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## Through a Glass, Clearly; Reflections on Team Lawyering, Clinically Taught

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## Through a Glass, Clearly; Reflections on Team Lawyering, Clinically Taught

61 N.Y.L. SCH. L. REV. 87 (2016–2017)

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What follows is a personal note of thanks from Professor Brescia:

I wish to thank my professors and colleagues who were teammates on this endeavor, many of whom made very helpful suggestions on earlier drafts of this piece, including Harold Hongju Koh, Michael Wishnie, and Graham Boyd. I am also grateful for the thoughtful comments of my colleague, Sarah Rogerson, and the encouragement, insights, and support of Brandt Goldstein. I wish to express my thanks to the students and staff of the *New York Law School Law Review* for the opportunity to share these thoughts.

As this piece was being drafted, one of the supervisors of the case, Michael Ratner, passed away after a long bout with cancer. As these pages reveal, his legacy lives on through the students who learned how to be lawyers through his guidance.

## I. INTRODUCTION

It is now twenty-five years since I first heard of Guantánamo Bay.<sup>1</sup> As a third-year law student, I was enrolled in a clinic that was engaged in human rights advocacy when those of us in the clinic learned of the U.S. government's practice of interdicting Haitian refugees on the high seas, screening them on the decks of U.S. Coast Guard cutters, and determining whether they had a "credible fear" of persecution should the United States return them to Haiti.<sup>2</sup> If they were "screened in," most were first brought to the U.S. naval base located at Guantánamo Bay, Cuba, and then admitted into the United States for a full-dress asylum hearing. In the clinic, we monitored the activities of advocates bringing an action in Southern Florida to challenge the policy. That challenge succeeded at the district court level, was reversed at the Eleventh Circuit Court of Appeals, and the Supreme Court denied certiorari, leaving the government's practices intact.<sup>3</sup> Once the decision to deny review came down, my classmates in the clinic sought to explore opportunities to challenge what the U.S. government was doing to the Haitian refugees.<sup>4</sup> I decided not to join because I had to fulfill some graduation requirements. What happened next ultimately changed me in profound ways. I would later understand that the moment I learned about this now world-historical spot in the Caribbean was a key inflection point in my life. As I look back on it now, it is also the mid-way point in my life to this time. I spent roughly the first half of my life not knowing about Guantánamo Bay, and the second half marked indelibly by it.

I ultimately acceded to the requests of my classmates to rejoin the clinic and engage with a new lawsuit the group was about to bring. That lawsuit has been written about in many contexts. A full-length, nonfiction legal thriller tells the tale of the litigation.<sup>5</sup> I will not recount that tale here. Moreover, I will not wade into the debate over the legal and policy legacy of the litigation; I leave that to others more versed in the doctrine and who practice and write in this field.<sup>6</sup>

Instead, I plan to take this opportunity to reflect on what I have learned about what made that law school project—because, in many respects, that is what it was—

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1. While Guantánamo Bay is a geological formation on the coast of Cuba, my use of the term here refers, as is common in the vernacular, to the U.S. naval base located at that location.
  2. Familiarity with the underlying factual and procedural history of the case is presumed. Therefore, this section will not be heavily sourced.
  3. *Haitian Refugee Ctr., Inc. v. Baker*, 949 F.2d 1109 (11th Cir. 1991), *reh'g denied*, 954 F.2d 731 (11th Cir. 1992), *cert. denied*, 502 U.S. 1122 (1992).
  4. For details on the pre-filing phase of the litigation that would come to be known as *Haitian Centers Council, Inc. v. McNary*, and *Sale v. Haitian Centers Council, Inc.* before the Supreme Court, see BRANDT GOLDSTEIN, *STORMING THE COURT: HOW A BAND OF LAW STUDENTS FOUGHT THE PRESIDENT—AND WON* 27–59 (First Scribner trade paperback ed. 2006).
  5. *See generally id.*
  6. For a negative take of the legacy of this litigation, see Joan Fitzpatrick, *The International Dimension of U.S. Refugee Law*, 15 BERKELEY J. INT'L L. 1 (1997). For a critique of the Supreme Court's decision in *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), and a defense of the litigation, see Harold Hongju Koh, *The "Haiti Paradigm" in United States Human Rights Policy*, 103 YALE L.J. 2391 (1994).

such a success. With twenty-five years of hindsight, including fourteen years of practice, one year clerking for a federal judge, and now in my tenth year teaching law, I am able to reflect on that case to consider what made it work, why it had the impact it did on the lives of the clients, and more importantly for this discussion, what it meant to the students.<sup>7</sup> Instead of staking claims about the outcomes, I focus here on the process and the manner in which the team carried out its tasks. In a nutshell: The Haiti case was my first exposure to team lawyering, clinically taught. Understanding how teams work—creatively, effectively, collaboratively—has become my life’s work, in good part because of this formative experience, a quarter century ago.

While many may debate the lasting doctrinal impact of the case, and much has been written on that topic, I choose instead to focus on another aspect of the undertaking: not what the team produced but how the team produced it. I believe that how we did what we did is an important story in itself, and one that has implications for similar initiatives and campaigns in the future. Borrowing from my experiences as a nonprofit manager, institution builder, and academic, as well as from diverse fields such as social and behavioral psychology and educational theory, I attempt to assess what went right in this case and why: from a functional, institutional, and organizational perspective. While attention is now heavily focused on how teams at creative institutions like Google operate,<sup>8</sup> this article traces the function of a team in an academic setting, although, I believe its lessons go beyond academia.

To date, little has been written about the functioning of that team and no one has tried to assess why the campaign had so many successes along most legitimate metrics: the victory that shut down the camp for HIV-positive refugees; the quality and volume of the work produced during the eighteen-month effort; and the subsequent careers of many of the protagonists, who developed critical skills and confidence through their involvement in the case. While effective tactical maneuvers and the strength of the legal arguments concocted by the students and their supervisors may have been the ultimate cause of those victories, what was it that created an environment for such an “outlier” campaign to flourish?

In his book *Outliers: The Story of Success*,<sup>9</sup> Malcolm Gladwell describes how accomplished individuals often arrive at their success because of the intersection of happenstance and opportunity. If luck is where preparation meets opportunity, the outliers highlighted by Gladwell were lucky. They were at the right place at the right time. Some of the examples Gladwell includes in his review are individuals like Bill Gates and other leaders in the world of computing, who, as high school students and young professionals, were afforded countless hours to learn how to write computer code at the dawn of the information age and then turned that effort into world-

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7. I am also consciously omitting much reference to the role of the client voice in this narrative. It must be said, however, that the clients’ harrowing experiences and our desire to free them from the HIV camp in which they were held were the font of everything we did.

8. See Charles Duhigg, *What Google Learned from Its Quest to Build the Perfect Team*, N.Y. TIMES MAG. (Feb. 25, 2016), <http://www.nytimes.com/2016/02/28/magazine/what-google-learned-from-its-quest-to-build-the-perfect-team.html>.

9. MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (2008).

changing talents.<sup>10</sup> Similarly, the leaders of many of the nation's largest and most successful law firms today, like Skadden Arps and Wachtell Lipton, who, because they were Jewish, were excluded from many of the prominent law firms and lucrative legal fields when they left law school. They started their own law firms and entered fields like Mergers and Acquisitions that were looked down upon by some of the more prominent firms. When these fields exploded in the 1970s and 1980s, the firm leaders were well positioned to take their firms into the legal stratosphere and compete with and surpass the same white-shoe law firms that had rejected them decades earlier.<sup>11</sup>

I could certainly write about the accomplishments of members of the team who worked on this litigation as an example of the Gladwellian theory of success. We boast a sitting U.S. Senator;<sup>12</sup> a former Assistant Secretary of the Treasury;<sup>13</sup> leaders in progressive organizations<sup>14</sup> and private firms;<sup>15</sup> and faculty members at the City University of New York,<sup>16</sup> Columbia,<sup>17</sup> Fordham,<sup>18</sup> the University of California at Irvine,<sup>19</sup> and Yale.<sup>20</sup> I choose instead to write about the components of the initiative that I believe make it an example of a different kind of success: an institutional and organizational success. I explore the features of this undertaking that I believe helped to bring about transformational change, not just in the lives of the clients we helped, but also in the lives of the students who worked on the case.

This article is a highly personal account. I do not pretend to speak for my clients, my classmates, or my professors. The article is not heavily footnoted or sourced. These thoughts are merely my own and are a collection of some of the things I have learned over the years, mostly as a legal services attorney and manager and as a law

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10. *Id.* at 51–55.

11. *Id.* at 121–24, 154–58.

12. Christopher A. Coons (D-Del.). *See Storming the Court: 25 Years After H.C.C. v. Sale: Speakers*, N.Y.L. SCH. L. REV., <http://www.nylslawreview.com/storming-the-court-speakers/> (last visited Nov. 7, 2016) [hereinafter *Storming the Court Speakers*] (providing biographical information about participants in the New York Law School *Storming the Court* symposium commemorating the litigation and Team Haiti).

13. Michael Barr. *Id.*

14. Tory Clawson, Lisa Daugaard, and Paul Sonn. *Id.*

15. Adam Gutride, Laura Ho, and Steve Roos. For more about their endeavors after Team Haiti, see *Adam J. Gutride Biography*, GUTRIDE SAFIER LLP, <https://www.gutridesafier.com/adam-gutride> (last visited Nov. 7, 2016); *Laura L. Ho Biography*, GBDH, <http://gbdhlegal.com/about-us/attorneys/ho/> (last visited Nov. 7, 2016); *Stephen H. Roos Biography*, HCMP, <http://www.hcmp.com/profile/attorneys/stephen-h-roos> (last visited Nov. 7, 2016).

16. Michelle Anderson. Michelle was recently named president of Brooklyn College. *Storming the Court Speakers*, *supra* note 12.

