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Stephen A. Rosenbaum

Golden Gate University School of Law, srosenbaum@ggu.edu

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CLINICAL LEGAL EDUCATION IN AFGHANISTAN: NEXT STEPS

Stephen A. Rosenbaum¹
September 1, 2014

The law and Shari'a² faculties that make up the expanding Legal Education Support Program-Afghanistan (LESPA) network now have a critical mass of professors trained in the principles of interactive teaching and experiential education, and a number of students eager to practice professional lawyering skills and assist real clients. Many deans and other administrators are keen on the idea of hosting a legal clinic or an innovative educational model.

Piloting a clinical program requires a team of dedicated professors who are willing to be engaged and accountable, and to exercise leadership—some of whom have a background in practice or relevant field of substantive law. This team of junior and senior faculty members must remain in continuous and long-term contact with their peers and practitioners across the nation, and with clinicians in the Global South and North, through conferences, Skype calls and on-site exchanges for work, study and observation. This should include a partnership with the University of Washington School of Law for (1) study, clinical practice and clinic

¹ Visiting Senior Lecturer, University of Washington School of Law (2012-14); John & Elizabeth Boalt Lecturer, UC Berkeley School of Law; Lecturer, Stanford Law School. [srosenbaum@law.berkeley.edu]. The views expressed here are solely those of the author and do not necessarily reflect those of the University of Washington, LESPA the University of California or Stanford University.

² The terms “legal program” or “legal faculties” may be used when referring jointly to the law and Shari'a faculties/schools.

tutorials, (2) assistance from in-country administrative staff and (3) periodic visits by consultants who offer hands-on technical assistance and critique.

In addition, the legal faculty and university administrators need to nurture clinical education by facilitating changes in policy and practice that spur the development of new curricula, service learning and interdisciplinary and inter-university collaboration and exchange. An advisory body can be helpful with substantive law issues; facilitating contacts with governmental and non-governmental legal professionals; exploring short-term externships or field placements; public relations on- and off-campus; fundraising; and overall administration and direction.

Many policies and procedures can be plucked from clinics operating elsewhere in Afghanistan, or adapted from those in Central or South(east) Asia or across the globe. As for the actual clients and socio-legal issues to be addressed, data are already available from governmental, non-profit and academic sources, both international and Afghan. This should allow the start-up clinic to focus on (1) service areas (*e.g.*, criminal, women's issues, human rights) without reinventing the wheel on documenting the problem and (2) modes of advocacy and service delivery (*e.g.*, individual representation, mediation, lay education, policy analysis, externships).

The temptation to purchase durable goods will be great, whether donor-driven or grantee-generated. Rather than routine acquisition of equipment, new furniture and surplus books, the clinic should be much more strategic about ways for students, staff and clients to access information and to access a space for consultation, training and work. A basic floor of technology can be a tremendous asset, *viz.*, (1) laptops or desktop computers, a printer, photocopier, reliable Internet service, (2) a work space that is

within easy reach of clients, staff and students, and (3) a fund for local and long-distance travel.

An essential but arguably elusive goal for successful clinicians is to maintain a relationship with donors marked by candor and coordination of activities with other funders. Accountability on the part of grantees and contractors alike must go beyond ticking off boxes and producing glossy brochures. It also means that IGOs and NGOs should strive to quell the turf battles, secrecy and competition for funds. Genuine communication, cooperation and collaboration must be the order of the day for the ROL internationals and their local partners.

Finally, clinical legal education cannot be divorced from the rest of the curriculum. The groundwork should be accomplished through skills-based, interactive education, in moot exercises and competitions, and in clinics, both inside and outside the classroom. Clinical teaching ability is not something one develops by attending a single workshop, and the legal clinic is more than a room with a sign on the door.

LAYING A CLINICAL FOUNDATION

It may seem obvious at this point in time, but in an environment where indirectness³ and embellishment flourish, it is worth restating what is

³ A former development operative describes the “very Afghan way” of refusing a donor’s proposed project— *i.e.* “doing everything to signal [not being] interested short of actually saying ‘no’ to the donor’s face.” Sarah Han, *Guest Blog: Working in Aid: donor rule, funding flows and awkward ‘no’s*, Afghan Analysts Network (Apr. 2012) (*Working in Aid*) <https://www.afghanistan-analysts.org/guest-blog-working-in-aid-donor-rule-funding-flows-and-awkward-nos/>. Han continues: “Why didn’t we just say ‘no’? First, we wanted a relationship with that donor and worried that we’d risk never getting support from them in the future if we refused the project in question. Second, we didn’t want to admit our simple lack of capacity to take on another project. And third, culturally, saying ‘no’ does not come easy to many Afghans; even if they know they will not be able to produce what the donor wants. In any case, a straight, ‘no’ might not

actually meant by the term *Clinical Legal Education*. Described simply as “learning law by doing law...a method of instruction in which students engage in varying degrees in the actual practice of the law,”⁴ this term has also been defined as “professional skills training, experiential learning, and instilling professional values of public responsibility and social justice.”⁵ As one veteran clinician observed: “[I]f the goal is for [students] to leave law school with a personal and professional responsibility to act as problem-solvers for social justice issues, there is no substitute for actively engaging them in trying to solve some of those problems as law students.”⁶

The clinical concept, which has gained a foothold in common law and civil law societies, in the Global North and Global South, encompasses

have even gotten through – the donor seemed determined to have us run the project whether we wanted to or not.” *Id.*

⁴ T.O. Ojienda & M. Odour, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, INT'L J. CLIN. LEGAL ED., 49, 49 (citation omitted)(June 2002).

⁵ Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. UNIV. J. L. & POL'Y, 111, 121 (2008). Professor Bloch, the “Grandfather of Global Clinical Education,” adds that “access to justice is widely accepted as a central component” of clinical education. *Id.* at 111. *See also*, Frank S. Bloch, *Global Legal Education: The Role of Clinics in Legal Education Reform*, __ in GLOBAL LEGAL EDUCATION APPROACHES: SPECIAL REFERENCE TO THE MIDDLE EAST (MUTAZ M. QAFISHEH & STEPHEN A. ROSENBAUM, EDS.)(forthcoming 2015).

⁶ Katherine R., Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405, 433 (2002). The primacy of social justice in a clinical program has been passionately defended by some and tacitly sidestepped by others. Whether deemed essential or not, a social justice mission is generally recognized as a core clinical program value. *See, e.g.*, David McQuoid-Mason, *Teaching Social Justice to Law Students Through Clinical Legal Education and Community Service* _ in QAFISHEH & ROSENBAUM.

many formats, ranging from in-house, live-client⁷ settings in law schools to field placements or externships to simulation classes.⁸ In concrete terms, “clinics must provide law students with opportunities to work on actual court cases or otherwise assist real clients with their legal problems ... [and] give students as much responsibility and client contact as possible while providing close supervision and guidance...”⁹

Pedagogically, financially and logistically, the leap to an in-house clinic is great — at least in the initial stages of experiential education. “Legal Clinic” or “interactive teaching” may be bandied about like buzzwords, understood in name only— particularly in conversation with consultants or reports to funders. There is no university-level or national agreement on the use of interactive teaching techniques, as some do doubt the effectiveness of these teaching tools and how appropriate they are in the law school setting. Class size¹⁰ and standardized curriculum should not

⁷ For an explanation of the “live-client” clinical concept and detailed pedagogical guidance, *see generally* DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2002).

⁸ AALS Section on Clinical Legal Education, *Clinicians’ Desk Reference*, n. 2 (Apr. 2009). *See also*, Stephen A. Rosenbaum, *Beyond the Fakultas’ Four Walls: Linking Legal Education, Practice and the Legal Profession*, 23 PACIFIC RIM J. L. & POL’Y 395, 406, n. 63 (explaining broad definition of clinical education and training) (2014) (*Beyond the Fakultas’ Four Walls*); Suzanne M. Rabé & Stephen A. Rosenbaum, *A “Sending Down” Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. LEGAL ED. 296, 297, n. 2 (2010) (on the divide between “live clinic” and “skills” clinicians); and JEFF GIDDINGS, PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION 75-114 (2013).

⁹ “Standards for Law School Clinics,” 2011, adapted from Open Society Justice Initiative. (Appendix 4). *See also*, Richard J. Wilson, “Ten Practical Steps to Organization and Operation of a Law School Clinic” (Feb. 2004), a succinct and straightforward guide for new clinicians, which has been translated into Farsi and Dari. (Appendix 2).

¹⁰ *See, e.g.*, ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 132-33 (2007) (setting out methods of instruction including brain-storming, buzz groups,

inhibit innovation.

