

## CROSSING BORDERS: CREATING AN AMERICAN LAW CLINIC IN CHINA

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*In the last twelve years, over eighty Chinese law schools have incorporated clinical legal education into their course offerings. Of these, the Center for Cross-Border Advocacy at the Peking University School of Transnational Law was the first live-client clinical legal education program to provide transnational – not domestic – legal representation. Under the supervision of an American clinical law professor licensed to practice law in the United States, Chinese law students in the Center represented immigrants in the United States at the administrative appeals stage of their deportation proceedings. In the complementary seminar, the students studied U.S. immigration law and appellate procedure, practiced advanced legal writing and oral advocacy, and explored issues of professional responsibility and cross-cultural lawyering. This article examines the creation of the Center for Cross-Border Advocacy and how the Center fit into the Chinese context of clinical legal education. It analyzes the Center's unique benefits for Chinese students, including providing direct exposure to different norms of legal practice, an opportunity to develop stronger cross-cultural lawyering skills, and a relatively safe environment for engaging in critical thinking about rule of law. The article explores in particular how representing non-Chinese immigrants in U.S. tribunals created a three-dimensional cultural exchange in the clinic while minimizing potential political backlash. It cautions, however, that cross-border clinics risk creating an appearance of legal imperialism and having only a limited impact on social justice issues within China. The article proposes that in the future, situating a transnational clinic within the same clinical program as a domestic Chinese clinic may alleviate those risks and promote even greater cross-fertilization of ideas.*

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## INTRODUCTION

On March 28, 2011, the English-language *Shenzhen Daily* newspaper ran the following short article:

**Law students win U.S. suit<sup>1</sup>**

Four local law students have been integral to the success of an immigration lawsuit in the United States.

While studying at the School of Transnational Law (STL) at Beijing University Shenzhen Graduate School, the four students helped an African in the United States write an application for permanent residency.

Having been living and working in the United States, the African, James (alias), got on the wrong side of the American legal system, putting him in danger of being deported, Shenzhen Economic Daily reported Saturday.

Short of money to hire a lawyer, James lost the first-instance trial and lodged an appeal, which would decide his fate.

On the verge of giving up, James was introduced to a foreign professor teaching at the STL through a legal aid organization in the United States.

The professor was in charge of “legal clinic” at the school, a program providing on-campus work-experience opportunities.

Having a heavy workload, the professor assigned four law students to write a testimony for James in the second-instance trial.

Under the guidance of the professor, the four students spent much time collecting related materials and communicating with James over the phone.

The indictment helped James win his lawsuit last month. He was grateful for the efforts of the four students and their professor.

It was the first time law students in China had been involved in a case heard at a U.S. court, according to the STL.

In fewer than 250 words, half of which were factually incorrect, the local Chinese newspaper managed to capture both the essence of the Center for Cross-Border Advocacy’s mission and its challenges as the first law clinic in China focused exclusively on representing clients in the United States.

The Center for Cross-Border Advocacy is the first law clinic at Peking University School of Transnational Law (STL), a graduate-level law school in Shenzhen, China that offers joint Chinese Juris Master and American Juris Doctor (JD) degrees in a four-year program. Taught entirely in English by predominantly American faculty, the JD curriculum at STL follows the standards established by the American Bar Association.

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<sup>1</sup> Li Hao, *Law Students Win U.S. Suit*, SHENZHEN DAILY, Mar. 28, 2011, available at [http://szdaily.sznews.com/html/2011-03/28/node\\_3.htm](http://szdaily.sznews.com/html/2011-03/28/node_3.htm) (last visited June 22, 2011).

As a member of the permanent faculty of STL, I founded the clinic in Fall 2010. In the clinic, Chinese graduate law students, under my close supervision, represented detained immigrants in the United States in their administrative appeals to the U.S. Board of Immigration Appeals. The *Shenzhen Daily* article appeared after we learned that one of our first clients had prevailed in the appeal of his case and had returned home to his family in the United States.

The article, and the fact that Chinese and English versions of it were published in the local papers of a city of over 10 million people,<sup>2</sup> conveys some of the excitement surrounding the innovative idea of having Chinese law students gain practical experience through live-client clinical legal education that is transnational, not local. It applauds the essence of clinical legal education: students, under faculty supervision, gaining work experience in the practice of law while providing legal assistance to those in need. And it acknowledges the important role that the representation played in the client's experience.