17. Sarah Cleveland. *Id.*

18. Catherine Powell. *Id.*

19. Song Richardson. *L. Song Richardson Biography*, U. CAL. IRVINE SCH. L., <http://www.law.uci.edu/faculty/full-time/richardson/> (last visited Nov. 7, 2016).

20. Michael Wishnie. *Storming the Court Speakers*, *supra* note 12.

professor. I have worked on both high-impact and low-impact litigation. I have worked on eight-figure housing deals and pursued claims seeking as little as a few hundred dollars for my clients. I have taught in doctrinal law courses and as a clinician. But apart from having a varied, almost twenty-five-year career, the roughly six months I spent working on what many of us referred to simply as “the Haiti case” left a profound mark on me as a practitioner, professor, and person.<sup>21</sup>

These reflections and recollections are seen through the filter of my close to twenty-five years of practice and teaching. They are also informed by those later experiences. Now, with these experiences, I am able to see what happened twenty-five years ago in sharper focus and detail. While we made many mistakes—we were law students after all—there was much we did right, sometimes unconsciously and intuitively, and sometimes by the designs of our faculty and practitioner supervisors. This article is an attempt to glean some of the lessons from our work, to understand what we did right, and why the Haiti case has left such an impression on those involved in the case and those who watched it unfold from near and far away.

I attempt to argue here, informed not just from my experiences working on the case, but those years in practice and now in academia that have given me a lens through which to view those experiences, that there were several core components of the experience that likely resulted in its significant success as an effort designed to produce social change.<sup>22</sup> I attempt to synthesize some of the components of the experience that may have resulted in its success as a cornerstone experience for so many of those involved in it and why the team dynamics of the undertaking produced a significant, creative, and important work product. I explore the things that I believe motivated us to work as hard as we did and the factors that brought out our passion, creativity, ingenuity, and grit: the things we did to keep us going, producing, and functioning at a high level. I also examine the reasons we stuck with the case until the last possible moments, with some making great sacrifices in their personal and professional lives in order to see the litigation through to its completion. I hope this discussion reveals some of the components of a successful law school project: what I call “team lawyering/clinically taught.” I have attempted to incorporate components of this model into some of the projects I have initiated both within the academy, and

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21. While many worked longer than I did through the course of the litigation, I was in the first “wave” of students, those third-year students who had been a part of the human rights clinic prior to the Haiti litigation. Most of us worked on the case until we graduated that May, with Graham Boyd and I staying in New Haven through the summer of 1992 during most of our bar exam preparation and Lisa Dugaard (another third-year) continuing to work on the case until its completion. After the bar exam, my involvement lessened dramatically. While a legal services attorney in New York City after graduating, I had a very minor role in drafting the brief before the Supreme Court and assisted somewhat in the resettlement effort by supervising several teams of law students providing assistance representing Haitians who were admitted into the United States to file their asylum applications. Finally, I personally worked with Yvonne Pascal (one of the protagonists in *GOLDSTEIN*, *supra* note 4, although that name is a pseudonym) in her fourteen-year journey to obtain adjustment of her immigration status and a so-called “green card.”

22. While I speak just for myself in this article, I know that others involved with the case feel no differently about how important their experience working on the case was to their own development as lawyers; as advocates; and as people, parents, colleagues, and friends.

from outside of it, as a practitioner. Moreover, I submit that the lessons learned from this experience can help inform any group effort, whether in business, the nonprofit sector, academia, or government. As I have seen these lessons play out in a range of contexts, I have no doubt that I learned these lessons early, even if it has taken me twenty-five years to realize where I learned them, applied them, and saw them take flight. The experience working on the Haiti case shaped so much of what I have done since and what I hope to accomplish still. After a brief recounting of how I went from an outsider looking in on the case, to one toiling at its core—which has its own lessons regarding team formation, recruitment, and project organization—I provide an overview of what I think are the central lessons that I, at least, have taken from the experience.

## II. JOINING THE TEAM

In the early part of my final semester of my third year of law school, the Haiti case—although it had not yet been named that by the students—was all around me. Some of my closest friends at law school, individuals with whom I had taken classes, litigated cases in other clinics, and argued over late night beers, had continued working with the human rights clinic where we had all been enrolled in the fall semester. We had worked on cases involving human rights abuses in Guatemala and Haiti, primarily using a writ that was as old as the federal court system, the Alien Tort Statute.<sup>23</sup> This work was interesting and exciting. It required research into centuries of federal case law as well as the development of facts and case theory. It involved important principles of international human rights law and complex procedural doctrine. It was far removed from the quotidian concerns of law students, which was, for many of us, a good thing. It got us out of our law school bubble and into the real world, where many of us were itching to go. We could not wait to graduate and to get our hands on these sorts of cases.

But for me, that was the fall semester. It was now my final semester of law school and I needed to graduate. I had a substantial writing assignment that I needed to complete in order to do so and I did not feel like I could throw myself into my clinic cases with abandon like I had been doing ever since I was a first-year law student. Whether it was writing an eighty-two page brief in litigation over a landlord's failure to return a \$500 security deposit, or researching arcane issues of Guatemalan procedural justice, I had spent the last two years of my law school experience focusing on my work in the clinics and it was time I devoted myself to what some might consider more "academic" pursuits. While my paper was on the subject of human rights in Guatemala, it was still supposed to be more of an academic piece as opposed to something that might have more "practical" application, like a brief in a lawsuit.

For these reasons, I had excused myself from working on a new project many of the students wanted to undertake that would center on the plight of Haitian refugees

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23. Subsequent litigation before the Supreme Court has severely curtailed the use of the Alien Tort Statute and it can no longer be used as aggressively as it had been used in the early 1990s. *See Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1668–69 (2013) (holding that the Alien Tort Statute does not apply to acts of foreign nationals on foreign soil).

fleeing persecution in their home country. While many of us had watched with great disappointment when the Supreme Court allowed the interdiction/screening policy of the U.S. government to stand,<sup>24</sup> I, unlike many of my friends, turned away from a new project that would explore any new legal challenges that the policy might invite. Guided by Harold Hongju Koh and Michael Ratner, the professors who led the clinic and with whom I had become close after working with them for much of my law school years, the students who were involved embarked on a mission to find a legal angle from which to attack the policy, one that had not been foreclosed by the Supreme Court's inaction on the earlier case.

As it turns out, and this is well documented elsewhere, the U.S. government would give our team of legal advocates a way in to attack the policy. By changing the practice for how the U.S. government treated refugees who were HIV positive, holding them on Guantánamo Bay even if they had exhibited a credible fear of persecution if returned to Haiti whereas before they had admitted everyone into the United States deemed by the government to have a credible fear of persecution upon return to Haiti, the government opened the door to a fresh round of litigation challenging its new policy.<sup>25</sup> While the Supreme Court's failure to intervene in the Florida litigation had given pause to more seasoned immigration lawyers, making them wary of bringing a new round of litigation for fear that it would invite the Supreme Court to further weaken the rights of refugees and immigrants, in some ways the law students researching the matter were not looking to such potential implications. Instead, we were thinking about the injustice of what was happening on the ground to the refugees being held in refugee camps on Guantánamo Bay, when they had a communicable disease that was, at the time, and for all intents and purposes, a death sentence.

Despite the plight of the refugees, I tried to keep my focus on more personal matters, like my desire to graduate on time. I was fortunate to be selected for a Skadden Fellowship to work for the Legal Aid Society of New York after graduation and my failure to graduate on time would have jeopardized my fellowship. Moreover, I was eager to get out into the "real world," outside the cloistered setting of a law school clinic and with clients of my own, rather than under the supervision of faculty. I assumed that meant I had to forgo work on any new initiative that focused on the plight of the HIV-positive Haitian refugees being held on Guantánamo Bay, for what could be indefinitely. Despite this horrible situation, my decision was firm. I was not going to get involved. Or at least that is what I told myself.

My resolve to focus on my academic requirements dissolved almost as quickly as it had set. Several weeks into the semester, two of my closest friends at the law school, Lisa Daugaard and Sarah Cleveland, approached me where they knew they could find me: in the library, hammering away on my Guatemala paper. They implored me to join the team. They told me that Koh and Ratner had made a specific plea that they reach out to me, which definitely stroked my ego. They told me that

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24. *Haitian Refugee Ctr., Inc. v. Baker*, 502 U.S. 1122, 1122 (1992).

25. See GOLDSTEIN, *supra* note 4, at 57–58.



Koh was willing to work with me to find some research projects in the course of the litigation that could satisfy my writing requirement for graduation.<sup>26</sup>

I was certainly aware of the plight of the refugees. I had been following the stories in the press and had overheard many of the conversations that my friends, who were working on the case, were having in the cafeteria. There was clearly an outrageous wrong that needed to be addressed. Two other components were essential to getting me hooked on the case, however. First, my friends wanted me to join them. This peer-to-peer recruitment and suasion was especially powerful and is what ultimately brought me on to the team. Second, two well-respected faculty members had singled me out to play a role in the case. Their faith in me was also an important fact in my decisionmaking process. It was an ego boost, for sure, but it also boosted my confidence. If these two faculty members believed in me, maybe there was something to that, maybe I could believe in myself as well. In the end, the plight of the refugees, the bonds of friendship, and the respect of two of my mentors, as well as Koh agreeing to remove the last impediment to my graduation, led me to change my mind and join “Team Haiti,” as we began to call it.

But these initial components of team building and motivation that were present in the Haiti case would be just the first of many important aspects of the case that would arise over the course of my experience with it. These components, I submit, help highlight some of the essential characteristics of a successful pedagogical and social service project in an educational institution and the lessons of the endeavor are not confined to a classroom setting. Indeed, it is likely these components are not confined to projects undertaken in an educational setting at all. It is to these components that I now turn.

