

WHY NOT AN INTERNATIONAL CLINICAL LEGAL EXCHANGE PROGRAM?¹ IT IS WORTH THE SCHLEP

WILLIAM L. BERMAN*

Clinical programs are a critical component of legal education worldwide. This article proposes a model of clinical legal exchange program that shifts the paradigm from one that presumes the U.S. clinician in the role of the consultant, to one in which the presumption is that clinicians from different countries have equivalent potential to positively influence each other's programs. This model is based upon an exchange program between Suffolk University Law School, and the University of Haifa, Israel (the Suffolk-Haifa Clinical Legal Exchange Program – "SHCLEP"). This experience suggests that international cooperation in clinical education should be seen through the lens of comparative law theory, as an endeavor in which participants in exchange programs seek to advance clinical pedagogy and practice on a global level. Sending clinical students abroad as a precursor to their clinical experience at home provides the student with an important, culturally disorienting experience that, ideally, will lead the student to think critically about his or her own legal system, and to be better prepared to understand the needs of clients at home. Empirical data shows that study abroad programs promote cultural sensitivity, self-reflection, and self-reliance, some of the very values that clinical educators hope to impart to their students. A survey of SHCLEP participants confirms these findings. Law schools should send their students to participate in the clinical programs of law schools in other countries as part of international clinical exchange programs that emphasize a comparative clinical law experience.

INTRODUCTION

It is clear that clinical legal education has gone global, and that it

¹ The title is a reference to Jerome Frank's 1933 article advocating for clinical training in law schools. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

* William L. Berman is a Clinical Professor of Law at Suffolk University Law School. I received assistance from numerous colleagues and students in the preparation of this article. I would like to thank Professor Leah Wortham, Professor Peggy Maisel, Professor Ronit Haramati-Alpern, Professor Jeffrey Pokorak, Professor Patrick Shin, Professor Michael Rustadt, Dean Camille Nelson, Clinical Fellow Jamie Langowski and my research assistants Rachel Churchill and Brianna Whitney.

is a critical component of legal education worldwide.² Over the years funders, such as the United States government and private foundations, have devoted significant resources to developing clinical programs in countries around the world.³ Much of the funding for the global expansion of clinical education has come from the United States, and U.S. clinicians have expressed concern about whether we have pursued our efforts to expand clinical education globally with knowledge about and sensitivity toward the culture and legal system of the host country.⁴ This article argues for a new paradigm of global clinical education. Such a paradigm shifts the emphasis from a U.S. centric perspective, to a truly global perspective by which clinicians use comparative law theories to advance clinical pedagogy and practice on a global level.⁵ This article draws on the experience gleaned from an international clinical exchange between Boston's Suffolk University Law School and Israel's Haifa University as a source of data to inform its analysis and conclusions.

By exposing students to real life situations that require students to exercise judgment in disorienting circumstances, clinical education promotes learning by doing.⁶ Sending clinical students abroad as a

² See THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch ed., 2011) (detailing the history of clinical education around the world); John E. Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329, 329-30 (1996) (“[T]hose who run America’s law schools are engaged in a parallel debate over the shape and content of legal education. Some of the changes occurring in the way law is taught involve modifications in the traditional curriculum: [including] a greater reliance on clinical instruction”) *Id.* at 330. See also Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL’Y 111, 113, 116 (2008) (arguing that the emerging international clinical movement can promote access to justice globally); Leah Wortham, *Aiding Clinical Education Abroad: What can be Gained and the Learning Curve on How to do so Effectively*, 12 CLIN. L. REV. 615, 617 (2006) (advocating donor support for international clinical legal education programs and setting forth criteria for programs worthy of such support).

³ See Shannon M. Roesler, *The Ethics of Global Justice Lawyering*, 13 YALE HUM. RTS. & DEV. L.J. 185, 186-87 (2010).

⁴ See, e.g., Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLIN. L. REV. 131 (2008).

⁵ In an October 2011 article, Nitin Nohria, Dean of the Harvard Business School, wrote that “HBS would be derelict in its mission if it wasn’t preparing the leaders it educates to succeed in a global context.” Nitin Nohria, *Educating Business Leaders for a Global Century*, HARVARD MAGAZINE, Sept.-Oct. 2011. Nohria describes changes in the HBS curriculum, including a field immersion experience, in which students develop strategies relating to an international business issue, and then travel abroad to attempt to implement their plan. *Id.* The idea is to have the student realize that what they conceive in the U.S. will face unanticipated obstacles elsewhere in the world. *Id.* According to Nohria “This strategy of chasing knowledge around the world and bringing it back to our classrooms in the form of cases and other research has served us well and will remain the foundation of our global efforts.” *Id.*

⁶ See, e.g., Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and*

precursor to their clinical experience at home provides the student with an important, culturally disorienting experience that, ideally, will lead the student to think critically about his or her own legal system, and to be better prepared to understand the needs of clients at home. Empirical studies have shown that study abroad programs promote the very values clinical educators are promoting in the clinic, including self-reflection, cultural sensitivity, self-reliance, and critical thinking.⁷

From 2006 through 2011, Suffolk University Law School and the University of Haifa conducted such an exchange program: the Suffolk/Haifa Clinical Legal Education Program (“SHCLEP”).⁸ A small number of students from Suffolk participated in the clinical programs at the University of Haifa and were paired with Haifa students, who then travelled to Boston to participate in Suffolk’s clinical programs. The students worked with clients, engaged in research projects, toured program sites and engaged in professional and cultural activities in both countries.

Part I of this article examines the history of the globalization of clinical legal education. After maturing in the U.S. and in a number of other countries in the 1960s and 1970s, clinical education began expanding globally.⁹ Many American clinical professors travelled abroad and assisted in setting up new programs. Some of these clinicians have written articles describing their experiences, and some have voiced concern about whether U.S. efforts in expanding clinical education abroad is sensitive enough to the culture and legal system of

the Teaching of Social Justice in Law School Clinics, 2 CLIN. L. REV. 37, 51-52 (1995). Quigley asserts that clinical education provides students the opportunity to learn through experiences termed “disorienting moments.” *Id.* at 52. There can be many such disorienting moments in the course of a student’s clinical work. Quigley cites learning theorist Jack Mezirow for the proposition that the change that can result from a properly examined disorienting moment can transform the learner’s perspective and can “cause the learner to engage in critical thinking focusing on reassessment of societal and personal beliefs, values and norms.” *Id.* at 53. *See also*, Susan L. Brooks & Robert G. Madden, *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*, 56 N.Y.L. SCH. L. REV. 331, 358-60 (2011/2012) (citing various concepts relating to experiential learning that apply to aspects of clinical education as useful for inculcating students on issues of ethics and professionalism).

⁷ *See* Anastasia Kitsantas, *Studying Abroad: The Role of College Students’ Goals on the Development of Cross-Cultural Skills and Global Understanding*, COLLEGE STUDENT JOURNAL, vol. 38, no.3, at 441 (Sept 2004); Patience A. Sowa, “*How Valuable Are Student Exchange Programs?*” in NEW DIRECTIONS FOR HIGHER EDUCATION, 63-70 (2002).

⁸ Schlep is a Yiddish word that derives from the German word Schleppen, meaning “to drag.” Leo Rosten, *THE JOYS OF YIDDISH* 346-47 (1968). It means to drag or pull something along. *Id.* In my own experience, a schlep also refers to a long journey.

