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# Exporting American Legal Education

James E. Moliterno

This essay's title, though perhaps catchy, is somewhat misleading. The essay describes experiences creating "American style" courses at law schools outside the United States. In that sense, these projects spread U.S. style legal education outside the United States. But the essay's primary theme is that there is sometimes too much focus on trying to make American clones in the kinds of projects I describe here.

Over the past few years, I have had the extraordinary good fortune to work in legal education projects outside the United States—Armenia, China, Georgia, Japan, Serbia, and Thailand.<sup>1</sup> Here, I relate some of what I have learned about how to do this work and about efforts to export American law and legal education. After briefly describing each project, I tell some stories from each. This essay is about legal education reform projects. When I say legal education reform projects, I do not mean giving a lecture or even teaching a semester-long course outside the United States. I mean helping to create new courses, taught and taught again and then added to the mandatory curriculum at the host school or in the national system. And I mean teaching methods training that holds the promise of affecting local professors' teaching in whatever courses they teach. These activities hold greater promise of outlasting the dates of arrival and departure stamped on the visitor's passport.

## The Projects in Brief

By far the most extensive work project occurred in Serbia between 2004 and 2006. Projects in Georgia, Armenia, and Thailand continue. The work in Japan came from a different direction entirely. The sessions in China were the result of the fundraising and creative work of Eleanor Myers at Temple Law School. Here is the essence of each project.

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1. Another description of learning-while-teaching in a similar environment may be found in Sanford Levinson, *National Loyalty, Communalism, and the Professional Identity of Lawyers*, 7 *Yale J. L. & Human.* 49, 64 (1995).

*Serbia*

Through a project of the National Center for State Courts (NCSC) funded by USAID, I made seven trips of about two weeks each to Belgrade and three other Serbian cities with law schools (Kragujevac, Nis, and Novi Sad). I worked with faculty and administrators at five law schools. I did a bit of consulting about law school policies and procedures,<sup>22</sup> but the bulk of my work in Serbia was to design and implement a legal writing and analysis course and a professional responsibility course. Eventually, four of the five schools adopted versions of the two courses and some schools have made them mandatory in the curriculum.

*Georgia*

Through an ABA-CEELI (Central and Eastern European Law Initiative) project, I went to Tbilisi, Georgia, in December 2006 to work on a new lawyer ethics course, again with a local partner, Professor Lasha Bregvadze. This one-week trip produced a draft of materials for his lawyer ethics course. Meanwhile, social unrest in Georgia cancelled my scheduled December 2007 trip. Elections occurred in early January, and a February 2008 trip was also delayed. I completed the materials in June. Then war came in August. Now a return trip is scheduled for November 2008. Such things are always a consideration in this work.

*Armenia*

Also through ABA-CEELI, beginning in April 2007, I consulted about a legal methods/analysis/skills course in Yerevan, Armenia. My two partners there, Davit Melkonyan and Ruben Melikyan, are young lawyers and part-time professors, teaming to teach this new course. Ruben is a clerk for an important judge. Davit represents the parliament in the Constitutional Court. Both seem quite likely to be important lawyers in post-Soviet Armenia. They finished the materials and started their new course in February 2008. It was taught successfully and is now being taught to law students, judges, and judicial clerks in Armenia.

*Thailand*

In fall 2006, I was invited to do some work in Thailand by the ABA Asia Initiative. I accepted and we set a date for the trip. Then the Thai military coup occurred. My students joked with me that the coup was in preparation for my visit and I was secretly meant to be the new head of government. Not

2. The academic dean at one of the schools said his school has no schedule. I thought he was exaggerating, but he explained. Professor X is offering a course in commercial law. It has no regular meeting time. The students spend time in the student lounge during the week until a notice is posted announcing that the first lecture in Professor X's commercial law course will be held on, let us say, Thursday at 2 pm. The following week, the students again wait for a notice that will announce the time and place of this week's lecture in Professor X's commercial law course. I feel sure that we did not solve this problem in our one-hour conversation.

quite. Instead, the trip was cancelled by our State Department and eventually rescheduled in spring 2007. This trip was meant to provide help with a new lawyer ethics course and also to do some training in interactive teaching methods for Thai law professors.

On a return trip to Thailand six months later, I met with the two professors who were teaching the ethics course, observed the last session of their semester-long course, and worked for three days with the Thai Lawyers Council on a redraft of their lawyer law and lawyer ethics code.

