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## Great Case for Clinical Courses

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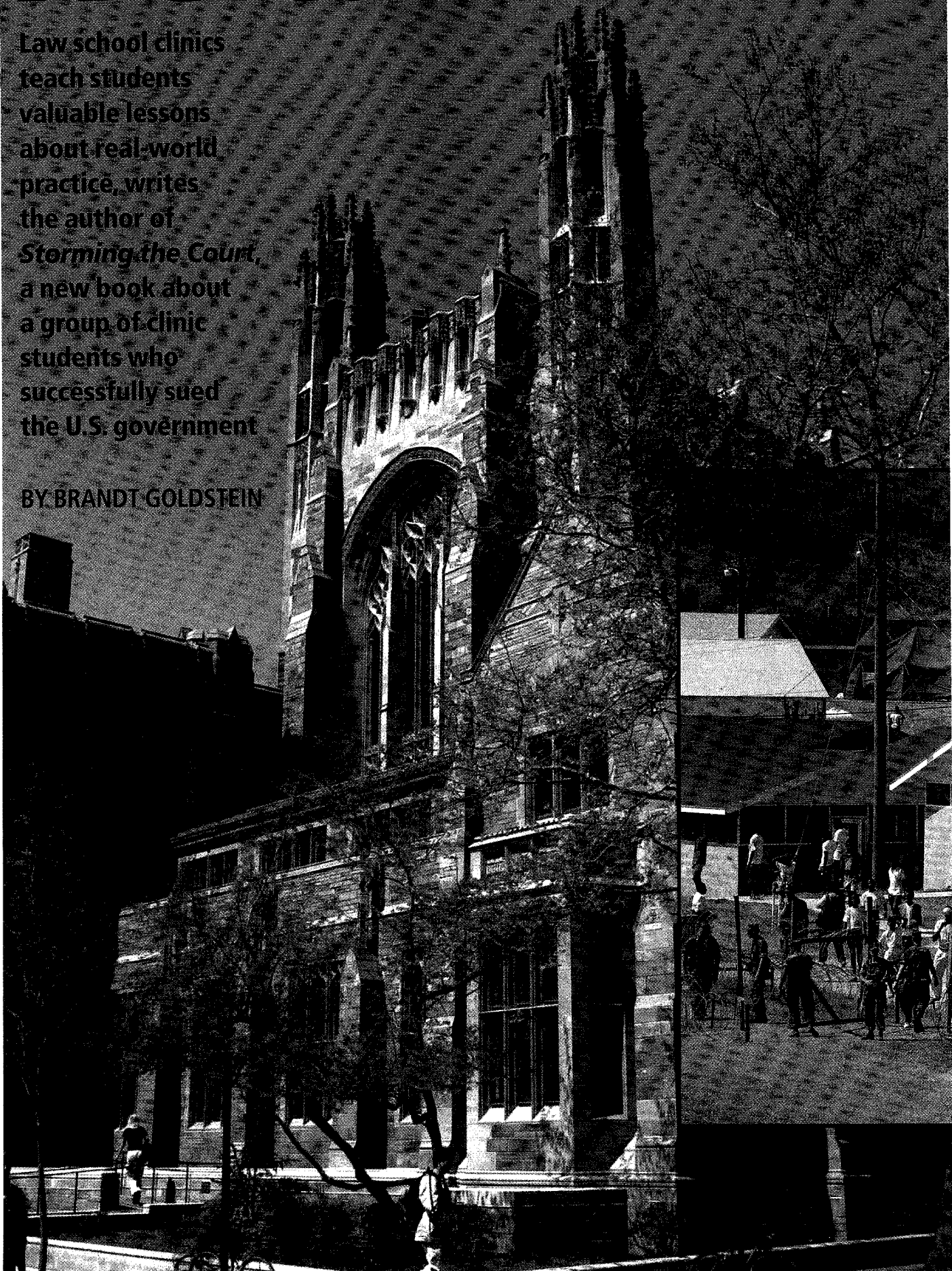
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# A Great Case for

Law school clinics teach students valuable lessons about real-world practice, writes the author of *Storming the Court*, a new book about a group of clinic students who successfully sued the U.S. government

BY BRANDT GOLDSTEIN



# Clinical Courses

**W**hen I was a third-year law student in 1992, several of my classmates were deeply troubled by a White House decision to detain political refugees from Haiti at Guantanamo Bay, Cuba. On orders from Washington, the U.S. military held the refugees indefinitely in a prison camp after their rickety vessels were intercepted by the Coast Guard in the Caribbean Sea. The students were convinced that this detention policy amounted to a massive violation of human

rights—and they resolved to do something about it. So they sued the Justice Department, seeking the refugees' freedom.