⁹ THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 2, at 1. Clinical programs existed in the U.S. as far back as the 1930’s, and by the 1950’s there were a handful of programs in operation. *See* Douglas A. Blaze, *Déjà Vu All over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 940-44 (1997) (section I provides an examination of the history of clinical education).

the host country.¹⁰

Part II of this paper examines empirical studies that suggest that study abroad programs, such as SHCLEP, promote the same type of values we are promoting in clinical education.¹¹ American students, who have been required to navigate living and studying in another country, will be better prepared to understand their clinical clients, many of whom are from different cultures and are faced with navigating an intimidating, unfamiliar legal system in this country. Moreover, students that participate in international clinical exchanges will more critically examine their own systems of justice.¹²

Part III of this article proposes the international clinical exchange program as a new model of international comparative clinical cooperation. This section discusses the goals of international clinical exchanges and makes the case that such programs allow a rich comparative clinical law experience in which all participants can improve their clinical methodologies. Clinical educators should engage in international exchanges because such programs will allow students to: 1) think more critically about their own system; 2) develop cross-cultural competence in an increasingly global legal market; and 3) use comparative law techniques to advance clinical pedagogy and practice on an international basis. In a pure clinical exchange, participants from both countries can work together to try to take the best approaches from each country. In the process, students and their professors can work to develop cross-cultural competence that they can take back and apply in their own clinics. Indeed, the analysis required to promote cross-cultural sensitivity is remarkably similar to that of comparative law analysis.¹³

Part IV is a case study that provides a paradigm of best practices for a global clinical exchange. The article describes SHCLEP and offers the reader insight into the issues involved in creating and running an international clinical exchange program. This part provides a

¹⁰ See, e.g., Richard J. Wilson, *Beyond Legal Imperialism: US Clinical Legal Education and the New Law and Development*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE*, *supra* note 2, at 137 (reaching the conclusion that the expansion of clinical education was not imperialistic); Genty, *supra* note 4, at 136 (exploring the differences in clinical law approaches in civil and common law systems and suggesting that “the history of the Law and Development and subsequent movements, and the analysis of the ways in which legal systems are transplanted, indicate that successful international collaboration in legal education involves at least two elements: a subjective attention to issues of cultural sensitivity in transmitting ideas, and a practical attention to the utility of these ideas to the receiving “host” country.”).

¹¹ See Kitsantas, *supra* note 7; Sowa, *supra* note 7.

¹² See Wortham, *supra* note 2, at 675.

¹³ Compare John C. Reitz, *How to do Comparative Law*, 46 *AM. J. COMP. L.* 617, 628 (1998), with Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLIN. L. REV.* 33 (2001).

roadmap of the critical variables for a successful international clinical exchange program. Briefly, the criteria necessary for a successful international clinical exchange, include: 1) a solid partnership based upon mutual respect and trust; 2) cultural sensitivity on the part of participants, including a thoughtful orientation for students prior to the program; 3) faculty and administrative support at both institutions; 4) resources for programming and for student participants; and 5) a system for open communication to allow rapid short-term adjustments in the program and longer-term reflection on program goals. In addition, there are cultural, language, and other localization issues as well as the difficult issue of who is to fund and administer the program. Clinical educators should use international clinical exchange programs to widen and globalize our perspectives on clinical pedagogy and practice and to provide students with the expanded world-view necessary to better understand the global nature of law.¹⁴

I. BRIEF HISTORY OF THE GLOBALIZATION OF CLINICAL LEGAL EDUCATION

Clinical legal education in the United States grew up around the social upheaval of the 1960s and early 1970s.¹⁵ Grants from the Ford Foundation through the Council on Legal Education and Professional Responsibility were instrumental in spreading clinical legal education in the United States.¹⁶ Concurrently, clinical education was in its nascent stages elsewhere, including Chile,¹⁷ Great Britain, Australia, South Africa, and Canada.¹⁸

Since its early days, clinical education has spread throughout the

¹⁴ See Frank S. Bloch & N.R. Madhava Menon, *The Global Clinical Movement*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE*, *supra* note 2, at 267-68. (“There cannot be a global clinical movement without a clear sense of what makes the movement a *clinical* movement. In other words, there must be some core qualities of clinical legal education recognized around the world that give the movement its substantive focus . . .”). *Id.* at 268. According to Bloch and co-author Menon, the core principles common to clinical education across the globe are professional skills training, experiential learning, and instilling notions of social justice. *Id.* at 268-70.

¹⁵ Jeff Giddings, Roger Burrige, Shelley A. M. Gavigan & Catherine F. Klein, *The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE*, *supra* note 2, at 3-4. See also Wortham, *supra* note 2; Wilson, *supra* note 10; Genty, *supra* note 4; Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 *CLIN. L. REV.* 465 (2008).

¹⁶ Maisel, *supra* note 15.

¹⁷ See Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 *CLIN. L. REV.* 515, 516-17 (2002).

¹⁸ See Giddings et al., *supra* note 15, at 3; David McQuoid-Mason, Ernest Ojukwu & George Mukundi Wachira, *Clinical Legal Education in Africa: Legal Education and Community Service*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE*, *supra* note 2, at 23.

globe.¹⁹ From clinics designed to provide legal assistance to the poor in Africa²⁰ and Eastern Europe,²¹ to public interest litigation clinics in India,²² to legislation clinics in China,²³ international clinical programs are diverse. International clinical legal education is now at a cross-road because programs are maturing all over the world, and there is significant discussion encouraging international clinics to shift their cultural perspectives away from being U.S. centric.

For example, Philip Genty raises the issue of whether U.S. clinical teachers have exhibited cultural blindness in promoting clinical education in other countries.²⁴ He posits that U.S. clinicians have sponsored a model of clinical education in Europe that works well in common law jurisdictions, but may not be appropriate in civil law systems.²⁵ In promoting pedagogical models that have worked in the U.S., are U.S. clinicians remaining open to clinical methods developed in other countries that they might learn from and adopt at home? I argue that they should. In an article discussing the global expansion of clinical education, Richard Wilson asks whether the export of clinical education to developing countries is legal imperialism.²⁶ While he rejects this notion, the question is framed in a manner that assumes that knowledge as to clinical methodologies is flowing in one direction. At the time Wilson wrote this article programs were getting off the ground in other countries and this was the appropriate question. Over ten years later, now that such programs are maturing, it is time to ask what we in the U.S. can learn from them. Peggy Maisel

¹⁹ As of June 20, 2011, there were 10 clinical law programs in Nigeria. *Nigeria University based Law Clinics*, NETWORK OF UNIVERSITY LEGAL AID INSTITUTIONS, http://www.nulai.org/index.php?option=com_content&view=article&id=152&Itemid=157 (last visited on Jan. 6, 2014). South Africa has at least 19 clinical law programs. See *Law Clinics*, ASSOCIATION OF UNIVERSITY LEGAL AID INSTITUTIONS, <http://www.aulai.co.za/law-clinics> (last visited Jan. 7, 2014); THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 2.

²⁰ McQuoid-Mason et al., *supra* note 18, at 24-25.

²¹ Mariana Berbec-Rostas, Arkady Gutnikov & Barbara Namyslowska-Gabrysiak, *Clinical Legal Education in Central and Eastern Europe: Selected Case Studies*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 2, at 53.

²² Bruce A. Lasky & M. R. K. Prasad, *The Clinical Movement in Southeast Asia and India: A Comparative Perspective and Lessons to be Learned*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 2, at 37.

²³ See Cai Yanmin & J. L. Pottenger, Jr., *The "Chinese Characteristics" of Clinical Legal Education*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 2, at 87; Yanmin Cai, *Global Clinical Legal Education and International Partnerships: A Chinese Legal Educator's Perspective*, 26 MD. J. INT'L L. 159 (2011) (describing the development of clinical legal education in China).

²⁴ Genty, *supra* note 4, at 9.

²⁵ *Id.*

²⁶ Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Education*, 22 PENN. ST. INT'L L. REV. 421, 428-29 (2004).

warned against U.S. law faculty traveling abroad having their visits be “one-sided attempts to transfer American expertise,” suggesting that such visits be cross-cultural collaborations.²⁷ For cross-cultural collaboration, the exchange program should be the preferred model.

Clinical educators should now use comparative law techniques to analyze and tap in to the knowledge base these programs have generated in clinical methodology. Clinical educators should mine the knowledge regarding clinical methodology accumulating globally for ideas to implement at home. One vehicle for such knowledge transfer is the clinical exchange program.

II. EMPIRICAL EVIDENCE SUGGESTS THAT INTERNATIONAL EXPERIENTIAL LEARNING PROGRAMS PROMOTE SIMILAR VALUES TO THOSE PROMOTED IN CLINICAL PEDAGOGY

Empirical evidence demonstrates that study abroad programs promote values such as cross-cultural sensitivity,²⁸ self-reflection, self-confidence,²⁹ self-motivation, critical thinking, interest in the well-being of others, and tolerance of ambiguity. Clinical legal education promotes the same values. Study abroad and clinical practice both expose students to the disorienting situations that are the hallmark of experiential learning. As far back as 1984, Norman Kauffman and George Kuh verified that exposing a small group of students to a learning experience in a new culture under the supervision of a mentor is an excellent vehicle for personal growth.³⁰ Clinical educators

²⁷ Maisel, *supra* note 15, at 66.