### III. BUILDING THE TEAM

I have identified several of the key components of the functioning of the team in the Haiti case. In sum, they are the following: we worked on a cause larger than ourselves; the project was student initiated; there was peer-to-peer outreach that constructed the team and the team was student coordinated; students had the opportunity to discover and develop their strengths and skills; we worked in conditions that fostered our creativity; we developed and deployed soft skills; we incorporated play into our work; we displayed grit and perseverance; and we were led by supervisors who worked side-by-side with us, yet gave us great autonomy. Each of these components is described, in turn, below.

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26. At the conclusion of my work on the case, I began to compile a portfolio of the documents—including portions of briefs before the Second Circuit and district court, and mounds of internal memoranda—I had written to show Koh that I had engaged in significant research and writing in the case that warranted my getting a writing credit for the work. That portfolio was several hundred pages thick and dealt with a wide range of complex doctrinal and procedural matters that had arisen through the course of my work on the case.

*A. Working on Something Larger than Ourselves, with Little Margin for Error, and Motivated by Intrinsic Forces*

The single most important component of the Haiti case, and from which so many of the following lessons flow, is that we were working to address a human rights disaster of global proportions. We felt that we were the only line of defense for our clients and that, without our effort, many of our clients would either die on Guantánamo Bay due to complications from their illness or face persecution and even death should they be forcibly returned to Haiti.<sup>27</sup> That our efforts could have such a significant impact on our clients' lives, as well as the potential implications for global human rights norms, animated us to work with uncompromising zeal, even in the darkest hours of the case. We were constantly motivated by our belief that we were the last, best hope for saving our clients and promoting fundamental human rights.

What also made the case particularly profound and important to many of us was that we were directly adverse to our own government in its attempt to exercise power and authority outside the norms of previously accepted global standards for international human rights. Some of us, like Graham Boyd,<sup>28</sup> Lisa Daugaard, Paul Sonn, and myself, had been involved with efforts around human rights abuses in Central America and the Philippines. In those settings, the U.S. government's involvement was, at times, merely indirect.<sup>29</sup> The Haiti case offered us the opportunity to challenge more direct U.S. participation in human rights abuses. Because this was our own government engaged in these direct violations, we could focus our prior experiences and training in human rights advocacy more squarely on U.S. government policy. All of us took great offense that these actions were being carried out by our own government, ostensibly in the name of its citizens. And we did not consent.

In addition, for many, the affinity for our clients' plight was personal. For some members of the team, their faith tradition led them to think of the Holocaust, and the abandonment of refugees who were passengers on the *S.S. St. Louis* who were refused entry into the United States and Cuba, and sent back to Europe, with some accepted in countries that would soon fall to the Germans.<sup>30</sup> Roughly 600 of the over 900 passengers ultimately perished under Nazi rule.<sup>31</sup> For Koh, his father was a political refugee from South Korea. For me, my grandfather fled Europe before the

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27. The Haiti case was clearly a "hard case" and there are pedagogical benefits, and risks, involved in using such cases as vehicles for training students. See Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLINICAL L. REV. 545, 546–48, 568–70 (1996).

28. See *Storming the Court Speakers*, *supra* note 12.

29. For a discussion of U.S. foreign policy in Central America in the 1980s, see WITH FRIENDS LIKE THESE: THE AMERICAS WATCH REPORT ON HUMAN RIGHTS AND U.S. POLICY IN LATIN AMERICA (Cynthia Brown ed., 1985). For a discussion of the U.S. government's role during the dictatorship of Ferdinand Marcos in the Philippines, see Marvin E. Frankel et al., *The Philippines: A Country in Crisis—A Report by the Lawyers Committee for International Human Rights*, 15 COLUM. HUM. RTS. L. REV. 69, 72 (1983).

30. Bill Ong Hing, *Detention to Deportation—Rethinking the Removal of Cambodian Refugees*, 38 U.C. DAVIS L. REV. 891, 925–26 (2005).

31. *Id.* at 926.

start of World War I when it was clear he would face forced conscription into the local security forces in Southern Italy.

Because of these personal connections, the work held a special resonance for many of us. We were not just working for some distant goal, or for some personal accolade to put on our resumes, like winning a moot court competition. We understood that we, or our ancestors, could have been subjected to exactly the same treatment. We were helping real people in unimaginably dire straits. And it was our government that had put them there. We knew the stakes could not have been higher and we dedicated and rededicated ourselves to exploring any avenue we could to gain some—any—advantage for our clients.<sup>32</sup>

In these ways, while there were personal reasons why every one of us committed ourselves fully to the work, a critical aspect of the initiative was that we were working on something “larger than ourselves.” We felt like part of a team that was attempting to tackle an incredibly difficult task. We were challenging the last remaining world superpower as it swung its weight around on the world stage, in violation of what we understood to be fairly straightforward, critical, humane, and wise international norms. The types of stories now emanating from Europe, as hundreds of thousands flee Syria and other war-torn nations, are precisely the types of crises we were toiling to avoid. If the United States could get away with these practices, what would stop other nations from doing the same?<sup>33</sup>

And toil we did. If it were not for the gravity of the situation, it is hard to imagine we would have been able to muster the personal, physical, spiritual, emotional, and intellectual reserves necessary to carry on the fight. In just three months from February through late May and early June, dozens of students easily worked over eighty hours a week on the case with many of us working well over 100 hours a week of grinding, relentless effort, with no let up.<sup>34</sup> The litigation was high stakes and moved quickly

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32. It is also likely that at least some of the students engaged in this project because it represented an opportunity to push back at the perceived corporate culture of an Ivy League law school, to rebel against the common perception that law students at such institutions are destined for work in white-shoe law firms representing wealthy, multinational corporations.
33. Indeed, these fears have proven quite prescient as countries around the world are tightening borders and denying entry to immigrants fleeing persecution and civil war. AMNESTY INT’L, *THE GLOBAL REFUGEE CRISIS: A CONSPIRACY OF NEGLECT* 12–16 (2015), [https://www.amnestyusa.org/sites/default/files/p4575\\_global\\_refugee\\_crisis\\_syria.pdf](https://www.amnestyusa.org/sites/default/files/p4575_global_refugee_crisis_syria.pdf).
34. While dozens of students worked these hours, for a sustained period, there were probably another 100 students who did what they could, when they could. Whether it was because of other class commitments, family responsibilities, or extracurricular demands, many students pitched in at critical times throughout the litigation, sometimes doing little more than cite checking a brief, pulling a few cases from the library, or helping out with mass mobilization efforts that were happening adjacent to the litigation. A key part of the team concept was that we could use everyone’s help and that no contribution was too small. As a result, we had a virtually limitless supply of law students, lawyers, and paralegals, in contrast to the government. To turn to Malcolm Gladwell again, we might have appeared weaker, a team made up of a few lawyers and a handful of students. But that appearance was actually our strength. *See* MALCOLM GLADWELL, *DAVID AND GOLIATH: UNDERDOGS, MISFITS, AND THE ART OF BATTLING GIANTS* 19–38 (2013) (discussing strengths in weaknesses). We constantly needed help, and hundreds of individuals—both inside the law school and outside of it—pitched in to support the effort, probably because we looked like we needed that help: a law school taking on the Department of Justice and the federal government. Our supposed weakness was an

between the district court, the circuit court, and the Supreme Court, and back down and back up again numerous times, all in the course of just a few months. Students performed tasks like document review, depositions, factual research in government offices, and field research on the ground on Guantánamo Bay. And students were central to every aspect of the work. This would continue throughout the case's eighteen-month trajectory. In my nearly twenty-five years of practice, I have never seen a group of people work as hard as I did in the six months I worked on the Haiti case, from the initial filing, through the second victory at the Second Circuit—the decision came down just as I was finishing my second day of the New York Bar Exam.

This type of effort would not have been possible had it not been for the students' firm belief in the cause and our desire to make things right for our clients and halt the U.S. government's conduct and flagrant violations of what we believed, and believe to this day, were well-established international human rights norms.<sup>35</sup> This sense of doing something and being involved in a cause beyond our own personal concerns, and doing something of significance, on such a large stage as the U.S. federal courts, was what kept so many of us motivated to unearth the reserves of will and stamina necessary to carry out the tasks before us.<sup>36</sup>

Our reserves of will and stamina came from within, driven by the desire to succeed on behalf of our clients. While some students who got involved in limited ways might have had some extrinsic goal, like securing a letter of recommendation or job reference from Koh or some of the practicing attorneys on the case, those students often found that such an objective was not worth the time and effort needed for sustained engagement with the case and they soon dropped out. For many of us, intrinsic goals like the desire to do our best for our clients and to be good colleagues were far more dominant in the forces that motivated us.<sup>37</sup>

Since the Haiti case, many initiatives involving law students have had a similar, high-profile appeal and have triggered the forces of intrinsic motivation. Litigation around Guantánamo detainees swept up in the War on Terror is one example and

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important tool for recruitment. We could do things like ask Judge Johnson to accelerate briefing schedules or agree to take depositions with twenty-four hours' notice because we knew we could get the people necessary to get the work done when it needed to get done.

