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Toward a Rule Of Law Society In Iraq: Introducing Clinical Legal Education into Iraqi Law Schools

By
Haider Ala Hamoudi*

INTRODUCTION

The current condition of Iraqi law schools is extremely poor.¹ Once among the most prestigious in the Middle East,² law schools in Iraq have deteriorated substantially during the past two decades for several reasons. First, the totalitarian regime of Saddam Hussein, hostile to the rule of law and to the establishment of consistent legal order, viewed the legal system and its educational component with suspicion.³ Thus, the former regime underfunded,⁴ understaf-

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1. Given the near total absence of scholarly research on the subject of Iraqi universities prior to the fall of Saddam Hussein, there is very little written information available respecting the current condition of the law schools. As a result, much of the information contained in this article has been gathered through personal observations and numerous interviews with the deans, faculty, staff, and students of various Iraqi law schools, as well as Iraqi lawyers and judges. In all, my colleagues and I have spoken with hundreds of people since December 2003. For reasons of both clarity and security, I do not refer to each of the persons with whom I spoke or the exact dates on which I spoke with them, but rather refer to all such discussions collectively as "Conversations."

2. Eric Davis, *Baghdad's Buried Treasure*, N.Y. TIMES, Apr. 16, 2003, at A19; *Coalition Provisional Authority Briefing Before the United States Dept. of Defense*, Mar. 9, 2004 (statement of Coalition Provisional Authority Senior Advisor Dan Senor and Brigadier General Mark Kimmitt, Deputy Director for Coalition Operations).

3. The former Iraqi regime's disregard for the rule of law is well documented and largely beyond the scope of this article. The most thorough information on this subject can be found in the annual U.S. State Department human rights reports, available at <http://www.state.gov/drl/rls/hrrpt>, as well as the annual Amnesty International Reports, available at <http://www.amnesty.org/ailib/airport/index.html>. The past two decades of these reports provide chilling reading, not only with respect to the absence of any consistent legal order, but also with respect to the regime's abysmal human rights record and reliance on torture, extrajudicial execution, and arbitrary detention in order to silence all forms of real and perceived dissent.

4. I have not been able to obtain reliable figures from any responsible authority regarding the law schools' respective budgets over the past several years; this is invariably attributed to the poor accounting system employed by the previous regime. However, the dean of Baghdad University College of Law estimated that approximately 90% of the law school budget was spent on faculty salaries, which in the year before the 2003 invasion averaged the equivalent of US \$90 per faculty member per month. Conversations, *supra* note 1. This would mean that the school had no more than \$300 a month to commit elsewhere. *Id.*

fed,⁵ and badly maintained the schools.⁶ Members of the Ba'ath party infiltrated the schools both at the student level and through faculty appointments to monitor libraries and classroom discussions to ensure that everything taught or read was in strict accordance with the principles of the ruling Ba'ath party.⁷ Students, professors, and the public believed that the deans appointed during Saddam's regime were government agents who would report any suspicious activity to the Iraqi security services.⁸

The sanctions the United Nations imposed on Iraq in 1990 also caused the deterioration of Iraqi law schools. Indirectly, the sanctions caused a massive decline in Iraq's economic condition that affected every person and institution in the country.⁹ Directly, the sanctions prevented the schools from accessing and obtaining educational resources from outside Iraq.¹⁰ Finally, the spate of loot-

5. See *infra* Part III.B (discussing the inadequate staffing at Iraqi law schools today). Baghdad University College of Law and the University of the Two Rivers College of Law in Baghdad, Iraq's two most prestigious law schools, see *infra* note 19, have suffered substantially from the emigration of many of their faculty members over the past two decades. A professor at the University of the Two Rivers told me that over two dozen of the schools' brightest faculty members have left Iraq since 1980. Conversations, *supra* note 1. The Dean of Baghdad University College of Law estimated the figure to be closer to 35 faculty members. *Id.* No official reports on this trend are available.

6. See generally *The United States and the Iraqi Marshlands: An Environmental Response: Hearing Before the Subcomm. on the Middle East and Central Asia of the House Comm. on International Relations*, 108th Cong. 20-21 (2004) (statement of Fernando R. Miralles-Wilhelm, Assistant Professor, University of Miami) (describing the weak condition of Basra University); Jared Stearns, *Librarians Aim to End Bad Chapter in Iraqi History*, BOSTON GLOBE, Mar. 21, 2004, at G20.

7. Conversations, *supra* note 1. The repression to which the law schools were subjected during the reign of the previous regime was a frequent theme of the law school faculties at each university. Numerous professors on countless occasions told us that they had at the time heavily censored their lecture materials to exclude anything that might be considered even mildly critical of the regime. Many also reported being questioned by government agents on occasion. Moreover, according to the faculties at several schools, libraries were frequently combed to remove any materials that might be deemed seditious, such that one Suleymania professor told me he was forced to write an entire master's thesis on a subject concerning Islamic law in the modern era without being able to quote a source from the nation with the most scholarship in that field, Iran. *Id.*

8. *Id.*

9. Eric Hoskins, *The Humanitarian Impacts of Economic Sanctions and War in Iraq*, in POLITICAL GAIN AND CIVILIAN PAIN: HUMANITARIAN IMPACTS OF ECONOMIC SANCTIONS 91, 105-29 (Thomas G. Weiss et al. eds., 1997); RICHARD E. HULL, IMPOSING INTERNATIONAL SANCTIONS: LEGAL ASPECTS AND ENFORCEMENT BY THE MILITARY, at http://www.ndu.edu/inss/books/book_titles.html (Mar. 1997); Cassandra LaRae-Perez, Note, *Economic Sanctions as a Use of Force: Re-Evaluating the Legality of Sanctions From an Effects-Based Perspective*, 20 B.U. INT'L L.J. 161, 166-68 (2002).

10. See S.C. Res. 661, U.N. SCOR, 45th Sess., 2933rd mtg., at 19, U.N. Doc. S/INF/46 (1990) (indicating that the comprehensive U.N. sanctions were to encompass all goods, except food and medicine under certain humanitarian circumstances). A tour of the Iraqi law school libraries in non-Kurdistan Iraq provides a fascinating, if tragic, glimpse into the long decline of the schools under Ba'ath party rule. Baghdad University's law library, for example, contains a respectable collection of United States law journals published between 1950 and 1980. The library carries fewer journals published after 1980, the year in which the Iraq-Iran war began and Saddam Hussein became president, and the number decreases as the decade-long war continued. By 1991, the year of the first Gulf War and the UN-imposed sanctions, new acquisitions virtually ceased altogether. Baghdad and Basra library officials each estimated that their respective collections expanded by approximately 10 books per year in the 1990's, all brought by professors who had received rare permission to travel and returned with as many books as they could carry. Conversations, *supra* note 1. For more information regarding the extent to which Iraqi universities were isolated from the trends and develop-

ing that took place immediately after the fall of Saddam's regime in April 2003 damaged the schools considerably.¹¹ The schools were stripped of virtually all possessions that could be carried off, including desks, air conditioners, computers, carpets, metal support rods, linoleum tiling, and shelves; many books were burned.¹² The damage to schools, already desperately low on resources, cannot be underestimated.

As a result, law schools are in desperately poor shape in today's Iraq, and the legal profession is held in very low regard. Iraqi law school graduates tend to be dismissed by the general population as low level scribes and facilitators of corruption, carrying bribes from a client to a judge or government official in order to achieve a particular result; talented students generally avoid law school as a result.¹³

I learned much of this firsthand when I moved to Iraq in December 2003. DePaul University's International Human Rights Law Institute ("IHRLI") sent me and several other educators to Iraq to reform and improve legal education. More broadly, we hoped that by raising the standard of Iraqi legal education we could help improve the entire legal profession, both in terms of its respectability and its dedication to the honest, efficient, and transparent administration of justice. This would, we hoped, help to create of a rule of law society in Iraq. The effect of our efforts would be gradual, we expected, but nonetheless real if all went well.¹⁴

ments of parallel institutions elsewhere, see Kathryn McConnell, *Rebuilding Education Sector Key to Iraq's Rejoining World*, WASHINGTON FILE (Dec. 1, 2003) at <http://usinfo.org/wf-archiv/2003/031201/epf106.htm>.

