

Conference on Experiential education in China

Beijing, January 16, 2009

We have all learned so much over the two years that this project has been operating. Our two three-week summer intensive workshops plus hosting 3 professors from each partner law school for a year in our LL.M. program, and hosting a visiting professor, have involved those of us from American University in the development of Chinese clinical legal education in ways that we did not anticipate. Looking at our own legal system and our own educational system from the prism of the Chinese system has taught us a lot about both societies and cultures. We have all worked hard to translate what we know and what we would like to know across language and cultural barriers and came to recognize again and again that our understanding is distorted by assumptions that come from differences in our legal system, in the role of lawyers and in the pedagogical culture in both societies. With amazing good humor, great patience, and strong desire on the part of all of us, particularly the Chinese, we repeatedly overcame these obstacles. Indeed, clinical education, that is using role-plays, simulations and even a real case, saved us when mere language translation could not.

It has been a great honor to have had this continuing opportunity to be part of this project to help Chinese colleagues who want to reform the content and methodology of legal education. We have learned that they, like us, have been disappointed by the fact that traditional legal education has not prepared law students to take on the responsibilities inherent in the role of being a lawyer. The idea that legal educators should be responsible for introducing their students to the skills and values that are fundamental to the practice of law is taking hold here in China, much as it has in the United States.

We have discovered that the aspirations of our Chinese counterparts are similar to our own. They want their students to have the ability to function as lawyers and to be able to perform with proficiency the tasks that make up the work of a lawyer. And, more fundamentally, they want them to be ethical lawyers, lawyers dedicated to client loyalty, zealous advocacy, the pursuit of justice and the promotion of the rule of law.

Our mission as law professors is to improve the legal profession, reform the legal system, and strive for justice through what we teach our students. Utilizing what they learn about how to behave and how to think as lawyers, they will reshape the future. Clinical teachers believe that we carry out this mission best by engaging students in the actual practice of law and then teaching them as they fulfill that responsibility. We think that giving students the responsibility for trying to solve a client's legal problem motivates them to learn because for the first time in their lives their decisions and actions have consequences beyond themselves. This is a powerful learning moment for them and we thus have the chance to shape how they understand and undertake that responsibility. Our objective is to teach them how they ought to understand their role, how to

conceive of their relationship to clients, and how to fulfill the duty of being a lawyer within the constraints of ethical practice.

The core idea of clinical education, of having future lawyers engage in practice while in law school and under the tutelage of a law professor, stems from an understanding that lawyers will learn skills and values *somewhere* and that we should not leave to chance where that occurs and whom they may emulate. At the same time, we cannot achieve what we hope to unless we know what to teach and how to teach it. Two years ago, in the first meeting that the American University team had with our Chinese partners, Dean Kong of ZGU told us that what the Chinese teachers needed from us was just that, a curriculum for clinical education. The idea that student volunteers would provide legal aid to clients was already established, he said. What ought students be taught while doing that? What teaching materials or textbooks could be prepared? What methods ought to be used to do that teaching? And how should a program be designed to carry out the program's objectives? We have worked with our Chinese colleagues since then to help them answer these questions.

Most American clinical teachers believe that the goal of teaching students to be lawyers requires, as a starting point, an examination of the tasks that lawyers perform and the development of theories about how those tasks can best be done. For that reason, an on-going scholarly project of clinical teachers in the United States and, more recently, here in China is to create and improve theories of lawyering that combine skills and values. And it is that which we teach to our students in clinical programs. However, in order to do that we have had to develop theories of pedagogy so that our students can learn these theories, apply them in practice, and test and refine them in light of experience. And so, in our work with our Chinese colleagues we demonstrated, discussed, and practiced the various teaching methods that we use in U.S. clinical programs.