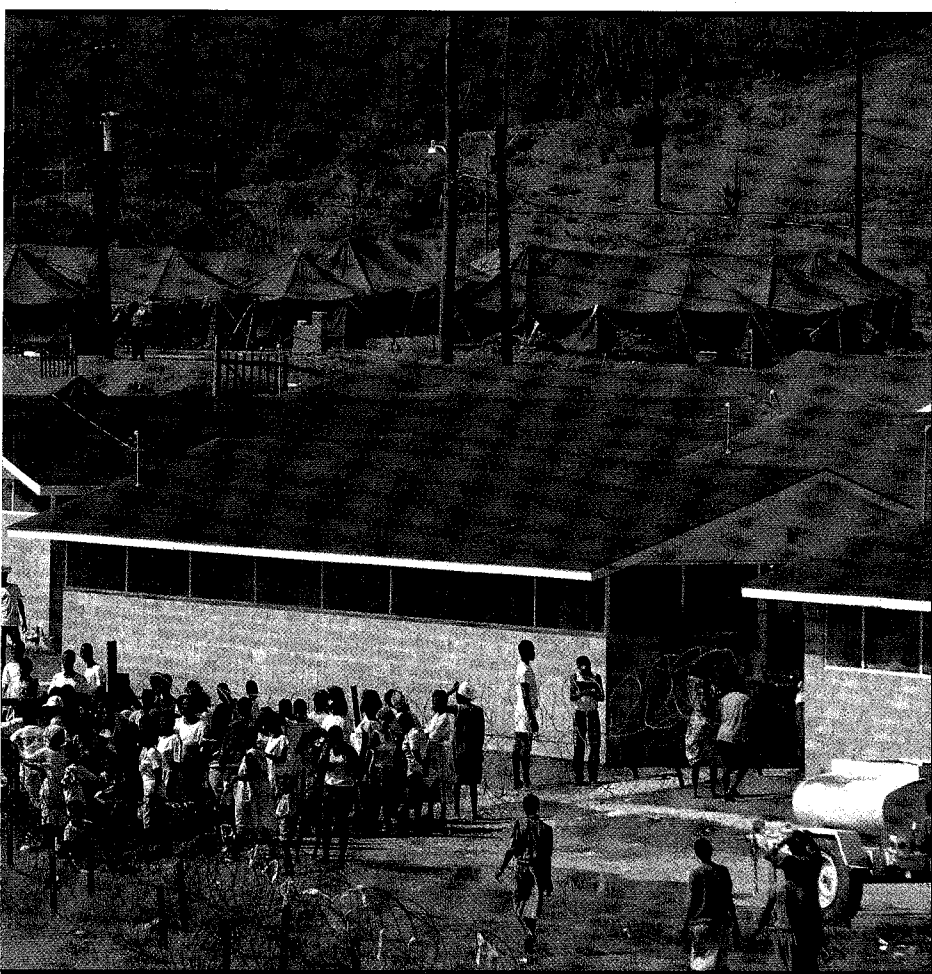
To the astonishment of the legal community, the students won.

The lawsuit was filed by the Lowenstein International Human Rights Clinic at Yale Law School. Most law schools have one or more such clinics that enable students to work on real cases for real clients: refugees seeking asylum, disabled individu-

als fighting to keep their government benefits, homeless people challenging their treatment by police, and so forth.

What is it like to work on cases in a clinic setting? I recently finished a book, *Storming the Court*, that tells the extraordinary story of the Yale students' lawsuit on behalf of the Haitian refugees. Though every clinic experience is different, the Lowenstein case highlights several factors that make participating in a clinic so exciting—and so challenging.

Here's a bit of background. In the spring of 1992, long before the current debate over the imprisonment of terrorist suspects on Guantanamo, the U.S. government was already running a detention camp on its naval base there. The camp, built in a remote corner of the base, held 300 Haitian political refugees who faced a terrible predicament. After fleeing their homeland in the wake of a brutal military coup, they had proved they deserved asylum in the United States. But then they tested positive for HIV.