11. See *United States Post-War Policies in Iraq: Hearing Before the Senate Foreign Relations Comm.*, 108th Cong. (2003) (statement of Peter W. Galbraith, Ambassador, United States) [hereinafter Galbraith]. See also Stearns, *supra* note 6 (discussing looting during the 1991 Gulf War). Fortunately for the schools in the northern, Kurdish controlled region of the country, which has been free of Baghdad rule since 1991, looting did not take place, and these schools were therefore spared this additional source of devastation. Conversations, *supra* note 1.

12. Galbraith, *supra* note 11; Conversations, *supra* note 1. While immeasurable damage was done to the libraries of the universities in the non-Kurdistan region of Iraq, credit must be given to the laudable efforts of the faculties of several law schools to preserve some of their material at considerable risk to themselves. At Baghdad University, for example, the dean and certain faculty members built a brick wall in front of the door to the library. They then painted it to camouflage its existence, so that looters were not aware of the location of the library. Books in the law school's main library were thereby preserved. Conversations, *supra* note 1. In Basra, the faculty rented a pickup truck in the midst of the chaos that enveloped their city after the fall of the regime and carried most of their collection to their private homes, where it could be better protected. *Id.*

13. These beliefs seem to be widely shared even within Iraq's functioning legal community. Virtually all of the practicing lawyers, judges, and professors with whom we interacted advocated this position, though of course the practicing lawyers were quick to point out that there are always exceptions. As a corollary to this principle, the entire legal system is widely viewed by the legal community to be deeply corrupt, so that effective lawyering is not as important to a practicing attorney as the extent of the attorney's (often unseemly) connections to members of the judiciary. Conversations, *supra* note 1.

14. IHRLI developed the project in the summer of 2003 in response to a Request for Proposal from the Higher Education and Development Program of the United States Agency for International Development ("USAID"). USAID granted the project approximately \$3.9 million in September 2003, and the project began in earnest upon our arrival in Iraq in December 2003. The project is set to end in February 2005, though the contract may be renewed for another year. For more informa-

The project as it developed focused primarily on three law schools: the Colleges of Law at Baghdad University, Suleymania University, and Basra University.¹⁵ At each school, we focused on four programs. First, we sought to improve and expand the infrastructure of and the materials contained in the law school libraries. Our many site visits demonstrated that this was one of the most pressing needs of the schools. Second, we tried to reform the law school curriculum, which is overly centralized, contains no electives, and has remained largely unchanged for thirty years.¹⁶ Third, we held several academic conferences in Iraq on legal subjects of pressing concern. These conferences offered the faculties of nearly all of Iraq's law schools, as well as judges, lawyers, and other members of the legal profession, opportunities to meet and exchange ideas on important legal issues facing Iraq today. Finally, and most pertinently for the purposes of this article, we aimed to create clinical legal education programs in the three selected Iraqi law schools. I was responsible for this particular program.¹⁷

My conclusion is that Iraq's law schools would benefit greatly from the introduction of clinical education methodologies. At the present time, there are many practical impediments to the institution of a live clinic, by which I mean a clinic that handles actual cases and clients. These impediments would render the creation of a live clinic now ineffective at best and counterproductive at worst. Thus, I recommend that any available funding and resources be focused instead on simulated and experientially-based learning programs based on clinical pedagogy.

That said, my participation in this program has only strengthened my firm belief in the educational benefits of a live clinic. As beneficial as simulated exercises may be, I believe that one of the best ways to prepare a student to

tion, see our website at http://www.law.depaul.edu/institutes_centers/ihrl/programs/rule_education.asp.

15. The project had neither the staff nor the funding necessary to institute programs at all of Iraq's law schools. We therefore selected these three, which are among the better known and are located in disparate parts of Iraq, in the hopes that reforms instituted there might be carried elsewhere in subsequent years. My only real regret was our inability to include Mosul University College of Law within the project; given its size and prestige, it would have been a welcome addition. Indeed, we had originally intended to include it, but the security situation in Mosul was so poor in our judgment that we did not think it was feasible to attempt a program. The prudence of this decision became clear in June 2004, when the dean of Mosul's College of Law was brutally murdered outside her home, for reasons that remain unclear. BBC News, *Academic Killed in Northern Iraq*, at http://news.bbc.co.uk/2/hi/middle_east/3829487.stm (June 22, 2004).

16. See *infra* Part III.C.

17. In terms of personnel, each of the four programs in our project was led by a manager, though each of us helped our colleagues with their programs to the extent possible. Our Baghdad-based Chief of Party, Sermid Al-Sarraf, oversaw the entire project. In addition, Dr. David E. Guinn, the executive director of IHRLI, and Professor Cherif Bassiouni, the president of IHRLI and a highly respected and eminent figure in his own right in the areas of human rights law and international criminal law, were involved in the management of the project from Chicago; each also traveled to Iraq to assess project development. Therefore, though I was responsible for management of the clinical program, I frequently consulted with all of my colleagues, and their advice and support were invaluable, as was that of the local Iraqi staff who assisted us. In deference to and in deep appreciation of the substantial efforts provided by my colleagues, I use the plural "we" throughout to describe the clinical program's efforts.

practice law is to have the student actually practice law. Moreover, in a society as devastated as Iraq's has been by the inconsistent application of law, the formation of a live clinic would go a long way toward instituting a greater respect for the rule of law among law students, faculty, the potential clients of such a clinic, and broader segments of society. While many Iraqis have spoken to me over the past year of the importance of the rule of law, few have had the opportunity to appreciate its benefits firsthand. A live clinic would provide such an opportunity. My account and recommendations, therefore, are not intended to disparage the notion of creating a live clinic, but rather to call for the careful and sustained development of experientially-based programs that can, in the course of a year or two, be developed into a live clinic.

I.

LEGAL EDUCATION IN IRAQ

A. *Baghdad, Basra, and Suleymania Universities*

1. *Baghdad University*

Founded in 1908, Baghdad University College of Law is Iraq's oldest and most prestigious institution of higher education.¹⁸ During our visits to its library, the dean and librarian pointed out to us that the collection, though meager, far outshines the collection at the other major Iraqi law schools.¹⁹ In spite of, or perhaps because of, its reputation, Baghdad University is the most resistant to change in its educational approach. On many occasions throughout the course of the project, the dean and several faculty members repeated to me their belief

18. Davis, *supra* note 2 (oldest). See also Daniel Del Castillo, *Iraq's Universities Try for a Fresh Start*, *CHRON. OF HIGHER EDUC.*, May 30, 2003, at 42 (most prestigious). As in most of the world, the initial law degree in Iraq is obtained at the undergraduate level. See Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 *S. TEX. L. REV.* 649, 655 (2002) (describing world practice). Advanced degrees are available, and it is expected that professors, for example, have at least a master's degree in law prior to teaching. Conversations, *supra* note 1. The only law school that might be considered slightly more prestigious than Baghdad University College of Law is the College of Law at the former Saddam University, now renamed the University of the Two Rivers. Daniel Del Castillo, *A Once-Privileged University Fears the Future*, *CHRON. OF HIGHER EDUC.*, Sept. 12, 2003, at 38 (describing Saddam University as the best university in Iraq). In 1993, Saddam Hussein decided to create Iraq's most prestigious university and name it after himself. *Id.* To achieve this, he divided Baghdad University into two separate universities, moving some of the better professors and students and most of the more advanced facilities into the newly created Saddam University. *Id.* Saddam University's budget was also considerably more generous than that of any other university of comparable size, including Baghdad University. *Id.* The two universities are therefore in some competition with one another for the higher quality students, though Baghdad University may soon regain its competitive edge because, after Saddam's fall, the University of the Two Rivers' budget was cut so that it is commensurate to the budgets of the other universities in Iraq. *Id.* Some Baghdad University administrative officials have suggested that the universities should remerge, though I have not found any documentary evidence that this is under active consideration. Conversations, *supra* note 1.