Perhaps a more useful term for what clinical educators desire—or what is feasible due to bureaucratic hurdles or the lack of teachers with a practitioner background—is “applied legal education,” *i.e.* a reflective and experiential learning process without the economic and efficiency pressures of the workplace, to help students understand how the law works in action.¹¹

The groundwork must first be laid through skills-based, interactive education.¹² Moreover, clinical teaching ability is not something one develops by attending a single workshop or Training-of-Trainers (ToT). In any event, clinical education cannot be divorced from the rest of the curriculum, confined to one professor’s *ad hoc* course load or an NGO-directed sideshow, but must be endorsed and embraced by the legal faculty and university administration.

demonstrations, free group discussion, problem-centered groups, syndicate method). These innovations are all adaptable to a large classroom.

¹¹ “See, e.g., *The 2010-11 Survey of Applied Legal Education*, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (May 6, 2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (stating that “applied legal education” includes live-client clinics under supervision of faculty member who is also a licensed attorney as well as “off-site” field placement programs in which students are simultaneously taught and supervised by law school faculty and practicing lawyers). On the importance of adopting different models, see e.g., Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 245 (1996); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and The Learning Curve on How to Do So Effectively*, 12 CLIN. L. REV. 601, 617 (2006); and Stephen A. Rosenbaum, *Clinique ToGo: Changing Legal Practice in One African Nation in Six Days*, INT’L J. CLIN. LEGAL EDUC. (Issue 17) 59, nn. 85, 120 & 128 (2012).

¹² The undue emphasis on the clinic as a *space* is perhaps best manifested by fixation on the fixtures, rather than the clinic as an educational and legal assistance strategy. Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERKELEY J. MIDDLE EAST & ISLAMIC L. 39, 43, 57 (2012).

There are three foundational objectives for a successful clinical legal education program:

● First, designated professors and other staff must be involved in the development and implementation of curriculum that incorporates interactive and other innovative teaching methods, including professional skills acquisition.

● Second, students must be engaged in classroom, co-curricular and extracurricular activities that allow them an applied educational experience.

● Finally, there must be institutional support from the Dean or other senior faculty or university administrators, and appropriate financial, personnel and/or material resources.

FACING CONTINUING CHALLENGES IN AFGHAN LEGAL EDUCATION

Normalizing curricular innovation is a long-term process that depends on a tenacious and mutually supportive group of colleagues.¹³ These are the people responsible for piloting new curriculum and who need extensive help to do so. A cadre of Afghan law and Shari'a faculty, most of whom obtained their LL.M.s at UW through LESPA and its antecedent, are in the forefront of the nation's nascent clinical movement.

Sadly, no clear and consistent picture emerges as to what is happening on the ground "clinically" at each legal faculty that is a part of the expanding LESPA consortium. Determining the physical existence of a

¹³ It is worth recalling that as recently as 2007, the post-Taliban judicial reform plan hammered out following the 2001 Bonn Conference was criticized for its failure to address legal education and access to justice, among other "huge gaps." ASTRI SUHRKE, *WHEN MORE IS LESS: THE INTERNATIONAL PROJECT IN AFGHANISTAN 200* (2012) (citing "devastating" report by former UN Special Rapporteur Cherif Bassiouni's team of experts).

legal clinic, or the parameters of an instructional and experiential program, depends on who one talks to and when. Usually an elaborate oral account of the clinic's status is provided by a member of the faculty.¹⁴ Sometimes there is a brochure, a handout or a room with books, equipment and furniture to attest to activity. Often, there is reference to the material and technical support lent by key legal reform NGOs. Still, it is difficult to distinguish what is sporadic, or peculiar to a particular faculty member, from what is operational and institutionalized. The one exception may be the Legal Clinic at Herat University, owing in large part to multi-year fiscal and technical support from Open Society Afghanistan (OSA).¹⁵ The clinic is distinct for (1) being housed, staffed, engaged in a multi-subject advocacy model and (2) offering a classroom component over a period of several years.¹⁶

There are a plethora of Access to Justice and Rule of Law organizations that provide technical assistance or training to law students,

¹⁴ That is the basis of most of my information, obtained in interviews in October-November 2012, and in conversation with LLM students from 2012 to 2014.

¹⁵ OSA is an affiliate of the Open Society Foundations, focusing on access to justice, women's rights and independent media. Its website boldly declares: "We are committed to supporting and defending civil society through the coming years of political and security transition in Afghanistan." <http://www.opensocietyfoundations.org/about/offices-foundations/open-society-afghanistan>.

¹⁶ It is worth studying the factors that have made the Herat clinic successful, notwithstanding that other Afghan faculties or universities may be reluctant to acknowledge the "superiority" of a program outside of their own. Professor Richard Grimes, Director of Clinical Programmes at York University School of Law, conducted a detailed review in 2009 and 2010 of the Herat clinic, under the auspices of the Open Society Institute's Afghan affiliate. Richard Grimes, *Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies* 14-20 [manuscript, Appendix 5] later published in 1 *ASIAN LEGAL ED. J.* 71 (2014). Grimes also briefly reviewed the University legal clinics at Al-Bironi, Kabul, Balkh and Nangahar. *Id.* 19-21.

or offer a practicum in which students are enrolled on a short-term basis. Some of them—*e.g.* Global Rights,¹⁷ International Legal Foundation,¹⁸ and TetraTech DPK¹⁹—operate clinics. These vary from on-going classes to occasional workshops. To the extent the NGO-affiliated clinics, practica or workshops operate in a parallel universe, but are not “owned” by (or integrated into) the law or Shari’a faculty, they will remain on the fringe, not treated as a full partner in the legal education enterprise.²⁰ It is incumbent on all legal faculties to establish relationships with NGOs operating in the same catchment area as their clinics,²¹ *e.g.*, IDLO,

¹⁷ I sensed from my February 2014 conversations with Attorney Abdul Mahir Hazim and other lawyers affiliated with the Global Rights Young-Lawyers-in-Training Program (<http://www.globalrights.org/afghanistan>) in Mazer e-Sherif, and Kapisa that they are working outside the structure of the university, or are running a “parallel” clinic in which law students at Balkh and Al-Bironi participate on a short-term basis.

¹⁸ The International Legal Foundation (ILF) has been providing representation to indigent defendants in the criminal justice system (<http://theilf.org/our-programs/ilf-afghanistan>) and supporting clinics. Grimes, at 19.

¹⁹ According to its website, TetraTech DPK works with faculties of law and Shari'a, under USAID’s Rule of Law Stabilization Program, to implement core curriculum and develop legal skills training, including moot court and legal clinics. Website visitors are informed that “[t]his legal education component is to be instrumental in creating a cadre of Afghan lawyers that have the much-needed professional competencies and legal skills that are critical to the development of a vibrant civil society.” <http://www.tetratedhpk.com/en/countries/11-asia/72-afghanistan.html>.

²⁰ An overabundance of international ROL organizations can be counter-productive, as when the introduced reforms are appended, but not “owned” and implemented by local agencies as a capacity strengthening strategy.” Rickard Zajac Sonnerholm, “In Search of a User Manual: Promoting the Rule of Law in Unruly Lands” *in* RULE OF LAW PROMOTION: GLOBAL PERSPECTIVES, LOCAL APPLICATIONS (PER BERGLING, JENNY EDERLÖF & VERONICA TAYLOR, EDS.) 208 (2009).

²¹ Based on a literature review, analysis and interviews, Analyst Sarah Han has provided a detailed overview of legal aid and defense attorney operations in contemporary Afghanistan, as well as the regulatory scheme and historical overview. Han, *Legal Aid in Afghanistan: Context, Challenges and the Future*, Afghan Analysts Network (Apr. 2012)(*Legal Aid in Afghanistan*), <https://www.afghanistan-analysts.org/?s=sarah+han>.

Norwegian Refugee Council and *Da Qanoon Gushtonky*.²² The uncertainty of continued funding and future technical assistance from donor agencies²³ is reason alone to share space, equipment and/or practitioner staff and to coordinate student training and delivery of legal services.

Veteran UK Clinician Richard Grimes has high praise for the Herat Clinic and offers a glimpse about what is happening at other Afghan university clinics.²⁴ Nonetheless, even his descriptions leave one wanting to know if there really is a *there* there when it comes to other universities' efforts.

