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From Pedagogy to Partnership: Leveraging the Law Clinic to Institutionalize Cutting Edge Strategies in Transnational Labor Advocacy

The Centro de los Derechos del Migrante, Inc. -
University of Maryland School of Law Clinical
Partnership

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I. INTRODUCTION

In mid-February 2010, four students from the International and Comparative Law Clinic at the University of Maryland School of Law (ICLC) arrived in Zacatecas, Mexico to work with Centro de los Derechos del Migrante, Inc. (Center for Migrant Rights or CDM), a transnational migrant workers' rights organization.¹ Zacatecas is a central Mexican state at the heart of the transnational migratory stream between Mexico and the United States. Thousands of people from Zacatecas migrate every year to work in the United States in low-wage jobs on temporary worker visas. Tens of thousands more *zacatecanos* live in diasporic communities across the United States and beyond.² Though many temporary workers from Zacatecas and

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1. See *Course Catalog: International and Comparative Law Clinic*, U. MD. SCH. L., <http://www.law.umaryland.edu/academics/program/curriculum/catalog/coursedetails.html?coursenum=538Q> (last visited Mar. 31, 2011) [hereinafter *International Law Clinic*]; CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., <http://www.cdmigrante.org> (last visited Mar. 27, 2011) [hereinafter CDM WEBSITE].

2. Jude Joffe-Block, *Immigration Viewed From the Other Side*, BERKELEY R. LATIN AM. STUD. 18, 18–20 (2010), available at <http://www.clas.berkeley.edu/>

other Mexican states return to Mexico each year with work-related illnesses and injuries and stories of wage and hour abuse and discrimination, they face tremendous geographic, political, and linguistic obstacles that make it difficult for them to access the U.S. justice system from Mexico.³ The students' work has tangible effects on migrant workers' lives: workers recover stolen wages, receive care for on-the-job injuries, and learn how to protect themselves from exploitation before they depart for work in the United States. The Centro de los Derechos del Migrante, Inc. - University of Maryland School of Law clinical partnership uses an innovative transnational clinical education model to help bridge the transnational justice gap that migrant workers face and offers a groundbreaking model for clinical education. The partnership responds to the growing need for transnational lawyers and balances the priorities of the advocacy community with the pedagogical goals of a law school clinic.

These reflective comments respond to the questions posed at the *Re-imagining International Clinical Law* Symposium, using the CDM-ICLC model as a case study. The comments are organized in four parts. Part I briefly describes CDM, the ICLC's partner organization for the Mexico component of the clinical course. Part II describes the transnational dimension of the students' work and the pedagogical approach of the CDM-ICLC model. Part III highlights differences between the CDM-ICLC model and traditional law school clinic offerings. Part IV concludes with this author's vision for the future development of the CDM-ICLC model.

II. CENTRO DE LOS DERECHOS DEL MIGRANTE, INC.

CDM is an innovative, transnational organization with offices in Zacatecas and Oaxaca, Mexico, and Baltimore, Maryland, dedicated to improving the working conditions of Mexican-based migrants by reforming guest-worker visa recruitment practices in Mexico and remedying violations of workplace rights in the United States.⁴

Publications/Review/Spring2010/pdf/BRLAS-Spring2010-JoffeBlock.pdf
(discussing the number of zacatecanos living in the United States).

3. See Victoria Gavito, *The Pursuit of Justice Is Without Borders: Binational Strategies for Defending Migrants' Rights*, 14 HUM. RTS. BRIEF 5 (2007), available at <http://www.wcl.american.edu/hrbrief/14/3gavito.pdf> (reviewing the obstacles to justice Mexican migrant workers in the United States face).

4. CDM WEBSITE, *supra* note 1. As of April 2011, CDM will be moving its Zacatecas headquarters to Mexico City, though CDM will continue its work in Zacatecas.

With its transnational team, CDM seeks to end the abuses that temporary workers and other migrants suffer all along the migrant stream. In Mexico, temporary worker recruiters often charge migrants exorbitant and illegal⁵ recruitment fees to secure temporary “guest-worker” visas.⁶ Temporary workers thus arrive in the United States already saddled with illegal debt; they often work extraordinarily long hours for subminimum wages and live in deplorable housing conditions.⁷ Migrants who suffer abuse or get hurt on the job are frequently sent back to their home countries, where it is nearly impossible for them to access the domestic justice system or to seek relief in U.S. courts.⁸ CDM’s work responds to the reality that migrants cross political borders; the violations of workers’ rights that occur in the process of being recruited for work in the United States often result in continuing violations of their rights on the job.⁹ Moreover, when workers return home to Mexico, CDM provides a base of support for migrants, assisting the workers in accessing justice.¹⁰ CDM’s bi-national, multilingual, and multicultural team of outreach workers and organizers, policy advocates, and attorneys works with migrants in four program areas: outreach, education, and leadership development; intake, evaluation, and referral; litigation; and policy advocacy.¹¹

5. See 20 C.F.R. § 655.135(j) (2011) (requiring employers of H-2A workers to comply with the prohibition against temporary workers paying recruitment fees); 20 C.F.R. § 655.22(j) (2011) (requiring the same for employers of H-2B workers); see also MARY BAUER, S. POVERTY LAW CTR., *CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES* (2007), available at http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf (noting that recruiters typically charge workers thousands of dollars for visas and other costs); AM. UNIV. WASH. COLL. OF LAW & CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., *PICKED APART: THE HIDDEN STRUGGLES OF MIGRANT WORKER WOMEN IN THE MARYLAND CRAB INDUSTRY* (2009), available at http://www.wcl.american.edu/clinical/documents/20100714_auwcl_ihrcl_picked_apart.pdf?rd=1 [hereinafter *PICKED APART*] (discussing the exorbitant and illegal fees many recruiters charge migrant workers).