19. Conversations, *supra* note 1. I should note, however, that while I have never asked anyone from the University of the Two Rivers about their law school library, I would not be surprised, given the nature of the rivalry between the two universities, if the faculty there believed their collection to be superior in quality if not in quantity. In contrast, no faculty member at any other law school stated to us that his or her school's collection was in any way comparable to that of Baghdad University. My own observations bore this out.

that clinical educational methodologies are untested and unorthodox and therefore not worthy of the University's high standards. Thus, the faculty accepted little more practice-based training than a lecture by a judge on the realities of practice or a student visit to a courtroom. Faculty resistance to active student participation would prove to be our greatest challenge at Baghdad University.

2. Suleymania University

The College of Law at Suleymania University is the most fortunate of the three law schools in our project by virtue of its location in the relatively peaceful Kurdistan region of Iraq, which has been free of Ba'ath Party rule since the end of the last Gulf War in 1991.²⁰ Founded in 1998,²¹ the College of Law has well-developed facilities by Iraqi standards and is more connected to global educational developments.²² Through our extensive discussions with the dean and faculty, it became clear that they are considerably more open to alternative pedagogical methods, such as clinical education, than their counterparts in Baghdad. The greatest difficulty that Suleymania University faces is a dearth of experienced and qualified faculty to teach the more than 400 enrolled students.²³ Only three faculty members hold doctorate degrees, and one of these members is the dean, who has very limited teaching responsibility.²⁴ The law school employs only five other assistant professors and lecturers, most of whom are active doctoral candidates.²⁵ The College of Law is therefore poorly equipped to engage in meaningful pedagogical reform without a considerable expansion of faculty resources.

3. Basra University

Despite the best efforts of its well-intentioned and diligent faculty, we found that Basra University is one of Iraq's most degraded educational institutions. It suffered acutely in Iraq's recent wars with Iran and the United States because of its geographical location near both the Iranian and Kuwaiti borders. Though it was once one of Iraq's top universities, its current desperate state was

20. David Filipov, *Coalition Readies for Attacks in Key Zone*, BOSTON GLOBE, Mar. 25, 2003, at A17. The Kurdistan region was declared a "no fly" zone by the United States and its allies shortly after the first Gulf War; in fact, it became a de facto autonomous zone over which Iraq's military forces exercised no control. *Id.* Accordingly, Kurdistan Iraq largely escaped both the economic and political deprivations of the past decade, as well as the damage done immediately following the most recent conflict. Tom Hundley, *Island of Stability in Volatile Iraq*, CHI. TRIB., Jan. 25, 2004, at C1.

21. UNIVERSITY OF SULEYMANIA, PROSPECTUS: 2001-2002 135 (2001) [hereinafter SULEYMANIA U. PROSPECTUS].

22. During our initial visit to the law school in January 2004, for example, we observed that the University hosts two computer labs containing over 100 internet connected computers for its more than 7,000 students, and the College of Law dedicates another 25 computers to student use. Although the student to computer ratio may be astonishingly poor by American standards, the mere existence of a wired computer lab that is free for student use is impressive by Iraqi standards.

23. SULEYMANIA U. PROSPECTUS, *supra* note 21, at 137.

24. *Id.* at 135; Conversations, *supra* note 1.

25. SULEYMANIA U. PROSPECTUS, *supra* note 21, at 135; Conversations, *supra* note 1. Suleymania University also employs a number of visiting lecturers, but these do not hold permanent positions. SULEYMANIA U. PROSPECTUS, *supra* note 21, at 136.

apparent to us during our first visit to the campus in December 2003. At that time, there were not enough desks for students to use, the buildings were in disrepair, and the law school library was stripped of its shelving, so that what functioned as a library was a mere collection of books stacked in a corner of a barren room.²⁶ Though classes were being held even during our initial December 2003 visit, education seemed almost impossible to us.

B. Traditional Teaching Methodology in Iraqi Law Schools

In each of the many classes that we attended at the law schools during our many visits, the nearly exclusive method of instruction was lecture. Student performance is evaluated entirely on the students' ability to memorize the lectures, which they indicate by regurgitating the information on a final exam at the end of the year.²⁷ At the classes we attended, the professors' lectures rarely included any discussion.²⁸ The deference students are expected to give professors at Iraqi law schools was apparent to us immediately upon entering any law school classroom. Students stand as the professor enters, sit only after he or she instructs them to do so, and remain in their seats after the lecture until the professor exits the classroom. By our observation, student-professor interaction is not welcome.

This is not unprecedented. The dominant educational paradigm in law schools in developed and developing nations outside of the United States consists primarily of instructor lectures, with students consigned to a largely passive role.²⁹ Attempts have been made to introduce clinical programs into jurisdictions that employ this methodology,³⁰ but they have sometimes met strong resistance.³¹ Professors operating within such a system grow accustomed to the

26. We noticed in subsequent visits that the condition of the library had improved partly through the efforts of the Basra University faculty and partly through our own library reform program.

27. Conversations, *supra* note 1.

28. Some faculty members indicated to me that they objected to the interruption of their classes by student questions, calling it disruptive to the remainder of the class, which they presumed to be following the material without difficulty. Others indicated that they welcomed, but rarely received, questions from students during lectures. By far the most common view, however, was that student questions on lecture material were ideally welcome, but that time limitations along with the large number of students attending each lecture made them impractical. In any event, having attended over fifty classes over the course of the past year, I can say with confidence that discussions are rare, and when they do exist, they are more in the nature of clarifications on the part of the professor to a confused student than a true intellectual discourse of any kind.

29. Stuckey, *supra* note 18, at 655-60. See also Lisa A. Granik, *Legal Education in Post-Soviet Russia and Ukraine*, 72 *OR. L. REV.* 963, 966 (1993) (describing this as the traditional educational methodology in Russia); CENT. EUR. AND EURASIAN INITIATIVE, AM. BAR ASS'N, *LAW SCHOOL ACCREDITATION IN THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION: WHAT STEPS FOR THE FUTURE?* 3 (2003) (same), available at <http://www.abaceeli.org>.

30. RICHARD J. WILSON, PUB. INT. L. INITIATIVE, COLUM. U., *CLINICAL LEGAL EDUCATION AS A MEANS TO IMPROVE ACCESS TO JUSTICE IN DEVELOPING AND NEWLY DEMOCRATIC COUNTRIES* (1996) (describing several efforts), available at <http://www.pili.org>. See also John M. Burman, *The Role of Clinical Legal Education in Developing the Rule of Law in Russia*, 2 *WYO. L. REV.* 89, 111-16 (2002) (describing some success in Russia).

31. See, e.g., Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6 *CLINICAL L. REV.* 315, 318-319, 326-28 (1999) (describing a

deference they receive in a lecture-based format and often object to any educational techniques involving more independent student thinking. This type of opposition to clinical pedagogy was a challenge that the project leaders and I therefore anticipated prior to beginning work on our clinical program.