²² The IDLO trains Afghan lawyers and paralegals throughout the country to provide civil and criminal legal assistance to the indigent (<http://www.idlo.int/what-we-do/initiatives/legal-aid-all-afghans>); the Norwegian Refugee Council (NRC) runs provincial Information, Counseling and [Civil] Legal Assistance Centers, with support from the UN High Commissioner for Refugees <http://www.nrc.no/?aid=9147716>; and *Da Qanoon Gushtonky* (DQG) provides free legal representation in criminal and family law cases and awareness-raising (<http://www.dqg.org.af/pages.php?pid=338>). Although these organizations operate independently of university legal clinics, the issues they address and the tasks their staff undertake are perfectly amenable to the clinical format.

²³ A United Nations humanitarian affairs officer reported that 90% of the civil-military teams had been closed down by the beginning of 2014. For example, US military-run Provincial Reconstruction Teams (PRTs) and Commanders' Emergency Response Programs (CERPs) were two of the civilian tools intended to generate stability through development. In 2012 alone, the US government had spent \$22 billion on contracts to sustain its operations. Aidan O'Leary, *2014 and beyond: implications for displacement*, FORCED MIGRATION REV. (Issue 46) 4, 4 (May 2014), avail. at <http://www.fmreview.org/en/afghanistan/oleary.pdf>. "The security transition thus marks the end of foreign military spending on development. While much of this spending was arguably poor value for money, it nevertheless oiled the machinery of governance and enabled Provincial Governors to deliver some services." *Id.*

²⁴ Professor Grimes conducted a survey of clinics under the auspices of the Foundation Open Society Institute Afghanistan [sic]. This included a "personal eye witness account" at Herat University and interviews with practitioners. The survey of another four clinics appears to be based on attendance at a meeting convened by Open Society in May 2012. Grimes, at 16-21.

Obstacles to developing law school clinics may have more to do with continued reliance on traditional legal *educational* models than with the country's particular legal culture, socio-cultural traditions, overall legal reforms or reverence for the Rule of Law. Classes are still almost exclusively devoted to theory, with minimal to no student interaction or opportunities for practical training.²⁵ The focus is on rote learning of a large number of subjects and students are taught “in an educational culture that is not student-centered, that is lecture-based, and that favors passivity and deference...”²⁶ This is not exceptional in post-Soviet Central Asia, where the widely used model of formal lectures is “generally focused on teaching students the rule of law rather than how to question, challenge or reform the authorities.”²⁷ Another commentator writes: “With this tiresome average course load, students sacrifice deep assimilation for superficial memorization, though all parties seem content with this performance due to the absence of any system of revision or evaluation.”²⁸

²⁵ Mohamed Serag, *Legal Education in Egypt*, 43 S. TEX. L. REV. 615, 616 (2002). Professor Serag of The American University in Cairo describes the status quo in his home country: “There is no interaction between professors and their students. As a result, memorization is expected to replace discussion. Admittedly, quantity of this sort obliterates quality.” *Id.*

²⁶ Kirsten A. Dauphinais, *Training A Countervailing Elite: The Necessity of an Effective Lawyering Skills Pedagogy for a Sustainable Rule of Law Revival in East Africa*, 85 N.D. L. REV. 53, 95 (2009). *See also*, M.G. Weinbaum, *Legal Elites in Afghan Society*, 12 INT’L J. MIDDLE EAST STUD. 39, 43 (1980).

²⁷ Michelle Leighton & Baktybek Keldibekov, “Reflections on Teaching Law: A Brief Comparison of Legal Education and Teaching Methods in the United States” (SSRN <http://ssrn.com/abstract=2156927>) (describing recent experience in Kyrgyzstan) 5-6 (2011).

²⁸ Serag, at 616.

The partition of Afghan legal education is perhaps its “most salient feature....”²⁹ While the faculties of Islamic Law and of Law and Political Science are logical outgrowths of dual systems of jurisprudence, their curricula largely fail to prepare students for the co-mingling of statutory law and Shari'a principles applied in most Afghan courts. Several courses offered in the two faculties in fact overlap in content. But, historically, few professors have held joint appointments.

Moreover, both faculties have long neglected to train students for vocations as lawyers or judges, and students have been frustrated by courses that they view as too general and impractical. Ill-prepared for either critical or creative thinking, this deficiency has been reflected in the quality of legislative drafting and legal research, as well as interpretation of laws.³⁰ As one student stated: "We learn a little about everything and nothing well."³¹ There is no doubt that students are now writing papers and some instructors are penning journal articles. However, questions remain about students'

²⁹ Weinbaum, at 42. To my knowledge, Professor Weinbaum's thorough study of the characteristics of education, and the vocational and professional environments of judges, prosecutors and lawyers, has not been updated. Anecdotally, it appears that many of his observations are still valid. However, Political Scientist Astri Suhrke and Clinician Richard Grimes have both offered recent observations about the status of the bar, the judiciary and the legal education establishment and post-Taliban efforts at national legal reform. SUHRKE, at 193-203 and Grimes, at 13-14. In addition, an independent research organization recently released a detailed report on the legal aid and defense lawyers' structure, politics and history in Afghanistan. Han, *Legal Aid in Afghanistan*. To better inform legal capacity building at the various legal faculties and planning by the Ministries of Higher Education and Justice (Legal Aid Department), it would be worthwhile to revisit the conclusions of Weinbaum's 1980 study by collecting current qualitative and quantitative data.

³⁰ Weinbaum, at 42-43.

³¹ *Id.* at 43.

research methodology and guidance, and whether faculty writing is tied to the curriculum or to jurisprudential development in Afghanistan.³²

Traditionally, members of the two faculties have not had frequent contact, professionally or socially, and their graduates have also pursued distinct career paths.³³ As part of an *undergraduate* institution whose mission is not simply training future attorneys, the Afghan law and Shari'a faculties have a duty to impart knowledge, skills and values to professionals who may serve society in many ways, and to generally prepare a citizenry for an inquisitive, informed and active life. Teaching students to think boldly and critically should be a priority in a society seeking to undo decades of autocratic or feudal rule, acquiescence or skepticism.

To keep pace with the changing curriculum and encourage students to embrace new methodologies and meet new competencies, the grading and evaluation of students must evolve beyond the conventional final exam. This means adopting an evaluation tool that measures performance.³⁴

³² Legal English Specialist Eisa Khan Ayoob Ayoobi observed recently that Afghan university students tend to excel in oral and aural skills, but few to none have conducted "qualitative research." LESPA, *An Introduction to Human Rights*, page vii (2012). Again, it would be useful to have a *current* assessment of how students are trained for drafting and research, and how much the scholarship produced by professors is encouraged and valued.

³³ Public prosecutors who graduated from the secular faculty have been assigned traditionally to a statutory court or one of the many district or appellate courts that hear civil and criminal cases. Their counterparts from the Islamic faculty were not ordinarily asked to represent the government before statutory tribunals, but would be appointed as judges or to posts in the Ministry of Education. Private attorneys have become general practitioners, who tend to identify largely with the Shari'a tradition, and only a handful have been fully conversant with Afghanistan's statutory laws. Weinbaum, at 41, 46.

³⁴ See, e.g., Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SOUTHWESTERN L. REV.1, 1 *et seq.* & appendices (2010)(describing a clinic model emphasizing apprenticeship methodology and assessment pedagogy). The Afghan Ministry of Higher Education, *National Higher Education Strategic Plan 2010-2014* ("Strategic

A critical mass of faculty members has now graduated from the UW Comparative Clinical Law Tutorial with hands-on knowledge, technical understanding of teaching methodology and an esprit de corps developed during their time together in Seattle. They have designed interactive course plans for subjects ranging from lawyering skills and civil procedure to international criminal law, women's rights and ethics.³⁵ Moreover, the first version of an *Afghan Legal Clinic Manual* was drafted by the Class of 2014 LLM students, which has the potential to be a valuable guide for budding clinicians.³⁶ There is also an increasing number of deans who are familiar with the subject matter and supportive of the clinical concept.

Plan") underscores the importance of the faculty "continually interrogat[ing] the art of teaching in order to improve and transform it. Once the quality assurance system is under way, evaluation of teaching and examinations will be a major part of its requirements.") *Id.*, *PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development* <http://www.mohe.gov.af/?lang=en&p=plan>.

³⁵ In 2012-13, LLM students (see, e.g., Aliullah Shefaju, Ghazi Hashimi and Wasima Badghisy) prepared sample plans or manuals and in 2013-14 their successors prepared a joint comprehensive *Afghan Legal Clinic Manual*. (Appendices 1 & 9). See, also, Charles Robert Davidson, *Introduction to Curriculum Development and Interactive Teaching Methods*, CURRICULUM DEVELOPMENT MANUAL: INTEGRATING INTERACTIVE TEACHING AND LEARNING IN EGYPTIAN LEGAL EDUCATION (ABA ROLI)(2011)(discussing curriculum development process and interactive teaching methodology), avail. at http://www.eltnd.com/index.pl/plans_courses. The ABA manual contains six sample course plans prepared by law faculty members from nine different universities. See also, GIDDINGS & David McQuoid-Mason & Robin Palmer, *African Law Clinicians' Manual* (2013)(Appendix 3).

