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Brian K. Landsberg
Pacific McGeorge School of Law

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Teaching Skills in Chinese Law Schools,

By Brian K. Landsberg
Professor of Law, Pacific McGeorge School of Law

I hear and I forget, I see and I remember, I do and I understand.¹

Pacific McGeorge School of Law has undertaken a project in simulation education, in partnership with three Chinese law schools. We are training Chinese law professors in simulation methods of teaching advocacy skills --- negotiation, mediation, arbitration, trial, and persuasive oral and written advocacy. This program is funded by the United States Agency for International Development for a two-year period, under a grant to promote the rule of law. Our other American partner, the Washington College of Law at American University, is providing parallel training in clinical legal education.

TERMINOLOGY

The recent Carnegie Report on law school education urges more emphasis on experiential legal education [where the student goes through the actual or simulated experience of acting as a lawyer].² The report's premise is that although traditional methods may effectively impart legal knowledge and analytical skills, they tend to ignore or ineffectively transmit professional values and practical legal skills required to represent clients in transactions or dispute resolution. The Report argues that experiential education is the optimal technique for inculcating practical skills and ethical values.

Discussion of global legal education is hampered by the lack of common terminology. Those of us who have engaged in education across national lines have learned that some terms are simply not translatable. For example, the term "advocacy skills education" has no accepted counterpart term in Chinese. Broadly speaking, there are two ways to provide practical skills education: By helping students to work on actual cases or by creating hypothetical case files and helping the students perform lawyering tasks relating to the files. These two techniques are not mutually exclusive. In the United States, clinical education has included both actual cases and training using hypothetical cases. The use of hypothetical cases is generally known as "simulation" education. However, the United States has somewhat artificially recognized two distinct types of skills training: clinical education [which includes a simulation component] and pure simulation courses, such as client counseling, business planning, negotiation, mediation, trial advocacy, appellate advocacy, and the like. "Simulation course" as used in this paper refers to the pure simulation course, not the clinical course, though the two are closely

¹ Attributed to Confucius, Quotation #25848, Laura Moncur, Motivational Quotations, <http://www.quotationspage.com/quote/2548.html>. Thanks to David R. Chavkin for this quotation.

² William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007).

related and the use of pure simulation courses can serve as a substitute for the simulation component of clinical courses.

BACKGROUND

First, why did we choose simulation education as a technique for promoting the rule of law in China? Our exposure to Chinese legal education had come primarily through our participation as a partner with Frank Wang and Laura Young in a summer program in 2004 at the Kenneth Wang School of Law in Suzhou, a program later joined by Bucerius Law School, Hastings Law School, and Cornell Law School. There we wanted to design a program that could educate law students from both China and the United States. How could we provide a common and rich experience under which students from diverse legal and educational systems and cultures could interact and derive some understanding of one another's law and culture? We decided on a simulation in which teams of Chinese and American law students would be assigned to represent either an American company or a Chinese company in a business transaction. The students had to negotiate a contract and then address the fallout from a disagreement regarding implementation of the contract. The culmination was oral argument before a tribunal, either in a western style court or in a Chinese style court.

Our other exposure to Chinese legal education had come at a conference in Beijing in 2005 on clinical legal education. A variety of speakers, both Chinese and American, argued that Chinese legal education was unduly wedded to the lecture method of teaching, so that Chinese law graduates lacked practical skills.

We recognized challenges to introducing simulation techniques to Chinese legal education.

- Since simulation has been only grudgingly and partially accepted as a legitimate element of the American law school curriculum, one might expect similar reactions from law schools in China.
- The Chinese legal curriculum is loaded with courses required by the Ministry of Education.
- Chinese culture might be inconsistent with some of the basic elements of simulation education.
- Chinese law students, who are undergraduates, might be too immature to respond properly to simulations techniques.
- Most American law professors lack expertise in Chinese law, so, at least initially, we would have to rely primarily on simulations as offered in American law schools rather than ones tailored to Chinese circumstances.
- Most important, Chinese law faculty are not generally familiar with simulation techniques and might resist change from the traditional lecture method. However, our experience with the summer program at Kenneth Wang School of Law and our interaction with Chinese legal educators gave us hope that simulation might prove a useful technique.