6. BAUER, *supra* note 5; see also 8 U.S.C. § 1101(a)(15)(H)(ii) (2006).

7. BAUER, *supra* note 5, at 9, 18–20, 37.

8. *Id.* at 25.

9. *The Binational Labor Justice Initiative!*, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., <http://cdmigrante.org/The%20Binational%20Labor%20Justice%20Initiative.html> (last visited Mar. 27, 2011).

10. *Id.*

11. *Programs*, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., <http://cdmigrante.org/Programs.html> (last visited Mar. 27, 2011) [hereinafter *Programs*].

III. THE TRANSNATIONAL DIMENSION AND PEDAGOGICAL APPROACH OF THE CDM-ICLC MODEL

The partnership between the University of Maryland School of Law International and Comparative Law Clinic and Centro de los Derechos del Migrante, Inc. began with the vision of “transnationalizing” the law school legal clinic. Students would have the opportunity to live and do legal work in the communities where migrant workers reside and to respond to the growing need for transnational lawyers to ensure that temporary workers and other migrants have access to justice even after they have returned home.¹² Because migrant workers often suffer continuing violations of their rights beginning at the point of recruitment in their home communities, migrant worker advocacy inherently implicates domestic law, foreign law, and international law, making it an ideal area to teach lawyering in a global context.¹³

A. CDM-ICLC Clinical Coursework

The CDM-ICLC partnership clinical coursework consists of three primary components: classroom instruction, pre-departure project work and case preparation, and full-time supervised clinical work conducted in-country with CDM. At the end of the course, students return to the classroom to engage in deep reflection and evaluation and wrap up their clinical work. Each component of the course is carefully constructed to complement the other two with the goal of fully engaging the students in a well-rounded, intensive intellectual and practical education.

12. Academics and practitioners have called for the development of transnational clinics to better prepare students to practice and respond to the needs of transnational clients. *See, e.g.*, Sarah H. Paoletti, *Transnational Responses to Transnational Exploitation: A Proposal for Bi-National Migrant Rights Clinics*, 30 U. PA. J. INT’L L. 1171, 1181–85 (2009) (proposing bi-national migrant rights clinical models that would employ domestic, international, and comparative law). Others have called for international human rights clinics to prepare the legal profession for globalized practice. *See, e.g.*, Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 506 (2003).

13. *See* Paoletti, *supra* note 12 (discussing how advocacy around labor rights requires lawyers and clinical law students to use domestic, international, and comparative law in transnational legal practice).

1. Classroom Instruction

The CDM-ICLC clinical experience begins by immersing students in an intensive six-week clinical course in their Baltimore, Maryland law classroom. Here, students receive substantive domestic, foreign, and international law instruction under the guidance of faculty and expert guest speakers.¹⁴ The course also incorporates relevant training that enables students to develop practical lawyering skills. For example, students take part in simulations where they engage in role-play and practice their interviewing skills and receive feedback from their peers. All clinical students participate as a group in a core class that introduces them to relevant topics and theory in international and comparative law. Together, students are expected to work toward a general understanding of international human rights law, cultural relativism, case theory, interviewing, and project planning, among other topics.

The Clinic simultaneously organizes country-specific meetings for students destined for Namibia, China, or Mexico, where their in-country supervisors lead in-depth discussions on issues directly relevant to their regional context and assigned casework.¹⁵ Mexico students working on legal advocacy for migrant workers learn to apply U.S. wage and hour, discrimination, and workers' compensation laws; temporary worker regulations; and international labor treaties and laws, including the North American Agreement on Labor Cooperation, to their cases. These meetings encourage students to contemplate rights under Mexican law and possibilities for employing international law in their advocacy strategies. The students also meet with several experienced clinical faculty and attorneys from a variety of low-wage worker advocacy organizations.¹⁶ With the support of these attorneys, the students develop their practical lawyering skills and prepare for the day-to-day

14. The students studied international human rights instruments such as the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71 (Dec. 10, 1948), and labor rights agreements, including the International Labour Organization conventions. They also evaluated how domestic courts, such as the Constitutional Court of South Africa, have enforced social and economic rights.

15. The Clinic previously offered placements for students to work in China, Mexico, and Namibia. The 2012 Clinic is slated to offer placements for legal work in Mexico and Namibia. *International Law Clinic*, *supra* note 1.

16. Among the advocates who participated in the course were Greg Schell of Florida Legal Services, Inc., an experienced farmworker attorney, and Earl Brown of the Solidarity Center.

responsibilities they assume as full-time clinical students working with CDM in Mexico.

i. Pre-Departure Case Preparation

The CDM-ICLC partnership is especially designed to allow students to hit the ground running when they arrive in Mexico by providing them with significant pre-departure casework. From the earliest possible moment, students are immersed in the physical aspects of the case, from document review and drafting to case strategy sessions with CDM staff.