### *Japan*

In most of the world, legal education is an undergraduate program of study. Dramatic legal education reforms took place in Japan four years ago. The government authorized graduate legal education, comparable to our JD degree. More than sixty law schools opened to provide this new degree. The key negotiation, still ongoing, was with the bar association. The pass rate on the Japanese bar exam has been historically very low, under 10 percent; the passing test takers are the 500 highest scorers. The new schools could not survive if the rate remained at that level. Students would not invest three years beyond a bachelors degree for an advanced degree that offered a less than 10 percent chance to enter the profession for which the degree provided training.

The Japanese government issued grants to teams of Japanese professors to study and report on various aspects of what this new graduate legal education should be. One team asked about William & Mary's Legal Skills Program, which combines a four-semester simulation skills course with the teaching of professional responsibility law. They visited us in Williamsburg in February 2005, created a pilot course for their law school that followed many features of our program, and held an international conference in Osaka in February 2006. Along with Eleanor Myers from Temple Law School and Roy Stuckey from South Carolina, I participated in the two day conference. During the conference, among other things, we played out a simulated family mediation involving custody and support of a child of a Japanese mother and an American father. Students in Temple Law School's Tokyo program represented the father. Students from the Japanese law school represented the mother. A Japanese professor and I acted as joint mediators.

### *China*

With a grant from the U.S. State Department, under the auspices of the Temple University Beasley School of Law/Tsinghua University School of Law Joint Rule of Law Program, Professor Eleanor Myers of Temple Law School put together a team of U.S. faculty to conduct a week-long workshop on experiential learning teaching methods for a select group of Chinese law faculty. They joined us in Beijing. And we enjoyed our time with them immensely.

Eleanor put together a team that had tremendous rapport and camaraderie.<sup>33</sup> We met in Philadelphia to plan the exercises we would use during the week. Eleanor had already done extensive work with her Chinese partner, Professor Jian Min Chen of Tsinghua University. She took the results of our day in Philadelphia and produced our schedule and plan.

The workshop proceeded on two tracks. The bulk of each day was taken by one or another of the team members using a simulation exercise with our audience and then explaining the educational theory behind it. Our efforts were aimed at showing the how and why of experiential learning. Later, the Chinese faculty broke into groups according to the courses each teaches. One of our team worked with each group as its members planned their own simulation exercise for their subject area. By week's end, we were ready for the final session in which the Chinese faculty demonstrated their exercises. The end product of the workshop will be a book of simulation exercises prepared by the Chinese faculty attending the workshop.

### **Some Lessons and Stories**

In the parlance of our times, these projects are meant to build "local capacity." Not to catch fish but to provide better fishing techniques and equipment, and to ensure that people know how to use those techniques and equipment to catch more fish: Leaving new courses behind that belong to the local professor, leaving behind teachers with new classroom techniques and teaching materials, helping with a new code. All meant not merely to provide some one-time service, nor to be a single-serving friend, but instead to leave new local capacities.

How? The keys seem to be collaboration in teaching and learning, not merely providing information and material or simply teaching. Time after time, collaboration produced something sustainable; teaching while I learned produced something more relevant and valued. The learning, when it was clear to my colleagues that I was learning from them, in turn created more fruitful collaboration and more enduring results.

In the course of this learning and teaching, openness and patience mattered enormously. Listening and hearing set the best course. Paying attention to culture was fundamental.

After my first two trips to Serbia, local people I worked with seemed to be interacting with me in an odd way. I asked what seemed curious to them about me, and they answered, "You do not seem American to us." I was not sure how to take that exactly. I said I am very proud to be an American and I am as American as anyone could be. I explained that there are no two Americans who are the same, so whatever they thought an American should be might be a mistaken impression. We talked a while about the mixture that is the United

3. Alan Lerner from Penn, Carrie Menkel-Meadow from Georgetown, Eleanor, Paul Tremblay from BC, and me. John Myers and Adelaide Furgeson, spouses of Eleanor and Alan, played important roles in our teaching and administration as well.

States, and that at its best, the United States has welcomed and learned from the cultures of its immigrants. So, I said, it was hard for me to imagine why I wouldn't seem American to them. They said they expected that I would tell them what to do and not listen to them and that I would not value their opinions or take the time to hear what they had to say. I said again that I am American and asked them to reconsider their views on what Americans can be. But I understand exactly what they meant about their impressions of Americans. I saw too many who fit their expectations. And their expectations of Americans are far from unique. Americans are regarded, with considerable evidentiary support, to be self-focused and uninterested in world events.

