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Doing Good While Doing Deals: Early Lessons in Launching an International Transactions Clinic

By Deborah Burand, Director of the International Transactions Clinic and Clinical Assistant Professor, University of Michigan Law School

In the fall of 2008, the University of Michigan Law School launched its International Transactions Clinic (“ITC”) – the first of its kind in the United States and possibly the world. Like other law clinics, the ITC provides students with real world experiences working on real matters for real clients. What sets the ITC apart from many other clinics, however, is the ITC’s international transaction focus.

As the Director of this newly launched clinic, I worried about two issues in the months leading up to our clinic’s launch. First, I wondered whether it was possible for law students sitting in Michigan to provide high quality legal services to clients transacting business in places as far flung as Uganda, Tajikistan, and Morocco. Secondly, I asked myself whether participating students would find this kind of clinic to be a meaningful learning experience as they launched their international legal careers.

One year later, here is my answer. Not only is it possible, but law schools can play a necessary and relatively unique role in providing legal support to the growing community of internationally-focused social entrepreneurs who are trying to do good in the world while also doing well financially.¹ Even more importantly, the students participating in the ITC appear to have grown tremendously in their capabilities and understanding of what it takes to be an international deal lawyer.

That is not to say that the launch of this clinic was easy. Four of the most challenging issues the ITC faced in its first year of operation were:

- 1) developing a client pool,
- 2) defining client projects so as to be appropriate to student clinicians’ skill levels and capacity,
- 3) making use of efficient and inexpen-

sive technology to foster international communication with clients and transaction management, and

- 4) tapping supervisory attorney talent capable of supporting student clinicians in their international transactional work.²

The first two issues were the biggest challenges that we faced in launching the ITC and so this article focuses on how we 1) developed our initial client pool for the ITC, and 2) defined client projects that could be served by a law clinic such as ours.

Developing the Client Pool

The ITC, as initially envisioned, was expected to become a training ground for highly qualified lawyers who graduate from law school already experienced at representing clients’ interests in an increasingly globalized world. When launching the ITC, Dean Evan H. Caminker of the University of Michigan Law School explained that the clinic:

will concentrate on teaching students skills that are critically important to their professional development as they enter into practice areas that involve international transactions. These include drafting and negotiating skills as applied to cross-border transactions, exposure to ethical issues that arise in the international commercial context, structuring and documenting investments in enterprises that primarily work in emerging markets, and an understanding of international economic and financial policy.³

The target clientele of the ITC was defined early in the planning process. For

instance, the ITC’s founders predicted that “ITC clients might include microfinance providers working in the developing world, socially responsible investors,

or others interested in investing in businesses operating at the base of the economic pyramid.”⁴ In addition, “[t]he clinic also plan[s] to match micro with macro, because ITC clients are expected to include multinational corporations and small- and medium-sized entrepreneurs seeking help with increasingly large – and increasingly complex – cross-border transactions.”⁵

This guidance, while offering useful information to students considering applying to the ITC and generating the keen interest of alumni of the Law School, offered only general direction as I began looking for prospective clients. As I began to learn about the clientele targeted by other transactional law clinics with a more domestic focus, I realized that I was at risk of stumbling over many of the current challenges confronting clinical legal educators.⁶ This prompted me to ask, could the ITC operate both as a center for skills training and experiential learning and a site for social justice lawyering? Second, could the ITC grow the next generation of “citizen-lawyers” able to put parochial interests of clients aside if necessary to confront larger societal challenges? And third, could the ITC translate its goals and pedagogy across borders, particularly to developing countries where many of its clients were working?

The answers to all of these questions seemed to rest on figuring out who should be targeted as clients for the ITC.



Deborah Burand

If we got the clients right, then much else should follow. This is why initially we paid as much, if not more, attention to figuring out who should be clients of the clinic as we paid to thinking about what services the ITC could offer them. My own non-profit background also influenced these discussions.⁷ As a result, we made a decision to focus our efforts on recruiting the ITC's initial clients from an arena I knew well – the microfinance sector.