But the article contains plenty of mistakes as well, which themselves are revealing. In fact, our client faced deportation and the loss of his legal permanent residency in the United States due to his criminal convictions. In a trial-level administrative proceeding, an immigration judge had granted the client one more chance to stay in the United States, but the U.S. government appealed the decision. As part of the clinical legal curriculum at STL, a team of students under my supervision represented the client in the government's administrative appeal of the decision in his case and was successful, gaining the release of the client from U.S. immigration detention and enabling the client to return to his home of almost 30 years in the United States. The article used inaccurate terminology and incorrectly described the procedural posture of the case and the reason for student involvement – the faculty member's otherwise heavy caseload.<sup>3</sup>

These particular misunderstandings highlight some of the characteristics of clinical legal education in China today. As a relatively new phenomenon, clinical legal education – and in particular, the in-house, live-client law clinic – is spreading rapidly in China but still represents an unorthodox approach to legal studies. The underlying motivation and methodologies are not yet part of a mainstream Chinese under-

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<sup>2</sup> At the end of 2010, Shenzhen officially had 10.36 million permanent residents, but many estimate the real population to be closer to 20 million. See SHENZHEN GOVERNMENT ONLINE, [http://english.sz.gov.cn/gj/201107/t20110713\\_1675955.htm](http://english.sz.gov.cn/gj/201107/t20110713_1675955.htm) (last visited Sept. 16, 2011). The fast-growing city is known as a “high-tech and manufacturing hub.” *Id.*

<sup>3</sup> In addition, the article is ambiguous as to whether I am teaching at STL through a U.S. legal aid organization or whether the legal aid organization introduced us to our client in this case. At the time, I was a permanent faculty member at STL. As discussed *infra*, the clinic received its cases through a non-governmental organization in the United States.

standing of what students do in law school. Even for those who are familiar with the last decade of law clinic growth in China, having a full-time professor teach and supervise students in a law clinic is an aspiration but not yet a reality in many places.<sup>4</sup> And in most cases, Chinese law clinics focus on local issues and local representation within China, obviating any need to understand U.S. legal procedure and terminology.

On a different level, the article also embodies some of the challenges that an unusual program like the Center for Cross-Border Advocacy faced, particularly in the area of cross-cultural communication. The information for the article originated when I, the clinical director and supervising professor, was interviewed in English and recorded on tape by one STL law student and one social sciences graduate student. At no time during or after the interview did the interviewers ask for clarification of any facts or concepts presented during the discussion, and at no time before publication did it occur to me that I should ask to review the article to correct any misunderstandings. In retrospect, however, once a Chinese-language article<sup>5</sup> and then the *Shenzhen Daily*'s English version were published, I recognized the familiar traps we had fallen into. Like many of my Chinese students, the interviewer-journalists chose to do the best they could with the information as they (mis)understood it rather than risk inconveniencing me with follow-up questions or requests for clarification. They preferred – or so it seemed – to make mistakes rather than to breach the distance between teacher and student. At the other end of the communication, I thought I was being careful to recognize and accommodate language difference, but I failed, except in hindsight, to realize the breadth of my own cultural assumptions about language and behavior.

In this article, I explore some of these ideas in greater depth, analyzing the Center for Cross-Border Advocacy in its infancy against the backdrop of the first decade of clinical legal education in China. Part I offers a brief sketch of traditional Chinese legal education and efforts to reform the traditional approach, including the growth of law clinics in China since 2000. Part II examines the Center for Cross-Border Advocacy in particular, including its structure, its principal goals, and its mother institution, STL. Part III explores in more detail some of the advantages and challenges facing the Center for Cross-

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<sup>4</sup> Guidelines issued in 2009 by the Committee on Chinese Clinical Legal Education (CCCLE) for clinical programs do recommend at least one full-time professor for each program. See *infra* at Part IB.