Some indication of this American trait is that the world seems to be becoming more U.S.-like in its ways and even in the forms that attend its legal professions. We are indeed exporting American law, legal education, and lawyer rules. I learned that Georgia, for example, has lawyer and judicial ethics codes that read much like the ABA codes. And with good reason. The ABA has sponsored the first bar association in Georgia and assisted in the adoption of these ethics codes. In Armenia, the main branch of the court system has begun to operate like a common law court. Law students will soon be taught to do common law style analysis, even as the first common law decisions in their national courts are being rendered. As yet there would be only a few court opinions to put into casebooks, if any existed, but there will be both court opinions and casebooks in Armenia's future. In Japan's reform of legal education, U.S. models have been sought for various aspects of the enterprise.<sup>44</sup>

These shifts to U.S. models do not always fit well with local conditions. Paying attention to this possibility, rather than merely assuming that the U.S. model must fit all, aided the work. Consider, for example, the new judicial conduct code and disciplinary process in Georgia, which looks a great deal like the ABA models. Nice. Perhaps. But not so fast. On each of my project trips, I have asked to meet a few prominent or interesting lawyers and judges, allowing me a small flavor of the legal profession as I try to understand their particular lawyer and legal culture. I met a lawyer in Tbilisi who said she had been disbarred for representing a group of judges who were charged with disciplinary violations under the new code. We talked for forty-five minutes, but I left unclear about the story: what were the judges charged with, were they factually guilty of the violations, and why had the bar then disciplined the judges' lawyer. I asked the Georgian professor and a staff member of the program, a recent Georgian law graduate, both of whom had been with me during the meeting and had been translating for me. It went something like this:

Did her clients (the judges) do what they were charged with doing?

Yes, absolutely, they said.

4. See <[http://www.kwansei.ac.jp/law\\_school/keisci/](http://www.kwansei.ac.jp/law_school/keisci/)> (last visited Sept. 12, 2008).

Hmmm. So this lawyer represented them. That seems uncontroversial. Do other judges do what these judges did?

Yes, absolutely. Nearly all judges engage in some form of this same conduct.

Oh, I see. Then why were these judges charged with disciplinary violations and others are not?

Because these judges were appointed by the prior government. And the current government has charged many officials of the prior government with crimes. And these judges would not convict those defendants. So the new government wanted these judges off the bench.

Oh. . . . . I see.

The Georgian Bar leaders I met were very proud of their new American-style judicial ethics code. The culture of institutions and the administration of laws matters more than the text of those laws. (Then I thought of the half dozen or so U.S. Attorneys discharged in 2006-07 for their suddenly poor performance.)

The style of legal education in most of the world is lecture, pure lecture. “The notes of the professor becoming the notes of the student without passing through the mind of either,” as Mortimer Adler described the method. In fact, better students with whom I spoke in some of my international stops have made a choice: either do the reading or attend the lecture, but do not do both. Doing both is a waste of their study (and café) time. (They would always say study time, but I was sure that this meant both study time and pleasure time. I suspected as much without judgment. Whether studying or having a coffee, I agreed with their time allocation. The lecture was usually a mere repeat of the reading and they were right to skip one or the other.) Newer professors are especially hungry for different ways of reaching and energizing their students. Some have taken LL.M.s from U.S. law schools. And truly, most of the time, the sort of interactive classroom in the U.S. law school really is better than the lecture classroom.

Of course, despite the behavior of some U.S. colleagues I met in this work, exporting exactly what we do in our interactive classroom makes no sense. We teach mostly from reported opinions of common law courts. Teaching the analytical techniques of the common law as the core of our most prominent teaching method makes no sense for civil law lawyers (except to the modest extent that they may find themselves litigating in EU courts, which are largely operating as common law courts do). And further, there are no court opinions from which to teach the law of obligations (for example) in a civil law country. So teaching professors in most countries how to teach with our case method is to teach them something that would be utterly useless to them. There exist no local opinions from which such teaching could be done. And yet, in one of my stops, I was pushed hard by the U.S. staff of the program to teach common