As a result, the administration refused to let them into the United States. Instead, it created what amounted to an offshore HIV prison, confining innocent men, women, and children in squalid barracks, surrounded by razor wire and guard towers, with no hope of release. The government justified this policy by arguing that the refugees had no rights under U.S. law.

Enter the Lowenstein International Human Rights Clinic at Yale, a small group of students litigating cases under the direction of professor Harold Hongju Koh and Michael Ratner, a seasoned litigator with the Center for Constitutional Rights in New York City. The Lowenstein Clinic specialized in international torture cases, but in the spring of 1992, the students pushed for an exception: They wanted to file suit against the federal government on behalf of the Haitians on Guantanamo.

It was an ambitious plan. Some even considered it foolhardy. The students would be taking on the biggest, most powerful legal adversary in the world—the U.S. Department of Justice—to help foreign clients on a military base 1,500 miles away. But after much cajoling by the students, Koh and Ratner finally agreed, and the clinic filed the suit, titled *Haitian Centers Council v. McNary*. (Haitian Centers Council is an umbrella

advocacy group for Haitians in Brooklyn; Gene McNary was commissioner of the Immigration and Naturalization Service at the time.)

Initially, the case was meant to ensure that the imprisoned refugees had access to counsel during their asylum hearings on Guantanamo, which were being conducted without lawyers. But it evolved into a broader, more far-reaching campaign: The students wanted to win the refugees' release. And though no one expected it at the outset, the suit became a major media story, grabbing newspaper headlines and the attention of the legal community over the course of one remarkable—and remarkably demanding—year.

During that time, the students drafted temporary restraining order papers, met with their clients on Guantanamo, testified at preliminary hearings, took depositions of military officials and Haitian refugees, helped research and write a Supreme Court brief, organized street protests, gave press interviews, negotiated with U.S. Marines, conducted direct examinations at trial, and, after winning the case, helped the newly freed refugees deal with the complicated process of resettling in the New York City area.

As uncommon as this lawsuit might have been, the students faced a number of the challenges—and corresponding rewards—that you're likely to discover in your own clinical course. Among those challenges are dealing with clients, working with opposing counsel, and following through on a project that might not fit neatly within the boundaries of a traditional academic schedule.

### The attorney-client relationship

First off, the students found themselves responsible for real clients. In class, a professor might ask you to argue one side of a case as an exercise. And you could spend weeks preparing for a moot court competition. But in both such instances, you have no broader responsibility. When you take on clients, however, you've got real people with real problems counting on *you* to help them.

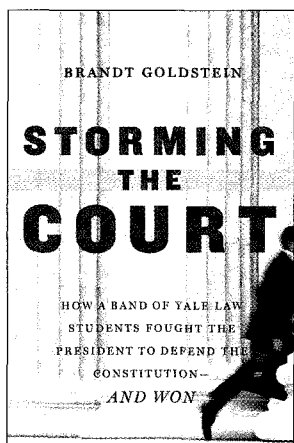
To understand those problems clearly and to identify a possible legal solution to them, the usual approach is to meet with your clients and talk over their situ-

ation. This requires patience, empathy, and concentration—but it also requires the presence of your client. And that's where the Yale team faced a challenge that you hopefully won't have: lack of client access.

Indeed, one of the factors that made the Haitian case so difficult was that for more than half a year, the government would not allow anyone from the Yale team to speak with the Haitians on Guantanamo. As a result, the students and lawyers had to fashion their case strategy without any input from the people who would be affected by it. This presented serious problems, and the students had to make a number of tough calls without client input.

A few weeks into the case, for example, the students got secret, late-breaking information that the government was about to force a number of the refugees back to Haiti, where they would face possible persecution. There was only one potential way to stop the government: Someone from Yale would have to pound on a federal judge's door after midnight with an emergency motion, a gambit that everyone figured was almost bound to fail. The supervising lawyers finally decided not to take this extreme measure, in part because it was certain to alienate the court. But the result was that some of the clinic's clients were in fact sent back to Haiti, and at least one of them was later beaten by the Haitian military. For months afterward, many of the students felt that the midnight motion should have been filed—because their clients surely would have wanted it.