35. Indeed, the European Court of Human Rights recently condemned the harsh conditions of Tunisian refugees being held in refugee camps in Lampedusa, Italy, as well as their collective and forcible expulsion. *Khlaifia v. Italy*, App. No. 16483/12 (Eur. Ct. H.R. Sept. 1, 2015), <http://hudoc.echr.coe.int/eng?i=001-157277>.
36. In some ways, this notion of the cause larger than ourselves may have been a reflection of something deeper, even primordial. See generally VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING* (Ilse Lasch trans., Beacon Press 2006) (1946) (proposing a theory based on the author's experience in a Nazi Germany concentration camp that man's primary pursuit is not pleasure, but personal meaning).
37. As Dan Pink, in his work, *Drive: The Surprising Truth About What Motivates Us*, points out, social science establishes that such intrinsic forces are far more powerful for sustained commitment and success than extrinsic goals, like monetary rewards. DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* 42–46 (2009). On the importance of student ownership over clinical project goals and activities, see Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 *CLINICAL L. REV.* 39, 65 (2013).

students have worked tirelessly on cases related to that effort.<sup>38</sup> But these life-and-death projects are not the only initiatives with which students can get involved that can encourage them to elevate their effort, focus their energy, and commit themselves completely. What was central to the Haiti case, and which is common in other, similar initiatives, is that students worked on a cause that was driven by more than mere professional or career-building concerns. Students often engage in the service of others and do so because they are committed to the cause; that commitment allows them to break out of a cocoon of more self-centered pursuits.<sup>39</sup> Thus, motivation flows from a personal commitment, from intrinsic forces, designed to achieve an important goal in the service of others: an extrinsic goal that is not self-centered. These are essential ingredients for a successful project that help to attract and motivate students and nonstudents alike and this component was a central feature to the work of Team Haiti.<sup>40</sup> But the project and tasks that came with the case were not thrust upon us. We chose them, which brings me to my second core component of the Haiti case.

### B. *A Student-Initiated Project*

The Haiti case was really the brainchild of a number of third-year students who were active in the human rights clinic in the fall semester—Michael Barr, Graham Boyd, Sarah Cleveland, Lisa Daugaard, Catherine Powell, and Paul Sonn. They had monitored the developments in the South Florida litigation<sup>41</sup> and when things turned out poorly in that case they began to explore other potential avenues to challenge the U.S. government’s ongoing policies, policies that were first blessed by the appellate court, and, ultimately, the Supreme Court.<sup>42</sup> But those policies would change. The policies were different from those described by the government’s lawyers, including then-Solicitor General Ken Starr, before the Supreme Court in their opposition to the appeal in the prior litigation. Once those policies changed such that even screened-in Haitians were being kept out of the United States because of their HIV-positive status, the students were more than ready, or at least believed they were, and painfully eager to bring a legal challenge to these practices. Of course, the students

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38. See, e.g., *No Prison Beyond the Law*, SETON HALL L., Fall 2005, at 4; Craig Whitlock, *U.S. Frees Longtime Detainee; Court Had Ruled in Favor of Turk*, WASH. POST (Aug. 25, 2006), <https://www.washingtonpost.com/archive/politics/2006/08/25/us-frees-longtime-detainee-span-classbankheadcourt-had-ruled-in-favor-of-turk-span/86dcf703-1eda-4df1-b96f-aac5670be708/> (describing success of Seton Hall Law School clinic in assisting Guantánamo detainee).

39. On the role of clinical legal education in instilling a sense of the law as a means of promoting social justice, see Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001).

40. For a discussion of the role of law school clinics in fostering student pursuit of intrinsic rewards, see Patricia E. Roberts, *From the “War on Poverty” to Pro Bono: Access to Justice Remains Elusive for Too Many, Including Our Veterans*, 34 B.C. J.L. & Soc. JUST. 341, 357 (2014).

41. *Haitian Refugee Ctr., Inc. v. Baker*, 949 F.2d 1109, 1110–11 (11th Cir. 1991).

42. See Victoria Clawson, Elizabeth Detweiler & Laura Ho, Essay, *Litigating as Law Students: An Inside Look at Haitian Centers Council*, 103 YALE L.J. 2337, 2337 n.1, 2350 (1994).

could not bring such litigation without the faculty supervisors who would ultimately approve bringing the case.<sup>43</sup>

Regardless, the students were the primary drivers of the litigation, especially at the pre-filing stages. The students identified the key obstacles: the need to bring a new lawsuit different from the prior litigation; the defensive challenges from the government; and the obligation to win over a federal judge, and the subsequent appellate judges. But even before facing these obstacles, the students had to clear a preliminary hurdle. They had to persuade their faculty supervisors in the clinic to take on bringing what promised to be a gargantuan undertaking: attempting to shut down a refugee camp located on a military base on foreign soil.

But these challenges were not assigned to the students by some external source. The first group of students chose them willingly, even eagerly. In fact, it was hard to dissuade them from the effort. Koh, at first, did not share their enthusiasm and was extremely skeptical of their arguments. Ratner, on the other hand, was used to hard-to-win—even those perceived as impossible-to-win—cases, so he had no problem with the thought of bringing the case. But the students believed so much in what they were doing that they responded to every inquiry and question Koh threw their way. This was the research he needed to feel comfortable bringing the case.

Unlike many projects on which students work, the Haiti case was one that students assigned to themselves. As a result, they were committed to executing on whatever needed to get done to achieve success. While many projects students undertake, and undertake successfully, are those that are assigned them by an instructor, what set this project apart from so many students typically come across, was this was one the students had identified and volunteered to undertake. When coupled with a cause larger than oneself, this became an incredibly powerful motivating force.

### *C. Peer-to-Peer Outreach, Coordination, and Information Sharing*

As evidenced by my recruitment by Cleveland and Daugaard to Team Haiti, central to the functioning of the team was the peer-to-peer nature of the outreach and coordination. Students reached out to students, asking each other to form the team. This had a powerful effect. It was not a situation, like one to which many of us were accustomed, where a faculty member was recruiting a student to work on one of her pet projects, dangling the promise of some research experience followed by a prized letter of recommendation. This was a student-initiated project, a fact clearly communicated to other students in a peer-to-peer fashion. The nature of the team thus drew in other students as they saw their friends involved in exciting and important work. It also looked like fun—more on that in a moment.

The other piece of the peer-to-peer nature of the work was that the students were responsible for and accountable to each other. With some guidance from our faculty and practitioner supervisors, we were mostly left to police ourselves. We managed the day-to-day operations, organized the teams, divided up the work, and made sure,

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43. See *infra* Part III.I.

at the end of the day, that everything got done. None of us wanted to let down our supervisors, to be sure, but we were also deeply committed to not letting down our classmates and friends. This was an essential component of the effective and efficient functioning of the team.<sup>44</sup>

In addition, because of our preexisting friendships with each other, strong horizontal ties cut across sub-teams—groups of students working on different aspects of the case—that offered students the opportunity to share information and support one another regardless of the piece of the project on which they were working. We were not organized in vertical units that reported directly and solely to a central point of contact—the faculty supervisor—with information flowing directly to and only sporadically from, that supervisor. Instead we functioned as both a network and a web. Team members in different teams were, on a daily, if not hourly basis, checking in with friends, bouncing ideas off of each other, supporting each other, and helping to keep the information flowing.

In his recent work, *Team of Teams*, General Stanley McChrystal explains that the military is a vertically integrated institution prone to siloing information and command-and-control leadership. McChrystal argues however that the military must adapt to respond to a protean enemy like a terrorist network by: (1) becoming more flexible, networked, and horizontal in its information sharing; (2) relying on interconnected relationships that transcended the different silos otherwise present in the organization; and (3) developing decentralized decisionmaking processes.<sup>45</sup>

Team Haiti was organized in just this flexible and integrated fashion. It was a complex, “flat” web of students who worked collaboratively, cooperated on decisionmaking functions on day-to-day operations, shared information freely, and sought advice and support from other members of the network eagerly. While we orbited around our supervising faculty and practitioners, and key decisions were, of course, left to them—like decisions related to what claims to file and what tactics to deploy in the litigation—students were often left to their own devices, with some guidance from supervisors, to decide how to organize their research, form teams, and carry out quotidian tasks like organizing correspondence, files, research, and data. This was partly by the design of our supervisors, who developed a great trust in the students, but also by necessity. There was just too much work to be done for Koh, Ratner, and the other supervisors to micromanage every aspect of the sprawling litigation.<sup>46</sup> While an organic hierarchy may have developed within the student teams, as third-year law students tended to assume sub-team leadership roles because they typically had slightly more experience than other students on the team and had been working in the human rights clinic longer, first- and second-year law students like Mike Wishnie, Song Richardson, Tory Clawson, and Steve Roos, among many

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44. On teaching teamwork in the clinical legal context, see Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013).

45. STANLEY McCHRISTAL ET AL., *TEAM OF TEAMS* 195–98, 217–18 (2015).

46. For more details on the supervisors, the supervisory structure, and their supervisory approach, see *infra* Part III.I.

others, found their own niches and leadership positions and played central roles in the overarching story.<sup>47</sup>

#### *D. Opportunities to Develop and Understand One's Strengths*

The organic structure that developed was a function of students finding their own roles, uncovering their own strengths, and applying their unique skill sets to the tasks at hand. Choose your pop culture metaphor: We were a Smurf village, a squad in a war movie, or a group of thieves in a bank heist flick. Everyone had strengths and weaknesses and we did our best to identify those strengths, play to them, and assign tasks associated with them. We settled into our roles, some more comfortably than others.

For some students, their previous academic pursuits led them to assignments related to those interests. Sarah Cleveland, who was an international law maven, was given the task of understanding everything there was to know about the international treaties that affected the government's policies. Michael Barr took quickly to the First Amendment arguments and set to work constructing them.<sup>48</sup> Paul Sonn wrestled with the administrative law issues.<sup>49</sup> For some, personal drive and interests led them to pursue claims that were more creative, or, as some said at the time, outlandish. Lisa Daugaard saw the government's policy toward the Haitians as explicitly and implicitly racist.<sup>50</sup> She worked tirelessly to construct an argument based on the Fifth Amendment's Equal Protection clause, despite some resistance about the claim from some members of the team.