law analysis to the local professors. "That is what they need most," she said. "To teach as we do in the U.S." She encouraged me to use U.S. court opinions as the materials for my teaching methods workshop. I didn't. I once observed an American expert teaching a trial techniques session to lawyers in a civil law country. The expert taught the intricacies and subtleties of cross examination, evidence manipulation, presentation and handling of exhibits, and so on. And as far as that went, he taught it quite well. But he seemed not to know or to care that his audience lives in a legal system without cross examination or evidence handling or submission by lawyers and so on. What he taught might have had some curiosity value for the audience, but it had no practice value. And they looked on the expert with incredulity that he could be brought at great expense to the U.S. taxpayer to their country to do something that could have been done better by a local expert and about which the American had obviously not even paused to realize would be irrelevant to his audience. Worse than useless. Offensive. So when we teach teaching methodology and the audience wants something more interactive, we should do so by conveying and demonstrating in-class role playing and the use of hypotheticals and such, but not by pushing the locally worthless common law case opinion discussion methods that we use most often with great effect in the United States.

Cultural imperialism is evident in the attitudes of some Americans (and Western Europeans) involved in these projects. By contrast, others doing this work are the most open, interesting people. Too often, though, "this is how we do it in the United States" is a one-line argument to which no engagement or rebuttal is permitted. It is as if the maker of such a statement is surprised and shocked by any further discussion of an issue after this simple assertion is made. Even the titles and definitions start down the wrong path: we are the "foreign experts;" they are "aid recipients."

Collaboration was more important than expertise. Treating colleagues and partners as "aid recipients" undermines this work. The interpersonal side of what I did was often more important than the knowledge I brought. The teamwork and mutual respect produced more than my knowledge could have. Had I thought I was there to do for them, I am convinced we would not have accomplished much. Had I merely delivered a set of materials from which they would be expected to teach, they may have done so grudgingly, if at all, and to little effect. The knowledge I brought could probably have been derived from any number of U.S. course books. It mattered far less than patience, perceptiveness, and collaboration.

When I was first asked to participate in an international project (in Serbia), I asked if I could have a partner at each law school, a local faculty member interested in teaching the course that we would design together. It seemed to me the course and materials might last, be taught more than once, and perhaps even (as has proven true) be added to the formal, required curriculum of some schools. Professors rarely teach courses that do not belong to them. At least not more than the one time necessary for their school to reap the sometimes attendant aid in the form of library renovation or computers. It seemed to me

that for any of these new courses to stay after I left, the course had to be created so it belonged to the local professor. It had to be created with her students, her legal system, her ideas in mind and prominent as themes in the course materials. It had to be created with collaboration. I set out to do a job that I knew I could not do on my own.

On the first trip, I met with partners at Belgrade's two law schools, the long established public Belgrade Faculty of Law and a new, private law school, the core faculty of which was largely composed of professors and judges who were in some fashion ousted from professorial or judicial positions during the Milosevic years. In our initial meetings, Professors Radmila Vasic and Zorana Kostic and Judge Radmila Dacic discussed their ideas for what a research and writing and analysis course should look like for their students. I brought electronic files of course materials from the William & Mary Legal Skills Program. I listened, and based on what they said, I pieced together and presented a draft syllabus at the second meeting. By the third meeting, we determined who would contribute what to the teaching/student reading materials. Before I left Belgrade, many of the materials that I modified from U.S. materials had been amended and inserted as they fit into the course. I made the analysis chapter largely a statutory analysis chapter. The research chapter was far less than we might be accustomed to: case research was largely irrelevant. In coming weeks, my partners added their contributions. Much of what they contributed were local documents and materials and descriptions of civil and criminal processes necessary for the legal analysis we would ask the students to do. Professor Vasic wrote a theoretically appealing description of why lawyers must write well. (Her legal theory book is in wide use in Serbia.) Judge Dacic contributed files she culled from actual cases in her court, allowing students to see examples of documents we asked them to produce for hypothetical cases. Professor Kostic, more attuned to U.S. legal education because of her Columbia LLM, worked with the basic writing exercises to make them work in Serbian. The writing course was ready for the next semester and ran at both schools. As it turned out, the course had a somewhat more theoretical bent for Professor Vasic, and a slightly more immediately "practical" bent for Professor Kostic. They had courses that belonged to them.

When the course ran for the first time, students would receive only an elective credit for taking it, which diminished its importance in their scheme of progress toward graduation. Still, more than 200 students showed up to register for Professor Vasic's course and she had to enlist two teaching assistants (more like assistant professors in our system) to help her manage the work of teaching the course for the fifty students she allowed to enroll. Professor Kostic's course was also popular. She had decided to limit the enrollment to their highest achieving students for the first few times.