<sup>5</sup> Wang Deng, *Immigrant Students and Teachers Across the Ocean to Win a Lawsuit in Shenzhen*, SHENZHEN ECONOMIC DAILY, March 26, 2011 at A3, available in Chinese at [http://szsb.sznews.com/html/2011-03/26/content\\_1495872.htm](http://szsb.sznews.com/html/2011-03/26/content_1495872.htm) (last visited August 19, 2011).

Border Advocacy in comparison to other law clinics in China. Part IV concludes by analyzing the value and potential drawbacks of replicating the cross-border clinic model elsewhere in China, or in the world, and proposing additional alternatives for consideration.

## I. THE CHINESE CONTEXT

### A. Modern Chinese Legal Education Generally

Modern legal education in China dates back only about 30 years, reborn in the aftermath of the Cultural Revolution.<sup>6</sup> For more than a decade, there had been essentially no legal education – and very little law – in China, as the country experienced turmoil and upheaval from the 1957 Anti-Rightist Campaign through the end of the Cultural Revolution.<sup>7</sup> In 1978, however, under the leadership of Deng Xiaoping, China began efforts to restore its legal system, and law departments at universities began resuming operation.<sup>8</sup> Since that time, the numbers of law schools, law students, and lawyers in China have exploded, propelled in part by desires within China to strengthen and reform legal institutions and to create a “rule of law” society.<sup>9</sup>

As in many countries, law in China is primarily an undergraduate field of study,<sup>10</sup> and students generally study law at institutes for law

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<sup>6</sup> *But see* Su Li Zhu, *An Institutional Inquiry into Legal Skills Education in China*, 22 PAC. McGEORGE GLOBAL BUS. & DEV. L.J. 75, 78 (2009) (dating “modern” Chinese legal education back to the Qing dynasty and describing the developments since the late 1970s as “contemporary” legal education).

<sup>7</sup> At the end of the Cultural Revolution, there were only two “nominally operating law schools” in the entire country. Jay Pottenger, *The Role of [Clinical] Legal Education in Legal Reform in the People’s Republic of China: Chicken, Egg – or Fox?*, 6 INT’L J. CLIN. LEGAL EDUC. 65, 65, 67 (2004); Cai Yanmin & Jay Pottenger, *The “Chinese Characteristics” of Clinical Legal Education*, in *THE GLOBAL CLINICAL MOVEMENT* 87, 89 (Frank S. Bloch ed., 2011); Zeng Xianyi, *Legal Education in China*, 43 S. TEX. L. REV. 707, 708 (2002); *see also* Wang Chenguang, *Retrospect and Prospect: Clinical Legal Education in China*, Remarks at 10th Anniversary Celebration of Chinese Clinical Legal Education and Clinical Legal Education Forum (Beijing, June 19, 2010), available in Chinese at [http://www.cliniclinalaw.cn/article\\_view.asp?id=774](http://www.cliniclinalaw.cn/article_view.asp?id=774) (last visited Dec. 30, 2011) (noting that there were 2.5 law schools in 1977).

<sup>8</sup> Huo Xiandan, *Legal Education and the Transformation of the Legal Profession*, in *CHINA’S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008*, 251, 252-253 (Cai Dingjian & Wang Chenguang eds., 2010); *see also* Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUMAN RTS. & DEV. L.J. 117, 122 (2005); Pottenger, *supra* note 7, at 67.

<sup>9</sup> Cai & Pottenger, *supra* note 7, at 89 (noting that there are today “more than 634 law-training, degree-granting schools, or departments, with about half a million students enrolled”); Pottenger, *supra* note 7, at 66-67; *see also* Huo, *supra* note 8, at 264. An in-depth analysis of the growth of law schools and the legal profession in China is beyond the scope of this article. For more detailed descriptions, *see generally* Cai & Pottenger, *supra* note 7; Pottenger, *supra* note 7; *see also* Huo, *supra* note 8; Zeng, *supra* note 7.