For me, since I joined late, I was not given any of the so-called plum legal claims to research. My main focus was team and resource management. While I bristled a

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47. Other team members have spoken about gender-based dynamics that unfolded in the final months of the litigation as work was sometimes divided among the team between securing social services for Haitians who had been brought to the United States, which often fell to the female students in the group, and brief writing, which the male students attempted to assume. See Clawson, Detweiler & Ho, *supra* note 42, at 2388. I believe that, although some hierarchy may have evolved early on among the students based on student class year, these types of gender dynamics were largely absent in the early months of the litigation as evidenced by the leadership roles shared among male and female students alike. See *infra* Part III.D.

48. The main thrust of the First Amendment argument was that the lawyers for the organizations seeking to provide services to the refugees, who wanted to assist the refugees directly, had a First Amendment right to access the camps; the government's failure to admit them to the camps was based on the content of their speech. See *Haitian Ctrs. Counsel, Inc. v. Sale*, 823 F. Supp. 1028, 1040–41 (E.D.N.Y. 1993).

49. One of the administrative law arguments was that the policy of detaining HIV-positive Haitians exceeded the government's statutory authority in violation of the Administrative Procedure Act. 5 U.S.C. § 702 (2012) ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."); see *Haitian Ctrs. Council, Inc.*, 823 F. Supp. at 1045–49.

50. Cuban refugees were not treated the same way as the Haitians: refugees from Cuba were regularly admitted to the United States for asylum hearings, without any prescreening of their claims or medical testing. For a description of the historical differences between U.S. treatment of Haitian refugees and Cuban refugees, see Malissia Lennox, Note, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN. L. REV. 687, 699–701, 712 (1993).



little about not having substantive law research to undertake, I found ways to work on many of the procedural issues that inevitably arose.<sup>51</sup> But the team management and document production side of the work also played to my skill set. As an undergraduate at Fordham University's Bronx campus, I was a fledgling community organizer involved in working on service projects mostly addressing the homelessness crisis afflicting New York City in the mid-1980s. This work involved recruiting students, keeping them informed and engaged, and coordinating the student volunteers' time. I was also a managing editor of a school newspaper and the rhythm of document drafting, editing, and production, all on tight time deadlines, was familiar to me.

I recall one day in the clinic offices charting out all of the team members' activities on several large 2" x 3" sheets of paper posted on the wall. Students were on Guantánamo; in Florida doing document discovery; in New York and Washington, D.C., taking depositions, and slogging away in New Haven on briefs and research. The team would sometimes swell to nearly 100 students, putting aside the large, New York City law firm and the two national public interest organizations also working on the case,<sup>52</sup> and it felt, at times, like we were an even larger group. Some coordination was necessary for all of these moving parts and I felt a strong sense of both duty and accomplishment by exercising my skills and coming to understand that they were also my strengths.

We were not always successful. There were times when students took on more than they could handle or were uncomfortable being given what some saw as menial tasks, like source-citing work that faculty or other students had done. This pique was understandable. But it was partly my job to keep people engaged, to make sure the same students were not always being given the less attractive tasks so everyone felt that the load of less desirable work was spread around somewhat equitably. Bruised egos and hurt feelings came with the territory—my own included—and everyone committed to our success tried to keep unproductive sentiments in check to a certain extent.<sup>53</sup>

The team nature of the effort, and the affirming trust members of the team gave one another, meant that as we developed different strengths and skills, we were able to achieve benchmark milestones. We received constant feedback along the way, which gave us information that allowed us to develop our expertise. This type of continuous feedback, or “deliberate practice” as it is called in social science literature,<sup>54</sup>

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51. I loved Civil Procedure as a subject while a student, and, as fate would have it, I teach it now.

52. Namely, the American Civil Liberties Union and the Lawyers' Committee for Civil Rights.

53. These issues would sometimes surface, as they always do and should when necessary. At times, it was up to our supervisors to help us sort them out when they could. For the most part, though, the students held many peer-to-peer conversations about the fairness of work assignments and we strived to distribute them in a conscious and conscientious manner, to keep the work moving, while making sure everyone felt valued and valuable.

54. K. Anders Ericsson et al., *The Role of Deliberate Practice in the Acquisition of Expert Performance*, 100 *PSYCHOL. REV.* 363 (1993). This work toward an obtainable but far-off goal, with constant feedback, is also a component of what Mihaly Csikszentmihalyi calls “flow.” MIHALY CSIKSZENTMIHALYI, *CREATIVITY: FLOW AND THE PSYCHOLOGY OF DISCOVERY AND INVENTION* 110–12 (1996). The work when in this state is sometimes “painful,” and “risky,” and involves “difficult activities that stretch[] the person's capacity and involve[] an element of novelty and discovery.” *Id.* at 110.

was necessary for us to develop mastery of our particular domains, which spread into new domains where we did not realize we had potential for growth. It also fostered the attainment of knowledge, confidence, and practical know-how. Once we developed a core mastery of a topic, we could then branch out, consider new approaches, and come up with creative solutions to the barriers before us. It is to this creativity that I now turn.

### *E. Creativity*

From the very beginning of the case through arguments before the Supreme Court and again at the district court, a critical feature of the work was the creative analysis and claims crafted by the student team and the supervisors. Whether it was developing novel legal claims out of whole cloth or offering a new spin on well-established case law and doctrine, Team Haiti was able to generate a number of creative claims. Some of these claims were considered, and rejected, by the Supreme Court on the second component of the case, while many were adopted by the district court in the successful effort to close the refugee camp at Guantánamo Bay and bring the Haitian refugees to the U.S. mainland. There are several reasons the team was able to develop the creative and, ultimately, winning arguments.<sup>55</sup>

First, we did not know better. It was not that we were “thinking outside the box”; we did not know there was a box. I say all of this somewhat facetiously, but the reality is, in many cases, we were working with a blank slate, reading cases, statutes, treaties, and commentary for the first time. Our thinking had not yet formed opinions about what the cases said, or what people believed they said. We would read our opponents’ papers and our hearts would sink. We would talk to practitioners in the field and they would confirm our fears: the cases said what the government said they did. Then we would read the cases. And then we would read them again. Then we would squint, turn our heads sideways, think a little, and talk it over among ourselves. We would come to the realization that maybe the government and the veteran litigators had it wrong; maybe the cases did not say what everyone said they said.

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55. I consciously focus my analysis on the first six months of the case, the period in which I was most involved. During this period, while we certainly had a press strategy, the political, grassroots, and social services aspects of the case came into greater focus in the months after I left the team and I do not mean to give them short shrift here. Those components played a central role in the ultimate successes achieved in the overall campaign; it was not just the legal strategies or the efforts of law students and lawyers in litigating the case that ultimately led to the closing of the refugee camp on Guantánamo. In the end, the campaign turned into a multidimensional, tactically pluralistic campaign that applied legal, political, and moral pressure to turn the tide for the Haitian refugees. For a discussion of the role of social movements in bringing about political and legal change, see GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008). For a response to the first edition of *The Hollow Hope*, see David Schultz & Stephen E. Gottlieb, *Legal Functionalism and Social Change: A Reassessment of Rosenberg’s The Hollow Hope: Can Courts Bring About Social Change?*, 12 J.L. & POL. 63 (1996). For a discussion of tactically pluralistic legal campaigns, see Scott L. Cummings, *Hemmed in: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 1 (2009). And for a discussion of one such campaign, see Raymond H. Brescia, *Line in the Sand: Progressive Lawyering, “Master Communities,” and a Battle for Affordable Housing in New York City*, 73 ALB. L. REV. 715 (2010).

A perfect example is the relatively obscure case of *Ukrainian-American Bar Ass'n v. Baker*,<sup>56</sup> a D.C. Circuit case that was a throwback to the era of the Cold War with the Soviet Union. In that case, a Soviet sailor had literally jumped ship while a Soviet merchant ship was docked in the harbor outside New Orleans.<sup>57</sup> The sailor was returned to his vessel by U.S. border authorities and the ship left port despite a bar association's attempt to reach the sailor while he was in federal custody.<sup>58</sup> These lawyers sought an order in the future forcing an affirmative obligation on the government to give information about the availability of their legal services to any similarly situated sailors who came into U.S. custody.<sup>59</sup> Our opponents argued that this case foreclosed our access to our clients: that it stood for the proposition that individuals in immigration detention did not have a right to a visit from a lawyer. But we began to realize that this case was not controlling in our situation at all, much to the surprise of our opponents and some of the veteran lawyers who were watching us from afar.

Our situation was different, we argued; we were not the first in line, like the lawyers in that case, who wanted to be the only individuals to speak to our clients. Rather, we were the *last* in line. We pointed out that the naval base on Guantánamo had a McDonald's, that a range of private individuals and professionals visited the Haitians, and that a piano tuner and even Jacques Cousteau had visited the base. Certainly, if we were being barred from the base, it was by virtue of the content of our speech, a clear violation of constitutional law. Moreover, unlike the Soviet sailor in the other case, our clients had actually asked for our representation. The precedent would be batted back-and-forth between the lawyers until Judge Sterling Johnson ultimately ruled that we were right. Contrary to the government's argument, *Ukrainian-American Bar Ass'n* was easily distinguished from our case and not controlling law in the Guantánamo litigation, as the government asserted.<sup>60</sup>

Marcel Proust once wrote that the "real voyage of discovery consists not in seeking new landscapes, but in having new eyes." We learned that by looking at the doctrine through new eyes, we saw things that others did not and could craft novel arguments that had never been tested before, or had long been forgotten. That is not to say that we were always right or that the veteran lawyers with whom we were working were always wrong. In fact, most of the time they *were* right, and their experience was helpful, their wisdom insightful, and their experience had led to a prudence that we did not possess. But once in a while, we found something under a rock, or hiding in plain sight, that no one had seen before.

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56. 893 F.2d 1374 (D.C. Cir. 1990).

57. *Id.* at 1376.

58. *Id.*

59. *Id.* at 1377.