C. Traditional Practice-Oriented Education in Iraqi Law Schools Traditionally

During our initial visits to the law schools in December 2003 and January 2004, we learned that there was very little practice-based training in Iraqi law schools.³² At one time, the law schools had a significant practice-oriented program that required students entering their final year of law school to attend court sessions and report on them.³³ At Suleymania University, professors still attend the courtroom sessions and often supervise the proceedings to answer questions.³⁴ Outside of the Kurdistan region, however, these programs have largely withered since the 1980s.³⁵ Saddam's regime required law schools to admit increasing numbers of students while the nation's courtrooms steadily deteriorated due to inadequate funding.³⁶ As a result, courthouses do not presently have the capacity to hold the students that need to attend summer sessions.³⁷ Moreover, the universities do not have a sufficient number of faculty members to oversee students during courtroom visits.³⁸ Finally, Iraqi judges are hostile to the idea of unsupervised students crowding into their tiny courtrooms to witness proceedings that will, in their view, inevitably be disrupted by the students' presence.³⁹ Thus, though the court visitation program still exists in theory, outside of Kurdistan Iraq⁴⁰ it tends to be more honored in the breach than the observance.⁴¹ A small subset of students will attend court sessions, take notes, and then copy and distribute them among the other students.⁴² The reports are so disregarded that members of the faculty often do not even read them.⁴³ In

lack of enthusiasm for and failure to understand the goals of clinical education in Romania); Lawrence M. Grosberg, *Clinical Education in Russia: "Da and Nyet,"* 7 CLINICAL L. REV. 469, 479 (2001) (describing some problems facing clinical education in Russia); Joanne Fedler, *Legal Education in South Africa*, 72 OR. L. REV. 999, 1003 (1993) (same for South Africa).

32. Conversations, *supra* note 1.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Based on my own observations, most courthouses in Baghdad, Basra, and Suleymania have only one proper courtroom, which holds approximately 15-25 observers. The vast majority of the proceedings in these courthouses take place in small rooms that are no larger than judges' chambers in the United States.

38. *See infra* Part III.B.

39. Conversations, *supra* note 1.

40. As noted in the text, at Suleymania University, the program is taken considerably more seriously. In addition to faculty attendance at the sessions, student reports are carefully evaluated for content.

41. Conversations, *supra* note 1.

42. *Id.*

43. *Id.*

light of these difficulties, the deans and faculties at all of the law schools expressed on several occasions a desire to expand the program substantially.

It must be noted, however, that court visitation programs are not truly “clinical” by Western pedagogical standards. They do not fit within the American Bar Association’s definition of “clinical legal studies,”⁴⁴ and they hardly provide for experiential learning—the touchstone of any clinical program.⁴⁵ Nevertheless, the law schools’ desire to expand these programs manifested an interest on their part in having students gain a basic sense of the realities of legal practice during their legal educations. We found this very encouraging.

II.

OBJECTIONS AND OBSTACLES TO IMPLEMENTATION OF THE CLINICAL PROGRAM

The faculty-supported courtroom visitation programs provided us with the foundation for a long and intensive series of discussions on the benefits of clinical legal education, which were held between December 2003 and February 2004.⁴⁶ During these initial discussions, we learned that the creation of a clinical education program was not going to be easy. The faculty made us aware of several logistical and procedural challenges that would limit the program. Some could be overcome. Others presented more serious difficulties. Taken together, however, there were significant obstacles that would act as substantial limitations on our program.

A. Security

Due to the armed conflict that continued in Iraq throughout the duration of our project, we expected that security related concerns would be among the most daunting for us.⁴⁷ In addition to general threats, such as car bombs, theft, and

44. ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, CLINICAL LEGAL EDUCATION 12 (1980) (defining “clinical legal studies” as including “law student performance on live cases or problems, or in simulations of the lawyer’s role”).

45. William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 474 (1995) (describing experiential learning as the essence of clinical education).

46. Part of the reason why these discussions proved to last so long, at least with the Baghdad and Basra University faculties, was the faculties’ hostility to U.S.-based groups and organizations. Faculty members did not disassociate the U.S. military occupation from our project and suspected, as far as we could tell, that our project was part of a plan to “Americanize” Iraq. In an attempt to defuse these suspicions, we emphasized that it was not our purpose to alter the entire Iraqi legal education system, which has a long and storied tradition. We stressed that we only wanted to present our ideas on possible alternative pedagogical tools and to allow the faculty to determine in consultation with us the extent and manner in which these would be implemented in their law schools. Notwithstanding the frequency and sincerity of our reassurances, I do not believe we effectively persuaded the faculties. Rather, the compelling factor in our favor turned out to be the fact that a great number of our staff, including myself, were ethnically Iraqi. Absent this key component, I believe our program would have failed entirely.

47. Security was a significant concern everywhere, but conditions did vary among the three law schools. Suleymania was the safest of the three; there was an obvious police presence in the city and American soldiers even appeared in public without weapons at times. Of the remaining two

kidnapping, the faculties of both Baghdad and Basra Universities repeatedly warned us that Iraqi participants would fear that involvement in our program would expose them to danger because of our financial ties to a U.S. government agency. While these circumstances would render the implementation of any program difficult, they virtually prohibited the creation of a live clinic. A student with an appointment for a pending court matter or a scheduled client interview cannot afford to be absent, even if the roads are dangerous, without possibly damaging the client's legal position. In contrast, a clinical program built around simulated exercises could accommodate security concerns more flexibly. If several students missed a moot court session because they were unable to come to school for security reasons, the court could function without them, or the session could be delayed.

B. Faculty-Student Ratios

Baghdad University College of Law, the largest and most prestigious of the Iraqi law schools, has only thirty-one full-time faculty members for its 3,000 students.⁴⁸ Basra University College of Law, with its thirty-four faculty members and nearly 1,000 students,⁴⁹ provides a slightly more favorable, but still very high, student to faculty ratio. Suleymania University College of Law has only six faculty members for over 400 students.⁵⁰ In order to accommodate the large numbers of students, each university has a morning session and an afternoon session, each with a different group of students.⁵¹ This system requires the professors to lecture for six to eight hours a day to classes of often more than 50 students. Given such strained resources, the deans were reluctant to allow faculty members to devote additional time to clinical or other programs, and the faculties were reluctant to accept additional responsibilities.

C. Inflexible Curriculum and Lack of Elective Courses⁵²

Early on, we learned that in non-Kurdistan Iraq the courses that each student must complete in order to graduate are determined by a curriculum committee consisting of the deans from each law school, led by the dean of the Baghdad

schools, Basra tended to be a safer city for the most part, and the university was in a slightly quieter location. At Baghdad University's College of Law, located in the nation's turbulent capital and in an area of the city, Adhamiya, where insurgents and coalition troops frequently clashed, it became immediately clear to us that any program we sought to implement would be significantly limited due to security. For further information regarding the security situation prevailing in Adhamiya during the project period, see Evan Osnos, *Gear Slow to Arrive for Iraqis*, CHI. TRIB., Feb. 5, 2004, at C3; Stephen Grey, *Life and Art Dangerously Close in Iraqi Soap Opera*, AUSTRALIAN, Mar. 22, 2004, at 15.

48. Conversations, *supra* note 1.

49. *Id.*

50. See *supra* notes 23-25 and accompanying text.

51. Conversations, *supra* note 1. Between December 2003 and September 2004, Basra University decided not to accept any more students for afternoon sessions in order to relieve the burden on its substantially overtaxed faculty. *Id.*

52. As noted in the introduction to this article, problems regarding the curriculum are being addressed in a separate program of our project. The success of these ongoing efforts has yet to be fully gauged.

University College of Law.⁵³ The committee's determinations must be approved by a higher commission consisting of the Minister of Higher Education and Scientific Research and the presidents of all the Iraqi universities.⁵⁴ The current law school curriculum consists of thirty-three courses.⁵⁵ There are no electives, and the law schools are not permitted to vary the established curriculum.⁵⁶ Further, over 80% of the material to be taught in any given course is determined in advance by the curriculum committee, although the remainder may be filled as the professor wishes.⁵⁷ Any additional courses or subject matter must be in addition to, rather than in lieu of, curriculum committee requirements.⁵⁸ For example, the dean and faculty at Basra University College of Law informed us that they added an admiralty class to their curriculum, which they felt was necessary given Basra's status as Iraq's only port city.⁵⁹ As a result, Basra law students are now required to complete one additional course over the committee requirements.⁶⁰

This rigid curriculum presented significant difficulties in terms of establishing a legal clinic. The addition of any clinical program to the established curriculum, whether a live clinic or a more traditional academic course focusing on simulations and trial advocacy, would require an enormous commitment of resources that probably drastically exceeds the Iraqi law schools' total combined budgets.⁶¹ Adding a clinical elective at even a few schools is likewise difficult because that elective must be taken in addition to other required coursework. Participation in a clinic involves a considerable amount of effort, and asking students to undertake that effort while also completing all other curriculum obligations would be difficult.