<sup>10</sup> Cai & Pottenger, *supra* note 7, at 89; Phan, *supra* note 8, at 127 & n.54.

and politics, law schools, or law departments of universities.<sup>11</sup> About two-thirds of all Chinese law students are pursuing their first university-level degree, and relatively few of the students who receive undergraduate law degrees pursue legal careers.<sup>12</sup> Instead, most go into government positions or business.<sup>13</sup> Moreover, a law degree is not required to be able to take the Chinese bar exam, known as the National Judicial Examination, or to become licensed as a practicing lawyer.<sup>14</sup>

As a consequence, traditional undergraduate legal education has paid little attention to professional skills training, emphasizing instead “legal article, legal principle, legal philosophy.”<sup>15</sup> Professors deliver information about legal theory and rules by lecture, and students learn by memorizing the material and imitating the teacher as much as possible, a technique sometimes known as “stuffing the duck.”<sup>16</sup> In class, the students are largely passive; their grades are based mainly on their ability to memorize and reproduce on exams the large quantities of information presented in the lectures.<sup>17</sup>

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<sup>11</sup> Since 2000, the Ministry of Justice no longer administers law study at institutes for law and politics; law schools are now under the administration of either the Ministry of Education or local government. Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 *FORDHAM INT’L L.J.* 421, 423 (2007).

<sup>12</sup> Cai & Pottenger, *supra* note 7, at 89; Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 *HARV. L. REV.* 2134, 2144 (2007); Su Li, *supra* note 6, at 81.

<sup>13</sup> Cai & Pottenger, *supra* note 7, at 89-90; Note, *supra* note 12, at 2144.

<sup>14</sup> Judith McMorrow, *Professional Responsibility in An Uncertain Profession: Legal Ethics in China*, 43 *AKRON L. REV.* 1085, 1088 & n.43-44 (2010) (citing China’s *LAWYER’S LAW*).

<sup>15</sup> Matthew S. Erie, *Legal Education Reform in China through U.S.-Inspired Transplants*, 59 *J. LEGAL EDUC.* 60, 68 (2009); *see also* Cai & Pottenger, *supra* note 7, at 90 (describing the traditional curriculum’s “virtually exclusive emphasis on rules, ‘law,’ and theory”); Mao, *supra* note 11, at 424 (observing that “law students lack the capacity to apply legal knowledge to resolve practical problems, and the ability to think creatively”).

<sup>16</sup> Erie, *supra* note 15, at 71, 78 & n.65. The “stuffing the duck” style of learning begins at an early age in China. Phan, *supra* note 8, at 126-127 & n.55; *see also* Cai & Pottenger, *supra* note 7, at 90; McMorrow, *supra* note 14, at 1086-87.

<sup>17</sup> Informal interviews of students who have taken undergraduate and graduate Chinese law courses at five different institutions indicate that students are expected to listen carefully in class, take notes, and then recall the material for the exam. *See* Mao, *supra* note 11, at 426 (observing that “China bases legal education on professional lectures and written examinations,” and legal teaching methods are teacher-centered, knowledge-oriented, and focused on content and logical reasoning); Su Li, *supra* note 6, at 76 (noting that “students are used to the spoon-feeding style of education they receive in high school. This leads to a rigid way of thinking – mainly conceptual, propositional, and theoretic – that applies general theories and principles to particular circumstances in a way of scientific deduction”); *see also* Wang, *supra* note 7, at Part II (noting that traditional education is passive study); *see generally* Qingjiang Kong, *Practice in Legal Education: International Experience and Chinese Response*, 22 *PAC. McGEORGE GLOBAL BUS. & DEV. L.J.* 35, 41 (2009).

The university undergraduate law curriculum is fairly standardized, with nationally prescribed texts, fourteen or more nationally required law courses,<sup>18</sup> and required general courses, including such topics as Marxist theory and “ideology and morality.”<sup>19</sup> A four-year law degree requires 140-170 credits, which equates to approximately 50 or more courses.<sup>20</sup> Undergraduate law students may take six to eight courses a semester and generally spend fifteen to twenty hours in class during the week,<sup>21</sup> compared to the twelve to sixteen hours of weekly class that are typical for full-time students at American law schools.<sup>22</sup> In further contrast to typical American law schools, Chinese law students generally do not need to spend as much time preparing assignments outside of class as American law students.<sup>23</sup>