In 2010, after careful deliberation over various possibilities that would balance the needs of both the ICLC and CDM, the Clinic assigned the Mexico students to two cases and a project concerning abuses faced by temporary workers. One case, *Vazquez v. Alewelt*, involved investigating potential wage and hour, health and safety, and visa fraud claims on behalf of a group of temporary migrant construction workers.¹⁷ The clients, all of whom were from Zacatecas, had been recruited to work in the United States as temporary workers for a construction company. Some of the clients were leaders of the *Comité de Defensa del Migrante* (Migrant Defense Committee), a leadership development and organizing initiative of CDM.¹⁸ All of the clients were charged unlawful recruitment fees for their jobs in the United States, and each paid hundreds of dollars for visa interviews, visas, transportation to the U.S. Consulate, and recruitment services. While many of the workers arrived in the United States and worked for the company, they subsequently reported hundreds of hours of overtime missing from their weekly paychecks. Several migrants suffered preventable workplace injuries. After one worker died in a tragic workplace accident, his widow joined the case to fight for just compensation for the wages her husband had earned but never received. Still other workers, who had been forced to pay recruitment fees and other costs to secure their name on a recruitment list, were ultimately never hired and thus considered themselves defrauded.

During the first week of the clinic's intensive course that year, the author supplied the students with an extensive file containing

17. *Vazquez v. Alewelt*, No. 3:10-cv-00087 (S.D. Iowa filed July 9, 2010).

18. See *The Committee for the Defense of Migrants (Comité)*, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., <http://www.cdmigrante.org/Committee%20for%20the%20Defense%20of%20Migrants.html> (last visited Mar. 27, 2011).

hundreds of pages of documents secured through Freedom of Information Act (FOIA) requests as well as interview files for eleven of the clients. While still in the United States, the students reviewed the case file and investigated both the employer and the legal framework governing the construction industry. After acquiring sufficient background on the applicable laws, the students then began independent investigations in which they secured further documentation through online research and arranged a visit to an administrative law judge's office in the U.S. Department of Labor in Washington, D.C. In the final phase of their pre-departure preparation, the students began arranging follow-up interviews with the workers and planned the first client meeting for the week they arrived in Mexico.

B. *Clinical Experience in Mexico with CDM*

In Zacatecas, the students worked rigorously on their cases involving temporary workers from Mexico who had suffered tremendous abuses both in the temporary worker recruitment process in Mexico as well as in the U.S. workplace. The students met face-to-face with the temporary workers in the workers' home communities, where the workers spoke openly about the conditions that they had endured in the U.S. workplace. Students investigated the workers' legal claims and met with the migrants to clarify facts about their workplace experiences and to discuss and consider legal strategy developments. The students worked closely with CDM's legal and outreach teams to craft a legal strategy that responded to the particular needs of the clients. Then, they wrote complaints and extensive legal memoranda in preparation for filing the workers' case in a U.S. court.¹⁹ In the end, the law students honed their skills in the following areas: problem solving, interviewing, client counseling, presentation, facilitation, legal research, and legal writing in a variety of contexts—transferable skills that will serve them well in their professional practice.

When the students arrived in Zacatecas, they prepared with CDM's legal and outreach teams to meet with the construction workers about their potential cases.²⁰ The students developed detailed questionnaires for interviews with workers to supplement the information they had received from CDM's general intake forms and

19. *Vazquez*, No. 3:10-cv-00087.

20. Because the students' work contributed to litigation that is ongoing, these comments describe the students' work in broad strokes.

to gather key facts to support the legal claims they had begun to research in Maryland. The students met with the workers in their hometown of San Antonio del Ciprés, a town of about 3,000 people a few kilometers away from Zacatecas, to assess each client's goals and discuss potential advocacy strategies. Several workers expressed concern about the repercussions that a legal case might have on their future employment in the United States. After discussing the potential benefits and risks of litigation, the workers, together with the students and CDM's legal staff, decided that they would file a case in a U.S. court. The students then drafted case-specific representation agreements in English and Spanish and then read the agreement to each worker, ensuring that each client understood the terms of the agreement before signing.

The follow-up interviews the students conducted with the workers upon arriving in Mexico had raised new potential claims, including retaliation. Moreover, their visits to the clients' community—a place with very few local employment opportunities, where, for many, a visa to work in the United States offers the only sure avenue to income—helped the students understand the gravity of the clients' concerns about retaliation. The students understood that if the recruiter for the construction company chose not to recruit in this community because the workers had participated in a case against the employer, it might not only harm the potential plaintiffs, but their neighbors and families might also suffer. In response, the students investigated these new claims and contemplated strategies to prevent retaliation, conducting extensive legal research and drafting memoranda. The students and CDM's legal staff met regularly to discuss the ongoing research and to develop a strategy to pitch to potential local counsel in the United States. The students then drafted a complaint and organized conference calls with potential local counsel, describing in detail the clients' claims, including possible Racketeer Influenced and Corrupt Organizations Act (RICO)²¹ claims, trafficking claims, contract claims for violations of the job order (which required the company to comply with all local laws), state law claims, and violations of Article 28 of Mexico's *Ley Federal de Trabajo* (federal labor law).²² Local counsel filed the case

21. 18 U.S.C. §§ 1961–1968 (2006).