²⁸ See Jacqueline Murray Brux & Blake Fry, *Multicultural Students in Study Abroad: Their Interests, Their Issues, and Their Constraints*, JOURNAL OF STUDIES IN INTERNATIONAL EDUCATION, vol. 14, no. 5, at 508-09 (2010) (noting that students participating in study abroad “acquire a broader perspective about the human condition in the world,” including an appreciation for other cultures and increased tolerance in their approach to issues); Louise Harmon & Eileen Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 T. JEFFERSON L. REV. 69, 76-80 (study abroad is one of the best ways of gaining “cultural intelligence” and confidence and reducing dogmatism and ethnocentrism); Kitsantas, *supra* note 7, at 441; Sowa, *supra* note 7, at 63-70.

²⁹ See Lijuan Zhai & Scott D. Scheer, *Influence of International Study Abroad Programs on Agricultural College Students*, JOURNAL OF INTERNATIONAL AGRICULTURAL AND EXTENSION EDUCATION, vol. 9, no. 3, at 25 (Fall 2002) (finding that, among other things, study abroad promotes self-confidence and positive attitudes toward cultural diversity).

³⁰ Norman L. Kauffmann & George D. Kuh, *The Impact of Study Abroad on Personal Development of College Students*, Presented at the Meeting of the American Educational Research Association (Apr. 1984), *reprinted* by the Educational Resources Information Center of the U.S. Department of Education, No. ED45591, *available at* <http://files.eric.ed.gov/fulltext/ED245591.pdf> (noting that, “It seems that coping with novel situations in a foreign culture with the support of a mentor [faculty leader] and a small peer group experiencing similar challenges is a suitable vehicle for encouraging certain aspects of personal growth.”).

will recognize this paradigm for learning as the clinical method.³¹ Kauffman and Kuh confirmed that study abroad does indeed promote the above-described values.³² In one study, the authors interviewed nursing students that participated in short study-abroad programs and found that, for many of the participants, the experience of cultural disorientation had a strong impact on how they would treat future patients. In particular, these experiences caused students to adopt a more compassionate approach to their practice.³³ In addition, forcing the students out of their comfort zone and requiring them to adapt promoted self-awareness and caused them to examine their beliefs and values.³⁴ Such an examination leads to adaptive behavior that is reflective of maturing adults.³⁵

In another study, the authors surveyed Ohio State University students who studied in the Czech Republic, Mexico or Swaziland for an academic quarter and concluded that study abroad fostered cultural sensitivity, confidence, and a better perspective on their own culture.³⁶ Study abroad also increases the capacity for critical thinking and tolerance for ambiguity.³⁷ Learning to make decisions under ambiguous circumstances and learning from the result is one of the hallmarks of clinical legal education.³⁸

While students participating in longer-term international placements receive a greater benefit, relatively short-term programs, such as SHCLEP, also provide a benefit. One study found a positive impact on the development of participants' cultural awareness after less than two weeks abroad.³⁹

Survey data collected from SHCLEP program participants confirms the empirical research cited above.⁴⁰ Ten of eleven responding

³¹ See DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER* 36-40 (1987); Quigley, *supra* note 6; Brooks & Madden, *supra* note 6.

³² See Kauffmann & Kuh, *supra* note 30, at 15-16 (finding that study abroad increases a student's interest in culture and reflective thought, and that students participating in such programs gained self-confidence, an appreciation for cultural differences, and a tolerance for ambiguity).

³³ Michelle L. Edmonds, *The Lived Experience of Nursing Students Who Study Abroad: A Qualitative Inquiry*, 14 J. STUD. INT'L EDUC. 545, 553-54 (2010).

³⁴ *Id.* at 560.

³⁵ *Id.*

³⁶ See Zhai & Scheer, *supra* note 29, at 25-28.

³⁷ See Kauffmann & Kuh, *supra* note 30, at 2.

³⁸ See, e.g., Karen Tokarz, et al., *Legal Education at a Crossroads: Innovation, Integration and Pluralism Required!* 43 WASH. U. J.L. & POL'Y 11, 36 (2013) (“[O]nly clinical courses provide students with opportunities to engage in complex practice, to make judgments under conditions of uncertainty, to learn from experience, and to begin to participate in a professional community”).

³⁹ *Id.* at 555.

⁴⁰ Eleven of the twenty six SHCLEP program participants from both Suffolk and Haifa responded to the survey, or 42%.

students, or 90.9%, reported a moderate to great increase in interpersonal skills and in their ability to adapt to new circumstances.⁴¹ Nine of eleven students, or 81.8%, reported a moderate to great increase in personal growth in their ability to understand different cultures and in maturity and self-confidence. Eight of ten students, or 72.8%, reported a moderate to great increase in critical thinking skills. These are all highly important skills for students to develop.

III. THE CLINICAL EXCHANGE PROGRAM AS A MODEL FOR FUTURE GLOBAL CLINICAL COOPERATION: THE CASE FOR COMPARATIVE CLINICAL LAW

A. *SHCLEP Program Description*

In 2005, Stuart Rossman, the Director of Litigation at the National Consumer Law Center in Boston suggested the idea for a program in which law students from the University of Haifa would visit and participate in Suffolk’s Clinical Programs.⁴² In the fall of 2006, Suffolk’s clinical programs hosted three Haifa students. The Haifa

⁴¹ The survey data is as follows:

9. Describe your personal growth as a result of the exchange program and the Housing Clinic

	answered question					11
	skipped question					0
	Great	Moderate	Little	None	N/A	Rating Count
Critical thinking skills	27.3% (3)	45.5% (5)	18.2% (2)	0.0% (0)	9.1% (1)	11
Interpersonal skills	27.3% (3)	63.6% (7)	0.0% (0)	0.0% (0)	9.1% (1)	11
Maturity and self-confidence	63.6% (7)	18.2% (2)	9.1% (1)	0.0% (0)	9.1% (1)	11
The ability to adapt to new circumstances	63.6% (7)	27.3% (3)	0.0% (0)	0.0% (0)	9.1% (1)	11
Understanding of different cultures	63.6% (7)	18.2% (2)	9.1% (1)	0.0% (0)	9.1% (1)	11
Different perspective on American culture	36.4% (4)	45.5% (5)	0.0% (0)	0.0% (0)	18.2% (2)	11

⁴² At the time, Stuart was the Chair of the Combined Jewish Philanthropies Haifa-Boston Connection Steering Committee, which promoted a relationship between the cities of Haifa, Israel, and Boston, Massachusetts. In January of 2006, Ada Spitzer, the Vice President of the University of Haifa visited Suffolk and discussed the project. In March of 2006, Ronit Haramati Alpern, Director of Clinical Programs at the University of Haifa, toured Suffolk’s clinics, attended clinic classes, and met with our faculty in order to assist her in deciding whether to pursue the program.

students were each placed in a different clinical program. They attended class and were responsible for class assignments and journals. They worked on cases paired with a Suffolk student. As they could not be certified under the Massachusetts student practice rule, they did not appear in court or otherwise engage in direct representation of our clients. They also audited two non-clinical courses of their choosing. As part of the program, they engaged in various meetings and activities in the Boston legal community. At the end of the program, in reflecting on their experience, the Haifa students suggested that the program would be more powerful if Suffolk students could visit and participate in the clinical programs at the University of Haifa. In this way, the students could work together in both countries and participate in a true cultural exchange in which they shared ideas regarding clinical education and the law in general. It was the students' idea to make the program into an exchange.

The Universities entered into an exchange agreement that set forth their respective responsibilities regarding the program. They signed the initial agreement in the summer of 2006 to allow Haifa students to participate in Suffolk's clinical programs. The Universities signed a one-year agreement in 2007 to allow for the SHCLEP to become an exchange program, and in 2008, entered into a self-extending agreement to perpetuate the program. Suffolk designed the program as an international internship, allowing the Suffolk students to receive credit for the experience. Suffolk students traveled to Haifa in late May for one month, and stayed in the dormitories at the University of Haifa.⁴³ The timing was favorable for Suffolk students because it allowed them to participate in the program after their semester ended, but still allowed them the opportunity to return home and work over the summer.

Prior to leaving for Haifa, students engaged in an orientation process that included several meetings to prepare students for the journey to Haifa. The orientation sessions centered on issues relating to travel, insurance, and culture. One of the lessons drawn from the experience was that the orientation focused too heavily on logistics and should have focused much more on teaching principles of cross-cultural lawyering.⁴⁴

In Haifa each Suffolk student participated in a clinical program. Professor Haramati-Alpern taught a weekly clinic class and met with each student separately each week. Professor Haramati-Alpern assigned each student a research project, in English, relating to the clinic

⁴³ See *infra* note 71.