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<sup>18</sup> See Cai & Pottenger, *supra* note 7, at 89, 90; *Student Research Topic Group of Zhejiang University of Industry and Commerce Law School, Research on the Undergraduate Teaching Plan for the Legal Specialty in National Higher Education Schools* (2007), available in Chinese at <http://www.chinalawinfo.com/fxyluntan/gq3.html> (last visited Dec. 21, 2011) (describing 14 core courses for legal studies but noting that some institutions, such as Wuhan University, have additional compulsory law courses); Zeng, *supra* note 7, at 711 (describing 14 core courses for the LL.B. degree programs); see also Huo, *supra* note 8, at 265 (explaining that 2 additional required courses were added in 2001); Brian Landsberg & Liu Jianming, *Clinical Education in China: The Next Step*, Global Alliance for Justice Education Conference (Valencia, July 13, 2011) (on file with author) (explaining that the undergraduate curriculum requires 14 core specialized courses and 16 general courses). For more detail on the undergraduate law curriculum at Sichuan University Law School, see Kara Abramson, *Paradigms in the Cultivation of China's Future Legal Elite: A Case Study of Legal Education in Western China*, 7 *ASIAN-PAC. L. & POL'Y J.* 302, 325 (2006).

<sup>19</sup> *Ministry of Education of PRC, Section on Higher Education Bureau, The Opinion to the Regulation and its Application in Setting Curriculum to the Marxism Theory Class and the Ideology and Morality Class in General Higher Education Institutions* (June 10, 1998), available in Chinese at [http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe\\_734/200408/2990.html](http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe_734/200408/2990.html) (last visited Dec. 21, 2011); see Abramson, *supra* note 18, at 327; see also 2009 Catalog of Undergraduate Education Peking University 449-50, available in Chinese at [http://dean.pku.edu.cn/jxbgs/jxbgs\\_main.htm](http://dean.pku.edu.cn/jxbgs/jxbgs_main.htm) (last visited Dec. 22, 2011) (describing 16 general courses required at Peking University Law School); Tsinghua University School of Law Training Program, available in Chinese at [http://www.law.tsinghua.edu.cn/publish/law/3376/2010/20101227111417555508211/20101227111417555508211\\_.html](http://www.law.tsinghua.edu.cn/publish/law/3376/2010/20101227111417555508211/20101227111417555508211_.html) (last visited Dec. 24, 2011) (requiring at least 15 general or “basic” courses for an undergraduate law degree). The JM degree at STL also requires a course in Classic Marxist Readings.

<sup>20</sup> See generally Landsberg & Liu, *supra* note 18; *Student Research Topic Group, supra* note 18 (comparing the total credits required for undergraduate law degrees at nine institutions). Because of the large number of compulsory courses, little time is left for specialized courses and professional training. In comparison, the JD curriculum at STL requires 107 credits.

<sup>21</sup> Phan, *supra* note 8, at n.55.

<sup>22</sup> See Jane M. Goddard, *Building the Cathedral: Sculpting a Part-Time Legal Education in a Double-Time World*, 8 *BARRY L. REV.* 117, 120 (2007) (noting that generally full-time law students enroll for 15-16 credit hours per term and at Barry University School of Law, it is 13-15 credit hours); THE YALE LAW SCHOOL, REQUIREMENTS, <http://www.law.yale.edu/academics/jdrequirements.htm> (last visited Sept. 17, 2011) (students must enroll in 12-16 units of credit each term).

<sup>23</sup> Cai & Pottenger, *supra* note 7, at 90. Informal interviews with students who received

Beyond the undergraduate law degree, China also offers three graduate-level degrees in law: the more traditional LL.M. and LL.D. (or Ph.D. in law) and the newer JM.<sup>24</sup> Traditionally, students with an undergraduate LL.B. law degree could continue their legal studies by pursuing an LL.M. degree in a program with a more academic than professional emphasis.<sup>25</sup> Students focus on a particular field of law and are required to write a thesis.<sup>26</sup> After completing the graduate law degree program, students may continue their academic legal studies to pursue a doctorate of law (LL.D.).<sup>27</sup>

In the 1990s, China began a new wave of legal education reform as the country moved further toward developing a market economy.<sup>28</sup> In response to the critique that traditional Chinese education did not do a good job of preparing future legal professionals (seen as necessary for the growth of a market economy), the Ministries of Justice and Education together developed the new Juris Master degree (JM).<sup>29</sup> First authorized in 1995 and piloted in 1998, the JM degree aims to link legal education more closely with the demands of the legal profession.<sup>30</sup> Modeled after the American graduate JD degree, the three-year JM program is open to graduate students without an undergraduate LL.B. law degree.<sup>31</sup> It intends to offer more practical,

