

# How to apply the clinical pedagogy of U.S to the administrative law clinic of CUPL

Li Chao

The primary purpose of my speech today is to report how I instructed my students of administrative law clinic in School of Law at CUPL after I graduated from Washington College of Law. I will focus on how I applied the clinical pedagogy of the US to my teaching in this clinic, the feedbacks from my students to respond such a methodology and the challenges we need to meet in the future.

First of all, I would like to introduce the general background about the clinic I teach. The establishment of this clinic can be dated back in 2004. It was sponsored by the Ford Foundation with the support of Beijing Municipal Bureau of Justice. Invited by its founder Professor Hongjun Ma, I was honored to be one of the very first instructors in the clinic. Later on, Professor Shenjian Xu has been in charge of the clinic. As he is also the head of the Institution of Experimental Teaching, the clinic got the full support from many experienced professors in the Institution as well as from the Academic Affairs Office at CUPL. I would also like to single out Professor Shuzhong Li for his particularly important role during the course of its development. As a result, the scale of our clinic is increasingly expanding. The clinical methodology is attractive, particularly for those students who attach great importance to the theoretical study. These students are usually excellent for their academic performance and are willing to be involved into the community activities. I have nine students in the group and teach on every Thursday morning.

The first method I adopted from Professor Elliott Milstein's clinic at WCL is the exercise for interview. I asked the students to be divided into 4 groups. Each group had two students, and one student was appointed as the coordinator for all four groups. During the first lesson, I taught the students how to interview the clients. The students were encouraged to have a chat in the group and then introduce the group mate to their classmates. The students like the way we did for ice breaking. They got to know each other and developed their relationships. Since then, they had been the colleagues in the group for the cases they involved. By the end of the semester, the four groups accommodated almost a hundred clients, drafted more than 40 legal writs and represented three civil cases.

Secondly, after meeting their clients, the students were required to submit the legal memos that were drafted based upon the documents the clients provided. During my candidature of LLM at WCL, although I only learn some basic rules on drafting legal memos, it did help me to know more about American Law. As I understand, by drafting legal memos, students will be able to quickly locate the precedents of the case as well as to clarify the case theory and the important facts of the case. Compared with the legal writing that Chinese students used to learn, as legal memos underscore the causal link among the important facts, the law and the evidence, the key issues of the case that should be resolved will be identified by drafting such memos. My students told me that through these legal memo writing, they were be able

to quickly tell the difference between facts the client described and the legal facts supported by the evidence and the law in accordance with the due procedure. Furthermore, they can also find the appropriate solutions to the case for clients.

Thirdly, skills for interviewing clients. When I studied in Professor Elliott Milstein's civil practice clinic at WCL, I had discussed with him on how I taught my students to interview clients. I told him, I taught the students to grasp the key information from the client's description as quickly as they can and got rid of the irrelevant information the clients provided immediately. As a result, my students dominated the interview and learnt the case from the perspective of lawyers. After studying with Elliott, I have realized that my previous method is a typical mode of lawyer - centered interview. However, in the States, most clinics adopt client-centered lawyering to deal with the case. This is certainly applied to the stage of interviewing the clients.

Later, I promised to Elliott, I would be more patient to listen to clients. So, this semester, I also told my students that they have to be patient when meeting the clients. But I have to say I failed to let the students fully understand this point. During the second week of this semester, we had many clients in our clinic. Even though the students had known all necessary points for the skills of interview after their first lesson, they did not have enough time to digest what they learn. On the other hand, we have too many clients, which is different from WCL's clinics. Sometimes, I interviewed the clients by myself in order to show the students how to talk with the clients. However, the problem is this would prevent other clients who were being interviewed by the students from talking because they found it is worth much more talking with the teacher. Then, with more clients coming to the clinic, the students were under the bigger pressure and had much frustration in the clinic. Gradually, they lost their patience even though they became more and more skillful in interviewing the clients. Next semester, I am going to improve it by giving each group (two students) two cases, taping their performance in a separated room when they interviewing the clients, and then working together with them for feedbacks and discussions. These ways are exactly what I learnt from WCL's clinics.

Fourthly, the negotiation skills. I also adopted the American training methods that I learned from WCL and Hangzhou workshop to teach the students negotiation skills. Compared with the training in the States, the case materials we used were too simple and there was too little time to do so. So I only train the students to learn some basic skills on negotiations. I recall that it had been taken several weeks for Professor Bob Dinerstein to teach the students to learn such skills step by step in his clinic at WCL. However, in China, there are few cases that lawyers can be involved as major players to resolve the dispute by negotiations. This is partly because the ADR system is not mandatory in China's law practice. Students find it is not valuable to be trained even if they are interested in negotiations. As a result, I had to tell my students to take such training for the skills of communication and persuasion. In this regard, if we think each case is a story, then representing the clients in the court can be regarded as a negotiating round. A good negotiator is able to persuade not only the other party but also the judge. In addition, students can think about the solutions to cases from

different perspectives by learning the skills for negotiations

Fifthly, understanding the client – centered lawyering. Several days ago, I joked with Professor Yanning Yu, saying as a part-time lawyer my earning is much less after I studied with Professor Elliott Milstein on legal ethics. This is because I do not want to do what I used to do with my clients. The system on legal profession’s ethics in the United States has been well developed from a lawyer – centered theory to the client – centered lawyering, which was based upon the evolvement of the whole legal community, not only in legal education, but also in judicial system. But the Chinese practice is different and students find it difficult to understand the client – centered theory. So when I introduce the theory, I asked them to recall how they advise the clients in the clinic and most students thought their advice would benefit their clients, no matter clients acknowledged or not. Then, I asked them to think about what happened when they do shopping. In that context, what advice the salesperson provided when there is a difference between the product they purchased and the product they expected. Students then were required to distinguish a lawyer from a salesperson. Most students argued that one such a key factor is the consumer’s discernment and knowledge. The consumer has to have some sense of knowledge to know that the product is the best one that he/she can get within this particularly certain time. The next step is to ask the students to think about a question, that is, who individually always tells them that his/her decision for them is at their best interests even though they do not satisfy the decision. Without doubt, students all think it is that their parents always to do so. Finally, the students fully understand the client – centered lawyering by comparing the difference among the roles that salesperson, lawyers and parents play and analyzing those negative factors involved with the “best interests”/ “benefits”. They also understand how important to help the clients for the increase of the analysis and knowledge to the case during the interview.

Finally, I personally hope to continue to improve my teaching skills on clinical pedagogy. Clinic education plays an important role in training the students to be good lawyers. To be instructors in the clinics, he/she should be not only a part-time lawyer with some experience in practice, but also should know how to teach students these skills by using the methodologies that students can accept. During my stay at WCL, the most impressive thing for me is not only the broad and profound law in the United States, but also the various and effective clinical pedagogy adopted by the American professors. I hope I can continue to get help from our American professors and improve my teaching skills in clinics.