⁴⁴ See *infra* Section III (B)(3) and accompanying text.

work.⁴⁵ The students worked on projects ranging from research on underage marriage, to administrative work on behalf of Arab residents seeking zoning relief, to helping to build a community center for immigrant women from Ethiopia. Suffolk clinical students also completed projects in collaboration with local nongovernmental organizations. Students engaged in professional and cultural activities including visiting the Israeli Supreme Court and Knesset and an unrecognized Arab village,⁴⁶ meeting a justice of the Israeli Supreme Court, attending organizing meetings pertaining to issues facing the Druze community, and visiting a walk-in clinic for victims of domestic violence.

In Haifa, the Suffolk students met their counterparts from the University of Haifa who would travel to Suffolk in August. During their time in Boston, the Haifa students stayed with local families. Staying with families gave the Haifa students a different experience than that of the Suffolk students, who stayed in dormitories. Some of the home stays led to long-term relationships, and in one case, a contact a Haifa student made through his host family led to a post-law-school apprenticeship opportunity in Israel.

In the last year of the program we designed a course specifically for the Haifa students. Various members of the Suffolk faculty volunteered to deliver a lecture for the Haifa students on a variety of topics including constitutional law, law and religion, racial profiling, the rights of indigenous people, and nuclear non-proliferation. Haifa students audited two other classes of their choosing in addition to their clinic work. They attended weekly clinic classes, met weekly with their clinic supervisors, and worked on cases to the extent possible without certification under local student practice rules. In addition, students met with the program director each week to check in on their progress, and to get assistance in ironing out any problems that arose during the course of their stay. The students also participated in professional and cultural activities in and around Boston. They met with a justice of the Supreme Judicial Court and a state legislator, and gave presentations at local law firms. They visited Cape Cod, attended a Red Sox game, and hiked in the White Mountains.

⁴⁵ There was a significant need in the Haifa clinics for comparative law research on legal issues in English speaking countries. The students received specialized training in conducting international comparative law research from Rick Buckingham, one of Suffolk's reference librarians prior to leaving for Haifa.

⁴⁶ An unrecognized village is one that was built without official permission of the government and thus is denied basic governmental services such as electricity and water. See *Negev Bedouins and Unrecognized Villages*, THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL, <http://www.acri.org.il/en/category/arab-citizens-of-israel/negev-bedouins-and-unrecognized-villages/>, (last visited on July 30, 2014).

There were significant opportunities for improving cross-cultural understanding through the program. In addition, each year all of the students gave a presentation at Suffolk relating to their clinic work, highlighting the comparative aspects of the program. Finally, the students offered feedback relating to the program in an effort to constantly improve the experience.

The guiding educational principle of the program was to provide the students with a framework within which to view and evaluate the clinical methods and legal processes of each country, and to have a respectful and open debate about the attendant issues. In addition to Israeli Jews, the Haifa contingent included Arab students, both Muslim and Christian, and the Suffolk contingent included both supporters of Israel and of the Palestinian cause. As one might imagine, differences arose as a result of the political persuasion of the participants. This was at once a significant challenge and a significant opportunity for personal growth of the participants. One Arab student initially did not want to participate in a panel discussion that included remarks from an official of the Israeli Consulate. After reflecting on the decision, the student decided to participate and to voice her views publically, leading to a richer and more productive discussion. But the program was characterized much more by paradigm shifts in the views of its participants, rather than by conflict. It provided a rare opportunity for participants to examine their assumptions about each other by living and working closely together. The program ended in 2011 after four years due to the resource demands of the program, both in terms of time and funding. One goal of this paper is to allow others to learn from our experience in a manner that will hopefully lead to sustainable international clinical exchanges.

B. The Goals of International Exchange Programs

Clinical educators should engage in international exchanges because such programs will allow students to: 1) think more critically about their own system; 2) develop cross-cultural competence in an increasingly global legal market, and 3) use comparative law techniques to advance clinical pedagogy and practice on a global basis.

1. Developing Critical Thinking

Law students are so busy trying to learn the law, they do not often enough reflect on how it could be different.⁴⁷ Exposure to

⁴⁷ Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287 (2001). Aiken describes students' ability to think critically about the law on a spectrum. She points out that students often believe the law is static and knowable, and that every legal dilemma has a right answer that is "out there" waiting for the lawyer to find. *Id.* at 290-91. At this stage, the

clinical education in another country broadens the students' perspective and induces them to think more critically about their own systems.⁴⁸ The benefits of such interactions should not only be available to clinical educators working abroad, but should extend to our students through clinical exchange programs.

Scholars have long recognized that examining another legal system through comparative law analysis puts one in a better position to examine one's own system.⁴⁹ As different types of clinical program-

student is concerned with learning what the law is, rather than thinking more deeply about what the law could be. Next on Aiken's spectrum are students that recognize the inherent ambiguity in the law, but are paralyzed by this awareness and believe they cannot do anything to change this uncertainty. In her third and final stage on the critical thinking spectrum, which Aiken refers to as "justice readiness," the student "demonstrates an appreciation for context, understands that legal decision-making reflects the value system in which it operates, and can adapt, evaluate, and support her own analysis. At this stage, the "justice ready" lawyer can become proactive in shaping legal disputes with an eye toward social justice." *Id.* at 291.

⁴⁸ In a 1996 speech introducing its Global Law Program, NYU Dean John Sexton made the case for viewing American legal education through a global lens by the introduction to comparative law and the integration of international scholars and students into the life of the law school saying:

As we are called upon to consider the serviceability of American legal ideas and institutions in a range of settings, and for peoples of diverse cultures and values, we will be forced to question premises of our system that have escaped scrutiny until today. Now, with the collaboration of colleagues from around the world, we will probe more fundamentally not only whether our legal rules may be acceptable for others, but also how acceptable they have proved to be for us—how well we are doing when we are tested by much broader standards of effectiveness and durability and by more encompassing concerns and aspirations.

Sexton, *supra* note 2, at 330.

Leah Wortham, in her 2006 article on effectively promoting clinical education abroad, concurred with Dean Sexton, saying:

The more one learns about another country - culture, politics, laws, legal system - the more one recognizes one's own assumptions about how things are and should be. Our own culture usually remains invisible to us until we step outside to compare it to something else. To be effective in working with others, we need to be conscious of how another system differs from our own. Gathering such information not only makes us more effective in working with others but also can help us to look at our own system more critically.

Wortham, *supra* note 2, at 675.

Wortham also observes that exposure to global ideas through the failed Law and Development Movement spurred early works of the Critical Legal Studies movement. *Id.*

⁴⁹ See Edward J. Eberle, *The Method and Role of Comparative Law*, 8 WASH. U. GLOBAL STUD. L. REV. 451, 453 (2009) ("Generally, comparative law has been employed as a discipline to understand foreign law and culture. It is also used to understand our own culture better through the process of comparison to another culture."); Harmon & Kaufman, *supra* note 28, at 74 ("The most obvious benefit of summer abroad law programs is that the student learns about a different legal system, and in the process learns about his own."); James Gordley, *Comparative Law and Legal Education*, 75 TUL. L. REV. 1003, 1008 (2001) (suggesting the study of more than one legal system discourages dogmatism and promotes critical thinking); Reitz, *supra* note 13, at 628 ("[C]omparative law by definition takes one outside of one's own legal tradition and therefore facilitates the taking of an

ming proliferate internationally, it is time for clinical students and educators to employ comparative law techniques to examine the differences in such programming in order to promote a more critical look at their own methodologies.

Comparative law methodology consists of drawing explicit comparisons by carefully examining the similarities and differences between laws or legal systems. By paying particular attention to the reasons explaining the similarities and differences and to whether the principles examined are functionally equivalent, the method ensures that the comparativist is examining how each legal system works as a whole.⁵⁰ According to Edward Eberle, to consistently achieve a meaningful comparison, the comparativist must acquire the skills necessary to objectively evaluate a source of law, determine the external law, or the literal text of the source of law, determine the internal law, or how the law is actually applied in the culture, and use the data gathered in the analysis to shed light on the foreign legal system and on the comparativist's own system.⁵¹

This methodology is particularly well suited to a clinical exchange program, which requires the participant to travel to the other country, and to then host participants from the other country in her own. The structure of the program should allow the participants significant opportunities to gather data relating to the similarities and differences in clinical methodology, and to analyze and discuss the results. Ultimately, a participant will gain a new perspective on his or her own legal system because of exposure to the other.