60. Judge Johnson distinguished *Ukrainian-American Bar Ass'n* in two separate opinions: *Haitian Centers Council, Inc. v. McNary*, No. 92 CV 1258, 1992 WL 155853, at \*6 (E.D.N.Y. Apr. 6), *aff'd in part, vacated in part*, 969 F.2d 1326 (2d Cir. 1992), *vacated as moot sub nom. Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993), and *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028, 1040–41 (E.D.N.Y. 1993).

Second, we were highly motivated, which links back to being a part of something bigger than ourselves. Some students visited Guantánamo and met with the Haitians. The rest of us had to imagine the suffering of our clients from their letters, the photos and videos of the camps, and the stories our colleagues told us. Regardless of the source of our information about the terrible suffering of the camp—through first-hand knowledge or second-hand sources—our devotion to our clients' cause was complete. "Necessity is the mother of invention,"<sup>61</sup> and the notion that we had a job to do to try to save our clients' lives was all the motivation we needed to keep plugging away: take another stab at drafting a brief, affidavit, or memo; review that case one more time; follow every research lead, hunch, and intuition.

There is an old saying in the legal services world, often attributed to veteran poverty lawyer turned academic, Florence Roisman: "If it offends your sense of justice, there is a cause of action."<sup>62</sup> For all of us, our sense of justice was offended. Deeply. We knew the government's policy toward the Haitians was morally wrong and there simply had to be legal arguments to stop it. We just had to discover them, craft them, or invent them.

Third, we were able to draw from everyone on the team to make sure every voice was heard, everyone could contribute, and everyone had a chance to have an impact. In their description of the inner workings of Pixar, founder Ed Catmull and his co-author, Amy Wallace, talk about the value of ensuring an environment where all can speak their minds, contribute to the creative work of the organization, and improve the ultimate product generated by the organization.<sup>63</sup> Team Haiti worked the same way. Everyone's voice was essential because we needed everyone simply to manage the workload. We could not sacrifice any student willing to do the work or relegate her to a secondary role.

Everyone could bring ideas to the group, present them, have them shot down and built up, and ultimately shape them into something of value that could advance the case. Brothers Tom and David Kelley, leading thinkers in creativity, explain that this sort of environment is essential to creative endeavors in teams:

[I]n working with colleagues or on a team, we've found that if team members believe that every idea gets fair consideration, and that meritocracy allows their proposals to be judged across divisional and hierarchical lines, they tend to put all of their energy and their creative talents to work on ideas and proposals for change.<sup>64</sup>

Essential to this functioning was a deep-seated respect for every member of the team, one that flowed from the fact that we all felt we were taking part in, and really contributing to, something extremely important that could make a real impact on

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61. PLATO, *THE REPUBLIC* 35 (Benjamin Jowett trans., Digireads.com Publishing 2008).

62. See, e.g., Robert A. Solomon, *Teaching Morality*, 40 CLEV. ST. L. REV. 507, 510 (1992).

63. ED CATMULL & AMY WALLACE, *CREATIVITY, INC.: OVERCOMING THE UNSEEN FORCES THAT STAND IN THE WAY OF TRUE INSPIRATION* 276–77 (2014).

64. TOM KELLEY & DAVID KELLEY, *CREATIVE CONFIDENCE: UNLEASHING THE CREATIVE POTENTIAL WITHIN US ALL* 48 (2013).

our clients' lives. No one on the team could be sacrificed, marginalized, or silenced, simply because no one could be spared. The stakes were just too high.

By learning how to work together as a team to problem solve and produce creative work product, we were, perhaps unconsciously, developing skills that we would likely take with us into our post-graduate pursuits, skills that have been recognized as essential lawyering skills. In the American Bar Association's 1992 MacCrate Report on the state of law schools, creativity was identified as an essential component of lawyer problem solving.<sup>65</sup> That report identified creativity as an essential skill relevant to all other aspects of lawyering.<sup>66</sup> It found that,

competent lawyering requires a person with a creative mind—a person who is willing to look at situations, ideas, and issues in an openminded way; to explore novel and imaginative approaches; and to look for potentially useful connections and associations between apparently unrelated principles, facts, negotiating points, or other factors.<sup>67</sup>

Whether we knew it or not, we were exercising this critical lawyering skill, out of necessity, and learning how to apply it to the doctrine as well as the practical issues that arose every day in the management of the sprawling litigation.

#### F. "Soft Skills"

In addition to learning and honing traditional legal skills, like legal research, writing, taking depositions, engaging in discovery, and motion practice, the functioning of the team required that we develop and master other critical skills as well. These other critical skills included learning to work together, draft documents together, engage in strategic planning, nurture our creativity, listen to the interests and needs of our team members, and put ego aside in the service of an important cause. It turns out, many of these skills are those that lawyers, in order to succeed, need to possess. In other words, we learned, by doing, that it is not just the traditional or core skills of legal research and writing that lawyers need to be effective, but also a range of other, critically important skills.<sup>68</sup>

Several years ago, Professors Marjorie Shultz and Sheldon Zedeck at the University of California, Berkeley, conducted extensive research to gather information about the skills lawyers need today to be effective. They developed twenty-six such factors considered vital for lawyer efficacy.<sup>69</sup> Many of these skills are those one would expect effective lawyers to have, including "analysis and reasoning," "researching the

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65. TASK FORCE ON LAW SCH. & THE PROFESSION, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 150 (1992).

66. *Id.*

67. *Id.* (citations omitted).

68. On the teaching of critical soft skills in the law school context, see Kathleen Elliott Vinson, *What's Your Problem?*, 44 STETSON L. REV. 777 (2015).

69. See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 630 (2011).

law,” “writing,” and “negotiation skills.”<sup>70</sup> Throughout the course of the litigation, the students involved in the Haiti case were exposed to highly successful lawyers doing all of these things and had countless opportunities to both develop such skills and put them to the test. Students learned by experience how to research and draft pleadings and memoranda for all levels of the federal courts, conduct discovery, and negotiate with opposing counsel and government officials as appropriate.

Students were also able to develop and hone some of the other effectiveness factors Shultz and Zedeck identify; the “soft skills” that the authors found to be essential components of effective lawyering. Such soft skills include “creativity/innovation,” “problem solving,” “strategic planning,” “organizing and managing one’s own work,” “organizing and managing others,” “passion and engagement,” “diligence,” and “community involvement and service.”<sup>71</sup> As the discussions above show, given the peer-to-peer work, the creativity students were able to exercise, their commitment to the cause larger than themselves carried out in the spirit of public service, and the opportunities students had to understand and develop their strengths, students were able to put a wide range of lawyer effectiveness factors to the test and develop their own understanding of, and facility with, such factors. In this effort, we learned not just that a lawyer’s core competencies go well beyond what we were learning in the classroom; by engaging with such a multidimensional campaign, carried out by a large team, we learned that there are other critical skills lawyers must master to be effective. We experienced a crash course in such skills as the litigation unfolded and escalated.

### *G. Play*

This description of the inner workings of Team Haiti might make one think that it was all a grind, that it was all dreary and difficult, with the weight of the world on the collective shoulders of the team. In reality, and at its very essence, it was actually exhilarating. Part of that feeling was the healthy appreciation we had for the importance of the work, but part of it was also that we made sure to incorporate play into the work. There was no shortage of laughter, even in some of the darkest hours of the litigation. And it was not a case of working hard and playing hard afterward. We actually played while we were working and sustained each other with humor, genuine affection for each other, and playful moments that helped us get through the hard work. We decorated the sprawling office spaces we had taken over with goofy posters and pictures and amusing quotes, mostly extolling the wonders of caffeine. We would celebrate little victories with some beer and toast and roast each other. One memorable moment came when students rewrote the lyrics of the Beach Boys song “Kokomo,” including the following excerpt:

Off the Florida Keys  
There’s a place called Guantánamo

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70. *Id.*

71. *Id.*

Go there said Harold Koh  
And get a TRO<sup>72</sup>

The students performed the song for Harold and others to uproarious laughter, but also with a touching poignancy that communicated to Koh that we would go to great lengths in following his leadership.

On another occasion, we had just finished serving the Department of Justice (DOJ) with a brief that had attachments running several hundred pages in length. As the whiz and whir of the fax machine from the Triassic period completed transmitting the final page,<sup>73</sup> I was urged to get on the phone with the DOJ's lead litigation counsel at the time to confirm receipt. As the call started going through and the receiver was picked up on the other end, a group of students cracked open bottles of beer near the phone's mouthpiece and started playing the early '90s song "I'm Too Sexy" from the one-hit-wonder Right Said Fred.<sup>74</sup> We were simply unable to contain our glee at having finished the brief, which, just hours before, looked like nothing one would want to file in small claims court, let alone federal district court.

There were too many of these lighthearted moments to recount here. The bottom line was that we were conscious of the need to sustain and support each other with good humor, playful moments, and laughter. And this was not limited to the students. Koh and Ratner, with whom we had the most day-to-day contact of all of our supervisors, were very much along for the ride and pushed us to appreciate each other and have fun while we were doing it. One evening late in the spring semester, having just won a victory in the Second Circuit, and even though a new brief was due shortly, Koh took a few of us out for an outdoor lobster bake, both as a reward but also to remind us that we should celebrate when there is cause to celebrate. Both Koh and Ratner really relished the fight and knew that cases like this come sometimes once in a career. One must be focused and take one's responsibilities seriously, but one can also have fun while doing it and that was an essential element of our effort. It helped to sustain us. Helped us to not take ourselves too seriously. And kept us in the right mood for creativity and hard work, while maintaining our *esprit de corps*.

#### *H. Grit, Perseverance, Passion, and Outliers*

Researchers Angela Duckworth and Christopher Peterson describe grit as "perseverance and passion for long-term goals."<sup>75</sup> If the previous discussions about hard work, passion, commitment, and creativity say anything about the core quality

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72. The original lyrics are: "Off the Florida Keys, there's a place called Kokomo. That's where you want to go, to get away from it all." THE BEACH BOYS, *Kokomo*, on *STILL CRUISIN'* (Capitol Records 1989). I actually like ours better.