Meanwhile, the NCSC staff decided we should proceed with a lawyer ethics course as well, and I met with a team of partners from the private law school. Professor Vasic was again my partner at Belgrade Faculty of Law and she began teaching the course a semester later. That association,

repeated from the first course, was easy and comfortable. During the second and third trips, I worked with the team at the private law school on topics for the course, and also made day-trips to Kraguyevac, Nis, and Novi Sad to start discussions with faculty and administrators regarding both courses.

The initial reception at the three schools outside Belgrade varied dramatically but ultimately did not foretell the successes and failures.

In Novi Sad, for example, the initial reception was open, warm, and enthusiastic. This city is in Vojvodina, the most ethnically diverse region in Serbia. Vojvodina functions as an autonomous province within Serbia, essentially the political equal of the far more turbulent Kosovo (before its recent announcement of independence from Serbia), also an autonomous province since the 1970s era amendments to the Yugoslav constitution. The people I met in Vojvodina regarded themselves as more closely oriented to Central and Western Europe than to the rest of Serbia, more inclined toward Germany, Croatia, and Hungary than toward the eastern Balkans or Russia. We thought after our first two meetings at Novi Sad that they would adopt the new courses. But in the end, their self-felt sophistication doomed our project. They already had a modest course in lawyer ethics, and seemed over time less and less to feel the need to start another or to revise the current one. We lost our momentum when one supportive professor/partner was dismissed for reasons we never came to understand, but hoped had nothing to do with his enthusiastic work with us. Later, following a “dean-coup,” the cooperation completely fell apart and the NCSC project ended before the administration stabilized and new overtures could be made. We were on the drive to the law school from Belgrade for a fourth trip to Novi Sad when the sudden change of administration occurred. On our arrival, we expected to meet the dean and a few faculty members. Instead, we were greeted by a distraught vice dean who said he would be acting as dean for a short time; he could not in good conscience stay on, he said, because of his good faith and solidarity with the dean ousted by a faculty vote that very morning. We enjoyed some time with him and had a coffee before heading back to Belgrade for the night. He was in no mood to discuss progress on our new course, and with good reason. The law school was in a genuine state of turmoil, and he was facing difficult personal questions of duty and loyalty.

By contrast, in Nis, our initial reception was demoralizing and a bit intimidating. I was there with an interpreter and a recent law school graduate who was helping me with the materials and with navigating the legal education system. The dean entered his office with an entourage of about ten faculty and administrators who sat in one motion as he sat. I began by expressing my enthusiasm for working with his faculty in a partnership to design new courses, much as I had said at other law schools. Through the interpreter, though, the dean kept repeating that he did not understand me. I was confident that the interpretation was sound and effective, but he persisted for some time. Finally, eventually, he spoke for a few minutes and the interpreter seemed uncomfortable telling me what he said. He said it was

not surprising that we could not understand each other given our countries' recent failures to communicate except through force. He wanted to discuss my opinions regarding the NATO bombing of the late 1990s. I knew before this visit that there had been many civilian fatalities in Nis during the bombing, but his combative stance still took me a little by surprise. I tried to explain that I was not on any political mission and just hoped to form an academic, educational partnership with him and his faculty. Perhaps I should have engaged a candid conversation about the bombing campaign and my opinions about its merits, but I did not. Looking back, I think that may have been a passageway through which I had to walk, but I still do not know where it would have led. We exchanged cordial but inconsequential banter for twenty more minutes and the meeting ended when he stood and coolly left the room. One of the faculty members at the meeting, however, took me by the arm in the hallway and asked if I might like to have some "hard drink." I smiled my approval of the suggestion and she and a colleague of hers joined me and my office colleagues in the faculty lounge for a sljivovice (or two). I never saw the dean again. Instead, on subsequent visits, we met with this faculty member and her vice dean and another colleague. She eventually began teaching both courses, without being given any credit in her teaching load. In some of the subsequent meetings, I sensed that she was drawing me into discussions that were designed to have me persuade her vice dean to credit her work more concretely (which I was happy to do). But this tactic never succeeded and she taught the courses without institutional credit for doing so.

The lawyer ethics course for Serbia began in a more fitful manner than the research and writing course and demonstrated the need for collaboration and patience in a different way. The team of partners for the first version of the lawyer ethics course were perhaps too many (six), each of whom would be responsible for a portion of the teaching. Mostly, they stayed fairly quiet in my initial meetings with them and seemed (I was wrong about this) to simply want me to tell them what to teach. I received so little input from them that I eventually decided I had to toss a syllabus of my own design onto the table and see what reaction it brought. That worked. I made a syllabus that might look like many lawyer ethics courses in the United States, all the doctrinal topics, and a week of judicial ethics almost as an afterthought.