³⁶ *Afghan Legal Clinic Manual* (2014). To be truly useful, this Manual should be translated into Dari (and Pashto) and revised annually, if not more frequently. The revisions could be jointly handled by future UW LLM clinic tutorial students and UW Afghan alumni. The *Strategic Plan* actually places very high importance on translation of textbooks and other materials and suggests that Afghan scholars working abroad or those studying or teaching in-country could be called upon to translate for a stipend. *Id.*, *PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development*.

However, knowledge and support do not always translate into action. For that reason, I recommend below a number of concrete steps—such as intensive networking, conferencing, on-line communication, visitor exchanges, materials collection amongst clinicians; campus technology upgrades; and genuine collaboration between the relevant NGOs, donor organizations and government ministries.

CONSCIOUSLY BUILDING CORE “CLINICAL” FACULTY

A successful clinical program requires: (1) introducing interactive teaching into the law and Shari’a curricula; (2) conducting a needs assessment with the help of local stakeholders; (3) engaging practitioners (lawyers and judges) in clinical activities; (4) determining the clinic formats; (5) establishing regional, national and international networks of clinicians and continuing to communicate with other clinicians and conduct on-site exchanges; (6) convening an advisory board composed of relevant stakeholders; and (7) meeting periodically with the Deans and University Administration. Faculties that gloss over some of these steps will have a harder time thriving.

Preferably, a working group is established, composed of senior and junior members from both legal faculties, as well as the prosecutor’s office and civil society at the district and/or provincial levels. Outreach to the bar and bench is also important. Historically, Afghan legal elites have exhibited little desire or capacity to organize and articulate their common interests.³⁷

³⁷ Weinbaum, at 41. In 1980, Professor Weinbaum noted that “[o]nly with an emerging respect for the rights of ordinary citizens and the growing complexity of statutory law” have more defined roles for the private bar and the prosecutor’s office been developed. *Id.* However, “neither [of these] specialt[ies] is highly esteemed, and the functions of private attorneys are poorly understood both within the legal community and by the wider public,” he wrote. *Id.* at 42. Whether this suspicion or indifference endures is a subject for further inquiry.

However, in recent years, the Afghan Independent Legal Aid Board (AILAB)³⁸ and Afghanistan Independent Bar Association (AIBA)³⁹ have shared a complicated and controversial licensing role, and oversight of legal education and clinics.⁴⁰

³⁸ The AILAB was established in 2009 to coordinate and provide oversight to the delivery of legal aid services in Afghanistan. It has licensed professors to practice law at some of the clinics. Grimes, at 19-21. However, it is unclear how the AILAB differs from the Legal Aid Organization of Afghanistan (LAOA), whose mission, since 2006, is to “provi[de] legal aid to indigent Afghans, by training the legal community, and by conducting research and advocacy to improve the Afghan legal system.” <http://www.laoa.af/>. LAOA’s donors have included the UNDP, UNICEF, Justice Sector Support Project (JSSP), NRC, ILF, IDLO, Italian Cooperation (ILC) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

³⁹ The AIBA is an independent, statutory body responsible for licensing, discipline, organization, and “general regulation” of defense counsel under the terms of the Advocates Law. It is governed by a general assembly of defense attorneys, and is not under the auspices of the Ministry of Justice (MoJ). The term “defen[s]e” does not seem to be restricted to attorneys handling *criminal* matters. The Bar also establishes “effective legal education programs” regarding national and international legal standards for advocates; ensures legal aid for individuals in criminal, civil and commercial matters and free legal services for indigent suspects; and provides “a variety of public legal awareness programs.” AIBA By-Laws, art. 2 (http://www.aiba.af/english/index.php?rcv_main=about%20us.html). Professor Grimes observes: “From personal discussions I have had with the chair of the Education Committee, the AIBA is highly supportive of the concept of legal Clinics and is willing to support Clinics through supervision and placements.” Grimes, at 21.

⁴⁰ For a detailed account of national legal aid policy and funding, and the role of the Legal Aid Board (AILAB), AIBA and MoJ, see Han, *Legal Aid in Afghanistan*, at 9-20. In a blistering blog posted the same date as her study was issued, Analyst Han charges that the Board “was born through a scantily researched paper, produced by a consultant with no Afghanistan experience and who did not adequately consult with [the] NGOs (which supply the vast majority of legal aid services across the country) to determine how the proposed changes might affect them. The donor that funded the implementation of the flawed research paper’s recommendations, and the organization it contracted to do the work, similarly cut out NGOs from the process. Not surprisingly, the Legal Aid Board has continued this trend and has consistently made decisions that attempt to limit the [NGOs’] influence in the field, belying the current strained relations within the legal aid community.” Han, *Working in Aid*.

The working group’s mandate is to develop a clinic concept and implementation plan for a pilot clinic and a substantive focus, and to consider whether the format should be a simulated clinical program (where students develop skills through hypothetical case studies), in-house services to “live clients,” an externship field placement clinic or a combination of all the above.⁴¹ Of course, a sustained focus on interactive teaching is also important to foster a culture conducive to a clinic, on the part of faculty and students alike. Co-curricular and extracurricular activities that are complementary to the legal clinic should also be encouraged, chief among them moot competitions.⁴² This is already popular with students and professors. Courtroom observation⁴³ is another activity that engages students who lack the time or may not yet be eligible for the clinic.

An advisory board composed of allies and other stakeholders could be very useful to the clinic. Its role could include advising on substantive law issues; facilitating contacts with government, NGOs and legal professionals; exploring short-term externships or field placements; public relations inside and outside the university; and overall administration and direction. Provided there are no internal or external restrictions, an advisory body

⁴¹ Rosenbaum, *Beyond the Fakultas’ Four Walls* at 409-12 (describing various forms in which schools adopt clinical legal education).

⁴² A variety of local, regional and national competitive team advocacy opportunities can be sought—specialized courts, negotiation, mediation, etc.—in addition to the well-established and popular Jessup International Law Moot Court Competition .

⁴³ Students could attend one orientation meeting where they would be provided a written checklist and guidance. After their observation and note taking, they might be required to conduct a peer review with one or more classmates. For some of the benefits of this activity, *see e.g.*, Emily Hughes, 28 WASH. UNIV. J. L. & POL’Y, *Taking First-Year Students To Court: Disorienting Moments as Catalysts for Change* 11 (2008). Perhaps court observation should be offered exclusively to 1st and 2d year students, who are otherwise ineligible for clinic or moot competition.

could also assist in fundraising for such things as: pedagogical and administrative materials, manuals and handouts in Dari or Pashto; photocopying; translation; a travel fund for students and faculty (local or beyond); amenities and refreshments; part-time administrative staff stipends; etc. Lastly, the advisory board, together with the university administration and other allies, could help the Clinic handle controversies that may arise in the community, or opposition from government or religious authorities.

Due to the typical top-down selection process, it may be difficult to assure that the chosen faculty members have sufficient preparation, *i.e.* an LLM awarded from UW in a program that includes experience in a clinic and a tutorial in clinical or interactive teaching pedagogy. Mere enrollment in a clinic abroad is not adequate preparation for actually administering or teaching in a clinic, much less piloting a new clinical program. The LLM student's clinical experience should be concurrently supplemented by a tutorial or seminar, and then followed by observations, mentoring and inter-university exchanges with other clinicians in the Global (North and) South.⁴⁴ In addition, each LLM graduate who plans to teach in a clinic upon return to his home university in Afghanistan should be assigned a UW clinical faculty member, or a Seattle-based practitioner, who would commit to a year-long mentoring relationship.⁴⁵

The clinical instructor should (1) have some knowledge and experience in the subject matter to which the clinic is dedicated or (2) collaborate in directing the clinic with a lawyer or academic staff who has a

⁴⁴ See, *e.g.*, Wortham, at 677-78 (human relationships and long-term collaboration are key to creating and sustaining clinical programs) & Rosenbaum, *Beyond the Fakultas' Four Walls* at 414-18 (importance of faculty-practitioner collaboration and mentoring).