22. See Artículo 28, 1 Apr. 1970, *Ley Federal del Trabajo [LFT]* [Federal Labor Law] (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/125.pdf>; Complaint, *Vazquez v. Alewelt*, No. 3:10-cv-00087 (S.D. Iowa filed July 9, 2010) (alleging violations of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801–1872 (2006), the Fair Labor Standards Act, 29 U.S.C. §§

in the Southern District of Iowa, and this year's students are currently considering whether they can affirmatively depose the workers in Zacatecas.

For the other workers—the defrauded recruits who had paid hefty fees and never made it to the United States—the students turned to the local knowledge of CDM's Zacatecas staff. After considering several strategies, the students and CDM's legal team decided that these workers, with the support of the other migrants who had worked in the United States, would meet with CDM contacts at a local human rights commission office. This office, at CDM's request, was then able to help the clients file fraud claims in Mexico.

While the litigation in the U.S. federal court was directed at the behavior of the construction company, the workers also wanted to raise awareness about the high recruitment fees and the failure of governments to address recruitment issues. After extensive discussions, the students and the workers decided to draft a petition to file with the Mexican National Administrative Office of the North American Agreement on Labor Cooperation within the Mexican Secretary of Labor and Social Provision under the petition process to enforce the provisions of the North American Agreement on Labor Cooperation (NAALC), which is the North American Free Trade Agreement (NAFTA) Labor Side Accord.²³ This petition focuses on the failure of the U.S. government to adequately enforce the minimum wage laws applicable to temporary workers, particularly with respect to the negative effect of recruitment expenses on minimum wages. To address the myriad implications of the petition, including political and strategic considerations, the students spoke with others who had filed petitions. Through their conversations with attorneys and allies in the labor movement and non-profit organizations in the United States and Mexico, the students began to better understand the composition of the National Administrative Offices (NAOs), which are housed within the respective labor ministries of the Mexican, Canadian, and U.S. governments, and the implications of filing a petition with these Offices.²⁴ In the strategic

201–219 (2006), and the Iowa Wage Payment Collection Act, Iowa Code § 91A (2009)).

23. North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, Sept. 13, 1993, 32 I.L.M. 1499.

24. *The National Administrative Offices*, COMM'N FOR LABOR COOPERATION, <http://www.naalc.org/english/nao.shtml> (last visited Mar. 27, 2011).

planning meetings, the students addressed a number of concerns, ranging from decisions about timing and word choice (in English and Spanish) to which organizations they should approach to join CDM's effort.

IV. THE CDM-ICLC MODEL

The CDM-ICLC partnership produces benefits for both students and CDM, transnationalizing future lawyers and institutionalizing transnational strategies for worker justice.²⁵

A. *Benefits for the Students: Transnationalizing Future Lawyers*

While students in the Mexico component of the ICLC develop many of the same lawyering skills as students in a traditional domestic clinic—case strategy development, client interviewing and counseling, legal drafting, and so on—students in the Mexico component of the ICLC also have the opportunity to explore lawyering locally as well as in a foreign cultural setting and a transnational legal context. One of the clearest advantages that this international clinical setting affords CDM-ICLC students is that, as young lawyers in a globalizing age, students trained in an international clinical context undoubtedly graduate with highly marketable skill sets. From a client-oriented, public-interest law perspective, however, there are important subjective benefits to be gained as well. Most notably, in this author's experience, clinical law students who work with CDM in-country undergo the kind of rare personal development found in highly effective lawyers with a keen instinct for sympathetic and inspired advocacy. Frequently, students with intense in-country clinical training continue to sustain relationships with CDM beyond the extent of the Clinic, develop an awareness of the broader social, political, and economic context of their casework, and, in evaluations, indicate a desire to maintain a long-lasting commitment to migrant worker advocacy.

The CDM-ICLC partnership is designed to provide students with a rigorous, hands-on experience as trusted members of a professional,

25. The transnational clinic model departs significantly from what some scholars have called a "Human Rights Clinic" model. *See, e.g.,* Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUM. HUM. RTS. L. REV. 527, 533–35 (2004) (defining a human rights clinic as one that focuses primarily on issues concerning international human rights law, rather than domestic law issues that affect international actors).

bi-national advocacy team. Like traditional law clinics, the CDM-ICLC model develops fundamental lawyering skills through practice with interviewing and intake methods, case development, research, and strategy sessions. Students enrolled in the Mexico component of the Clinic, however, also gain experience with nuanced legal analysis, complex problem-solving, frequent client contact, and, where possible, application of these lessons to policy advocacy, all within an authentic international context. As a bi-national organization with a multi-pronged approach to migrant worker advocacy, CDM truly affords students a unique opportunity to become involved in creative lawyering. From their initial classroom training and throughout their in-country clinical work, CDM-ICLC students were required to call upon U.S. domestic, foreign (Mexican),²⁶ and international law to best conceive an approach to migrant workers' rights violations. In one instance, when complications arose for traditional legal avenues in the construction worker case, students were forced to abandon their comfort zones and begin the process of filing a complaint under the NAFTA Labor Side Agreement. This change in tactic required the students to constantly communicate with their clients regarding the role of their clients' personal and group interests under these different strategies. The students discussed case strategy with the clients, evaluating the risks and rewards of filing a NAFTA Labor Side Accord complaint. They explained that the complaint process would not conclude with the monetary compensation that the workers had hoped to receive through the U.S. civil law system. They supported the workers' decision to pursue the complaint, however, because of the system-wide change that it could achieve in improving U.S. workplace conditions for other temporary workers. The students explained that the complaint would highlight the severe flaws in the temporary worker system, marshalling the clients' experiences in recruitment and the U.S. workplace. The students had prepared a special retainer for the clients for the NAFTA complaint, which the clients signed.