Within Kurdistan Iraq, Suleymania University has developed its own curriculum, which can be changed more easily.⁶² Nevertheless, adding elective

53. Conversations, *supra* note 1.

54. *Id.* The several law school deans with whom we spoke indicated that, in their experience, the higher commission rarely rejects the recommendations of the law school deans. However, the second level of approval does require further time and effort before any curriculum change can be effected.

55. Baghdad University College of Law's curriculum for the 2003-04 academic year, as given to us by the dean, is contained in Appendix A.

56. Conversations, *supra* note 1.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. More than 10,000 law students graduate in Iraq each year from the over twenty existing law schools. *Id.* Even assuming a student-faculty ratio of 35:1 for the clinics or practice-based programs, which would be regarded as absurdly poor by most clinicians in the United States, a mandatory, universal clinical program would need to retain and train approximately 300 professors or attorneys. This is almost ten times the number of existing faculty members at Baghdad University College of Law.

62. *Id.* The 2001-02 curriculum, as contained in the SULEYMANIA U. PROSPECTUS, *supra* note 21, at 136-37, is reprinted as Appendix B. One of the most recent changes to the Suleymania curriculum related directly to the faculty's desire to insert more practice-related coursework into students' existing course load. Conversations, *supra* note 1. Noticing that the existing summer courtroom visitation program was not as beneficial as it could be, because students did not learn civil and criminal procedure until their fourth year of study, the university approved a change in the

courses such as clinical offerings still requires overcoming many obstacles, such as a lack of available faculty.

D. Faculty Resistance

It was apparent from our initial discussions that senior faculty members, in particular those dominating Baghdad University, believe strongly in the traditional model of education, in which students learn in a passive, non-interactive manner. In the faculty's collective judgment, students are ill-prepared to handle experiential education, even in simulated settings. Throughout the discussions, the faculty made clear its belief that it is absurd for a professor to guide students to learn from their own experiences rather than to tell them what to do and how to do it.

Junior faculty members at all of the universities were more flexible. Unfortunately, in our initial discussions it became clear to us that the opinions of junior faculty members are not held in the same regard as those of their senior colleagues. The Iraqi law schools seemed quite hierarchical in nature and, as a result, the more favorable opinions of junior faculty members tended to have little impact on the program.

E. Limited Resources; Other Priorities

As noted above, the general condition of most Iraqi law schools is quite poor, and their needs are multifold. These range from adding materials to the library and granting increased computer access to students to hiring more faculty and improving the basic infrastructure of classes by purchasing desks, air conditioners, blackboards, and similar items. In light of the schools' desperate state, many faculty members wondered aloud more than once during our initial discussions whether a significant expenditure of funds on a clinical program was the best way to direct our limited funding. Though we continued to press for a program, we acknowledged the validity of their concerns.

F. Faculty and Student Training

Law professors in Iraq are prohibited by statute from engaging in the practice of law.⁶³ While some of the professors we met did briefly work as lawyers

curriculum that moved civil and criminal procedure to the third year. *Id.* Some of the faculty at several other universities suggested on more than one occasion that they would welcome such a change in their curriculum, but that to implement it would be a difficult endeavor.

63. Qanoon Al-Muhamat No. 173, §§ 21, 34 (1965) [hereinafter Attorney Law]. There is a narrow exception to this rule that allows professors to engage in practice through a department established at each university known as a Legal Consulting Office. Revolutionary Command Council Decree No. 48, Art. 1, §§ 1-2 (1997). Under the decree (passed over the strong objection of the Iraqi Bar Association), professors can appear in court and otherwise consult on legal matters through the Office. In practice, however, the Office at almost every College of Law has rarely been used in recent years. Conversations, *supra* note 1. When the Office has been used, the work usually entails little more than providing an interpretation of a statute to an appellate court judge in connection with an existing case at the request of one party's attorney. *Id.* According to the faculties at every university, a professor will very rarely handle an entire case on his own through the Office. *Id.*

prior to their teaching careers, the overwhelming majority lacked any practical experience. Thus we concluded that any clinical program would require significant training for the faculty members leading it. Unfortunately, such a training program would be difficult to arrange because outside personnel with clinical training experience would probably not come to Iraq, given the security concerns. Out of country training would obviously be expensive and complicated as well.

Student maturity was also a significant problem. Because a law degree in Iraq is obtained at the undergraduate level,⁶⁴ most first-year Iraqi law students are seventeen years old. Though we intended to focus our program on third and fourth-year law students to ameliorate our maturity concerns, we still were unsure of students' ability to handle live client affairs in any significant capacity. In addition, Iraqi law does not permit students to participate in court proceedings or appear before government agencies; only members of the Iraqi bar are permitted to do this.⁶⁵

III. PROGRAM DESIGN

In light of the foregoing obstacles, we did not believe that it was possible for us to create a live clinic at any of the three law schools prior to the scheduled end of our project. Further, we believed that forcing the institution of a live clinic could prove counterproductive because if the program failed it would leave the schools with a general distaste for experientially-based education. Nevertheless, given our desire to expose law students to experiential learning, we decided to embark on a set of programs that were more modest and based on simulations. To succeed, my colleagues and I knew we would have to structure the program to take all obstacles into account and to compromise where necessary to ensure continued faculty support.

More importantly, we needed to tailor the program to fit the particular needs and capabilities of each institution. Despite the former regime's extensive efforts to impose centralized rigidity on the administration and management of all Iraqi law schools,⁶⁶ each school has remained unique.⁶⁷ Our program had to take this into account to be successful. Therefore, toward the end of the initial discussion period, we developed the following plans for each of the three law schools in close consultation with the faculty and administration of each school. As I explain in Part V below, we were not always able to implement our ideal programs as originally envisioned, but the initial plans remained our blueprints throughout the project.

64. *See supra* note 18.

65. Attorney Law, *supra* note 63, § 21 (allowing only attorneys whose names are registered as members of the bar to represent clients before courts and government administrative bodies).

66. Centralized control was best demonstrated by the uniform curriculum and by the fact that the Minister of Higher Education and Scientific Research was responsible for the appointment of deans and faculty at each College of Law. Conversations, *supra* note 1.

67. *See supra* Part II.A.

A. *Baghdad University*

While the faculty at Baghdad University refused to accept the benefits of experiential learning, it did support some forms of practice-based education such as courtroom visitations and lectures by judges, prosecutors, and attorneys. These programs would only be possible with our support. Therefore, the faculty was amenable to the implementation of two linked programs focusing on the most talented third- and fourth-year students. The resulting programs included aspects of practice-based education that were of primary interest to the faculty and aspects that were more appealing to us.

The fourth-year program, larger in terms of attention and resources devoted to it, involved selecting the twenty students with the highest grades⁶⁸ and enrolling them in a three-phase clinical education program focusing on criminal law. In the first phase, the students would attend courtroom sessions and listen to lectures on the ethical and competent practice of law. These lectures would be given by judges, defense lawyers, and prosecutors, whom I refer to throughout as “exercise leaders.” This first phase did not involve true experiential learning because the students were not involved in practice-based exercises. The second phase, however, involved a more active student role, including limited role playing with faculty and exercise leaders. Important to this phase were pre-role playing discussions between students and the faculty and exercise leaders. My colleagues and I knew we needed to urge the exercise leaders to assist the students in learning from their own experiences rather than merely show them the “correct” way to approach a legal problem and ask them to parrot that. We anticipated that this would be very difficult because it involved persuading them, as well as the faculty and the students, to employ an alien methodology. The third and final phase of the fourth-year program was the organization of several moot court sessions, for which the students would prepare and play important roles in connection with a simulated criminal case. The students would therefore conduct an entire trial or set of trials, time permitting. The final moot court session, insisted on by the faculty, would consist entirely of exercise leaders playing the same roles that the students had played.⁶⁹ As an additional incentive to encourage faculty support, we agreed to use project money to build a permanent moot court room on university grounds for this purpose.