In post-program feedback, SHCLEP participants confirmed that they had sought and benefitted from the opportunity for a practical comparative law experience and as a result became more critical of their own legal systems. When asked why the student chose to participate in the program, ten of the eleven respondents referenced gaining comparative substantive or clinical law experience.⁵² One student's goal was "to develop my own philosophical views and gain meaningful international comparative legal experience with the site visits and interactions with peers, professors, and practitioners within the clinics." Another student wanted to experience the differences in "the work of a student . . . [in] the clinical program[s] in each country." Other students reported being "excited to gain international and comparative legal experience," to "experience clinical legal education in another

exterior viewpoint of the law.").

⁵⁰ See Reitz, *supra* note 13.

⁵¹ See Eberle, *supra* note 49, at 457.

⁵² Survey responses are on file with author.

country, or “to gain some exposure to a foreign legal system.”⁵³ The survey responses confirmed that experience in the program caused students to reflect on their own legal system.⁵⁴ One student noted that “by understanding the legal system of a foreign country, it provided a deeper understanding of my own.” A student reflected that the program “gave me a perspective on the faults and inequities within the American legal system, but also in its strengths compared to the Israeli system.” Another student realized that “we are only beginning to incorporate international law and legal perspectives into our scholarship and practice of law.”⁵⁵

2. *Developing Cross-Cultural Competence*

Clinical exchange programs give their participants an important opportunity to increase cross-cultural competence through direct experience in a different country. In designing and implementing such programs, U.S. educators must move beyond the paradigm in which Americans are placed in the role of consultants to a new paradigm in which ideas are exchanged equally.⁵⁶ The exchange model offers the participants an opportunity to share equally in each other’s ideas, rather than presuming that one participant has a monopoly on the right way to approach clinical pedagogy or practice.

Designers of clinical exchange programs should address the issue of culture early on in the process of the exchange program. A solid orientation is a must for international programming.⁵⁷ Clinical educa-

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Maisel advocates for international efforts of U.S. law faculty that “amount to effective cross-cultural collaborations as opposed to one-sided attempts to transfer American expertise.” She recommends that participants in funding and developing international legal programming immerse themselves in the local context and culture, and maintain a high level of collaboration in the process. Maisel, *supra* note 15, at 465-66. James Moliterno, in describing his experience with international “American style” law programs, notes that there is too much emphasis on making such programs “American clones.” James E. Moliterno, *Exporting American Legal Education*, 58 J. LEGAL EDUC. 274, 277 (2008) (stressing the importance of collaboration in teaching and paying attention to culture in international programming). See also Teresa K. Brostoff, *Using Culture in the Classroom: Enhancing Learning for International Law Students*, 15 MICH. ST. J. INT’L L. 557, 557-58, 575 (2007) (noting the centrality of the idea of culture to the law, and advocating that to be most effective, U.S. professors should learn more about the culture and educational contexts from which international students come). Brostoff describes a process by which U.S. professors and their international students could improve communication by taking the time to learn the cultural context of their respective laws, which would in turn lead “towards international legal education that includes respect and understanding of cultural differences as an important part of learning about the law.” *Id.* at 575.

⁵⁷ Research suggests that an orientation stressing cross-cultural competence is a critical component of a study abroad program. See Kitsantas, *supra* note 7. Such “cross-cultural training programs build awareness of culture shock, develop interpersonal skills, facilitate

tors have long been aware of the importance of culture in lawyering.⁵⁸ Indeed a variety of professions have long recognized the benefits of teaching cross-cultural competence.⁵⁹ “Cross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by different subsets within ethnic groups.”⁶⁰ Lawyers who work with clients from differing cultures face potential challenges in establishing a rapport with the client, and thereby obtaining information and maintaining effective communications with the client.⁶¹ Clinical educators should train students to be aware that cultural differences can lead to differing interpretations of the same information, and arm them with techniques for addressing this phenomenon.⁶²

Professors Susan Bryant and Jean Koh Peters describe five habits of cross-cultural competence as follows: 1) degrees of separation and connection, in which the student lists similarities and differences between the student and the client in order to focus them on the possibility of cultural misunderstanding;⁶³ 2) the three rings, in which the student identifies and analyzes the “effects of similarities and differences on the interaction between the client, the legal decision-maker and the lawyer”;⁶⁴ 3) parallel universes, in which the student

cross-cultural effectiveness and increase cultural empathy.” *Id.*

⁵⁸ See, e.g., Bryant, *supra* note 13.

⁵⁹ *Id.* at 38-39.

⁶⁰ *Id.* at 40-41.

⁶¹ *Id.* at 42.

⁶² *Id.* at 42-43. Bryant cites Howell’s four stages of growth of cross cultural competence to describe the incremental process through which one must travel to attain cross cultural competence: 1) unconscious incompetence, in which the individual is unaware of the importance of culture and does not recognize its impact; 2) conscious incompetence, in which the individual is aware of the importance of culture, but cannot apply the appropriate techniques to interpret cultural difference; 3) conscious competence, in which the individual exerts conscious effort in order to apply the appropriate techniques to properly interpret cultural cues; and 4) unconscious competence, in which the individual naturally, and automatically appropriately interprets cultural similarities and differences in their practice. *Id.* at 62-62. This process illustrates the essential journey one takes in developing a skill. Donald Schon described this process as going from the indeterminate zones of practice to a higher level of thinking requiring professional artistry he calls “reflection-in-action,” to the smooth sequences of activity one does without thinking about it, he terms “knowing-in-action.” SCHON, *supra* note 31, at 22-43. Specialists in human error describe the same process in three stages, or levels of human performance: 1) the knowledge based realm, in which the actor encounters a problem or issue for which he or she has no stored contingencies; 2) the rule based realm, in which the actor encounters an anticipated problem, and must consciously apply a stored rule, or contingency plan, to address the problem; and 3) the skill based realm, in which the actor is able to perform the skill routinely without conscious effort. JAMES REASON, HUMAN ERROR 53 (1990). Clinical educators should design curricula to allow students to internalize as many activities as possible so as to become skill based activities.

⁶³ Bryant, *supra* note 13, at 64-65.

⁶⁴ *Id.* at 68.

searches for alternate interpretations of client behavior;⁶⁵ 4) pitfalls, red flags, and remedies, encourages sensitive communication with clients, identifying particular areas of concern;⁶⁶ and 5) the camel's back, in which the student is encouraged to directly address and account for stereotype and bias.⁶⁷

Clinical exchange programs should have extensive orientations that raise issues of cross-cultural awareness because program participants will not only be faced with navigating a different culture, but also a different legal system. Indeed, Bryant and Koh Peters' five habits of cross-cultural competence involve strikingly similar processes to comparative law analysis.⁶⁸ The first two habits, which require students to identify and analyze differences between them, their clients, and the legal decision maker, are virtually identical to Eberle's first two principles of comparative law analysis, to identify similarities and differences in legal systems, and to analyze the significance and reasons for the similarities and differences.⁶⁹ Reitz stresses the importance of paying attention to the political, economic, social and historical traditions of each society in conducting comparative law analysis.⁷⁰

Clinical exchange programs have the added benefit of introducing students to issues of cross-cultural competence before they even begin their own clinical experience.⁷¹ In this way, students can receive

⁶⁵ *Id.* at 70-71.

⁶⁶ *Id.* at 73.

⁶⁷ *Id.* at 77-78.

⁶⁸ *Id.* at 64-70; Reitz, *supra* note 13, at 626-28.

⁶⁹ Reitz, *supra* note 13, at 626-28.

⁷⁰ *Id.*

⁷¹ The students appreciated the importance of the cultural experience in developing communication skills. One student reflected that "[a]s attorneys, we are communicators, which requires understanding of others. Deeply experiencing outside cultures builds a solid foundation to engage with anybody." Another reported that the program was helpful in terms of "learning to work with people of different social and cultural backgrounds, understanding the impact of the power of the legal system to impact communities positively and negatively."