26. The experience working with Mexican law could be strengthened, and CDM is currently engaged in major efforts to enhance this experience for the Clinic students. First, CDM recently added Lilian Lopez Gracian, a Mexico-trained human rights lawyer, to its team. Second, CDM is working with the Universidad Autónoma de Zacatecas (Autonomous University of Zacatecas or UAZ) and the University of Michigan to establish a trafficking clinic at the UAZ. The CDM-UMICH-UAZ partnership brings additional expertise in Mexican law and the Mexican legal system to CDM's work, which will directly enhance the students' experience.

The cases presented required that the students analyze the possibilities and limits that U.S. law afforded to their clients and weigh the benefits of adopting organizing or policy-based strategies in lieu of a more traditional legal approach. On this point, 2010 CDM-ICLC student participant Juan Rossi was particularly candid, saying:

The clinic provided me with a good perspective on the American legal system by being exposed to different legal systems and [a] different way of thinking. For example, with regard to some of the labor laws, we spoke to different officials, and we saw what labor laws are different and could understand why enforcement issues are different and how they wouldn't work in our system.²⁷

For students like Juan, the ability to navigate between international legal contexts lends him a competitive advantage over other law students—including other clinical law students—without such diverse knowledge who will be vying for the same jobs in a couple years' time. In a rapidly globalizing world, legally “bilingual”²⁸ students will be—in fact, already are—in high demand by corporate and public interest organizations alike. During the *Re-imagining International Clinical Law* Symposium, Carl Minzner discussed the marketability of lawyering skill sets developed in an international context:

There is consequently an unexploited niche for a comprehensive effort to teach students what it really means

27. E-mail from Juan Rossi, Student, 2010 CDM-ICLC, to author (Jan. 23, 2011) (on file with author) [hereinafter Rossi].

28. At this moment, the author feels it necessary to highlight the language skills that in-country clinical law students frequently develop while working with clients, conducting outreach, working in CDM's office, and generally through their daily experience in Mexico. While all students are required to possess a functional level of Spanish before participating in the Mexico component of the ICLC program, and while some arrive with Spanish language fluency, there are certain language abilities that few Spanish speakers achieve without an immersion experience working in-country. Mexican migrant communities, like all language communities, frequently speak with unique vocabulary patterns and mannerisms when referring to work or migration experiences that are rarely found outside of the migrant worker context. Understanding not only the literal meaning, but the *client's intended meaning*, is crucial to obtaining an accurate case history, formulating affidavits, conveying information to other legal team members, maintaining a true record of events during depositions, and communicating with the client. Through the CDM-ICLC program, students are able to develop the necessary language skills to work with migrant worker clients and communities.

to practice work in a truly international environment. This is the key niche that international human rights clinicians should attempt to seize. Substantial international work is a major value-added experience that increases student marketability upon graduation, can help justify the corresponding debt load, and can help clinics survive the fratricidal law school budget wars which will erupt in an age of austerity. Two particular skills sets deserve focus, in addition to basic lawyering skills. First - actually operating in a foreign cultural context (ideally a non-European one). Second - working collaboratively with foreign entities/students. Both of these are the key skills to develop for American legal graduates seeking to work in a world that is shifting away from the United States (and the West).²⁹

To elaborate Minzner's second point, the importance of "working collaboratively with foreign entities/students," it should be noted that the CDM-ICLC program in 2010 differed from the China ICLC program.³⁰ The CDM-ICLC model did not directly focus on academic exchange between U.S. and Mexican clinical law students, although CDM recognizes the value of peer-to-peer contact for the purpose of enhancing the comparative aspects of the clinical experience. Rather, in 2010 the CDM-ICLC encouraged and expected students to take initiative in forging relationships with other local organizations, including CDM allies as well as local government bodies. On one particular occasion, the students convened an exchange with Mexican officials to discuss comparative law in the U.S. and Mexican contexts. Allowing students to take advantage of alternative lawyering opportunities in an environment that does not exclusively privilege the U.S. legal model provides for a rich and complex international clinical experience.

In addition to acquiring valuable professional skills, many students derive indispensable personal benefit from their experiences abroad. CDM confirms that of the students with whom the organization partners, those who spend significant time in-country typically develop a better understanding of the issues facing CDM's

29. Carl Minzner, *International Clinical Law* (Nov. 2010) (unpublished manuscript) (on file with the Maryland Journal of International Law).