68. Though we would have preferred to have had an opportunity to meet with and select students to participate in the program based on a variety of factors not limited to grades alone, this approach was staunchly opposed by the faculty for reasons that seemed reasonable in the specific context of Iraq. In a society so divided by sectarian and religious differences, as well as controversies regarding the role of women in the professional classes, the faculty did not want to give any appearance that the selection criteria were based on anything other than merit, and they felt that the use of any subjective standards would create that appearance.

69. As an indication of how distrustful some members of Baghdad’s faculty were to the notion of students learning from experience, a few had initially suggested early on in the discussions that the students should play no role in the moot court but rather should be engaged only as passive bystanders or perhaps witnesses. The concept of a moot court in which not a single student played a significant role struck me as absurd, but some within the faculty continued to advocate it until the end of the program, insisting that nobody would learn anything from watching students make a mess out of a criminal proceeding.

Initially, my colleagues and I vigorously opposed the concluding moot court session because it could suggest to the students that there is only one correct method of advocacy; namely, that employed by the exercise leaders. However, under much faculty pressure, we relented because we saw no other way to proceed with the program and retain faculty support. I intended to exhort the students not to view the exercise leaders' approach as necessarily "correct" and their own techniques as necessarily "incorrect," but rather to contrast the two and decide for themselves. Unfortunately, however, given the long tradition of deference among Iraqi law students, I was skeptical that anything I said might make a difference.

The other program we intended to institute at Baghdad University was a summer externship during which the twenty best-performing third-year students (again, based on grades) would be selected to work under the supervision of practicing lawyers. The lawyers would involve the students in all aspects of practice. In comparing the third- and fourth-year programs, the third-year program was designed to be smaller and was likely to be of less benefit, given the restricted ways in which students would probably be used in the attorneys' offices. Nevertheless, in our view, the third-year program would still expose students to practice-based education if implemented properly. The key to its success would lie in close supervision of the selected attorneys. While the faculty made very clear their low regard for Iraqi attorneys generally, they were confident that a sufficient number of competent and ethical attorneys could be found with whom the students could be placed.⁷⁰ This was absolutely crucial; if the students did not have the opportunity to assist in the meaningful practice of law or, even worse, witnessed outright corruption or fraud, the program could undermine our larger goal of assisting in the development of a rule of law society in Iraq. In selecting appropriate attorneys, we were forced to rely on the faculty's judgment. Fortunately, through our repeated discussions, my colleagues and I had begun to place a great deal of trust in them.

Structuring the two programs in a way that would motivate the students was a difficult challenge. This was particularly an issue for the fourth-year students because our program added to their existing, curriculum-committee-imposed course of study. In addition, the faculty assured us more than once during our discussions that Iraqi law students, like their counterparts in the United States, would not be very motivated in their final year of study, especially as graduation neared.

Fortunately, during our initial discussions, we did discover one way to motivate the fourth-year students. Law students at Baghdad University are required to complete a research paper approved by a faculty mentor prior to graduation.⁷¹ The faculty allowed us to waive this requirement for students who participated

70. Naturally, in addition to competence and ethics, we wished to select attorneys who would be reasonably amenable to employing the experientially-based pedagogical tools from which we wanted the students to benefit.

71. Conversations, *supra* note 1. According to the faculty at Baghdad University, the same is true of every Iraqi law student. *Id.*

satisfactorily in our program. The faculty seemed amenable to this because the research requirement was not terribly important to them. In their view, it had long ceased to be a meaningful enterprise given the severe restrictions on outside material and resources.⁷² For students in the third-year program, no similar inducement could be offered.⁷³ Fortunately, it was not as necessary for them, because the program did not force students to take time away from their other academic requirements and because third-year students are in theory already required to spend their summer attending court sessions. The program therefore would not be such a stark deviation from the norm and would provide a better executed, more meaningful summer experience for the students.

B. Suleymania University

Due to strained faculty resources, Suleymania University was not in a position to offer any additional programs during the course of the school year. Moreover, in our initial discussions, the faculty repeated several times its strong preference for implementing a program that would focus on an entire class of students rather than a select few. Accordingly, in consultation with the faculty, we devised a summer program that was to be a practice-oriented, four week workshop to be held in August 2004.⁷⁴ It would be open to all students who had graduated the previous June and would be led by practicing judges, prosecutors, and attorneys.⁷⁵ The workshop was to consist of a series of conferences in which students were introduced to and encouraged to engage actively in the experiential learning process. One workshop would focus on civil court advocacy and procedure, another on criminal court advocacy and procedure, and yet another on ethics and practice.

Although we could not compel attendance at any of the workshops, we would, through direct discussions with the students, encourage maximum participation, particularly in the ethics workshop.⁷⁶ Our concerns regarding attend-

72. *Id.* See also *supra* note 10 and accompanying text.

73. In what stands out in my mind as the most tragic example of the devastated state of affairs that govern Iraqi law schools today, some faculty members proposed that we pay the students to participate in the program as an inducement. That one would need to offer money to Baghdad University's top students in order to entice them to participate in a program designed for their benefit was troubling to us. Nevertheless, financial inducements were not offered, and, fortunately, the faculty's cynicism regarding the level of student interest absent such inducements did not appear to be justified in the end. See *infra* Part V.C.

74. Originally, we had discussed with the Suleymania faculty a plan that would help strengthen their third year court visitation program. However, because their current third year program is already strong and our fourth year program seemed so promising, we decided to focus our efforts entirely on fourth year students.

75. In fact, the fourth year students were not "students" at all but rather recent graduates. Nevertheless, given that they would have graduated only two months prior to the scheduled start of the program, the faculty and we tended to think of them as students, and we designed the program as if they were still enrolled at the university. Accordingly, I refer to the graduates herein as "students," notwithstanding the technically incorrect nomenclature.

76. Our emphasis on the ethics workshop was not related to the development of clinical programs per se, though it is my belief that ethics in particular is a subject best learned experientially. Rather, my colleagues at IHRLI, in considering our broader project objectives, lamented the lack of any formal ethics training in the Iraqi law school curriculum, particularly when lawyers are so rou-

ance at the Suleymania workshops were particularly acute because recent graduates could not be compelled, or even influenced meaningfully, to attend. A professor exhorting current students to attend a seminar, for example, is very likely to have an effect on attendance, particularly given the hierarchical nature of Iraqi universities. A graduate, however, even a very recent one, is entirely free of the university, and a professor's urging is not likely to have the same effect. As a result, the faculty was quite certain that the majority of students would not attend. However, by making the program available to everyone, the faculty believed that approximately one-third of the recent graduates would attend regularly.

C. Basra University

As with Suleymania, the Basra faculty made apparent its strong desire to make any program we implemented available to an entire class of students. We therefore agreed to adjust Basra's two existing civil and criminal procedure classes to include a practice-based component that would subsume the 15-20% of the course that is discretionary.⁷⁷ This clinical component would be divided into two parts. The first part would consist of court visitations and lectures by judges, prosecutors, and other practitioners (to whom I again refer as exercise leaders) on ethics, courtroom strategy, advocacy techniques, and similar issues. The second part would consist of role playing and moot court exercises, whereby students would act as advocates, with the faculty and exercise leaders evaluating and guiding their performance. As in Baghdad, we agreed to build a moot court room for the law school for this purpose.

Our greatest concern was ensuring that students would have a meaningful opportunity to participate. In light of the large number of students (approximately one hundred in each of the morning and afternoon sessions), we knew that this would prove to be a challenge. We hoped that by dividing the classes and securing the assistance of a sufficient number of exercise leaders, we could provide the necessary resources to give students a significant opportunity to learn from the experiential training. In addition, although we did have some of the same concerns that we had with respect to the Baghdad program regarding hostility to the general concept of clinical pedagogy, the problem seemed less pronounced in Basra.

IV.