OUR PROGRAM

In order to maximize the impact of our program, we adopted a "train the trainers" approach, training Chinese law professors in experiential techniques. Workshops and an LLM program provide simulation education training to Chinese law teachers. We scheduled three-week workshops at partner schools in China for the summers of 2007

and 2008. At each workshop we would train fifteen or more Chinese law professors in simulation teaching techniques. In addition, we sent professors to our partner schools to offer short simulation courses to Chinese law students. We also created a new LLM program at Pacific McGeorge in the teaching of advocacy skills. In all three settings we stressed the following aspects of experiential learning:

1. Creation of realistic simulations;
2. Lecture on basic techniques;
3. Demonstration of techniques;
4. Role play by the students;
 - a. As clients
 - b. As lawyers
 - c. As mediators
 - d. As judges
5. Self-critique after viewing video of self during the role play;
6. Critique by Professor;
7. Critique by peers;
8. Redoing the exercise after the critiques.

Perhaps the least understood and most important element in education by simulation is the critique --- the feedback after completion of an exercise. We both explain and demonstrate the importance of being specific, repeating back precise words that evoke either praise or criticism, and making the individual critique a lesson that will educate the entire class, not just the person being critiqued.

In Guangzhou, in summer 2007, at the South China University of Technology, thirteen Chinese faculty members participated in what we then called the Advocacy Skills Workshop. It was simulation education training. Six faculty from Pacific McGeorge taught that workshop. We provided Chinese language course materials, power points, and presentations..

During the first day of the workshop Professor Cai Yanmin, a director and co-founder of the Committee of Chinese Clinical Legal Educators, delivered a dynamic keynote lecture on the legal profession in China and its relation to legal education. She noted that China as a society ruled by law was at a beginning stage and that the quality of legal education will determine the degree of progress. She argued that Chinese legal education must change, that it relies too much on spoon feeding lectures and does not pay enough attention to cultivating skills and responsibility, ethics and values. There is a gap between curriculum and law practice. She noted a large number of societal problems that should be addressed by the rule of law, and she argued that legal educators have a societal responsibility to help solve those problems. However, only about 40 of China's more than 600 law schools had clinical and advocacy programs. Professor Cai concluded that the growth of these programs would be a gradual and accumulative process.

The Advocacy Skills Workshop addressed three sets of skills. The first week focused on negotiations/ settlements, the second week on arbitration, and the third week on

persuasive writing and oral argument. The workshop centered around interactive simulations in which the participants engaged in role play as lawyers, mediators, students, and professors. The participants both went through experiences of a student in an advocacy skills course and also practiced the role of a professor teaching such a course. These are the critical components of the “train the trainers” approach.

Pacific McGeorge professors gave introductory lectures, including some demonstrations of techniques. We then divided the participants into various roles and observed and commented on their performance. They learned techniques of designing and implementing skills simulations and of critiquing student performance. At the end of each day participants filled out a Two Minute Wrap-Up form evaluating the day’s lesson and mentioning questions that remained unanswered. These evaluations enabled the Pacific McGeorge professors to adjust the next day’s course plan to address issues raised by the Chinese participants. In addition, the participants helped create outlines of advocacy curricula that could be used in Chinese law schools. During the last day of the workshop each participant explained how she or he would make use of the knowledge and skills acquired during the workshop. During the entire three weeks the Chinese professors and Pacific McGeorge professors engaged in a continuing dialogue on the differences between our educational and legal systems and the adaptability in Chinese law schools of American techniques of teaching experientially.