30. Students in the China component worked in teams with Chinese law students from the Central University of Finance and Economics Law School in Beijing, China to develop a handbook analyzing the legal framework for microcredit programs in China.

clients, are usually more connected to their casework, and generally are more engaged with their work than students who conduct work exclusively from their institutional campus.³¹ Upon returning to the United States, students participating in the CDM-ICLC program were engaged in a thorough evaluation process individually and as a group. In these sessions, students reflected as first-hand witnesses to the conditions in the workers' communities, conditions that play a role in the workers' decisions to migrate and affect their choices and preferences in their legal cases. Several students noted that before arriving in Mexico, they did not understand the living and working conditions that migrants confront in their home communities. Some, like Kathryn D'Adamo, a student in the Mexico component of the ICLC last year, found that learning about the home realities of migrant workers changed her view of the clients' interests and, subsequently, her understanding of case strategy. Ms. D'Adamo noted:

Though I had done immigrant worker advocacy before the clinic, I was not able to fully appreciate the pervasive nature of employer control over workers' welfare until going to Mexico with CDM. There, we visited a community that was completely dependent on its link to U.S. jobs for its economic livelihood, and in turn, on the predatory and unscrupulous recruiter for those jobs who lived in their very community. We also witnessed firsthand the lack of economic opportunity in rural Mexico that drives many workers to the U.S., only to endure exploitation upon arrival.³²

As these students soon discovered, any case involving a migrant community that depends on a sole local recruiter for gainful employment requires careful analysis. In this case, any actions on the part of CDM or ICLC students that could be perceived as a threat to the recruiter might have caused serious, unintended consequences for the migrants' future employment prospects. For many of these

31. The bonding that occurs between students and their clients in the Mexico component of the ICLC program is not unlike that in human rights clinics. For example, in a reflective comment prepared for the *Re-imagining International Clinical Law* Symposium, Susan Akram reports that, in her experience, students who represent individual clients often develop deep connections with their work on those cases. Susan Akram, *The International Human Rights Clinic Re-imagined* (Nov. 2010) (unpublished manuscript) (on file with the Maryland Journal of International Law).

32. E-mail from Kathryn D'Adamo, Student, 2010 CDM-ICLC, to author (Jan. 14, 2011) (on file with author).

clients, migration was not only the best option but also the only option to prevent destitution. In this case, CDM-ICLC students learned to tread cautiously in client interviews, build community trust, and consider the regional dependence on migration when developing a strategy for legal action and timing.

Juan Rossi, himself an immigrant to the United States, was similarly overcome by his experience with Mexican migrant worker communities. In his statement, Mr. Rossi reflected on the impact an advocate's emotional connection to his client can have on his lawyering skills:

It is easy to read an article about the living conditions for many in Mexico, but it is so much different to go to their environment and see their home, their conditions, and their surroundings. When you see their conditions and witness their frustrations, you understand their motives, you feel their desperation. This helps you as an advocate and as a person. As an advocate, it helps you serve their interests; as a person, it helps you relate to their problems.³³

As is evident in the previous excerpts, CDM-ICLC students are able to deeply reflect on their experiences. While CDM-ICLC students are, to a large extent, a self-selecting group with an interest in broadening their education through international clinical work, the CDM-ICLC model is particularly attentive to opening dynamic and challenging spaces to foster students' intellectual growth and practical skills. One of the fundamental characteristics of the CDM-ICLC model is the multi-pronged approach to advocacy, which requires that students take part in organizing opportunities, meet with migrant worker leaders, and engage themselves in policy work on immigration and employment issues, in addition to gaining practical experience with traditional legal work. Through this process, students become intimately familiar with the stories of migrant workers and must reconcile this knowledge with a deeper understanding of the social, economic, and political context that produces systematic rights violations in the recruitment process and in U.S. workplaces. Often, this context has a very real impact on the way students learn to develop their advocacy strategy and in the way they understand the relationship between the Mexican legal system, U.S. legal system, regional treaties like NAFTA, and international law. Again, Mr. Rossi reflects on his experience in the ICLC with his experience in different law school clinics:

33. Rossi, *supra* note 27.

Working in other clinics has provided me with solid experience and understanding of relevant substantive and professional issues. The international clinic, on the other hand, has provided me a much broader experience. It has allowed me to experience another culture and another legal system. It has allowed me to understand the legal and social issues that we face as individuals and members of a larger community – both a national and international community. It has allowed me to experience and understand the wide-ranging scope of the advocate's role, and to appreciate the different media for social justice and change. It has helped me appreciate social and legal considerations beyond those implicated by representation of a single client or community.³⁴

Based on lessons learned from the 2010 CDM-ICLC experience and her previous work supervising U.S. law students in Zacatecas, this author concludes that students who spend time working in Mexico develop a nuanced understanding of the issues facing their clients and of the advantages and pitfalls of employing legal and non-legal advocacy strategies. To this end, the in-country experience not only allows students to develop a working knowledge of relevant legal structures on both sides of the U.S.-Mexican border, it also creates a unique opportunity for students to hone their cultural competency and develop personal relationships with migrant worker communities to assess the best possible course of action for their clients throughout the development of the case. Lastly, it produces students who are likely to build careers in migrant worker advocacy or related fields.

B. For the Organization: Institutionalizing Transnational Strategies

Relationships with law school clinics greatly expand CDM's capacity to respond to issues facing migrant workers. Transnational workers' rights organizations are greatly underfinanced and lack the support of most major government institutions and large foundations. Law students bring their energy and intellect to challenging cases requiring cross-border advocacy, and the partnership brings the promise of institutionalizing transnational advocacy. While CDM has relationships with several law schools, the relationship established by the CDM-ICLC partnership is unique in that it brings additional institutional resources, credibility, and continuity to this relatively

34. *Id.*

new area of legal work. Moreover, it empowers CDM as a partner, giving the organization greater ability to balance its priorities and leverage the resources of the Clinic.