The way SHCLEP was organized, the Suffolk students travelled to Israel in the summer before they participated in their clinic at Suffolk. Participating students were typically finishing their second year of law studies. Students accepted into SHCLEP were automatically accepted into a clinical program at Suffolk for the fall. They spent a month in Israel in May and June working in the clinical programs at the University of Haifa. The students were assigned to a clinical program in Haifa and were paired with Haifa SHCLEP participants who later travelled to Boston for six weeks at the beginning of the fall semester where they participated in the clinical programs at Suffolk. The timing of the program worked because the spring semester at Suffolk ended in May, but did not end in Haifa until July, while the fall semester at Suffolk started in August, but did not start in Haifa until October. Thus, both sets of students were able to participate in the clinical programs of the other University at a time when their own University was not in session.

As a result of how the program was structured, SHCLEP students completed their

a primer on issues relating to cross-cultural lawyering, and then experience another culture themselves. This will better prepare students to serve a culturally diverse clientele when they return.

The survey of SHCLEP participants confirms that the students benefited from exposure to a new culture. Nine of eleven students polled, or 81.8%, reported moderate to great personal growth in their understanding of different cultures.⁷² While in Israel, American students worked on a variety of policy projects that expanded their exposure to different cultures, both in their clinics⁷³ and with local partner NGOs.⁷⁴ One student was placed in the Legal Feminism Clinic in Haifa. He participated in creating a community center for women immigrants from Ethiopia. There was an issue of domestic violence in the community. The women preferred to begin addressing the issue by creating a safe place where they could receive services. Another student worked in the Prisoner's Rights Clinic and assisted in preparing a petition to the Israeli Supreme Court asking the government to provide continuing education classes in prison in Arabic as well as in

studies in Haifa prior to beginning their clinic at Suffolk. This provided the students with the opportunity to delve into the issue of culture prior to beginning their clinics at Suffolk. Having had the disorienting experience of navigating another culture and legal system prior to entering the clinic, the students were better prepared to represent clients from other cultures going through similar cultural confusion with respect to the U.S. legal system.

⁷² See Survey, *supra* note 41; One student noted that participating in the program provided her with the opportunity "to embrace a new culture and understand its values, challenges, and world view." An American student explained that,

I was able to immerse myself in the Israeli culture through living at the university residence and having daily face-to-face contact with the local students. Moreover, participating in the activities organized by different clinics at the university I was able to get a deeper understanding of the challenges faced by the Israeli society and the legal system. The benefit I gained from the weekend cultural trips where I explored Israel and its history is also unsurpassed.

An Israeli student described the experience this way:

The program opened for us aperture for the experience to study abroad and the experience of clinical program abroad, trying to make the law as a helpful tool in helping others who's [sic] less fortunate. Beside that I think the program gave me the basic tools in understand [sic] the American system.

⁷³ Students participated in the following clinics in Haifa: The Clinic of Human Rights in Society, the Legal Feminism Clinic, the Clinic for Rehabilitation and Prisoner's Rights, the Arab Minority's Rights Clinic, the Public Defender Clinic, the Intellectual Property Clinic, and the Law & Social Change Clinic.

⁷⁴ The students worked with a variety of NGOs in Israel including the Association for Civil Rights in Israel (ACRI), The Legal Center for Arab Minority Rights in Israel (Adalah), Isha L'Isha (Woman to Woman) Israel's oldest grassroots feminist organization, and Woman Lawyers for Social Justice (Itach Maaki). They worked on various projects for these NGO's ranging from projects offering services to women, to working on behalf of disabled individuals, to working for the rights of the Arab minority in Israel. All of these projects allowed the students a window into the complexities of the legal issues facing the various communities in Israel and the importance of understanding the cultural perspective of the various groups.

Hebrew because although Arabic was also an official State language, such courses were only provided in Hebrew.

American students were able to develop comparative law research skills working on projects that required them to research how legal issues are handled in various English-speaking countries. One student conducted research on how various countries treat the age of consent to marry. In Israel, the legal age at which one could consent to marry was seventeen. Lay leaders from certain Arab communities decided to work with the Legal Feminism Clinic to educate the community about the consequences for women of marrying too early, such as the impact on their ability to continue their education and to be economically independent. Subsequently, the Israeli Knesset raised the legal age of marriage to eighteen years old.⁷⁵

Another American student worked in the Law and Social Change Clinic in Haifa and analyzed methods of affordable housing production in Sweden, France, Spain, the United Kingdom, Australia, Canada, and the United States. Researchers for the University of Haifa and the Technion University, Israel's equivalent to the Massachusetts Institute of Technology, were preparing a proposal to Israel's Ministry of Interior seeking funding to conduct further research into how localities might spur the development of affordable housing. This student was fluent in French, and as a result focused on affordable housing policies in France. Upon returning to Suffolk, she continued her research and wrote a paper as an independent study on affordable housing policies in France and how they might be applied in Israel. This paper was submitted to the Israeli Ministry of the Interior. This student received a cultural experience in Israel, and a comparative law experience related to French law. She continued on to pursue a dual Master in International Affairs and Law at the Paris School of International Affairs of Sciences Po and Georgetown University.

In Boston, Haifa students lived with local families. They participated in various clinical programs, including the Immigration, Family Advocacy, Juvenile Justice, and Housing and Consumer Protection Clinics. The students also attended non-clinical classes ranging from constitutional theory to intellectual property. Students met a Justice of the Massachusetts Supreme Judicial Court and a State Representative. The students participated in a small academic conference at which they shared and compared their experiences in clinical education in both countries. Their clinic work consisted mainly of working on individual cases. They conducted research, factual investigation,

⁷⁵ Lahav Harkov, *Israel Raises Minimum Marriage Age to 18*, JERUSALEM POST, Nov. 4, 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Minimum-marriage-age-upped-to-18-330610>.

and client interviews. They attended court hearings related to their cases. One Haifa student commented on how it was inspirational to meet and work on behalf of individual clients. In Haifa, she did not have this opportunity because there is no equivalent to the student practice rule.

Students will gain valuable skills in cross-cultural lawyering through exposure to other cultures in the context of a pure clinical exchange. Indeed, the clinical exchange model provides the structural framework for participants from each country to share and learn from each other equally.

3. *Employing a Comparative Law Approach to Advance Clinical Best Practices on a Global Level*

One purpose of comparative law is to attempt to identify and seek to universalize core legal principles.⁷⁶ While differences in cultures and legal systems in different countries may make it difficult to extract legal principles that can be applied universally,⁷⁷ there is much to gain from designing exchange programs that will allow participants to identify a common core of clinical pedagogies through their experience in different countries.⁷⁸ Clinical educators in countries with long-standing clinical programs should take advantage of the opportunity to be exposed to innovations in countries that are currently developing their programs.⁷⁹ Scientists share knowledge across international borders to advance human progress. Clinical pedagogy and practice can similarly advance through sharing of information across borders.⁸⁰ Clinicians should use comparative law techniques to advance clinical pedagogy and practice on an international basis

⁷⁶ See Eberle, *supra* note 49, at 453-54 (noting that “comparative law has sometimes entailed a search for universal principles of law that transcend culture, primarily in the field of private law, but with elements transforming public law as well.”).

⁷⁷ See, e.g., Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT’L L. 655, 694-98 (2008) (identifying a bare minimum universal common core of human dignity, but argues that various judicial interpretations of the human rights concept of dignity are inconsistent and highly dependent on local circumstances).

⁷⁸ See Bloch & Menon, *supra* note 14, at 268.

⁷⁹ KONRAD ZWEIGERT & HEIN KOTZ, *INTRODUCTION TO COMPARATIVE LAW* 14 (1987) (“[C]omparative law is the only way by which law can become international and consequently a science.”).

⁸⁰ *Id.* at 15 (“[C]omparative law can provide a much richer range of model solutions [for resolving social conflicts] than a legal science devoted to a single nation, simply because the different systems of the world can offer a greater variety of solutions than could be thought up in a lifetime by even the most imaginative jurist who was corralled in his own system.”). See also Ruti Teitel, *Comparative Constitutional Law in a Global Age*, 117 HARV. L. REV. 2570, 2575 (2004) (describing Zweigert and Kotz’s view of comparative law as a vehicle to legal truth).

through exchange programs.⁸¹

Clinical exchange programs enhance the learning environment for all students by encouraging new perspectives and a healthy exchange of ideas relating to law and social justice. The most significant example of this phenomenon arising from the SHCLEP Program came when one of the Haifa students began a process that led to a significant policy change in Massachusetts.