Ironically enough, the case grew even more difficult when the Yale team's clients became available. After the government allowed the clinic to meet with the Haitians on Guantanamo in October 1992 (seven months into the case), the students were stunned to discover that the refugees were highly suspicious of them. Rather than being greeted as supportive advocates who'd been doing everything they could to help, the students were pelted with angry questions: Who are you? Why should we trust you? How come it has taken you so long to come here? And why are we still locked up? Adding to the difficulty of the situa-



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tion, the students had to work through interpreters to communicate with the refugees, who spoke largely in Creole.

The students ultimately won the trust of their clients through many days of intense discussion. But the challenge of the attorney-client relationship wasn't over. After the initial meetings with the Haitians, the Yale team's recommended course of action in the case ended in disaster. The students and supervising

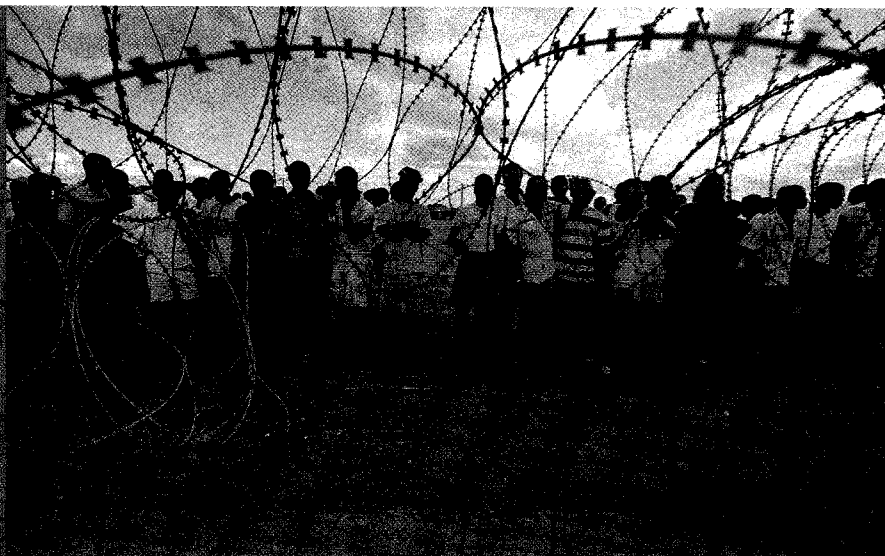
you come at it with an agenda directly in opposition to that of your opponent. Indeed, as you probably know, you are obligated as a lawyer to represent your client zealously.

But as zealous as you may be about your client and your cause, you still have to deal with opposing counsel in an effective, professional manner. You'll find that it requires composure, clear thinking, and a good deal of restraint. If you're too

only were the two lawyers able to cut down on the acrimony that pervaded even the small day-to-day matters the two sides had to handle. While the litigation continued, they were also able to negotiate an interim deal to fly the pregnant women and the sickest Haitians off Guantanamo for treatment in the United States.

The key for Ratner was that he kept his emotions in check for the benefit of his clients. It's a challenge you might find

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lawyers had advised the refugees that they should put the litigation on hold for a month, until early November 1992. The reason? Presidential candidate Bill Clinton had promised to free the refugees if he won. But after taking the White House, President Clinton reneged on the promise. In despair, the refugees responded with a hunger strike—a dangerous move for anyone with AIDS—and many quit talking with their lawyers.

Your relationship with your client may not prove nearly so challenging. But be prepared, and stay flexible. Developing good communication and understanding with your client will be critical to successful clinical work.

### **Working with opposing counsel**

A second set of issues that the students had to address involved their relationship with opposing counsel—something you're likely to face as well. Managing this relationship is a tricky task because

aggressive, it can backfire on you. That's what happened in the Haiti case. The students were so disgusted with the government lawyers that they could barely communicate with them. There were bitter fights about setting discovery deadlines, scheduling flights to Guantanamo, and all sorts of other issues, large and small. It became an exhausting process for the two sides to come to an agreement on almost anything.

Luckily, however, supervising lawyer Michael Ratner managed to develop a good working relationship with a top Justice attorney, Paul Cappuccio. Ideologically, they could not have been more different. Ratner was a 1960s-era radical who couldn't stand most Republicans. Cappuccio was a diehard conservative who thought of the Yale law students as a bunch of sanctimonious do-gooders. But Ratner and Cappuccio got along personally—kidding around and telling stories—and the results were invaluable. Not

yourself grappling with as well. And if it proves difficult, maintaining a bit of perspective may help. Looking back on the litigation many years later, one of the students remarked that it took her until the end of the case to realize that the government lawyers weren't all bad-intentioned. At trial, she saw one of the government attorneys sitting alone on a bench outside the courtroom, exhausted and demoralized, and it finally occurred to her that he was simply a lawyer trying to do his job.