⁴⁵ The commitment could be as simple as agreeing to Skype monthly with the returning Afghan faculty member and/or correspond regularly by email.

substantive law background. Equally important is retaining staff who have the motivation and engagement necessary to sustain the clinic beyond the tenure of a LESPA (or other NGO) consultant.⁴⁶ The clinics should also work more closely with the faculty-embedded English instructors and ALE workshop leaders to strive toward an alignment of curriculum, subject matter, written materials, staffing and instructional techniques.

While the concept of inaugurating a legal clinic in the abstract may be attractive to deans and university administrators, there may be a disconnect between the professors assigned to the clinic and their (senior) colleagues. There may be little genuine peer support for their trailblazing efforts and it is easy to underestimate the various disincentives for their participation. Helping to develop a clinic is not necessarily compensated by promotion in rank, release time from other teaching obligations or financial remuneration. Moreover, reforms that introduce new structures and practices are likely to be impeded by existing hierarchies of status and influence at the university.⁴⁷

Lack of compensation, in particular, can be a real obstacle in a country where the professoriate is not well-paid⁴⁸ and volunteerism is not

⁴⁶ Professors should be evaluated by their peers and by their students, a suggestion that may be novel in the Afghan context. For a comprehensive treatment of the subject, see, University of California, Berkeley Academic Senate Task Force on Teaching Evaluation *Final Report* (2009), avail. at <http://academic-senate.berkeley.edu/issues/online-evaluation-courses-and-teaching>. See also, Philip B. Stark & Richard Freishtat, *An Evaluation of Course Evaluations* (2014), avail. at (https://www.scienceopen.com/document_file/6233d2b3-269f-455a-ba6b-dc3bccf4b0a8/ScienceOpen/teachEvalSciOpen14.pdf).

⁴⁷ Weinbaum, at 45. In particular, Weinbaum cautioned that Shari'a *students* may be "suspicious of new approaches or the application of non-Islamic legal principles." *Id.* at 44.

⁴⁸ Many instructors are earning pay at private law schools to supplement their public university salary.

its own reward. And, of course, security concerns override almost all interests, professional or social, in Afghanistan, particularly in this climate of politico-military transition, including a new Presidency and imminent departure of the International Security Assistance Force (ISAF).⁴⁹ Cliché or not, the professor who undertakes clinical teaching must do so because he is individually inspired or motivated.

Involvement of the faculty and university leadership must go beyond periodic courtesy visits over cups of chai and congratulatory speeches at formal receptions. The Dean, University Chancellor and other top administrators need to be on board with such things as revisions to curriculum and grading policies, easing restrictions on fundraising, opening the campus to the community and non-academic speakers, supporting critical thinking by students, intellectual exchanges amongst faculty, interdisciplinary teaching, research and service, adjunct teaching by legal professionals (such as lawyers, judges and ministry officials) and supporting clinic advocacy that may ruffle the feathers of clergy, the business sector or government.

SAYING NO TO REINVENTING NEEDS ASSESSMENT

It may be tempting to emulate clinics that faculty members participated in while pursuing their LLM degree abroad. It would be a

⁴⁹ “[M]any Afghans have expressed reservations about the focus of the international community on 2014 as pivotal for their country’s immediate prospects. One reason is the risk of suspending action while waiting to see what unfolds.... Another reason is resistance to the idea that Afghanistan’s fate is effectively in the hands of the international community; Afghans instead tend to view 2014 as a staging-post in a long-term project of state-building, and part of a broader transition between the past and the future.” Khalid Koser, *Transition and displacement*, FORCED MIGRATION REV. (Issue 46) 44, at 44-5 (May 2014), <http://www.fmreview.org/en/afghanistan/koser.pdf>. See also, O’Leary.

mistake, however, to transplant a clinic wholesale to Afghanistan, without taking stock of community needs, social and legal culture, lawyer and jurist training and student expectations and demand.

That said, Afghan clinics are not starting from *tabula rasa*. Faculty and stakeholders should review some of the comparative law and other papers written over the years by LESPA-sponsored students.⁵⁰ Some of the alumni have written about social and legal problems that may be tackled by students working under supervision. Problems range from coerced and underage brides to police misconduct, from children's access to education and social services to the free exercise of political rights, and from the rights of detainees in penal institutions to women's inheritance of property. These papers should be kept in a repository in Kabul and scanned for easy sharing on the Internet.

In addition, numerous surveys, studies and reports have been prepared by IGOs and Afghan governmental and non-governmental entities on these same and other issues—whether characterized as human rights, women's rights, criminal justice, customary justice, rule of law or access to justice. There is no shortage of national and localized data to guide the work of any clinic. This is not to say that there are off-the-shelf playbooks for clinics. But stakeholders have plenty of material to review when designating timely and worthy issues to be addressed by their respective clinics.

Finally, many schools have adopted (at least on paper⁵¹) a structure

⁵⁰ Appendix 7.

⁵¹ Herat University reports that 16 students are enrolled each term in the Civil Clinic, 12 take part in the Criminal Clinic and an additional 20 students in a Street Law program run in conjunction with local schools. Since 2008, over 300 students have worked in the various clinics at the University. Grimes, at 20. Other legal faculties aspire to do the same. *Afghan Legal Clinic Manual* 8-15 (adopting same clinic structure). *See also*, Mustafa Saqib, "Adding Women's Rights Units to the Current

for handling cases, typically falling under the rubrics of criminal, civil and Street Law.⁵² The tendency may be to appropriate these models wholesale. Individual clinics should instead thoughtfully adopt, adapt and pilot clinical models that fit their needs—as determined by problem areas, staff and student capability, funds, locale and politico-legal constraints.⁵³ Moreover, the formal justice sector should not be privileged over the informal as a practice area.⁵⁴ The Huqooqiyah Directorate, for example, created to preempt and prevent ethnic, tribal, and family disputes—and to promote the maintenance of public order—offers an opportunity for student field

Legal Clinics in Afghan Universities: The Need for a Women's Domestic Violence Legal Clinic” (recommending establishment of separate domestic violence University legal clinic and substantive DV law course)(2014)(manuscript on file with LESPA).

⁵² See generally, LEE P. ARBETMAN & EDWARD L. O'BRIEN, STREET LAW: A COURSE IN PRACTICAL LAW (8th ed., 2010). “Street Law” is a registered trademark. The terms “community legal education” or “public legal education” are often used to describe the same instructional model designed for lay and activist audiences. *Id.* at ii.

⁵³ A sample teaching module, student learning objectives and primer on reflective writing can be found in Appendices 8, 10 & 11.

⁵⁴ Given the emphasis by legal educators and foreign donors and advisors on the *formal* justice sector, and the conventional criticism of customary law or Shari'a tribunals, it is easy to overlook or dismiss the latter as unworthy of examination—beyond pure academic interest or comparative law study. *But see*, Erica Gaston, Akbar Sarwari, & Arne Strand, *Lessons Learned on Traditional Dispute Resolution in Afghanistan* (2013) (analyzing effectiveness of series of US Institute of Peace pilot projects attempting to link formal justice and governance sectors with traditional dispute resolution actors), avail. at <http://www.usip.org/publications/lessons-learned-traditional-dispute-resolution-in-afghanistan> & AFGHANISTAN LEGAL EDUCATION PROJECT (ALEP) (ERIK JENSEN ET AL.), AN INTRODUCTION TO THE LAW OF AFGHANISTAN 147-48 (customary and Islamic law description in primer for University students) and 198-200 (restorative justice description) (3D ED. 2011). Clinical students can play an important role in helping to harmonize the law and procedures of the *jirga* or *shura* with contemporary universal human rights norms. SUHRKE, at 211-17.

placements or partnership with clinics. Resolution of disputes may take the form of reconciliation or court referral.⁵⁵

In building a strong advocacy component, it is important that the activities be teachable and manageable. For example, Street Law or public legal education, field monitoring and research, and externships with NGOs or government agencies are all suitable activities. Once the clinic takes on clients, and perhaps even before, it may face resistance and outright opposition from industry, government, clerics, the general public and perhaps from the university itself. At a time when maintenance of internal order remains a high regime priority, the discrediting of traditional legal norms is certain to be counterproductive. The experience of Afghan modernizers has repeatedly shown that legal reforms that anticipate or lead social change will either be ignored or be politically destabilizing.⁵⁶

AUGMENTING INFRASTRUCTURE

Bricks and mortar are important, but the donor-driven or grantee-generated urge to purchase clinic space, furniture and books must be resisted. Funds may be more wisely spent upgrading Internet access and connectivity, subsidizing off-campus transportation or printing classroom readings, client informational materials and office forms.