One of the team was a former supreme court judge, ousted during the Milosevic regime, a gruff, silver-haired man with a voice that seemed perpetually angry. He started to speak in Serbian and never gave the interpreter a chance to pop in and translate for me. Instead, he spewed what seemed like anger for fifteen minutes, during which the word I recognized numerous times was "Milosevic." The rest of their team was silent and seemed aghast. I remember wondering if they were anxious about what my response would be. (Later one of them told me that they thought I might leave in anger and protest.) Finally the interpreter caught me up as best she could. He was upset that I would propose such a course. (What a gentle interpreter she was.) Their problem was the judges, their corruption, and lack of independence

in the judicial system. This course must be, he said, at least half on judicial topics. I knew there was a great deal more that was not being translated. I looked at him and smiled, and said, "Hvala. Thank you, so very much. I do not want to have my U.S. course taught in Serbia. I was hoping to help with your creation of a Serbian ethics course for Serbian students on Serbian problems. But until you spoke, I could not know what those problems and topics were, because you know them and I do not. So thank you. Now we can start our work." The ice was broken, he and I became friends, even though his voice still sounded angry. Months later, he was the most enthusiastic person attending the first day of the new course. After the ice-breaking meeting concluded, I returned with a new syllabus, one that met his approval (and everyone else's) and off we went. I was lucky enough to attend and speak at the unveiling of the course to the first class a few months later.

By contrast, my Georgian partner, Lasha Bregvadze, had a perspective on the lawyer ethics course that was decidedly social science oriented. He and I worked out how to organize the course, with some general chapters at the beginning on the culture of lawyers and the legal profession, followed by more doctrinal chapters on the usual list of lawyer and judicial ethics topics, and concluding with a chapter on the globalization of the legal profession that combined elements of both doctrinal and cultural perspectives. We used my comparative materials from Serbia as a doctrinal starting point. Professor Bregvadze is at work on the first four chapters and the concluding one. We spent the first week working and eating delightful Georgian food. A second trip will likely be needed to coordinate our efforts. But perhaps he and I can finish the materials from a distance and I will return for the first class or two of his new course as his guest. I could use a dish of khinkali.

In Armenia, my partners and I struggled at first. Ruben and Davit had little time to meet during business hours and the office staff was hesitant about meeting them in the evenings or on the weekend. We had a brief meeting on a Friday afternoon and another brief one on Saturday afternoon. Then it became clear that I would be meeting Davit and Ruben on my own in the evenings from there on. We had dinner on Saturday evening and worked, had a drink and more work, then more work. Davit was initially a skeptic, but in the end, he simply wanted to make sure this course would suit the needs of the Armenian students and legal system. In what was a great surprise to me, an earlier ABA initiative had set the stage for the main Armenian court to become a common law court. Their first few case opinions were being published and a body of judicially created law was being generated for the first time in the country's ancient history. The materials we put together reflected this emerging aspect of the Armenian legal system. We also created hypotheticals that suited the substantive expertise of Davit and Ruben. At one point, Davit saw that I had extensive materials available that explained in detail to students how to analyze statutes and cases, and how to write various legal documents. With this, and with his beginning to sense that I had no interest in forcing a course that would

not suit their needs, our work became smooth and productive. They were marvelous hosts, showing me the city by foot and taking me to traditional Armenian restaurants. On our last night of working together in Yerevan, we toasted our accomplishments with a vodka and a few hours later I was flying home.

A few months later, in August 2007, Ruben, Davit, and others visited William & Mary to observe our orientation week and other classes at the beginning of the semester. They were a delight. Our discussions that week did not write any words in the materials, but they clearly contributed to their appreciation of the experiential method of teaching lawyer skills, lawyer ethics, and legal analysis. Our collaboration produced the book they are using to teach Armenian law students, judges and judicial clerks.

*Flexibility* is crucial to this work. Often, the task changes before your flight lands. You can adjust to nearly anything, but it is important to acknowledge your own limitations. The teacher training sessions and especially my work with the Thai Lawyers Council on its new ethics code illustrate the need for flexibility, for knowing one's limitations, and for learning about cultural norms.