In Israel, clinical programs are more policy-based than case-based due in part to the fact that there is no equivalent of the student practice rule. This contrasts sharply with traditional American programs, in which the ability of students to practice is at the core of the curriculum.⁸² While Israeli clinical students do not represent individuals in court like their American counterparts, because their country is relatively young and small, the Haifa clinical students address many significant social issues on a policy level. They are routinely involved in drafting legislation submitted to the Keneset, Israel's parliament. In an exchange program, these differences can challenge the assumptions and practices of both students and clinical teachers. They can also lead to significant improvements in the pedagogy and practice of the host school.

A prime example of this kind of opportunity arose when one of the Haifa students participated in Suffolk's Juvenile Defender's Program.⁸³ Professor Kim McLaurin is the Director of the Juvenile Defender Clinic at Suffolk. At the beginning of the semester, she asked her students to observe court and to write a journal entry about the experience. Her American students wrote journals about the lawyers and the law. The Haifa student wrote about issues affecting the dignity of the juveniles in detention, including the fact that some of the detainees were hungry after having arrived in court without having had lunch. She also questioned why all the juveniles were brought to court in shackles if they were presumed innocent. She provoked dis-

⁸¹ Indeed, Zweigert and Kotz note that comparative law offers the observer a platform to learn to respect other cultures, to develop a better understanding of one's own legal culture, and to develop the critical skills to improve legal principles. They predict that: "The younger generation of lawyers, and probably their successors as well, will be faced with an unparalleled 'internationalization' of legal life." ZWEIGERT & KOTZ, *supra* note 79, at 20.

⁸² See *Student Practice Rules - Clinical Research Guide*, GEORGETOWN LAW LIBRARY, <http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm> (last visited Dec. 16, 2013) (a comprehensive guide to the various clinical practice rules).

⁸³ Each year, program participants from Suffolk traveled to Haifa and participated in their clinical programs for a month. In the fall, participants from Haifa participated in Suffolk's clinical programs. Each participant was assigned to a particular clinical program. This particular student was assigned to the Juvenile Defenders Clinic, which represents juveniles in criminal cases.

cussions in class about changing systems and drew upon her experience in her clinical program in Haifa. This student focused on the human elements of the experience, and then set about a process aimed at changing the shackling policy.

She first determined that the Massachusetts Department of Youth Services (“DYS”) was responsible for the shackling policy, and arranged a meeting with the Chief Legal Counsel of DHS, who was open to discussing the issue. The Haifa student left after six weeks, but Professor McLaurin and her students worked on the issue for over two years, and ultimately DHS abandoned the policy of presumptively shackling juveniles when transporting them to court. The current policy presumes that juveniles will not be shackled when transported to court unless the government can show evidence that the juvenile is a flight risk or a danger to his or herself, or to others.⁸⁴ This profound policy change in Massachusetts is an example of what Dean Sexton was referring to when he spoke of the benefits of sharing ideas with those from other cultures.⁸⁵ In Haifa, the majority of the clinic work is policy based. At Suffolk, although we engage in policy work, the majority of clinic work is case based. This Haifa student looked at the same circumstances with a broader, policy level view. This led to the change in the policy, and added a significant new dimension to the work of Suffolk’s Juvenile Justice Clinic. This also led Suffolk clinicians to be more mindful of possible policy solutions that arise from the clinic case work.

Clinical exchange programs work in both directions. The experiences students have abroad change their perspective and promote a more critical view of their own system when they return. Moreover, participants bring with them different perspectives that sometimes lead to positive change in the country and in the clinic they are visiting. We saw this phenomenon repeatedly on a smaller scale in the unique perspective that the Haifa students added to the discussion in their clinic classes.

IV. HOW TO BUILD A SUCCESSFUL INTERNATIONAL EXCHANGE PROGRAM

In many respects, SHCLEP was a resounding success. Overall, we had very positive feedback from the students. Students and professors from both Universities had the opportunity to travel to the other country, and to obtain valuable first-hand experience that often led to paradigm shifts in thinking about the other’s legal system or

⁸⁴ See Memorandum from Massachusetts Chief Justice Edgerton to Court Personnel, (Feb. 25, 2010), http://www.njcn.org/uploads/digital-library/resource_1525.pdf.

⁸⁵ See Sexton, *supra* note 2.

culture. Some students reported life-changing benefits. One Palestinian student commented on renewed hope for peace after living with a Jewish family in Boston. Suffolk students reported a completely new outlook on examining and being critical of the flaws in American law after being given the opportunity to participate in the policy-based clinics in Haifa. The students' learning was deepened by participating in a global experiential learning program with clinical education at its core. It is one thing to study in another country, and yet another to have the opportunity to engage with the people who are in need of legal advocacy and to engage in social justice work.

Any fair examination of SHCLEP, however, must include reflection upon the reasons the program ended. If the clinical exchange program is such a good model, why was it not sustainable? The answer lies in the criteria set forth in this section, and in the fact that we did not always measure up to the ambitions set forth in the criteria. Even more fundamentally, both parties did not always agree on the goals of the programming, and on whether these goals were being met. Faculty and administrative support was not always consistent, particularly on the Haifa side. At times, our communication was lacking. We struggled with the financial demands of the program. In addition, there is no getting around the significant time demands the program put on already busy professionals. We grappled with all of these issues through four productive and eye-opening years. As is apparent from my analysis so far, I am convinced the benefits far outweighed the difficulties, and that clinical programs can use this experience as a model for successful future programming.

A. Develop a Solid Relationship Based on Mutual Trust and Respect

The most important feature of a successful international exchange program is that participants must have mutual respect for and trust in one another. Inevitably, logistical issues or problems due to cultural differences will arise. These problems may be tackled successfully by partners who share goals and respect each other. U.S. educators in particular must be careful to be respectful and culturally sensitive toward their international clinical colleagues.⁸⁶ Clinicians from both sides of the exchange must be willing to learn from each other for the program to work well. The very structure of the clinical exchange promotes such mutuality. The model requires a move from the paradigm in which U.S. clinicians are cast in the role of the consultant to their international counterpart, to one in which the pre-

⁸⁶ See Maisel, *supra* note 15; see also, Wilson, *supra* note 17; Genty, *supra* note 4.

sumption is that both sides can learn equally from each other. This model cannot work without the participants working together based on respect and trust.⁸⁷ Mutuality of respect and understanding is critical in such relationships. In addition, clinical education has evolved to the point where we should move past the presumption that the U.S. clinician is the consultant.

SHCLEP was developed based upon such principles. Both student and academics participating in the program visited each other's countries, and had the opportunity to view the programs from within, which allowed a significant comparative law experience. What made the program successful for the time in which it operated was the significant efforts of the people involved in both Haifa and Boston, who showed extraordinary commitment to looking after the students and making the program work.

In their article, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, Professors Louise Harmon and Eileen Kaufman describe lessons learned from Touro's summer law program in India.⁸⁸ They point out that the experience improved dramatically when they included four students from India in the program. They report that the presence of the Indian students added an important perspective and depth of experience that was lacking without them.⁸⁹ The exchange model adds even greater depth and perspective because together both groups of students experience each other's culture and legal system. There is symmetry to the structure of the program that

⁸⁷ Peggy Maisel points out that in the past, "One of the key ways legal education has become more integrated worldwide, as the trend toward globalization intensifies, is through visits by U.S. consultants to overseas law schools." She goes on to say that "[A]s is true in other spheres, while practitioners and academics from the developed world such as the U.S. are often in the role of imparting rather than receiving expertise, such exchanges will not be successful unless a mutuality of respect and understanding is achieved." Maisel, *supra* note 15, at 504.

⁸⁸ See Harmon & Kaufman, *supra* note 28.

⁸⁹ Harmon and Kaufman describe the addition of the Indian students to the program as follows:

Their presence has undeniably raised the level of intellectual discourse in the classroom and has introduced a competing point of view that allows our students to experience India from the inside out. We are no longer an insulated group of American law students peering out the window at India. India has entered the program's classroom and has ceased to be an abstraction. Our students make new friends and come face-to-face with their peers and counterparts in a distinctly similar, yet foreign culture—that of the law school. India has become associated with names, distinct personalities, and smiling faces. Our students have universally embraced the Indian law students, and the two groups interact on all levels—intellectual, cultural, and social. Both inside and outside the classroom, the Indian law students have added depth to our understanding of India and its laws and culture, and have brought to our discussions their own unique, internal perspectives. It is now impossible for us to imagine the India summer law program without the NUJS students.