73. Faxing this document with the technology at the time took nearly two hours to complete. This was important because it gave us a little more time to finish writing the brief. We started sending the brief's attachments first, and only when they were completed did we begin to fax the brief.

74. RIGHT SAID FRED, *I'm Too Sexy*, on *UP* (Charisma Records 1992).

75. Angela L. Duckworth et al., *Grit: Perseverance and Passion for Long-Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087, 1087 (2007).

of the members of Team Haiti, it is that we exhibited grit. We had the willingness to face great adversity in pursuit of a desired goal. Duckworth and Peterson's research suggests that this quality is more essential to success than IQ or other factors typically associated with achievement. And it is this quality that stands out as one of the main characteristics of the team as a whole. The group worked tirelessly, day in and day out, toward achievable benchmarks throughout the process like securing depositions and winning motions, and toward the larger, long-term goal of ultimate victory and a closing of the Guantánamo camp.

What is the good news about grit? As Paul Tough points out in his research on academic achievement, this is a quality that can be developed, nurtured, grown, and strengthened.<sup>76</sup> Although some possess it as part of their character, it is also something that can be obtained through—what else—hard work, resilience to setbacks, and optimism. Why is this “good news”? A common refrain I hear about the Haiti case is that it could only take place in an Ivy League law school like Yale.<sup>77</sup> Certainly such a school has financial resources that many other schools do not have and the students have probably displayed grit in their academic and extracurricular pursuits, which might be one of the reasons they end up at schools like Yale. Moreover, there is likely little doubt that the group that got involved in the Haiti case, and stuck with it, was a self-selecting collection of individuals who had large stores of grit already.

Nevertheless, I have worked with students from many different schools who possess the strength of will, the smarts, and the fortitude to engage in a project such as the Haiti case. Hopefully, these students get the chance to apply themselves in ways that unchain their talents, let loose their drive, and allow them the opportunity to work on something larger than themselves. It is a shame, and a waste of precious talent, if they do not, especially at a time when the world needs more law students who will take on the tremendous social challenges that the world faces, from improving police-community relations and combatting economic inequality, to addressing climate change, seeking out solutions to the present refugee crisis, and promoting peace in war-torn regions of the Middle East and Africa.

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76. PAUL TOUGH, *HOW CHILDREN SUCCEED: GRIT, CURIOSITY, AND THE HIDDEN POWER OF CHARACTER* 177 (paperback ed. 2013).

77. Some might say, more specifically, that such a case could only occur at Yale because of its somewhat “relaxed” grading system where students are not ranked and all are expected to do well and are graded accordingly. The argument goes that students at Yale could devote so much of their time to such a cause because we were not so concerned about grades. Another point that bears mentioning is that many of the students involved in the case from the outset, and who would ultimately leave the case when they graduated, had jobs upon graduation, which meant they had different pressures than many students today. This was not the case with students who would work on the case in the 1992–1993 academic year, many of whom were second-year students at the time and were appropriately worried that their devotion to the case might hamper their job search (which did not seem to stop them from working on the case, nor did it end up affecting their job search efforts negatively).



*I. Clinical Teaching: Faculty and Practitioner Mentors and “Player-Coaches”*

To this point, the reader might think a rowdy band of students ran roughshod over the litigation, worked on its own, and, from the title of Brandt Goldstein’s book on the subject, “*Fought the President—and Won.*”<sup>78</sup> While some of that has elements of truth to it, the reality is that we had remarkably gifted supervisors, teachers, and mentors: Koh and Ratner, the professors who worked with us every day; the lawyers from public interest organizations, like Lucas Guttentag from the American Civil Liberties Union and Robert Rubin of the Lawyers’ Committee for Civil Rights; and Joseph Tringali, from the law firm Simpson Thacher. These individuals created a space within which we could work that helped us realize our strengths, find our voice, nurture our creativity, and push ourselves to find what we believed were our limits and press beyond them, tapping into reservoirs of energy, intelligence, heart, and courage few of us knew we had.

The supervisory infrastructure was flexible but solid. The lawyers on the case trusted us to carry out our respective tasks, but also played the critical role that a supervisor must play, ensuring every document that left our offices, every word spoken in court, every interaction with opposing counsel, the courts, litigants, the public, and the press, had their seal of approval. It was a herculean task, but the lawyers all carried it out with remarkable goodwill and an intelligence, passion, and conscientiousness that taught the students what it meant to practice at the height of one’s craft.<sup>79</sup>

And while we pushed our twenty-something bodies to work in a sustained fashion with little sleep over weeks without respite, sustaining ourselves with coffee throughout the day and night, as well as junk food and sugary treats, our supervisors were right there with us.<sup>80</sup> There were times when Koh and I were the only ones up at four o’clock in the morning, and Ratner—who lived in New York City—slept on the couch in Yale Law’s faculty lounge or on the Metro-North railroad, connecting the Big Apple to New Haven.

The typical process by which we put the finishing touches on our pleadings and briefs helps reveal the ways that the supervisors and students worked hand-in-hand. While we were still trying to figure out how to work a new technology called a modem, which could transmit our briefs digitally to Simpson Thacher, the New Haven–New York City rail connection often carried briefs that had the following chain of custody. Students would work on them until four o’clock in the morning. The briefs would then be handed off to Koh who appeared in the offices after a few hours of rest. He would work on them intensely until we needed to hand them off to students who would proofread and source cite them. The briefs would then be

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78. GOLDSTEIN, *supra* note 4.

79. For one vision of clinical supervision as flexible and responsive to the context, students, and demands of the substantive project, see Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 178–82 (1993–1994).

80. Our supervisors were the same age then as many of the students are now, though they tended to eat more healthily.

hustled down on a floppy disk on the train to Simpson Thacher, which was conveniently located right outside of Grand Central Station, where the Metro-North train from New Haven ended. Ratner and Tringali would put the finishing touches on them in the firm's offices. The briefs were then produced and run down to the courthouses of either the district court or court of appeals, sometimes by bicycle messenger—this was pre-electronic filing. What such processes reveal is that the lawyers were working hand-in-hand with the students, and their commitment, in time and energy, was no less complete.

Our supervisors thus held the position of “Player-Coach.” While this notion has gone the way of the suicide squeeze,<sup>81</sup> in prior eras, this was somewhat common. In basketball, Bill Russell coached the Celtics while playing; in football, gridiron legend George Halas simultaneously played and coached the Chicago Bears.<sup>82</sup> Perhaps the most famous and infamous player-coaches were in baseball: Ty Cobb, Joe Torre, Frank Robinson, and, most recently, Pete Rose, all filled the role.<sup>83</sup> Like these professional athletes and managers, Koh, Ratner, and the others led by example and gained the students' ultimate respect, admiration, and even love for their commitment and dedication.

More important than the commitment of our advisors in time and effort, however, was the trust they placed in the students and their willingness to create an environment that allowed a peer-to-peer network to flourish. The Team Haiti environment fostered creativity, encouraged play, sought to tap into and develop each of our individual strengths, and was one that helped us nurture our passion for social justice as well as the soft skills necessary to make it all come together. Our supervisors were willing to believe in the students when they first brought the case and had faith in the students' ability to do what needed to be done to make the case as strong as it could be in order to sustain the fight over a protracted time frame but at a break-neck pace. Thus, while the idea for the case may have percolated up from the students, the supervisors shared the students' passion and commitment and showed the faith in their abilities that was necessary to not just bring the case, but also create an environment that functioned the way it did. That environment helped us grow as professionals and as individuals, nurtured our creativity, and inspired many of us to careers in some form of public service.

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81. A term used in baseball to describe a situation when a “runner runs all out at the pitch without knowing whether the batter will contact the ball.” *Suicide Squeeze*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/suicide%20squeeze> (last visited Nov. 7, 2016).

82. Steve Wulf, *The Evolution of Player-Coaches*, ESPN (Jan. 21, 2013), [http://www.espn.com/espn/story/\\_/id/9407299/the-evolution-player-coaches](http://www.espn.com/espn/story/_/id/9407299/the-evolution-player-coaches).

83. See *Player-Managers*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/managers/player-managers.shtml> (last visited Nov. 7, 2016); Wulf, *supra* note 82.

#### IV. LESSONS OF TEAM LAWYERING/CLINICALLY TAUGHT: MASTERY, AUTONOMY, AND PURPOSE

A recent study conducted by Lawrence Krieger and Kennon Sheldon, a law professor and a psychology professor, respectively, reveals that lawyers engaged in public interest work are personally and professionally happier than those in more prestigious positions, like large law firms.<sup>84</sup> While there is surely something inherently rewarding in such work, these researchers posit that the reasons for this finding are that public interest law jobs enjoy several features that tend to translate into higher job satisfaction: autonomy, competence, and a connection or relatedness to others.<sup>85</sup> Dan Pink echoes these three concepts—autonomy, competence, and relatedness—in the previously cited work.<sup>86</sup> There, Pink identifies the following as essential components of top performance and motivation: mastery, autonomy, and purpose.<sup>87</sup>

I hope it is clear that the different features of the advocacy effort described above reflect that, as students, we were afforded the opportunity to master our work and were given autonomy over it. Critically, the work was steeped in a collective purpose that motivated us, spurred us to work hard, fostered creativity out of necessity, forced us to collaborate for the betterment of the group and our clients, and encouraged us to value all of the members of the team and incorporate aspects of play into our work to make sure we were able to sustain the effort. What motivated us to work as hard as we did, or impelled us to stick with the cause through some very trying and challenging times? We were given the opportunity to master the work, had autonomy over it, and we were doing it for a cause greater than ourselves.