I thought when I went to Bangkok that I was to help create a new lawyer ethics course. I learned after arriving in Bangkok that it was not so; two part-time professors, a judge, and an important lawyer were already teaching a lawyer ethics course by lecturing for fourteen weeks on the expected doctrinal topics. I was really there to give advice on making the course more interactive and engaging for students. I met with the instructors for an hour or two, during which we discussed teaching methods and I tried to demonstrate, with them playing the role of my students, some ways to place students in role for discussion purposes and hypotheticals. I thought these meetings were largely unsuccessful, and learned on a subsequent trip that I was entirely mistaken.

During the first trip to Georgia, I conducted a demonstration class for students with good English skills, and was observed by several Georgian faculty and administrators. The temperatures in Tbilisi were in the 30s and 40s in December 2006, and I was encouraged to wear a sweater under my suit to teach the class. The students I found in the room wore winter coats and scarves. There was heat in the administrative suite of the law school building, but not in the classrooms. I taught on lawyer conflicts of interest much as I do in the United States, with a series of hypotheticals, asking students to imagine themselves as a lawyer engaged in practice with a client or situation that challenges them in some conflict sense. These students, unlike my U.S. students, had not read any materials before class. That turned out to be marvelous. We puzzled through the situations and discussed what was troubling about each hypothetical. By identifying what was troubling, we had an opportunity to discuss how we might craft a rule that would solve or ameliorate the trouble. The "rules" we crafted together had many features in common with conflict rules from the United States, Japan, and the European Union. The professors watching absorbed the method and told me they could see

how to do such things in their own classes on commercial law and various other topics.

The more formal teacher training in Thailand took two quite different forms, with one much more successful than the other, I think. One training was set for a full day at a law school where twenty to twenty-five professors from various law schools in the country were already gathered for a conference. They extended the conference by one day, giving me that last day to conduct my training. These professors did not know one another well and had no institutional common-point. The other training was split into two evenings of three hours each, and the audience was the newest cadre of nine professors from a single school. Both were worth doing, but the second was much better than the first.

With each group, I began with a one-hour lecture (boring in my own view) on the evolution of teaching methods in U.S. legal education, from apprentice system to law school-based lectures to the Harvard case method revolution to the effects of legal realism on teaching to modern addition of clinics and simulations and role play methods. When I finished, I suggested that the lecture was probably boring to them, so I would demonstrate a more interactive method. I then taught lawyer conflicts of interest material as I had in Georgia (without any rules but rather based on the underlying implications of conflict issues) for about an hour, placing various "students" into the role of lawyer, posing some hypothetical situation, and exploring choices they might have and strategies they might undertake and so on. I pulled in other "students" to offer advice to their colleague and managed a free-wheeling discussion of the hypothetical, all based on the student in the role of lawyer. I acted the part of the client at times, making a mock phone call to the lawyer to ask what would happen next. I had been warned that the Thai professors would likely not participate because they, as Thai students are as well, are accustomed to the lecture method only and are culturally disinclined to "question the professor." I had been told the same when I did a demonstration class for a group of Georgian students and another for Serbian students. The warning was not true in any of these places. The discussion/class session was lively and spirited.

I then asked them to consider how they might use role and hypothetical situations in their own courses, and suggested they write a paragraph outlining a hypothetical for some aspect of their course. I visited with them one-on-one as they tried this out. The final part of the workshop was my invitation to any of them to try to teach their hypothetical. In the day-long session, no one accepted that offer and we spent our time in a question and answer about teaching. At the two-evening workshop, four of the new professors tried it out, one of whom said he had done his hypo in his actual class that morning with some success. We had a marvelous time followed by a lovely dinner to celebrate our time together.

Meeting with the two part-time ethics course professors on my return visit to Thailand was a bit of a shock. I had not thought much of an impression had been made on my first visit. But on this occasion, they were most excited

to tell me what they had done to change their course in light of our earlier visit. And they had done much. They had introduced a variety of student-active projects and classroom activities replacing time spent solely in lecture in the past. The class I observed involved student small groups debating the meaning of various passages from speeches by the King regarding the justice system. Each group then appointed a spokesperson to make a brief presentation and summary of their debate for the rest of the one hundred student class. The students were engaged and attentive. The two professors said this was the tone of the course now, and that it was quite a departure from the passive role students had played in the past.