We have tried, I hope successfully, to avoid being pedagogical imperialists. We knew from the outset that American lawyering theory and American pedagogical theory would not be directly exportable to the Chinese context. Although we have provided translations of clinical texts and articles, we knew that they could only be a starting point for similar work that needs to take place here. At the same time, we have nearly 40 years of experience with clinical education and we recognize the historical moment here that has similar characteristics to the situation we faced as clinical education in the U.S. was just developing. Both the Chinese and American professors involved in this project have worked hard to understand the extent to which American models are adaptable to the situation here but we are gratified to believe that much of what we have created in the U.S. is quite useful to our counterparts here as they create clinical education for China. And, again and again we learned that apparent differences between the values we Americans cherish as lawyers and those that matter in China are illusory and that as we worked for clearer communication we discovered more similarities than we originally knew.

The teaching model for our clinical programs starts with the creation of a law office run by the law school for the purpose of teaching law students while providing legal services to clients. That clinic simultaneously serves the community by helping individuals or groups but that service

is a secondary purpose to its educational mission. Some of the teaching time of each of our summer workshops was devoted to questions about the design and operation of the clinic itself. We know from our visits to our partner schools that each is experimenting with different ways to organize the office, to establish criteria for accepting clients and cases, and to define the role of faculty in the operation.

It is in this practice setting that faculty work with students both to ensure that they act competently in the particular case and also to teach them in ways that reach beyond that case by developing insights that will be useful throughout their careers. We call this part of clinical teaching “Supervision.” And the model we use to do supervision attempts to give responsibility for decision-making to students, often by asking questions instead of giving answers. The questions are designed to ensure that student’s decisions take into account alternative courses of action and have a sound basis. We incorporated this model into our training and watched with satisfaction as many Chinese professors began to master this technique during practice sessions.

We also prepare our students for real client representation in the classroom, using simulated cases to permit them to learn lawyering skills in a low-risk setting. We teach such skills as interviewing, client counseling, problem solving, fact investigation, negotiation, and oral and written advocacy in a seminar that calls upon students to perform these tasks, reflect upon their performance and receive critique from their instructor. These skills can be taught in a seminar simultaneous to the students’ clinical experience or before it in prerequisite courses. In either event, the lawyering theory that is taught in the classroom gets reinforced or changed as the students apply it in real-world practice. Participants in our program who came for two summers got to learn in one summer with the Pacific-McGeorge advocacy faculty how to write and teach from simulations in free-standing courses and also to learn in the other summer with the American University faculty how to use simulations as a component of a clinical course.

Another component of clinical teaching focuses on a seminar discussion of the students’ experience on their real cases and clients. Called “Case Rounds,” this method of teaching permits all of the students to learn from the experiences of each other. Teachers facilitate conversations that engage students in looking forward, to plan a strategy or an action to achieve a goals, or to look backward, to reflect on something that occurred to gain a deeper understanding of why it did and what conclusions can be drawn from it. In this endeavor we ask students to apply theory to practice and to extract theory from practice. Rounds are a particularly useful way to explore ethical questions that occur in practice with all of the students. In our summer training we were able to discuss, demonstrate and practice rounds teaching along with simulation teaching with our Chinese counterparts. And, in this past summer’s workshop in Hangzhou, we implemented Prof. Liu’s idea to build the training around a real client with a real case. That quite successful innovation enabled us to conduct Rounds about this case and to explore a wide range of ethical and values questions that arose from it.

Among the many things that has been satisfying about this program has been to see how quickly ideas that were developed in the summer workshops have been put to use by our Chinese friends. One of the core values of American clinical education is “client-centered lawyering.”

By this we mean preserving to clients the right to make the important decisions about the goals of legal representation and to choose, with the help of the lawyers, among the possible courses of action that are available. When we first introduced the concept in Guangzhou in the first workshop there was a lot of resistance to the idea of adapting it for China. Some of the resistance stemmed from a misunderstanding of what we meant by it and some of it was based upon a belief that lawyers knew best about what is in the best interests of clients. By the second summer, this value had not only been accepted but, we were told, has since been incorporated into the new Chinese Lawyer's Law that Profs. Xu and Ma of CUPL had helped draft. And, initial resistance to a less directive model of clinical supervision faded when Prof. Zhou Shiwen demonstrated how to do it during class in Hangzhou.

We have built enduring friendships from this program. We have developed enormous affection and admiration for those professors from China with whom we have worked. Built upon these relationships, the collaborative work that we have begun will continue, even as this phase of the project comes to conclusion.