IMPLEMENTATION OF THE PROGRAM

Having spent the first three to four months of our project developing the detailed program described above, we set out to implement it. Below, I describe

tinely regarded in the broader society as irredeemably corrupt. There were many ways the project sought to address this, but one was to encourage students to attend the ethics workshops.

77. See *supra* Part III.C (describing the limited amount of discretion professors have in teaching courses).

the challenges we faced during the implementation period and gauge our relative success in achieving our project goals.

A. Challenges

1. Security

Security problems waxed and waned during implementation and affected nearly every aspect of the programs in Basra and Baghdad. On numerous occasions, I was forced to cancel courtroom visits or scheduled workshops because, in my judgment, street travel to one or both of the law schools was too dangerous. My own ability to travel to Basra was severely restricted because of the dangers of intercity road travel.⁷⁸ The program could therefore almost never keep to the schedule that we had so carefully developed, despite the best efforts of the project staff, the students, and the faculties.⁷⁹ Regrettably, during a critical period at the beginning of our program, April 2004, particularly acute security concerns arose throughout the country. The U.S.-led coalition conducted a series of military incursions into the restive city of Falluja, and violence erupted in much of Iraq's south and in some neighborhoods of Baghdad as well.⁸⁰

Classes at this time were intermittent and sparsely attended; the attention of the students and professors was elsewhere. In addition, the faculties in Basra and Baghdad told me that because of these difficulties, the schools were moving exams forward, from late to early June 2004.⁸¹ These developments severely affected our project, as our Baghdad program was supposed to begin full moot court sessions in April, and in Basra we had planned to have a series of practice-based exercises at that time as part of the students' existing coursework. Given the conditions, we were forced simultaneously to cut back on and accelerate our program, in an already challenging security environment, to complete it before the middle of May, when the students would begin to be preoccupied with exam preparation.

In light of these challenges, I believe the progress we made was admirable. In Baghdad, for example, we reached the second phase of our three-phase, fourth-year program. Exercise leaders came to the school and assisted the students in practice-based techniques, even though we ran out of time before we could hold a full moot court session. In Basra, most, though not all, of the

78. See, e.g., BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, TRAVEL WARNING: IRAQ (Oct. 20, 2004), available at http://travel.state.gov/travel/iraq_warning.html.

79. On at least one occasion, the desire on the part of project participants to adhere to our schedule may have led us to proceed imprudently. Specifically, one day in early April 2004 we decided to attend a scheduled courtroom session in Baghdad after some discussion among the dean, several faculty members, and me about whether or not conditions were safe for travel on that particular day. When we arrived at the courthouse, we discovered that no criminal sessions would be held that day. The guard at the gate informed us that the U.S. Army and Iraqi police had decided that the roads were too dangerous for travel, so they could not bring any defendants to court. From that point on, we were considerably more cautious in deciding whether or not conditions were safe enough for us to proceed with program activities.

80. Mark Franchetti, *Apocalypse Now?*, SUNDAY TIMES (London), Apr. 11, 2004, at 15; Christopher Caldwell, *Bush Weathers a Stormy War*, FIN. TIMES (London), Apr. 10, 2004, at 11.

81. Conversations, *supra* note 1.

students in the civil and criminal procedure classes were exposed to practice-based techniques and given the opportunity to visit courtrooms. While these opportunities were more limited in scope than we had originally planned, they were still opportunities the students otherwise would not have had.

In one area, the Baghdad third-year summer externship, the increased security concerns ironically resulted in a significant improvement to our program. Both faculty and parents believed that it was unwise to allow students to travel unsupervised to an attorney's office on a daily basis. We therefore eliminated the attorney externship aspect of the program, after having already begun attorney training, and replaced it with court visitations and moot court sessions that continued to run even after classes began. I believe that the students benefited more from and were also more interested in the program than they would have been had it been limited to attorney externships.

Finally, I should note that none of the security concerns affected our Suleymania program. Throughout the entire implementation period, Suleymania remained free of significant incident from our perspective.

B. Faculty Support and Cooperation

Generally, the faculties at each school were well intentioned, diligent, and eager to work with us to improve their respective schools, as were the exercise leaders. Nevertheless, it was difficult to persuade these individuals to employ different pedagogical methods from those to which they were accustomed. My colleagues and I were unfortunately only mildly successful in overcoming this obstacle, with the degree of success varying from school to school.

We were most successful at Suleymania University. The faculty and exercise leaders on whom we relied there generally welcomed the challenge of allowing students to learn in such a dramatically different fashion, though the process of teaching them these new techniques was challenging. Most were initially confused as to what we were asking of them, such that the first two-to-three days of the workshop were effectively mere lectures by the exercise leaders. Moreover, I could not speak Kurdish, the native language in Kurdistan Iraq, and this made it more difficult for me to steer the exercise leaders in the direction of the alternative pedagogy. Fortunately, the students and practitioners were all fluent in Arabic, and the ideas I presented did seep in gradually. The progress gathered momentum as the weeks proceeded. By the end, several of the Suleymania exercise leaders echoed the comments of Western clinical commentators, with whom they were not familiar, arguing that experiential learning benefits students greatly because it teaches them to teach themselves through experience, as they will be compelled to do throughout their careers.⁸² By the

82. *Id.* For the general views of Western clinical commentators, see, for example, Quigley, *supra* note 45, at 473-76 (describing experience as the key to education); Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984) (describing critical self-reflection following experiential learning as the best kind of education); *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 512 (1992) (stating that a "critical goal of clinical education [is] to teach students how to be reflective practition-

end of the seminar I believe the majority of those who participated in the summer workshops had a decent understanding of clinical ideas and application.

At Baghdad University, however, the traditional notions of proper pedagogical techniques interfered with the success of the program. For example, though students played significant roles in simulation exercises, their lessons were often dictated by the faculty or the exercise leaders rather than by their own experience. They were told where they made mistakes and were instructed on specific improvements. Students responded by producing pen and paper and writing down the comments, seemingly verbatim, presumably to memorize them. We urged a different approach to the extent that we considered prudent, but we were careful not to breed resentment by insisting that the faculty had acted in error. In our view, the mere introduction of these ideas was a step in the right direction. If the faculty did not wish to move further, nothing could be gained by trying to force them to accept an unpopular idea. I am personally very confident that in the future, given sufficient time, the faculty will begin to warm to the new pedagogical techniques.

Basra University was similar to Baghdad University in this respect as well, except for the outstanding performance of a single junior faculty member whose ability to understand and employ experientially based learning techniques was extraordinary. A former attorney, he understood almost immediately the concept of experiential learning and had an uncanny ability to allow a student to perform a simulated exercise and to coach him or her in a manner that ensured that the student would learn from his or her own mistakes. Even extremely poor performances received a nod, a smile, and a series of questions that would bring the student to understand exactly why his or her approach was not likely to be effective. Though the security situation and large number of participating students limited his efficacy somewhat, his efforts alone made a significant difference and helped the program achieve modest success.

C. Student Interest

The most satisfying aspect of the program at all three schools was the level of student interest. Students at all three universities exhibited an overwhelming degree of interest that surprised even their own professors. As the most fitting example of this, at Suleymania University, where our concerns over a lack of attendance and interest were the greatest, over 150 of the 220 eligible students signed up to participate in the program on the first day of a three day registration period. In addition, in Baghdad, we received numerous queries from nonparticipating students as to how they could join the program in the future. Several members of the Basra faculty mentioned more than once that the classes with a practice-based component were considerably better attended than other classes. Furthermore, the profound student interest was a crucial factor in maintaining

ers'") (quotation marks omitted); Michael Meltzer & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1, 9 (1978) (describing the process by which students at Columbia University's legal clinic developed useful skills for directing their own learning).

faculty support for the program. The faculties at all three law schools, which had indicated on many occasions that their respective students were unmotivated, were delighted to see students take such an interest in their own education.