Working with the Thai Lawyers Council was both challenging and rewarding. It turned out to be three days of exhausting and exhilarating work. But again, I only learned of the nature of the work the day before I was to begin. I had been told that they were at the early stages of revising the lawyer law and ethics code and that they would like to spend three days with me. As can sometimes be the case in these projects, it was difficult to get much guidance about the work in advance. I did not know if I was to run these three days or be a participant at the table with a work committee, and if I were to run the meetings what issues were the participants most interested in and what format would be useful to their work. Once in Bangkok I learned that I was running the sessions as a presenter of sorts, that the audience would be the drafting committee of the Lawyers Council and about thirty or forty selected other lawyers, and that I was simply to select the topics and format that I thought would be most helpful to them. After reviewing the existing Thai lawyer law and ethics code, I worked out a schedule and list of topics for the three days. The presentations began with me addressing some issue and then taking questions and comments from the group. Eventually, I suggested that our last half day be spent with them making written proposals for amendments or modifications to their current law. That final session was lively and I think useful and reflected the substance of what we had discussed in the initial two and half days. This proved to be challenging but rewarding work, all done with simultaneous translation and subtle cultural overtones.

I tried not to push my opinions in areas that were heavily oriented to cultural norms. We talked about how to design a lawyer code, what major topics it should cover, and the substance of many of those topics. I was surprised to find only one conflict of interest rule in their current code, one dealing with changing sides, and surprised that other conflict scenarios simply did not resonate with the group. Their consistent response was to say that such situations work out somehow. I doubt they work out in a satisfactory way, but there seemed to be a perspective issue at play. They did not see things the way U.S. lawyers might. (Luckily, the other work on various lawyer ethics courses had allowed me to learn a fair amount about the EU lawyer code, some domestic European codes, the Japanese code, and a number of others. As a result, whenever we discussed a particular issue, I was able to provide examples from outside the United States.)

Late in the sessions, one of the few women in the lawyer group suggested that the current codes' dress code for women in court be amended to allow women to wear pants. Cultural implications aplenty. The chair of the drafting committee turned to me, I think perhaps looking for cover. I described the history of some U.S. judges' past insistence on women wearing dresses or skirts, and some being upset about facial hair or long hair on men, and other such issues. But I said those days were largely past and that when the court-by-court restrictions on women wearing pants disappeared, no one noticed any change in the women's abilities to be good lawyers. That was my subtle way to approve of the proposed change. Then, a few months after returning to the States, I learned of a Michigan judge who disapproves of women wearing pants in his courtroom. I feel sure he is not the only one who continues in such a view. So what do I know?

During the sessions, on the afternoon of the second day, I think, a lawyer in the audience suggested that I should write the code for them and have them make modifications as they saw fit. His suggestion was essentially that I should be the drafter of their lawyer ethics code. I answered that a lawyer ethics code must reflect the lawyer and legal culture of a place, and that I was the least well-equipped person in the room to write their code. I offered to give advice and review drafts at every stage and to answer any question, but suggested that it would be a terrible mistake for me to be the one to craft their code.

### **Some Conclusions**

The world is getting smaller and it will matter how lawyers behave around the world. So how should we try to affect lawyer ethics behavior with the influence we have?

1. We should collaborate to make lasting change.
2. We should be culturally sensitive to make meaningful change.
3. We should not merely export American legal education and legal ethics, and especially we should not just drop our codes or our techniques out of the sky and expect them to produce good results.
4. We should start in the law schools of Beijing, Bangkok, and Belgrade, where the lawyer culture of the future is being born and developed.
5. We should work with local professors to design new courses, especially lawyer ethics courses, that advance the best of the local lawyer culture, allowing the newest members of their legal professions to be educated about their responsibilities.

And we should not care much if these emerging democracies with evolving lawyer cultures have more or less confidentiality in their codes or more or less sensitivity to conflicts of interest or more or less permission to advertise. We should care that they evolve into legal professions committed to serving a society governed by the rule of law, one in which human rights are protected and one in which lawyers serve as a check on abuse of governmental power, and perhaps most importantly one in which the leadership in government passes

from one president or prime minister to another by means that are described in the law rather than by means of force or fraud or chicanery.

In this way, we will export what in the end matters most about the American legal profession, what distinguishes it from nearly all others, and what will most positively affect populations around the world.

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A person doesn't routinely get the opportunity to do what I have done. I fully recognize how lucky I have been to have these opportunities. I consider this work to be a great responsibility. And enormous fun. And challenging. Not any less of any of these because of the others. I have been much enriched by this work. I learned more than I taught. But I think if I had simply tried to export American legal education, I would not have been challenged, would not have had much fun, and would have failed in my responsibilities.