We planned one interview per detainee in order to interview the largest possible number of detainees; therefore, such intervention was necessary as there was only one chance to gather information. Only when we felt comfortable that a team would be able to conduct the interview alone did we allow them to do so.

[26] During the project, we were also interested in identifying possible plaintiffs who might have a legal case. However, that was a secondary purpose, and in no way did we allow that to affect the primary and more immediate purpose of our interviews.

[27] OneAmerica's human rights associate was primarily responsible for keeping a running list of detainee names, numbers, and languages spoken, when she was able to ascertain that information.

[28] *See supra* note 26.

[29] However, we concluded after some deliberation that forty-one was a large enough sample from which to be able to draw some conclusions. In addition, we were careful to include an equal amount of detainees who did not specifically seek us out to complain about conditions as those detainees who did. Further, we were careful about the questions we asked and how we asked them.

[30] VOICES FROM DETENTION, *supra* note 3, at 59. Language barriers created problems in many areas. However, the most common barriers ranged from not understanding grievance procedures and operations to creation of isolation. These barriers also included an inability to understand how to use the telephone and not understanding documents they were being asked to sign.

[31] *See supra* note 4.

[32] ICE does an annual assessment of each detention center contracted to be run by a private group. U.S. Dep't of Homeland Security, Office of Inspector General, Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities,

December 2006, at 36, *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-01_Dec06.pdf; *see also* ICE Annual Reviews (on file with author).

[33] The 2008 standards, which are not binding, are listed in the Detention Operations Manual. U.S. DEP'T OF HOMELAND SECURITY, OPERATIONS MANUAL: ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS (2008), *available at* http://www.ice.gov/partners/dro/PBNDS/index.htm.

[34] The only regulation that applies to detainees' treatment in non-ICE (i.e., privately-run) facilities simply lists four "mandatory criteria" for immigration detainees: 24-hour supervision; conformance with safety and emergency codes; food service (i.e., that food be provided); and availability of emergency medical care. 8 C.F.R. § 235.3(e).

[35] However, the students did ascertain that in the contract with the GEO Group, as with the detention standards regarding food, the GEO Group was to provide detainees with nutritionally balanced meals and quantities of food in compliance with the Recommended Daily Allowances (RDAs) established by the National Academy of Sciences.

[36] FOOD & NUTRITION BD., INST. OF MEDICINE, NAT'L ACADEMICS, DIETARY REFERENCE INTAKES: RECOMMENDED INTAKES FOR INDIVIDUALS, VITAMINS (2004), *available at* http://www.iom.edu/Object.File/Master/21/372/0.pdf.

[37] VOICES FROM DETENTION, *supra* note 3, at 35–64 (providing a detailed discussion of the findings and recommendations).

[38] SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereafter MACCRATE REPORT].

[39] *Id.* at 138–40.

[40] *See* U.S. Reservations to the CAT, *supra* note 23. The reservations state that the United States is bound to prevent CIDT only to the extent that such conduct violates the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution.

[41] *See*, *e.g.*, Voyvodic & Medcalf, *supra* note 11, at 106 (noting the perception of legal clinical projects lacking "academic vigor").

[42] *See id.* at 121–24; Johanna Bond, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV 317, 335 (2001) (noting the importance of collaboration skills in clinical education).

[43] *See also* Bond, *supra* note 42, at 342.

[44] *Id.* at 332–33.

[45] For example, too often, lawyers, who may have started with good intentions to help someone, become dismissive of or impatient with their clients who do not show up for meetings, fail to provide information, or are otherwise seen as non-cooperative. Or, we simply forget about them. Understanding how hard it is simply to exist can remind us to be more patient.

[46] This interaction often comes from interpersonal interaction, but can also come from other types of interaction as well, such as the media—watching movies or documentaries or reading about another's life.

[47] *See* VOICES FROM DETENTION, *supra* note 3, at 48.

[48] Before participating in the clinic, many students did not have occasion to realize that many immigrants who have never been convicted of a crime are detained, and that those

who had been convicted and had already served their time were also detained in conditions that were very much like a prison.

[49] Carasik, *supra* note 2, at 25.

[50] *See supra* note 11. In addition, the American Bar Association's Task Force on Law Schools and the Profession has identified "striving to promote justice, fairness, and morality" as a fundamental value of the profession which law schools were encouraged to impart upon their students. MACCRATE REPORT, *supra* note 38, at 123.

[51] *See supra* note 10.

[52] *See*, *e.g.*, Julia Dahl, *Private Prison Co. Again Accused of Human Rights Abuses*, ABC NEWS, Aug. 5, 2008, http://abcnews.go.com/Blotter/Story?id=5466166&page=1; Associated Press, *Study: Immigrants Mistreated at Detention Center*, USA TODAY, July 15, 2008, http://www.usatoday.com/news/nation/2008-07-15-ice-tacoma_N.htm; Manuel Valdes, *Detention Center in Tacoma Blasted: Illegal Immigrants Mistreated, Report Says*, SEATTLE POST-INTELLIGENCER, July 15, 2008, http://seattlepi.nwsource.com/local/370806_detention15.html?source=rss; Thelma Guerrero-Huston, *Abuses Reported at Tacoma Deportation Holding Center*, STATESMAN J. (Salem, Or.), July 18, 2008, at 1; U.S. *Northwest Detention Center Mistreats Illegal Immigrants*, PRAVDA, July 15, 2008, http://english.pravda.ru/news/world/15-07-2008/105789-immigrants-0; *Report Alleges Rights Abuses at Tacoma Immigration Facility*, KUOW NEWS, July 16, 2008, http://www.kuow.org/program.php?id=15356.

[53] An average course load for an SU law student is fifteen credits per semester. Ninety credits are required to graduate. SEATTLE UNIVERSITY SCHOOL OF LAW, STUDENT HANDBOOK 43 (2008), *available at* http://www.law.seattleu.edu/documents/registrar/handbook.pdf#page=8.