Microfinance, the provision of small-scale financial services and products to unserved and underserved populations around the world, is a growing sector that now reaches as many as 190 million people living on US \$2 a day or less.⁸ Today's over 10,000 providers of microfinance can take many forms ranging from not-for-profit organizations that limit their product offerings to credit-only services, to specialized microfinance banks that operate on a for-profit basis and are licensed to offer a range of financial services, including taking deposits from the general public.

A microcredit can be as small as a loan of US \$25 to be used, for example, by an African woman to buy a second-hand (or thirdhand, for that matter) sewing machine so that she can expand her tailoring business in the village where she lives. This microcredit is not a hand-out, however. Rather, it is a loan, albeit a very small loan, that will bear interest and will amortize over a several month period, requiring the borrower to make multiple principal and interest payments before it is fully repaid.

The real power of microfinance, however, often goes beyond that of a purely financial transaction. In many places, microfinance builds the social capital of a community as well as its financial capital.

I learned this lesson when I visited a group of microfinance customers in Tanzania several years ago. As we were preparing to disburse microcredits to our clients, a Tanzanian woman approached me and, through a translator, thanked me for the microcredits we already had

extended to help her grow her business. The thank you she offered, however, was oddly framed so at first I did not understand what she was saying. According to the translator, this woman was thanking me for her “soft knees.” When I shook my head in confusion, the translator explained. Because of the microcredits we had lent to this woman, she no longer needed to kneel in front of her husband to ask for money for her children's food and education. Instead, she was paying for those expenses out of the profits of her growing business – a business that we had helped her build by extending small loans for her working capital needs.

Such a story about the power of a small loan to change the lives of the poor would not come as a surprise to Professor Yunus, winner of the Nobel Peace Prize in 2006 for his groundbreaking work in Bangladesh in microfinance and the founding of the Grameen Bank, which shared the Nobel Peace Prize with him. As microfinance has grown in the last several decades since Yunus first lent US \$27 from his own pocket to women in Bangladesh, so too has the circle of stakeholders in microfinance. Microfinance appeared to offer a rich array of potential clients for the ITC – such as providers of microfinance to the poor, investors in these microfinance providers, and policymakers building enabling legal and regulatory environments for microfinance, to name a few.

That calculation proved correct. By the end of the first year, the ten (10) clients of the ITC included, among others, a microfinance institution in Tajikistan, two microfinance networks – one global and one regional (focused on Russia), several socially responsible investors in microfinance, a rating agency that specializes in rating microfinance institutions, and a newly formed company that focuses on hedging the foreign exchange risks assumed by microfinance institutions when they borrow internationally to meet their needs for loan capital.

Many of the ITC's initial clients already enjoyed legal support and services. As a result, a decision to use the

ITC sometimes was a decision to forego other, perhaps more proven, legal talent and expertise. The fact that the ITC offers its services on a *pro bono* basis was useful but not a huge spur as most of the ITC's not-for-profit clients already had obtained *pro bono* legal support. Generally, the most convincing client pitch occurred when the client saw its broader social objectives as inextricably linked to the mission and objectives of the ITC, namely, the development of the next generation of international legal talent capable of addressing global challenges like poverty. One of the ITC's most eloquent clients put it this way when explaining why he was willing to use the ITC to respond to some of his organization's legal needs: “[t]he traditional rules of international business were written for banks and other big players, and not for investments in microfinance. The next generation of lawyers should use the law to promote the global effort to reduce poverty. We are delighted that the University of Michigan has taken on this challenge.” Robert Bragar, General Counsel, Oikocredit (The Netherlands).

At the end of our first year of the ITC, I approached each of our clients and asked them to evaluate their experiences with the ITC. Among the feedback we received was the following: “[t]he international transactions clinic did a superb job reviewing our local transaction documents, identifying risks, and offering solutions It's exciting to see a cadre of talented young lawyers engaging in the microfinance space.” Camilla Nestor, Vice President, Microfinance, Grameen Foundation (USA).