Id. at 152-53.

does not prefer one group of students over another. As a result, the message conveyed to the students is that they are equals who have an equal amount to learn from each other and from each other's country and legal system. Harmon and Kaufman also note that teaching in a summer law program allows for the professors to get to know the students in a way that allows deeper teaching to happen.⁹⁰ The clinical law exchange can only involve a small number of students because clinical education necessarily involves a very small student-to-teacher ratio, usually eight students per teacher. SHCLEP never had more than eight or nine participants, four or five from each country, and thus allowed the teacher to get to know each student and to tailor the learning to the student's needs.

To be successful, an exchange program requires faculty and administrative support at both institutions.⁹¹ It was critical to have a general consensus between the institutional players in order to get the program off the ground and to keep it running smoothly.

B. Funding the Initiative

Obviously, any new programming requires a commitment of resources. The most significant commitment of resources required for a clinical exchange program comes in the form of the time commitment of its organizers. Numerous administrative responsibilities fall on the organizers, from the visa process, to arranging housing, to recruiting and advising students, to designing and participating in programming and other activities relating to the program, all in addition to time devoted to substantive instruction. A clinical exchange program also requires a significant financial commitment. There are costs associated with travel and programming, such as airfare, hotels, books, and the cost of academic presentations relating to the exchange. In addition, students participating in the program will have expenses relating to travel, room, and board in the other country, which could be a significant bar to participation if not subsidized.

We received a grant from Combined Jewish Philanthropies of

⁹⁰ *Id.* at 83.

⁹¹ *Id.*; Leah Wortham lists three requisites to a successful clinical program abroad, including the support of local faculty in the design, administration, and teaching of the program. *See* Wortham, *supra* note 2, at 655-56. Prior to beginning SHCLEP, we met with Ada Spitzer, the then Vice President of the University of Haifa, and with Professor Ronit Haramati-Alpern, Haifa's Director of Clinical Programs. We also met more than once with Haifa's then law dean, Eli Salzberger. On the Suffolk end, myself, Jeff Pokorak, Director of Suffolk's clinical programs, Clinical Professor Ilene Seidman, and Associate Dean Marc Perlin were all significantly involved in this project. The other two factors that Wortham lists are direct experience with poor people, and competent and sincere individuals implementing the program. *Id.*

Boston (“CJP”), which we used to help defray the cost of the program to the University and to the students. Each student received a stipend from the grant for this purpose. The cost of room and board for the students was low, as the Suffolk students stayed in the dormitories in Haifa at a cost of approximately \$600 per month, and the Haifa students stayed with families in Boston, and did not pay for room and board. The largest grant we received was for \$10,000. This was enough to run the program, although it did not come close to covering all of the time spent by faculty and administrators to run the program. Had the program continued, we would have pursued a larger grant. CJP was also instrumental in assisting in finding the families with whom the Haifa students stayed.

It was also critical to have a degree of flexibility regarding the program in order to make necessary adjustments to improve the experience. It is critical that all parties, including funders, agree that the academic nature of the program is paramount, and that the focus should be on providing a structure to give the students a comparative law experience, and to encourage them to think critically. CJP was willing to fund the program with the understanding that it was an academic program.

C. *Complying with ABA Clinical Program Standards*

Standard 305 of the American Bar Association Standards and Rules of Procedure for Approval of Law Schools governs internships.⁹² In order to meet the standard, the program had to be evalu-

⁹² The text of Standard 305 is as follows:

Standard 305. STUDY OUTSIDE THE CLASSROOM

(a) A law school may grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.

(b) Credit granted shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student’s academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term “faculty member” means a member of the full-time or part-time faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

(d) The studies or activities shall be approved in advance and periodically reviewed following the school’s established procedures for approval of the curriculum.

(e) A field placement program shall include:

(1) a clear statement of the goals and methods, and a demonstrated relationship between those goals and methods to the program in operation;

(2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

(3) a clearly articulated method of evaluating each student’s academic performance

ated by a faculty member, have a clear statement of goals and methods, adequate instruction, and a clear method of evaluating student performance.⁹³ In addition, the standard requires periodic site visits, a method for choosing and evaluating supervisors, and an opportunity for students to reflect on their experience.⁹⁴

At least one Suffolk professor, and sometimes two, made a site visit each year during the program to ensure the students were receiving an appropriate experience, to assist those students with any issues relating to the program, and to assist in the teaching.⁹⁵ During these visits, we gave the students the opportunity to give us feedback on the program in the hopes of being able to correct any problems. Suffolk University Law School's clinical program required Suffolk students to prepare weekly reflective journals to document their work. I immediately reviewed and commented upon each journal. When setting up a clinical exchange program as an international internship one must be mindful of ABA guidelines and establish procedures for monitoring the program to ensure it is a sound academic experience.

D. Communication, Feedback and Reflection between Partners to Promote Quick Adjustments during the Program, and more Long-Term Improvements upon Reflection at the Program's Conclusion

International clinical exchange programs require communication and flexibility. Early on, we recognized that we were embarking into uncharted waters with this program, and that we would make mistakes, which would have to be quickly identified and rectified. There

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- involving both a faculty member and the field placement supervisor;
 - (4) a method for selecting, training, evaluating, and communicating with field placement supervisors;
 - (5) periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for field work in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;
 - (6) a requirement that students have successfully completed one academic year of study prior to participation in the field placement program;
 - (7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn four or more academic credits (or equivalent) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 305 (2013-2014).

⁹³ *Id.* at §§305(c), 305(d)(1)-(3).

⁹⁴ *Id.* at § 305(c)(4)-(7).

⁹⁵ In the third year of the program, Professor Ilene Seidman taught a separate mini course at the University of Haifa, which was one of the hoped for side benefits of conducting the program.

were several examples of this throughout the program. We made changes over the course of the program, including eliminating a substantive class for the Suffolk students in mid-program, because the students preferred to spend the time on their clinic work. Because of a process of reflection at the end of the program, as described above, we decided to take our students suggestion to make the program into an exchange. Because of this reflective process we made additional changes such as adding a class designed specifically for the Haifa students to the programming at Suffolk. Communication and feedback directed at improving the program mirrors the reflective practice that is one of the cornerstones of clinical pedagogy.⁹⁶ Introducing processes for reflection into the exchange program allows participants to contribute to the program's positive development and ensures the most vibrant program possible.

CONCLUSION

Clinical legal education has matured world-wide to the extent that clinical educators should be regularly exchanging ideas across borders, and moving toward a consensus as to global clinical best practices. The clinical exchange program offers a unique model that allows participants to engage in this process through the lens of comparative analysis. Students and clinical educators participating in such exchanges have the opportunity to engage in thoughtful exchange of ideas relating to clinical methodology and substantive law.

The hallmark of clinical legal education is learning by doing. Clinical students learn by being put into disorienting circumstances with the proper support. Study abroad programs promote the same type of learning. Indeed, empirical evidence demonstrates that such programs promote cultural sensitivity, self-reflection, confidence, and critical thinking, the very values we are promoting in the clinic. What better way for a student to develop an understanding of what a client from another culture may be experiencing in our system than for that student to be first exposed to another culture, in which they learn for themselves what it is like to navigate an unfamiliar system.

SHCLEP participants reported a significant improvement in maturity and self-confidence, the ability to adapt to new circumstances, understanding of different cultures, and critical thinking and interpersonal skills. The model of pairing students who participate in each

⁹⁶ See, e.g., Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U.J. GENDER SOC. POL'Y & L. 161, 165 (2005); Amy L. Zeigler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575, 575 (1992) (arguing that "a structure which teaches skills of self-evaluation can be the core around which all experiential teaching activities are organized.").

other's clinical programs in different countries sends a message of equality and will lead to improvement in clinical methodologies and to positive policy changes in each country.

While SHCLEP lasted only four years, it had a significant positive impact on its participants, and beyond. From a policy change by which juvenile prisoners are no longer presumptively shackled in court in Massachusetts, to individual paradigm shifts for its participants, the program's impact will be a lasting one. The world is growing smaller. American clinical educators would be well advised to listen to their colleagues all over the world, and in so doing, hopefully learn new and better ways of educating students, and of having a positive impact on the most relevant social issues.