Key to the unique benefits of the CDM-ICLC model is the structure of the institutional relationship, which enhances the credibility of CDM's groundbreaking, transnational model. A description of some of the key structural components of the relationship follows.

A Memorandum of Understanding governs the CDM-ICLC relationship. Pursuant to the Memorandum of Understanding, CDM and the ICLC jointly determine the legal cases and law-related projects on which students work.³⁵ This method of project selection, which involves input from both the University and the organization, ensures an in-depth discussion of what each partner can bring to the table, and it ensures that the projects are not only good learning opportunities but also that they do not create a vacuum when students leave. Thus, CDM proposes projects of high priority to the organization, and as a result, the organization commits to providing the necessary on-the-ground support for the students and the Clinic.³⁶ CDM staff not only work with law school faculty to develop the curriculum for the Clinic but also help train students before they leave for Mexico, ensuring that students are adequately prepared for their work in Zacatecas. Rather than "outsourcing" the work of the Clinic, this model creates a partnership between the institutions that allows each to realize its pedagogical, service, and advocacy goals and gives each institution some decision-making power and control over the relationship and work in which the students engage.

The CDM-ICLC relationship structure is very different from the relationships CDM has with other university clinical programs. In some instances, clinical programs have represented CDM. In others, clinical programs that already have a project in mind have approached CDM.³⁷ In yet others, CDM has approached clinical

35. Memorandum of Understanding (MOU) (May 4, 2010) (on file with author).

36. The MOU also provides criteria for the selection of student attorneys and requires that the students be fluent in Spanish.

37. See, e.g., Karen Sloan, *Grant Lets Law School Fight Human Trafficking in Mexico*, NAT'L L.J. (Oct. 11, 2010), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202473217194&Grant_lets_law_school_fight_human_trafficking_in_Mexico&slreturn=1&hblogin=1 (describing a partnership between CDM, UAZ, and the University of Michigan, after the University of Michigan received a \$300,000 grant from the U.S. Department of State to establish a human trafficking clinic). The

programs with case referrals. In the CDM-ICLC model, rather than being a client or simply a referral source, CDM is a partner in the case/project selection, a partner in the legal work, and a partner in the education, mentoring, and supervision of the students.³⁸ The partnership translates into a longer-term commitment to CDM's clients and work, ensuring that the Clinic will respond to consequences of the students' advocacy.³⁹

In addition to the valuable work of highly trained law students, the relationship with the University of Maryland lends additional credibility to CDM's innovative transnational labor advocacy. For a Mexico-based organization with a Spanish name, one that aims to change U.S. policies affecting the rights of migrant workers, partnering with a recognized U.S. academic institution gives the organization's work additional legitimacy in certain U.S. circles. Partnering with a U.S. academic institution with Maryland's reputation also gives CDM credibility in certain Mexican academic circles.⁴⁰

Another important resource CDM is able to leverage through this partnership is the expertise of law school faculty. Professors share their experiences and expertise with the students and CDM staff, which inspire students and CDM staff to be creative and consider "out-of-the-box" legal theories and strategies. For example, Professor Marley Weiss, who served as the Chairperson for the National Advisory Committee to the U.S. National Administrative Office for

students have assisted clients who were forced to work in hair braiding salons, restaurants, and in the commercial sex industry. *Id.* The clinic's fifteen students assist victims of human trafficking in criminal and immigration proceedings but also help them obtain services such as federal money to attend college. *Id.* The Director of the Michigan clinic said that the "[o]ne reason we started this clinic is that we didn't want to be restricted in the type of assistance we offer We are able to come at it from any direction we want." *Id.*

38. Although project-based, CDM's relationship with American University Washington College of Law's (WCL) Immigrant Justice Clinic more closely resembles the partnership model we have with the University of Maryland. One example is the relationship between CDM and WCL on a crab-worker women project. WCL students and CDM staff partnered on the design and drafting of a report, and post-report release, and worked to ensure adequate follow-up to the report.

39. Similarly, the partnership benefits the ICLC, ensuring that CDM can provide continuity of advocacy and enabling more flexibility in project and case selection.

40. Partnering with CDM also brings credibility to the work of the Clinic and the Clinic students; the Clinic may leverage the reputation of CDM as the Clinic builds relationships with other institutions and communities in Mexico.

the NAFTA Labor Side Agreement,⁴¹ was able to provide expert feedback on the students' NAFTA petition, while Professor Michael Millemann challenged students to consider consumer law theories.⁴²

Moreover, the CDM-ICLC model institutionalizes the transnational advocacy model that CDM practices and promises continuity to transnational migrant advocacy. CDM's transnational model challenges the status quo in the legal services community. Legal service providers (including clinics) frequently limit services to people who live within the provider's city or region.⁴³ This geographically constrained service model ignores the reality of temporary workers. It leaves them without access to the U.S. legal system when they return home, after having suffered an accident on the job in the United States or having worked without receiving proper pay. CDM dismantles the barriers to the U.S. legal system that transnational workers confront when they return home to Mexico by providing direct legal representation and referrals to Mexico-based migrants. The CDM-ICLC model extends the practice of transnational advocacy to the clinical setting, which prepares future transnational lawyers and encourages faculty to practice creative lawyering in a transnational context and to break the geographic barriers that restrict migrants from accessing justice.