This is high praise, but the best evidence of our clients' satisfaction is that nine of our ten clients returned after the first year and asked the ITC to continue offering them legal services and support.⁹

Defining Client Projects

While the initial focus of our clinic's launch was on targeting appropriate clients, once we started conversations with willing clients, it did not take long for

those clients to ask what legal support our student clinicians could offer. In scoping out client projects for the ITC, we aimed to expose each student to three distinct areas of transactional-related work: 1) promoting enabling legal and regulatory frameworks for investing in microfinance, 2) developing forms of cross-border documentation, and 3) conducting live cross-border transactions. By weaving together all three of these assignments, students were able to work on two to three projects at a time. We tried to assign students to a combination of projects – a mix of time sensitive projects as well as some that are less time critical. We also considered the varying complexity of the matters that were assigned to students. Finally, we required students to work in teams. Our goal was to ensure that no single student would be overwhelmed by client demands while still mimicking much of what happens in the real world.

Of these three areas, the hardest for the students was tackling “enabling environment” projects. This, with hindsight, makes sense as most of these projects presupposed a body of knowledge and expertise that even many mid-level attorneys might lack.

From a pedagogy point of view, it was with the “form development” projects that students appeared to learn the most. Here, freed from the time pressures of closing a deal, we could practice “slow motion” law and spend the time necessary to craft provisions and documents that served our clients’ interests. This appears to have been time well spent as by year-end most of the ITC’s clinicians were drafting at a second year associate level.

The third area, live transactions, was the most anxiety producing assignment for the students, yet also the most desired. In order to take on transactions that either were very time sensitive or overly complex for the ITC to manage on its own, we decided to collaborate with several law firms to ensure that the deals were managed and closed properly. These collaborative relationships were made

easier by the fact that two of our clinic’s supervising attorneys also were partners in those firms. The learning that occurred in these transactions included much of what the students encountered while developing forms of documentation. By working on live deals, however, students also were exposed to negotiation tactics, time management issues, and project management issues.

Much of the focus of the first year of the ITC was on microfinance-oriented projects; yet students were encouraged to consider how transferable the skills and experiences they encountered were to other sectors and businesses. By year-end, the ITC student clinicians had worked on third party guarantees, loan agreements, shareholder agreements, share purchase agreements, rating agreements, subscription agreements, and sale and purchase agreements. While the ITC’s work focused on businesses engaging at the base of the economic pyramid while trying to improve the lives of the world’s poor, much of the content found in the contracts and documents drafted by the ITC clinicians would be recognizable to those offering legal advice and support in a purely commercial, cross-border context.

While the ITC is still very much a “work-in-progress” as it embarks on its second year, the most significant test of its success will be how this clinic experience shapes the lives and careers of its student clinicians. To date, initial feedback from our graduated students has been positive.

Alyssa Worsham, now a first year associate at Baker & McKenzie (Vietnam) wrote to me after her first week at work to say, “[t]he real value of my experience in the ITC became apparent on my first day of work when I was confronted with documents similar to those I had spent hours studying and often drafting under ITC supervision. As a new lawyer, it is important to walk into the office on your first day feeling confident and ready to take on whatever they give you. [The] ITC has made my adjustment into firm life much smoother.”

Ganya Chiranakhon, a December 2009 graduate of the Law School, recently described her experience in the ITC. “[a]s a student attorney in the inaugural year of the ITC, I had the opportunity to work on a variety of matters that I wouldn’t have been exposed to in any other clinical program Student attorneys are given a great deal of responsibility, and communicate directly with clients to direct the scope and management of projects. I also had the opportunity to collaborate with associates at two different law firms. It was an amazing learning experience to be able to work with attorneys who have specialized knowledge of the specific types of agreements the clinic was working on. Not only does the ITC provide students with real transactional experience, but it also fosters the development of team-building, communication, and time-management skills.”

And Ji-Yeon Suh, another December 2009 graduate of the Law School, shared this observation about her experience in the ITC. “[d]uring my year in the ITC (Fall 2008 to Winter 2009), we were immersed in international law in a unique and socially crucial way: under the prism of microfinance, a major and robust social investment phenomenon that is an utmost force for positive socio-economic change around the world. As we served a global clientele of think tanks, microfinance financiers, microfinance rating agencies, even universities interested in constructing their own microfinance contributions, the clinic placed its student clinicians squarely in the international law arena Truly, the ITC imparted its student clinicians with a sophisticated awareness and respect for the increasingly fluid cross-border environment in which lawyers serve their clients.”