It's also true, of course, that you might come up against some lawyers who are just plain difficult, argumentative types—people who don't want to compromise on anything. And that can make your job a great deal more difficult than it otherwise would be. Indeed, despite the good relationship Ratner forged with Cappuccio, the Yale team had to deal with another government lawyer who fought every last issue until the day

that the judge handed down his final ruling in favor of the refugees. This lawyer made for an interesting character in *Storming the Court*, but you probably wouldn't want him as an adversary.

### Following through

Among the many other challenges the students faced in the Haiti case was that it turned out to be an absolutely massive amount of work. Some students put in more than 2,000 hours on the case in a single year. That's the equivalent of a full-time law firm job, over and above regular law school coursework. In fact, a few students put in even more time than that—in a couple of instances, almost 3,000 hours. Which means, in short, that they were working on this case night and day for an entire year—skipping class, missing vacations, even interrupting graduation ceremonies to get back to work on an emergency motion.


Your clinic experience almost certainly won't be this intense. Most clinics are carefully structured to keep the work at a

manageable level, and clinics almost never take on a case as ambitious as *Haitian Centers Council*. (Moreover, most of the students involved in the Haiti case—who've gone on to become successful public interest lawyers, law professors, and human rights advocates—will tell you they have rarely been involved in a case that was so demanding.) But the fact is that if you have real clients, you may find that you have to rearrange your schedule, and your life, a little.

The graduation story I just mentioned is an extreme example, but it's worth considering for a moment. The day before many of the students on the Haiti case were set to graduate, President George H.W. Bush issued an executive order. The president declared that from that day forward, every Haitian who fled Haiti would be taken aboard a U.S. Coast Guard cutter and sent back to Haiti—no exceptions. The order applied even to those refugees who feared for their lives due to political persecution.

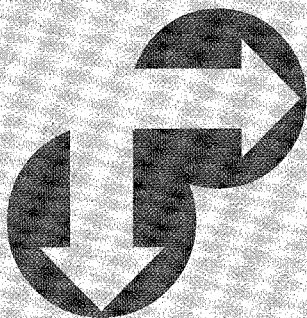
When the students learned about

Bush's order, they were packing up to leave campus forever. But instead, they stuck around, some of them until late into the summer, to fight the order in court—against Solicitor General Kenneth Starr, no less. Exhausted as the students were, they wouldn't have had it any other way. They were committed to the case and to their clients, no matter what. And, even today, they have fond memories of those busy summer months.

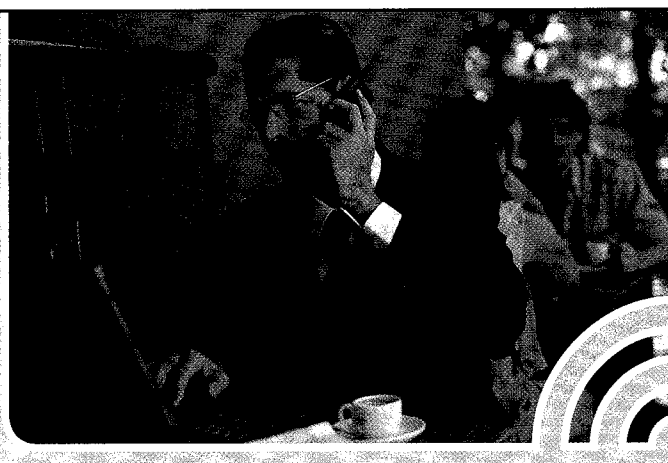
If you end up representing a battered woman seeking a restraining order or an impoverished family fighting an eviction notice, there's always the chance you could get a telephone call on a Friday night just as you are about to go out to dinner or a movie. If it's an emergency with your client, you'll have not just the obligation but the opportunity to bring to bear your knowledge, skills, and judgment to help that person. That's the privilege, and the burden, of being a good lawyer. But as Professor Koh liked to ask his students on the Haiti case, "Hey, isn't this why you went to law school?" 

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