In 1980, Professor Weinbaum observed: “Aside from a few (often politically and culturally suspect) Iranian books, no law texts in Persian are

⁵⁵ Originally established several centuries ago as the Huqooqiyah Directorate, the role of this MoJ department is “to facilitate the adjudication of disputes and civil right[s] cases arising between citizens and real and legal persons... and to effectuate resolution through tribal elders, or patriarchs, and chiefs.”
<http://moj.gov.af/en/page/7943/7944/1672>. *See also*, Grimes, at 17-18.

⁵⁶ Weinbaum, at 55. Maintaining internal order remains as high a concern today as 35 years ago.

available, and the modest library collection of French, English and German volumes go unread.⁵⁷ Though many students have studied a Western language in secondary schools, few have an adequate reading comprehension.”⁵⁸ Certainly, the English literacy rate among Afghan law and Shari’a students today is higher than in 1980, and university study abroad has increased. Still, it appears that students are exposed to very little in the way of classroom or research materials in Western languages (outside of English language classes)—or to new and innovative legal texts published in Farsi or Dari.⁵⁹

Legal Materials Specialist Eisa Ayoobi noted two years ago that “[m]ore and more Afghan legal classrooms are equipped with computer technology...”⁶⁰ Nonetheless, university campuses are not uniformly blessed with reliable Internet access and many lack a sufficient number of video monitors, desktop computers, laptops or projectors in classrooms and libraries. The Ministry of Higher Education (MoHE) five-year plan is replete with references to the need to upgrade and improve information and

⁵⁷ See Bibliography (Appendix 6). However, as noted, a bricks-and-mortar library may be a less cost-effective manner of transmitting knowledge about clinical practices than a collection of digitized materials and widespread, reliable Internet access.

⁵⁸ Weinbaum, at 43.

⁵⁹ According to MoHE’s *Strategic Plan (Introduction)*, “Outdated curricula, under-qualified faculty members, lack of proper classrooms and laboratories, under resourced libraries and the lack of adequate information technology are among the acute and pressing problems faced by the higher education sector.” The MoHE plan also calls for foreign language instruction, especially English. *Id.*, *VALUES: High Quality Tertiary Education & PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development*.

⁶⁰ LESPA (Ayoobi), *An Introduction to Human Rights*, at page v.

communication technology.⁶¹ Securing computer access for faculty and students, maintaining informational websites, desktop publishing and off-campus clinic-related travel are precisely what is required to advance the research, instructional, training and professional collaboration agenda for students and teachers laid out in this paper.

Designing and maintaining websites for legal clinics is also necessary for communicating with prospective clients, other clinicians, funders, the general public, and with the student participants themselves. This requires reliable computer/Internet access, as well as personnel to maintain the site. Several law or Shari'a schools already have sites, as do some clinics, but they tend to be static, no-frills, outdated and/or under-visited. Facebook pages are also important for communicating with students and with some clientèle. They are easier to maintain than websites, but still require active monitoring. Website and Facebook administration can be assigned to faculty members or upper-level students on a part-time and rotating basis.

Donor funds could be sought for travel and office space. Travel for faculty members within Afghanistan and abroad for short-term exchanges would be a priority. The latter should include working visits to clinics in neighboring countries, the US and Europe—not “study tours,” where sometimes the touring trumps the studying. Students, as well, often need travel funds to participate in off-site clinics, externships or for periodic court observation or shadowing of professionals in the city center. In some instances, clinic space must be rented (if not donated in-kind) off-campus to

⁶¹MoHE, *Strategic Plan: VALUES: High Quality Tertiary Education & Promote National Unity; PROGRAMS: Sub-Program I-3: Infrastructure and Teaching and Learning Facilities.*

serve clients who are prohibited from entering university grounds, or where travel to campus is remote, costly or too difficult to negotiate.⁶²

Funds could also be used for printing and distributing classroom training materials, posters, tracts, factsheets, booklets, in-house manuals, and administrative forms such as client retainers, intake checklists, confidentiality guidelines. To subsidize publication costs or facilitate distribution, LESPA staff in Kabul or elsewhere in-country could collect a number of exemplars, sample forms and manuals.

Finally, donors with a legal capacity or ROL focus must genuinely coordinate and cooperate. While every IGO and NGO funder gives lip service to this rule, it is honored more often in the breach. Competition for grants⁶³ amongst development and technical assistance organizations and the race for innovation and distinction breed overlap, redundancy, turf battles, waste and an air of obfuscation and secrecy.⁶⁴ Would-be grant recipients⁶⁵

⁶² In recounting a recent move of the Herat clinic to the city center, Professor Grimes observed that the change of venue “immediately resulted in an upturn in client numbers. Clearly clients felt more able to approach the Clinic in this new setting, one that is proximate to the courts and main government administrative buildings.” Grimes, at 16. Moreover, “[t]he relative anonymity of a city centre venue to a degree protects against th[eir] concern [about being seen outside their usual environment]. In a country which is, by custom and reputation, deeply conservative, such perceptions and their implications are extremely important.” *Id.*

⁶³ See, e.g., Elena A. Baylis, *Function and Dysfunction in Post-Conflict Judicial Networks and Communities*, 47 VAN. J. TRANSNAT’L L. 625, 667 (2014) (ROL funding and contracting structure sets up competitive relationships between implementing organizations and between individuals within organizations). “Because funding is granted in short cycles of 1 to 5 years with the expectation of particular outputs, implementing organizations must be able to demonstrate tangible short-term outcomes to donors....to justify their use of funds, but also in anticipation of future funding, in order to be in a position to compete successfully for the next contract....In environments in which tangible outcomes can be difficult to come by, there can be intense competition for ownership of projects and unwillingness to share credit.” *Id.*

⁶⁴ Notwithstanding the theoretical advantages to inter-organizational competition, e.g., improving quality of outcomes, Professor Baylis records observations made by some of

are primed to please every prospective donor, and funders and contractors tend to operate on their own.⁶⁶ Moreover, many donor organizations are more accustomed to dictating project goals to country-based grantees and

the ROL contractors: "...[Y]our own work product becomes your ticket to do your next job, right?... [I]t's quite easy for someone to just steal your work and call it their own. And so it creates, rather than incentives for sharing knowledge, incentives for hoarding knowledge that can be really counterproductive." *Id.* at 667. Another interviewee confides: "...I was told by some people that...other people would steal our work and we wouldn't be able to get any more funding. And it would set us back in terms of our competitive position for funding. . . . But that I suppose is why people were so secretive, and one of the reasons why there wasn't very much coordination." *Id.* at 668. Because the ROL written work products "are often considered private and kept hidden, even when they would be useful for others,...the field of ROL does not gain all the benefits..." *Id.* at 675. These benefits would include "the regular issuance of assessments and applications of [the field's] norms that can be forwarded and discussed, the concomitant reconnection with others in the field, the sense of connection to the process and its result, and the reified product that can be encountered by others outside the field." *Id.*

⁶⁵ The key players in legal education reform, clinics and capacity building appear to be Global Rights, TetraTech DPK, ILF, ILDO, NRC, GIZ, USAID and Checchi & Co. Consulting. (It is unclear, however, whether Checchi is *currently* involved with legal education activities, under its AID-funded *Afghanistan-Support II* grant). *See*, http://www.checchiconsulting.com/index.php?option=com_projects&country_id=29&Itemid=8#108).