As these students indicate, the ITC is building a professional and legal foundation for our student clinicians that may prove to be not only powerful, but also transformational. If those of us shaping and guiding the ITC do our job well, the lawyers who emerge from this clinical ex-

perience will have a greater understanding of the world about them and of the range of roles they can play in that world. The ITC should deepen and broaden our students' sense of what is possible in their career paths, their *pro bono* practices, and, even, their philanthropy. As Dean Caminker said upon the launch of the ITC, "[t]his is an exciting opportunity to involve a new generation of bright legal minds in cross-border transactions that will train our students for a lifetime of international business dealings, and that can also make an enormous difference in the lives of the people in the developing world."

Dean Caminker has it exactly right. The launch of the ITC marks a generational shift. We say we have launched a new clinic here at the University of Michigan Law School, but we also have launched a new community -- a world-changing community of international transactional attorneys who have experienced firsthand, before even graduating from law school, an opportunity to apply their growing legal talents and skills on a global scale while also helping to improve the lives of the world's poorest people. 🌍

About the Author

Deborah Burand joined the faculty of the University of Michigan Law School in 2008, as a Clinical Assistant Professor, to direct the launch of the Law School's International Transactions Clinic (ITC).

Burand was one of five topic leaders for the 2009 Clinton Global Initiative (CGI). She co-led the Finance track, "Financing an Equitable Future," at CGI's annual meeting in September. When not teaching at the Law School, she also is a freelance writer.

Prior to joining the law faculty at the University of Michigan, Burand's career has spanned, in nearly equal seven-year parts, senior management positions in the microfinance sector, senior internationally-focused legal and policy positions in the US government, and an international corporate law practice.

Endnotes

- 1 There are many definitions of the terms social entrepreneur and social entrepreneurship. Bill Drayton, founder and CEO of Ashoka, is recognized as first coining the term "social entrepreneurship" nearly 30 years ago in the early 1980s. Paul Light most recently wrote that "[l]ike business entrepreneurship, social entrepreneurship involves a wave of creative destruction that remakes society." See generally Light, "Social Entrepreneurship Revisited," *Stanford Social Innovation Review* (Summer 2009).
- 2 In its second year of operation the ITC tapped three adjunct law professors to offer part-time supervisory support. They include Timothy Dickinson, Jennifer Drogula, and Carl Valenstein. This has allowed the ITC to expand the number of student clinicians in the ITC to 14, with an approximate professor to student clinician ratio of 1:7.
- 3 "Students Will Get Hands-On International Transactional Experience," *50 Law Quadrangle Notes* 2, at 81 (Summer 2008).
- 4 Press Release, "New International Transactions Clinic Means Business," May 5, 2008.
- 5 Press Release, "New International Transactions Clinic Means Business," May 5, 2008.
- 6 See generally Moran, "President's Message: Transformation and Training in the Law: Serving Clinical Legal Education's Two Masters," *2009-2 AALS News* 1 (May 2009) (Moran notes three challenges: 1) focusing on skills training may undermine the social justice origins of clinics, 2) creation of clinic traditions may slow the accommodation of diversity and change in the legal profession, and 3) globalization of clinical legal education may complicate the relationship between pedagogy and social justice).
- 7 Prior to joining the faculty at the University of Michigan Law School, I had divided my professional career nearly in equal thirds – nearly seven years in a large New York law firm, Shearman & Sterling; seven years in the US Government as a central bank lawyer at the Federal Reserve Board and as a senior advisor on international financial matters at the US Treasury; and more recently, seven years in the microfinance sector as a member of the senior management teams of two global microfinance networks – FINCA International (www.villagebanking.org) and Grameen Foundation (www.grameenfoundation.org).
- 8 Roughly 40 percent of the world's population (approximately 2.6 billion) lives on less than US\$2 a day. In the developing world, one in four people (1.4 billion) live on less than \$1.25 a day. See, "State of the Microcredit Summit Campaign Report 2009 (available on the Microcredit Summit website: www.microcreditsummit.org). See also, World Bank Press Release, "New Data Shows 1.4 Billion Live on Less Than US \$1.25 A Day, But Progress Against Poverty Remains Strong," August 26, 2008. (available on World Bank website: www.worldbank.org). For more general information about microfinance, see www.cgap.org.
- 9 That 10th client did not return because it did not have any further cross-border deals that required international legal support.