Student evaluations of the 2007 Advocacy Skills Workshop were highly favorable. In the last day of the advocacy workshop, participants outlined their future plans. Prof. Lu Wei Feng of CUPL said he would introduce into his Labor Law course workshop methods relating to negotiation, mediation, pretrial preparation, and moot court. All participants said the workshops would have an impact on their teaching. When asked what were the most important things they learned at the workshop, responses from advocacy workshop participants included: •“Teamwork, course design and the style of teaching,” •“The use of role play and simulations,” and •“Encourage students to participate in the teaching method.” Although a skeptic could suggest that they were just telling us what we wanted to hear, we know that many have incorporated experiential learning techniques in their courses. Professor Shu Yao Zhi of Zhejiang Gongshang University reported that the school was further formalizing and systematizing its clinical program and had introduced skills training techniques into the required course on lawyering. Professor Liu Xiao Bing of CUPL reported that in the fall of 2008, “in the course of lawyering, I divided the class in several groups, some play the role of judges, some the plaintiff party, some the defendant party, and the others play the roles of lawyers presenting each party respectively.” He added, “all of the students showed the greatest interest in such teaching method.”³

We have also sought to expose Chinese faculty and students to experiential learning by sending visiting professors to China. Professor Xu Shenjian described Professor Jay Leach’s visit to teach trial advocacy at China University of Political Science and Law: “This kind of teaching method was highly accepted and welcomed by students. They not

³ E-mail message from Liu Xiao Bing to Brian Landsberg, 10/21/07.

only learned academically, but also found the shortcomings and merits of their characters and personalities.”⁴ Professor Leach taught sixteen Chinese law students, through lecture, demonstration, simulation, and feed-back. Professor Leach reports:

It would be impossible to overstate the enthusiasm with which all 16 Chinese law students embraced our full-on experiential, simulation-based, American-style trial-skills course. Any preconception I had that they would be less inclined to engage in public performance as a means of learning was quickly dispelled at the outset of the first exercise - drills of direct and cross examination styles of questioning – when they vied with one another to ask the best questions and showed no shyness or hesitation.⁵

Professor Leach reached two important conclusions: (1) “those who choose law as a field of study are in many respects the same the world over: eager to do battle and comfortable with conflict;” and (2) “teaching skills in a learning-by-doing, or experiential, setting appears to be universally effective. Cultural, stylistic, and linguistic differences, while noticeable, do not appear to affect either the rapidity of the students’ learning or their enthusiastic embrace of the experience.”⁶

For the 2007-8 school year Pacific McGeorge inaugurated a new LLM in the Teaching of Advocacy Skills. The five participants this year were all Chinese law professors whose studies were financed by US AID and Pacific McGeorge. They have taken intensive simulation courses in Trial and Appellate Advocacy and Alternate Dispute Resolution, as well as a traditional course in Evidence, a course in Comparative Criminal Law, and a course in the Teaching of Advocacy. They have written theses as part of the LLM requirement. After the initial culture shock of participating in American style legal education, the Chinese professor/students immersed themselves in the courses and showed great capacity to adjust to new methods and a foreign legal system. They have told us that they believe the concepts and techniques they have learned are not only transferable to the Chinese context, but will substantially improve legal education there.

Transference of the concepts of experiential legal education by American law professors, using American materials, has thus been quite successful. The longer term task is to build capacity for Chinese legal education to incorporate experiential education. In the remaining portion of our program we are turning our attention to helping to create a critical mass of Chinese law professors and Chinese simulation materials. China has the opportunity to avoid the artificial division between clinical and other simulation courses. Our Chinese partners agree with this approach and have received some encouragement from the Chinese government to adopt experiential education techniques.

On a broader note, experiential learning is an essential element of legal education, not

⁴E-mail message from Xu Shenjian to Brian Landsberg, 12/13/07.

⁵ **Thomas J. Leach**, CONTENT AND DESIGN OF ADVOCACY EDUCATION COURSES IN CHINESE LAW SCHOOLS: A PROPOSED TEMPLATE (January 2008).

⁶ Ibid.

just in the United States, but wherever law graduates will be called upon to act as professionals. The techniques that American law professors have developed are not only valuable, but are transferable to other cultures and legal systems.