The CDM-ICLC model promises continuity to transnational migrant advocacy. By engaging law students and the law school in this advocacy, future transnational lawyers are being trained and additional sources of support for migrant worker advocacy and organizing are being created. While neither the ICLC nor CDM have committed to the partnership beyond the 2011-2012 academic year, each partner can envision further development of the CDM-ICLC model.

41. *Faculty: Marley Weiss*, U. MD. SCH. L., <http://www.law.umaryland.edu/faculty/profiles/faculty.html?facultyid=137> (last visited Apr. 1, 2011).

42. *Faculty: Michael Millemann*, U. MD. SCH. L., <http://www.law.umaryland.edu/faculty/profiles/faculty.html?facultyid=082> (last visited Apr. 1, 2011). Among other public interest pursuits, Professor Millemann has been in charge of the Consumer Protection Clinic at the University of Maryland School of Law. *Id.*

43. *See, e.g., How We Can Help You*, MD. LEGAL AID, <http://www.mdlab.org/How%20We%20Can%20Help%20You> (last visited Mar. 27, 2011) ("Maryland Legal Aid offers a full range of free civil legal services to financially qualified low-income Marylanders.").

V. THE FUTURE OF THE CDM-ICLC MODEL

Although only in its second year, the CDM-ICLC international clinical model's experience to date suggests that, with some changes, it may be successfully reproduced in similar contexts and on a larger scale. The author envisions two primary directions for the program's evolution toward establishing a more effective program to meet both the ICLC's pedagogical objectives and CDM's organizational goals in coming years. To the benefit of both partners, the Clinic would ideally progress toward a year-round, truly transnational clinic in which students from participating law schools in both the United States and Mexico directly matriculate in the same course.

First, in its current life, the semester-long clinic produces some limits to capacity and continuity challenges for the host organization in Mexico. CDM greatly values the contributions of the ICLC students, who from the first day of class become involved in ongoing casework. In Mexico, they are immediately and unhesitatingly incorporated into the fabric of the organization's everyday functions. While the addition of four well-prepared, highly capable law students greatly expands CDM's capacity to adopt heavier caseloads and commit more ambitiously to projects, the loss of this extra manpower at the end of the semester can produce a four-person void in the legal support staff that CDM is hard-pressed to fill. At the least, the students' departure has the potential to disrupt the flow of the casework as new volunteers or staff must be trained to take on these projects. A clinical program that provides greater continuity between CDM-ICLC participating student groups would not only maintain CDM's capacity at a more relatively steady level but also provide opportunities for students to continue supporting projects begun during their CDM-ICLC experience. Making this possible, however, will require evaluation and consensus on both ends of the partnership to determine the best way to maintain a long-term relationship between CDM and ICLC students. Offering independent study opportunities, internships, or opening CDM's office in Baltimore to clinical student interns may allow participating ICLC students to continue their work with CDM, whereas encouraging outside matriculation of law students through the ICLC directly could create enough demand to warrant the addition of a spring semester or summer clinic. If two other law schools were interested in investing in this clinic model, the CDM-ICLC model could be opened up to those other law schools through a multi-party agreement that provides strong communication and coordination mechanisms.

Together with CDM, and in coordination with each other, each of the three law schools could take responsibility for coordinating one semester of the Clinic each year. For example, the ICLC would continue to coordinate with CDM during the spring semester, while law school A would take responsibility jointly with CDM for the fall semester; and law school B, for the summer semester.

Second, CDM-ICLC is aware that it lacks an important component of peer-to-peer exchange that is emphasized, and brings positive results, in the ICLC-China program.⁴⁴ Currently, law students participating in the Mexico program have limited opportunities for interacting with Mexican clinical law students in a professional setting. In the future, the author fully expects that peer-to-peer exchange will have a larger role in the CDM-ICLC experience. As partners with both the ICLC and the Universidad Autónoma de Zacatecas, CDM sees the potential for growing the clinical partnership in Mexico as well. As it evolves, the course will explore more deeply the comparative law, choice of law, and foreign legal practice issues presented by cases involving transnational migrant workers. Through these developments, CDM-ICLC will deepen the problem-solving components of the clinical program by taking into consideration Mexican legal strategies with more knowledgeable supporters in-country.

VI. CONCLUSION

The CDM-ICLC model institutionalizes important strategies for the transnational defense of migrant workers' rights and equips students with the necessary problem-solving tools to address the challenges of today's globalizing legal landscape. While providing students with the rigorous practical experience of a competitive legal clinic, the international component of the model also succeeds in developing the cultural competency and comparative legal knowledge required for highly effective transnational migrant worker advocacy. Still in its earliest phase, the Clinic seeks to pursue possibilities for greater continuity over the course of the academic year and create further opportunities for peer-to-peer exchange between U.S. and Mexican law students. In doing so, the Clinic will approach a true bi-national curriculum with a greater emphasis on comparative law. With this vision, the CDM-ICLC model will

44. See *supra* Part.IV.A (noting that the ICLC-China model, in part, focused on peer-to-peer exchange between U.S. and foreign clinical law students).

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continue to lay the pedagogical foundation for the twenty-first century defense of migrant workers' rights.