⁶⁶ In her case study of ROL networks in post-conflict societies, Baylis describes the barriers to information exchange: "Embedded ROL internationals ...viewed it as critically important to be able to share information and act jointly with internationals and nationals in their local networks, but many interviewees identified elements of dysfunction that made it difficult for them to do so. ...[T]heir transnational community is bifurcated between casual interactions over social and career matters and deliberate participation in formally organized online communities and in-person conferences to discuss work matters." Baylis, at 650. She offers additional interviewee descriptions: "People were very unwilling to give you details of what they were doing.... So every organization was repeating the work of lots of other organizations, not only horizontally but also vertically... There was no institutional memory, there was no coordination or no effective coordination between the various different funding bodies like the UN, the US, the EU and other organizations. . . . I went to a lot of coordination meetings, but I didn't notice any actual coordination going on." *Id.* at 665 (footnotes omitted).

partners, than to listening or consulting.⁶⁷ Offering an alternative *modus operandi* is the International Network to Promote the Rule of Law (INPROL), which works on rule of law reform in post-conflict and developing countries, and “shares a desire to learn and innovate together as a community in order to improve the[] rule of law knowledge and practice.” Membership is free and open to individuals currently working on ROL assistance in a policy, practice or research role.⁶⁸ Within the Rule of Law sector, the concept of “communities of practice” has also been adopted as a tool or technology.⁶⁹

STRENGTHENING INTER-UNIVERSITY & INTER-CLINICAL RELATIONSHIPS

Change cannot occur in an administrative vacuum. In addition to support within the faculty and university, the clinical enterprise needs

⁶⁷ Again, Han offers solid, candid advice: “Aid, particularly in the rule of law sector, has become much more about what donors want to see happen in Afghanistan than what Afghan organizations are able to implement or even want. There has been more money dumped into rule of law over the last few years than could ever have been effectively absorbed and used. While the coming draw down in aid resources will certainly rattle Afghanistan’s economy, it need not mean less-effective aid, particularly if donors pledge to read the signals sent by the Afghan organizations they are meaning to help.” Han, *Working in Aid*. “I wonder, when a potential aid recipient has refused to engage with the donor in planning how a particular project will be built and implemented, if the donor ever asks – ‘who wants this more, us or them?’” *Id.*

⁶⁸ <http://www.inprol.org/>. One of Professor Baylis’ interviewees furnished a positive testimonial to INPROL: “[S]taff will use th[e] information to collate and put together a kind of concept note . . . that is then made available to everybody. And so you have research notes on how to build the capacity of bar associations, issues relating to pre-trial detention, how to build the capacity of law schools. . .” Baylis, at 670. *See also*, U.S. Institute of Peace, Rule of Law Center, <http://www.usip.org/ruleoflaw/index.html> (conducts research, identifies best practices, and develops new tools for policymakers and practitioners working to promote rule of law, with emphasis on fragile and post-conflict societies).

⁶⁹ Baylis, at 671.

backing in various degrees from the MoHE, Ministry of Justice, AILAB, AIBA and the Joint Coordination Committee. This is essential to the survival of any curriculum change made to accommodate the clinics, particularly those that might involve a reallocation of teaching resources and other funds, or the awarding of academic credit.

Collaboration is an important aspect of developing an interactive or clinical curriculum. This should occur not only at the department or faculty level, but also across faculties and universities in Afghanistan and abroad, including Central, South(east) and Western Asia.⁷⁰ The establishment of a higher education accreditation system within the MoHE is called for in the Afghanistan National Development Strategy (ANDS) and its fundamentals are set out in elaborate detail in the Ministry's *Strategic Plan*.⁷¹ Indeed, last year MoHE organized a symposium for all 19 law and Shari'a faculties, where supposedly for the first time in the history of Afghanistan, representatives from universities, government, NGOs and international donors engaged in a strategic dialogue on the future of legal education.

⁷⁰ See, e.g., Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (FRANK S. BLOCH, ED.) 44-50 (2011)(decades-old experience with law clinics at several Indian universities, strengthened with mandate from Bar Council of India); and Lisa Radtke Bliss & Supamas Chinvinijkul, *Preparing Law Students for Global Practice: An Innovative Model for Teaching Lawyering Skills and Social Justice in a Large Enrolment Class*, 1 ASIAN J. LEGAL EDUC. 1 (2014)(describing border-crossing collaborative experiment in Thailand).

⁷¹ The accreditation process for all public and private post-secondary education institutions is to be "formally approved" pursuant to the revised Higher Education Law, including MoHE 2009 Criteria for Self-Assessment, with reaccreditation to take place every five years. MoHe, *Strategic Plan: PROGRAMS: Sub-Program II-4: Accreditation and Quality Assurance*. "In the long run the accreditation process will fit into a national qualifications framework and a national skills development program." *Id.* It remains to be seen whether this very detailed action plan amounts to more *plan* than *action*.

A key outcome of the May 2013 gathering was the establishment of a governance body for legal education, the Joint Coordination Committee, comprised of leading law and Shari'a deans and professors "who will work to build cooperation between universities on system wide reforms."⁷² Ostensibly, the group assembled committed to adopting a credit system for both law and Shari'a faculties and to refine the core curriculum to include more practical legal coursework, such as legal clinics and moot court competitions.⁷³ The Joint Committee, Justice and Higher Education ministries may also need to be "lobbied" so that professors can receive incentives and added professional status for their contribution to this effort. It remains to be seen whether the Committee will function as a serious oversight body and engine for change, or as an ineffective, ceremonial, politicized or bureaucratic entity.

Notwithstanding the formation of the Joint Committee, there is a need for an association of junior legal educators, whose sole mandate is to serve as a clearinghouse for ideas and materials to advance innovative and practical legal education. Through this informal⁷⁴ network, training of professors could be conducted on clinical techniques to enable them to share curriculum plans and teaching strategies. This association has the potential

⁷² *Universities Agree to Governance Body to Lead Legal Education Reform*, <http://www.tetratedpk.com/en/news-and-resources/newslatest/545-afghanistan-symposium-2013.html>. It is unclear whether the Joint Committee is in effect the "accreditation agency" envisioned under the *Strategic Plan (PROGRAMS: Sub-Program II-4: Accreditation and Quality Assurance)* or will function as a parallel institution.

⁷³ *Id.*

⁷⁴ This body should eschew election of officers, bylaws drafting and conferences and devote itself to collecting materials and regularized dialogue—all of which could be conducted via the Internet.

to stimulate discussion and create a new pedagogical culture. More cooperation internationally with other clinicians and law faculty, and between academia and the bar, should also be encouraged.⁷⁵ The Global Alliance for Justice Education (GAJE)⁷⁶ and the International Journal of Clinical Legal Education⁷⁷ hold annual conferences and are important networks, particularly for clinicians and faculty outside of Europe and North America.⁷⁸

CONCLUSION

Afghan faculties could initiate, or continue, legal education innovations that have few to no bureaucratic barriers, that are centered on professional skills and can be conducted with the support of professors,

⁷⁵ International exchanges are also endorsed in the *Strategic Plan (PROGRAMS: Sub-Program I-1: Professional Faculty/Staff Development)*.

⁷⁶ With members from over 50 countries, GAJE facilitates cross-national educational exchange programs and joint research projects amongst law school teachers, judges, legal practitioners and activists. Its goals include support for “innovative justice education, especially in developing countries” and serving as a teaching methodology and materials clearinghouse. <http://www.gaje.org>.

⁷⁷ http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/. The Open Society Justice Initiative sponsors an invitation-only, on-line resource, the Legal Clinics Community, <https://karl.soros.org/communities/clinics-community/> has protocols and guidelines available for downloading.

⁷⁸ See Wortham, at 675-78. See also, Stephen A. Rosenbaum, Dana Raigrodski, Kimberly Ambrose, *et al.*, “Cross-Border Teaching and Collaboration” (text accompanying nn. 40-44), in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* (D. MARANVILLE *et al.* EDS.)(forthcoming 2015)(Appendix 12)(importance of transnational on-site working exchanges with faculty counterparts). For a candid exchange on perceived and real inequities in cross-border relationships between legal academics, see Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination—An Essay*, 16 *YALE HUM. RIGHTS & DEV. L.J.* 1 (2013) & James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South—An Essay in Conversation with Daniel Bonilla*, *id.* at 41.

lecturers or teaching assistants. Practicing lawyers and local judges can also assist, as can senior students and graduates. These co-curricular and extracurricular activities include moot court oral advocacy or legal writing competitions. Faculty could undertake these activities in addition to regular teaching duties; members of the bar and bench could give their time *pro bono*.

Short-term externships during the summer, or part-time during the school year, should also be encouraged, and can be the building blocks of a clinical program. Informal outreach or “awareness raising” on local issues can also take place with the support of NGOs. Finally, courtroom observation is an activity that can supplement the classroom component—at the students’ own convenience and without labor-intensive faculty oversight. More ambitious and expensive options are student exchange programs and international conferences and competitions.

Teaching and practice are complementary. As it may be difficult to recruit faculty able to engage in both teaching and law practice, one response is to hire adjunct practitioners—be they lawyers, or judges at the courts of first instance or appellate courts. If there are bureaucratic barriers to hiring adjunct staff, these individuals should be engaged as guest speakers, advisors or mentors.

In addition, the legal faculties and university administrators will need to nurture the clinics (or more broadly, clinical education) by facilitating changes in policy and practice that trigger the development of new curricula, service learning and interdisciplinary and inter-university collaboration and exchange.

The groundwork should be accomplished through skills-based, interactive education—in moot courts and in clinics, both inside and outside

the classroom. It will also require more student guidance and discipline, and serious attention to the field work advocacy component and “real world” application of the law. By continuing to network with practitioners, NGO activists, community members, government officials, and other faculty members in law, Shari’a and other disciplines, the legal clinic can build a base of allies, skilled presenters and mentors and clients—all necessary for its credibility and survival.