The mastery came through hard work. We needed to become experts on the legal claims, defenses, and procedural questions that made up the latticework of legal issues on which the case was built. But mastery does not stand on its own and it does not come without the other components: they are intertwined and interdependent. We needed to work toward a greater purpose and we had to have a degree of autonomy over our work. It was this combination that not just sustained us, but also generated better and more creative results, theories, and tactics.

Our supervisors, whether consciously or unconsciously, by design or by necessity or both, gave us a great deal of latitude in our research, organization of our work and teams, and the projects we embraced. When Koh or Ratner thought a question needed to be answered, they would ask the group who wanted to take it on. They would give guidance in broad strokes and direct the students to, in effect, “figure it out.” The autonomy to organize the research, to determine our research paths, strategies, and methods, strengthened our research skills. More experienced students helped less experienced ones. We supported each other, suggested potentially relevant cases, and generally assisted each other whenever and however we could.

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84. See Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 614–15, 618 (2015).

85. *Id.* at 617.

86. PINK, *supra* note 37, *passim*.

87. *Id.* at 85–146.

The gift of autonomy was one that Koh, Ratner, and the other supervisors gave us. This communicated to the students on the team not only that our mentors, individuals we respected, trusted us, but also that they were counting on us. In addition to not wanting to fail our clients, we did not want to breach the trust that was placed in us; we did not want to let down those who believed in us. As a result, we each gave it our all, knowing that a given team member might be the only one who would be counted on to research an issue, brief a case, develop a factual record, or talk to a potential witness.

Once again, the purpose is what drove the entire operation. From the twin goals of winning the case and making our clients safe flowed a desire to develop the strongest claims, the most efficient workflow, and the most effective and best functioning team. We had to do all of that and sustain it throughout the grueling slog of this high-impact, high-intensity, and high-stakes litigation. We could not have done it without developing mastery, being granted a degree of autonomy, and working to further a serious purpose and cause.

When thinking about what made this project work so well, and what it might mean for other, similar endeavors, whether in a law school, a nonprofit, or any other setting, these three components are essential for sustained commitment and creative output. They also put a team or organization in the best position for success. Whether that success is realized is somewhat beside the point. The most a team, organization, or movement can do is put itself in the best position to succeed.

Team Haiti had some considerable victories, but also a defeat at the Supreme Court. While there might have been different or more creative arguments out there to win the day at the nation's highest court, I think it is highly unlikely.<sup>88</sup> I doubt, however, that Team Haiti could have generated a better, more creative work product, gotten more work out of its members, or worked harder than it did. I believe this was the result of our grit, our tenacity, our resilience, and our commitment. I do not think we would have worked as hard as we did, produced the quality work that we produced, or engaged in a sustained fashion with the work if we were not given a great deal of autonomy, afforded the opportunity to master our respective legal and tactical domains, and wholeheartedly devoted to the cause.

While I have said that a lot of this flowed from our purpose and our goals, it was also a product of the autonomy we were given, and the mastery that autonomy engendered. As with grit, mastery can be developed through hard work. And autonomy comes from trust: the trust that an individual can master the tasks she is given.

Although some might say this was only possible at a law school like Yale, I disagree. I have seen law students and undergraduates from all types of institutions, including where I teach now, rise to the occasion to take on difficult projects, stick with them, produce innovative work, learn and grow from the experience, and

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88. The Supreme Court's significant intervention in the lower court rulings by issuing stays had "tipped its hand," with respect to the return of Haitian refugees; it could not then "turn around and declare it illegal." Koh, *supra* note 6, at 2414. Despite that, I respectfully disagree with the Supreme Court's decision!

change the world, even if just a little bit.<sup>89</sup> There is something about that trust and confidence that both spurs the granting of autonomy, and can bring out the best in people.<sup>90</sup> Mentors, team leaders, supervisors, and CEOs, should all seek out opportunities to provide their team members with the autonomy they need, with guidance and coaching as appropriate, to work toward a goal. Teams should not go into a setting unprepared or untrained, but once ready and trained, they should be given leeway to execute projects large and small in order to bring out their best.<sup>91</sup>

How does one find the sweet spot between good, supportive guidance and supervision that can be seen as aloof or distracted? And to what extent is purpose tied to supervision that provides meaningful coaching and helps to bring out the best in the team? A group that flounders under an indifferent supervisory structure will not generate the mastery that is also an essential component of sustained success. Digging a little deeper into the interplay between supportive supervision, mastery, autonomy, and sustained motivation, behavioral economist Dan Ariely identifies the search for meaning in one's work.<sup>92</sup> This leads to sustained engagement, as a combination of both recognition *and* purpose.<sup>93</sup> For Ariely, recognition "means that some other person acknowledges the completion of the work," and purpose "means that the employees understand how their work might be linked, even tangentially, to some objectives."<sup>94</sup> In the Haiti case we had both: the support and affirmation of our supervisors and fellow students, as well as an understanding that our work was always a part of a larger mission.

I think it is safe to say that the students involved in Team Haiti worked hard, over a sustained period, and produced exemplary results. They were guided and mentored by able attorneys and teachers, who were willing to give students leeway to work, explore the limits of their capabilities, produce innovative work product, and rise to the occasion. Those supervisors were also available, accessible, supportive, and encouraging, but always with a light touch. If our supervisors had micromanaged us, had not trusted us with awesome responsibility, and had not believed we could rise to the occasion, we never would have.

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89. One example of this type of endeavor is the work of law students to assist victims of Hurricane Katrina. See Janell Smith & Rachel Spector, Article, *Environmental Justice, Community Empowerment and the Role of Lawyers in Post-Katrina New Orleans*, 10 N.Y.C. L. REV. 277, 291-93 (2006).

90. Of course, they should not be given tasks they cannot handle, and trust should not be given blindly. "Trust but verify," as the old proverb goes. For background information on the term, see Nora Fitzgerald, *Revisiting the Adage 'Trust but Verify,'* RUSS. BEYOND HEADLINES (Apr. 2, 2014), [http://rbth.com/society/2014/04/02/revisiting\\_the\\_adage\\_trust\\_but\\_verify\\_35595.html](http://rbth.com/society/2014/04/02/revisiting_the_adage_trust_but_verify_35595.html).

91. As an example of the extent of student work on the Haiti case, students took and defended dozens of depositions, prepared witnesses, reviewed tens of thousands of pages of documents, and assisted in the writing of briefs at all levels of the federal judiciary, including the Supreme Court.

92. Dan Ariely et al., *Man's Search for Meaning: The Case of Legos*, 67 J. ECON. BEHAV. & ORG. 671 (2008).

93. *Id.* at 672.

94. *Id.*

As Henry Ford is quoted as saying: “Whether you think you can, or think you can’t—you’re right.”<sup>95</sup> Perhaps the same could be said for supervisor-supervisee relationships. If a supervisor believes her team cannot complete a task, and acts on the basis of that belief, that supervisor is probably right about the team’s chances for success. If a team is not given autonomy to complete a task, it unlikely is going to be able to do so. What we, and our supervisors, learned was that the stakes were too high for us to let our supervisors down, so they relied on us and trusted us. We knew if we were in over our heads on a project, our colleagues, friends, teammates, and mentors would back us up and support us as needed, but we also knew that we were being counted on to come through and that was a great motivator.

## V. CONCLUSION: ONE LEGACY OF TEAM HAITI

In my Civil Procedure class that I now teach to first-year law students, I use Goldstein’s *Storming the Court* and the accompanying documentary companion<sup>96</sup> to give the students a sense of the arc of a lawsuit, the strategic decisions that go into one, and the human factors at the core of all litigation. Many of my students appreciate the ability to peer into the inner workings of a lawsuit. It brings what many might consider a dry subject to life and serves to make a lawsuit multidimensional. The students’ exposure to the effort often spurs many of them to come up to me at the conclusion of the class to tell me that they would like to do something like this in their careers: to make their own “dent in the universe,” to borrow a phrase from Steve Jobs. And when I talk to my students about their own goals, asking why the Team Haiti story resonates with them, they often reply that they want not only to accomplish real victories, but they want to do it in a team, with others. They want to enjoy that camaraderie that permeated the Guantánamo campaign and seemed to be the font of its success.

The Haiti case was a formative experience for everyone involved; students, faculty, and supervising attorneys alike. While I believe what was accomplished by this outlier campaign was important, how we went about accomplishing it is also important. I use the word “outlier” because it is hard to argue that there had been a similar legal campaign launched from a law school clinic prior to this undertaking, and I am not aware of a campaign of similar breadth and scope since. That does not mean that students and faculty at law schools and other educational institutions have not embraced and furthered important work, and have not brought about social change.<sup>97</sup> I have attempted to argue here that there are lessons to be learned from

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95. E.g., Erika Andersen, *21 Quotes from Henry Ford on Business, Leadership and Life*, FORBES (May 31, 2013, 12:26 AM), <http://www.forbes.com/sites/erikaandersen/2013/05/31/21-quotes-from-henry-ford-on-business-leadership-and-life/#ad3b3ea3700a>.

96. BRANDT GOLDSTEIN, RODGER CITRON & MOLLY BEUTZ LAND, *A DOCUMENTARY COMPANION TO STORMING THE COURT* (2009).

97. Recent campus campaigns over diversity and civil rights throughout the country are examples of these sorts of orchestrated, organized, sustained campaigns for social change. Law students have been active in efforts to demand greater diversity and inclusion in higher education. See, e.g., RECLAIM HARV. L. SCH., <https://reclaimharvardlaw.wordpress.com> (last visited Nov. 7, 2016).

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Team Haiti's accomplishments that might help inform other, similar efforts. How the victories were achieved, and the methods and approaches used to obtain them, were not just important, but were critical to that success. I hope that others looking to promote positive social change might take something from our experience in their own endeavors.





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