CONCLUSION

There are a number of lessons that I learned from these experiences and that I think could be applied in other circumstances, both within Iraq and other developing nations. First and foremost, I learned that clinical legal education is not simply a pedagogical method useful to students in American law schools; students in other areas of the world such as Iraq can benefit immensely from this educational methodology. While I believed this to be true from the beginning, it became concretely evident to me as I saw Iraqi students, faculty, and practitioners apply and learn from these new techniques. Students were made aware for the first time of what would be expected of them when they graduated; their exposure to the world of practice both interested them and seemed to benefit them.

The students with whom we worked over the past year made it clear to us on numerous occasions that they learned more about the actual practice of law from our program than they had in years of lecture in law school. We only provided simulated exercises and moot courts; if students were permitted to appear in court representing live clients, their ability to learn from their own experiences, and to challenge preconceived notions in order to protect their clients' interests, would be magnified. I believe that the highly deferential, lecture-based educational format, when applied exclusively, results in a certain passivity on the part of law students, and that passivity is not an admirable quality in any advocate in any jurisdiction. A live clinic, with students arguing cases before actual judges, would help students not only to refine and improve advocacy techniques and their legal abilities generally, but it would also require them to engage in the legal process more assertively.

If the law schools open live clinics, this educational tool would also lead to a societal benefit of greater respect for the rule of law. Based on my experiences in Iraq and after numerous discussions with legal practitioners, professors, law students, judges, and even government ministers, I believe that one of Iraq's greatest needs is a strengthening of its legal institutions and a greater societal reliance on those institutions to settle disputes. One of the major problems with the legal system in Iraq, as in the United States, is that most Iraqis cannot afford to retain competent counsel.⁸³ Further, Iraqis view their legal system as corrupt. As a result of these problems, they often redress grievances through violence

83. The Iraqi Municipalities and Labor Minister estimated recently that the unemployment rate in Iraq is 50%, and the poverty rate 60%. *Iraqi Press Highlights*, BBC WORLDWIDE MONITORING (Oct. 22, 2004). Therefore at least three out of every five Iraqis could not even consider retaining an attorney.

and other extralegal measures.⁸⁴ Opening a live clinic at a law school that was geared toward handling day-to-day issues could help address these problems by providing competent, cost- and corruption-free legal services.⁸⁵

The second important lesson I learned from this experience is that imposing any form of education, or any specific program, upon an institution that is not prepared for or otherwise resistant to it will not be successful. Our program achieved modest success precisely because we were very flexible and open, both in designing the program and in implementing it. We relied throughout the project on continuous dialogue with the respective faculties and made frequent adjustments to our plan when they objected or as circumstances required. This flexibility and open communication were necessary not only to ensure faculty support, but also to ensure that our program harmonized well with the needs of the law students. While we believe that our ideas certainly helped and could continue to help improve legal education in Iraq, those ideas needed to be tailored to best meet the needs of the law students, the faculty, and the society. Local professors, not outside educators such as ourselves, are best suited to assess those needs and tailor a program to address them.

Indeed, the level of success we enjoyed at each school depended on the level of faculty and administrative support we received. We were more successful in Basra than in Baghdad because of one outstanding faculty member. His success was made possible due to a relatively disinterested and otherwise preoccupied administration, a relatively younger faculty (most were younger than forty-five), and a consequently weaker deference to tradition. In such an environment, a pioneering and enthusiastic professor can thrive, but only if he or she has great personal motivation to do so.

By contrast, we were more successful in Suleymania than in Basra because the administration actively supported our endeavors and encouraged all the participants in the summer workshops to be open to new ideas. With this type of support, those participating in the program felt freer to experiment. I believe that more faculty members and exercise leaders in Basra or Baghdad would have been open to experimenting with clinical pedagogy had the administrations in their respective universities reacted as warmly as the Suleymania administration did.

Finally, I learned that achieving the sort of goals we set out for ourselves requires patience and determination. I entered Iraq in December 2003 expecting

84. By my observation, most Iraqis seem to rely almost reflexively on extralegal measures to settle their disputes. Disputes concerning automobile accidents, for example, are routinely settled through negotiations among different family or tribal groups, and familial disputes are often referred to a religious authority to be settled in accordance with the Islamic code. See also Ian Fisher, *Iraqi Liquor Store Owners Fear Fundamentalists' Rise*, N.Y. TIMES, July 16, 2004, at A8 (describing Iraqi vigilantism); Hassan Fattah, *Iraqi Tribal Leaders Find New Clout*, CHRISTIAN SCI. MONITOR, June 17, 2003, at 6 (describing the importance of tribal law).

85. I do not mean to suggest that a live clinic is a panacea that would immediately solve the many problems facing the Iraqi legal system. Clearly, inasmuch as there is a corruption problem in the existing judiciary, it must be addressed elsewhere. However, a drive to clean the judiciary, when combined with the administration of legal services on the part of a clinic that does not practice corruption, would together go a long way toward improving the image and practice of law in Iraq.

to open three live clinics at three law schools in the course of a single year. Now, I remain uncertain as to whether a live clinic could be opened at any one of the three schools by the 2005-06 school year, and I am certain that two of the three schools, Baghdad and Basra, are not ready for such a step. I do not think this demonstrates any failure or deficiencies on our part but rather simply reflects the reality of Iraq's current state. Years of progress are necessary for the faculty to begin to incorporate experiential learning techniques as part of their own educational methodology and for clinical education and live clinics to be an integral part of the Iraqi legal experience. I believe this can only be achieved in Iraq in the longer term.

I do not know whether the funding or necessary resolve exist to carry forth clinical education in Iraq in the near future. However, having seen firsthand the difference that clinical legal education can make for Iraqi law students and potentially for Iraqi society in general, I fervently hope that these next steps are taken, and that in one to two years' time an article similar to this one is written concerning the formation of Iraq's first live clinic.

APPENDIX A: GENERAL IRAQI LAW SCHOOL CURRICULUM⁸⁶

FIRST YEAR	SECOND YEAR
Constitutional Law	Civil Contracts
Introduction to the Study of Law	Civil Law
Introduction to the Shari'a (Islamic Law)	Administrative Rulings
History of Law	Criminal Law
Study of Crime and Punishment	Public International Law
Principles of Economics	The Law of Labor and Social Security
Computer Instruction	Trade Law
	Computer Instruction
THIRD YEAR	FOURTH YEAR
Civil Law	The Law of Commercial Papers
Criminal Law	Civil Procedure and Evidence
Personal Law	Principles of Islamic Law
Principles of Public Law	Execution of Judgments
Public Finance	Private International Law
Administrative Law	Criminal Procedure
Political Organization	Principles of Real Property Law
Computer Instruction	Trade Law
	International Organizations
	Computer Instruction

86. As represented by the 2003-04 curriculum of Baghdad University College of Law. See *supra* note 55.

APPENDIX B: SULEYMANIA LAW SCHOOL CURRICULUM⁸⁷

FIRST YEAR	SECOND YEAR
Constitutional Law	General Theory of Obligations
Introduction to the Study of Law	Political Systems
Introduction to the Shari'a (Islamic Law)	Administrative Law
History of Law	Public Penal Law
Introduction to the Study of Law (in English)	Principles of Administrative and Constitutional Law (in English)
Principles of Criminology	Law of Personal Status (Marriage and Divorce)
Kurdology	International Organizations
Principles of Economics	Public Finances and Financial Legislation
Computer Instruction	
Human Rights	
THIRD YEAR	FOURTH YEAR
Principles of Commercial Law and Corporations	The Law of Commercial Papers
Private Penal Law	Civil Rights Law
The Law of Personal Status (Inheritance)	Civil Procedure and Evidence
Civil Contracts	Principles of Fiqh (Islamic Legislation)
Public International Law	Execution of Judgments
Public International Law (in English)	Private International Law
Labor Law and Social Security	Criminal Procedure
	Commercial Law (in English)

87. As represented by the 2001-02 Suleymania Prospectus. See *supra* note 62. Criminal Procedure and Civil Procedure and Evidence are being moved to the third year effective Fall 2005. *Id.*