Cost savings can be accomplished through a “study tour” within Afghanistan—*e.g.*, a week or fortnight at Herat University— or to clinics in India, Malaysia, Indonesia, Pakistan or Singapore for a few weeks of hands-on learning with veteran clinicians familiar with regional politics and educational bureaucracies.⁷⁹ Visits abroad are not all about perks; on-site, continuous cross-clinical collaboration is the way that professors develop skills needed to grow their clinics.

Student enthusiasm can also be tapped into, in light of their expectations about learning practical skills and serving real clients. Beyond guidance, encouragement and training from knowledgeable, patient and attendant instructors, they need discipline in attendance, practice and follow-through on individual and group assignments. Transparent selection procedures, written policies on attendance, assignment submissions and grading and recordkeeping will help to achieve this.

Lastly, genuine and continuous cooperation and coordination of funding and technical assistance, amongst foreign governments, IGOs and

⁷⁹ Consider exchanges as well with nascent clinical legal programs in Iran, *e.g.*, Mofid University. See, Sahar Maranlou, *Modernization Prospects for Legal Education in Iran*, in QAFISHEH & ROSENBAUM__ (clinic at Mofid has provided assistance to indigent clients on family law, labor law, and criminal law since 2007); <http://www.youtube.com/watch?v=M7YQ0lltfpo> (10-minute videotaped interviews in Farsi of clinic staff, accompanied by mix of classical piano and South American pan flutes) (Sept. 2011).

NGOs engaged in rule of law, access to justice and development, is essential to the survival and success of Afghan clinical legal education.

RECOMMENDATIONS FOR 2014-15 (“12 POINT PLAN”)

National Level

1. Facilitate *monthly* (or more frequent) Skype [one-] hour conferences between all Afghan faculty members who are conducting legal clinics, or who plan to initiate clinics. Rule of Law and Access to Justice NGO and IGO representatives may participate as needed.
2. Establish an informal, non-bureaucratic network of interested law and Shari’a faculty members, narrowly focused on *regularized* web-based exchange of information on innovative and practical legal education (training, conferencing) and collection of materials, including PDFs of relevant (UW) LLM papers and journal articles, sample exercises and administrative forms. A repository of hard copy documentation should continue to be maintained at the LESPA office in Kabul for books and other non-digitized materials.
3. Establish (with *pro bono* tech assistance) a national website (in Dari, Pashto and English), Facebook page and listserv for clinicians and prospective clinicians.
4. Dedicate infrastructure funding to: upgrading reliable Internet connectivity on all campuses; computer access for faculty and students; Desktop publishing (course reading; clinic handouts); and off-campus clinic-related transportation.
5. Continue offering a Clinical Law Tutorial to LLM candidates (UW), with additional *pro bono* instruction and mentoring provided by other clinicians and practicing attorneys who make a commitment to post-graduate conferencing and mentoring (See No. 7 below).
6. Translate the Spring 2014 *Afghan Legal Clinic Manual* into Dari and establish a means of *regularly and systematically* revising and updating the manual.
7. Facilitate bi-monthly (or more frequent) Skype [one]-hour conferences between all Afghan faculty who are conducting legal clinics and a [UW] clinical liaison/mentor or [Seattle]-based practitioner/mentor.

8. Link more consciously the law and Shari'a faculty-embedded English classes and the ALE workshops to the development and maintenance of clinical programs—through *curriculum planning, written materials, staffing and instructional techniques*.
9. Facilitate Legal Faculty Exchanges (1 to 3 months) between Afghans and English proficient clinicians in South and Central Asia (e.g., India, Malaysia, Singapore, Indonesia (former E2J), Pakistan (OSF projects)) and US/UK; Sponsor [3 to 6] professors to attend upcoming GAJE (Global Alliance for Justice) and ICLE (Int'l Clinical Legal Education) conferences.
10. Undertake an update of M.G. Weinbaum's 1980 study on the Afghan legal profession, the state of legal education—and include data on the status of NGO-operated legal services and university-based legal clinics.
11. Engage the newly-established Joint Coordination Committee (legal education quality control), Ministries of Higher Education and Justice, Afghan Independent Legal Aid Board, Supreme Court and Afghanistan Bar Association in continuing discussions about curriculum electives and mandatory courses, academic credit, grading, student practice guidelines, externship opportunities, etc.
12. Convene a small-scale, non-ceremonial summit of the hands-on staff of the legal education capacity building projects, IGOs and donor agencies who are dedicated to ROL, Access to Justice and human rights in Afghanistan and Central/Western Asia. Thereafter, systematically and regularly coordinate funding and consultation activities with key members of this Afghan legal education capacity building community.

University Level (2014-17)

Allow each university/faculty in LESPA Consortium to develop clinical educational programs at its own pace, acknowledging that there will not be uniform progress and activities across the campuses. The key to progress are: support from the administration and participation of knowledgeable and interested teaching staff (UW alumni). Some of the recommendations below mirror the 12-point national plan of action above.

1. Designate faculty co-directors (one law and one Shari'a) who have the time, (expertise) and interest to lead the clinic; and offer (symbolic) incentives.
2. Recruit 2 junior faculty members not necessarily clinically trained (teachers, lecturers or assistant teachers) to assist with supervision and assessment of students; and offer (symbolic) incentives.
3. Clearly delineate responsibilities for each co-director and assisting faculty members.
4. Recruit senior law and Shari'a students to attend meeting(s) to plan curriculum, recruit new students and mentor new students.
5. Enlist short-term technical support from a legal education advisor (UW or other university) or other international specialist (ABA) for on-going consultation and training, both on-site and off-site for clinic faculty members.
6. Recruit and select Clinic students in a transparent and equitable manner and clarify expectations prior to selection (attendance, time commitment outside of class, etc.).
7. Arrange short-term exchange visits and observations with legal clinics in [Afghanistan, India, Pakistan, Indonesia, Malaysia, US, UK].
8. Determine grading criteria and means of assessing students.
9. Update Clinic Facebook Page layout and/or website design (*pro bono* tech assistance) and assign junior faculty to update postings and regularly monitor content.
10. Conduct mandatory orientation session (2+ hrs) for the selected Clinic students: (a) overview of the clinic and inspirational speech on---; (b) clarify policies on *attendance*, grading, out-of-class time commitment, and use of clinic office; (c) complete the learning goals form and review the concept of reflective learning; (d) tentative start and end dates (and time period) for class; and (e) break-out sessions, as appropriate, for students to select *tentative* subtopics, small group partners, etc.

11. Arrange sufficiently in advance for translation of international materials into Dari or Pashto, as needed.
12. Establish a Clinic Advisory Committee composed of faculty, former and current students, legal practitioners, NGOs, professors from other faculties (business, social work, etc.), community members and other stakeholders; begin discussions to determine its terms of reference re publicity, general administration and practice areas.
13. Begin discussions with law and Shari'a faculty and university administration on: appropriate offsets/incentives for Clinic faculty; curricular policy with affect on Clinic (e.g. course credit changes; approaching MoHE/Joint Coordinating Committee on national standards).
14. Explore possible future externships and venues for street law (incorporate into assignments).
15. Offer a "Courtroom Observation" extracurricular activity to all law and Shari'a students.
16. Initiate modest fundraising for clinic (photocopying, supplies, travel, amenities, refreshments, part-time administrative staff stipend, etc.)
17. Conduct Annual Evaluation of Legal Clinic.

APPENDICES⁸⁰

1. *Afghan Legal Clinic Manual* (2014)
2. R. Wilson, “Ten Practical Steps to Organization and Operation of a Law School Clinic” (Feb. 2004) (Dari and English)
3. D. McQuoid-Mason & R. Palmer, *African Law Clinicians’ Manual* (2013)
4. Standards for Law School Clinics (OSI)
5. R. Grimes, *Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies* (2014)
6. Clinical Education Bibliography
7. Select Comparative Law Papers (LESPA/UW)
8. S. Rosenbaum, Criminal Module/Interactive PowerPoint
9. Criminal Defense Clinic Manual (G. Hashimi, 2013)
10. Student Learning Goals
11. Reflective Lawyering Handout
12. S. Rosenbaum, D. Raigrodski, K. Ambrose, *et al.*, “Cross-Border Teaching and Collaboration,” *in* BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (D. MARANVILLE *et al.* EDS.)

⁸⁰ Appendices are available from the author, upon request via email (srosenbaum@law.berkeley.edu).