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undergraduate law degrees or took specialty law classes at four different universities revealed that none were required to complete assignments outside of class. While some students might read recommended materials, in general they did no preparation before class. In addition, at the graduate law level, one survey indicated that LL.M. degree candidates spent as little as two hours preparing for all classes for one week. Erie, *supra* note 15, at 85. In comparison, according to some studies, American JD students spend approximately 20-30 hours per week preparing for class. Charity Scott, *How Well Do We Engage Our Students?*, 35 J. LAW, MEDICINE & ETHICS 739, 739 (2007); *see also* Mitu Gulati, Richard Sander, Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third-Year of Law School*, 51 J. LEGAL EDUC. 235, 244-45 (2001).

<sup>24</sup> Erie, *supra* note 15, at 64; Zeng, *supra* note 7, at 712.

<sup>25</sup> *See* Erie, *supra* note 15, at 64 (describing Tsinghua University Law School's two-year-long LL.M. program). *But see* Abramson, *supra* note 18, at 328 (noting that at the graduate level – including both LL.M. and JM degrees – Sichuan University Law School emphasizes training of “high-level legal workers and managers”).

<sup>26</sup> Abramson, *supra* note 18, at 330-31. For more details about the Sichuan University Law School graduate curriculum, *see id.* at 328-32.

<sup>27</sup> *See* Zeng, *supra* note 7, at 712 (noting that 8 schools are entitled to confer LL.D. degrees).

<sup>28</sup> Huo, *supra* note 8, at 258.

<sup>29</sup> *See id.* at 261-62; *see also* Erie, *supra* note 15, at 67; Su Li, *supra* note 6, at 80. Similar critiques have been leveled at U.S. legal education, *see, e.g.*, Eleanor W. Myers & Jianmin Chen, *The Challenge and Opportunities of Importing and Exporting Experiential Education to China*, 42 McGEORGE L. REV. 825, 825 & n.3 (2011), but the characteristics of traditional Chinese legal education make it even less well-suited for preparing future lawyers.

<sup>30</sup> Erie, *supra* note 15, at 67-68; Huo, *supra* note 8, at 261-62.

<sup>31</sup> Su Li, *supra* note 6, at 80; *see also* Abramson, *supra* note 18, at 331 (noting that not all students need three years to complete the JM requirements); Zeng, *supra* note 7, at 711



professional legal training than the LL.B., LL.M., or LL.D. degree curricula and thereby “to produce better legal practitioners,” representing a shift to “legal article, legal principle, legal practice.”<sup>32</sup> Eventually, the government’s plan is to transform legal education from a predominantly undergraduate major to a predominantly professional education centered on the JM degree.<sup>33</sup> In the meantime, the proper goals and legal teaching methods for legal education in China remain topics of heated debate among scholars, educators, and other experts.<sup>34</sup>

### B. *The Birth and Flowering of Chinese Law Clinics*

Along with the JM degree and other professionalizing reforms, clinical legal education has been introduced recently in China. Since 2000, a growing number of Chinese law clinics now offer students the chance, under supervision, to develop professional lawyering skills and provide legal assistance to poor and disadvantaged members of Chinese society. The origins, themes, and aspirations of clinical legal education in China mirror those in the United States to a large extent. Some of the obstacles are the same, too. At the same time, the Chinese context imbues its clinics with their own qualities and challenges. As they move forward just over a decade after the birth of the Chinese clinical legal education experiment, Chinese faculty – with help from international and domestic training programs – are reforming Chinese legal education and developing a clinical legal pedagogy “with Chinese characteristics.”

Like decades earlier in the United States,<sup>35</sup> the origins of curricular clinical legal education in China lie principally in student legal aid organizations that started to grow at some schools in the 1990s.<sup>36</sup> The

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(observing that the JM degree was modeled after the American JD). At STL, 56 credits and a thesis are required for the JM degree.

<sup>32</sup> Erie, *supra* note 15, at 68.

<sup>33</sup> See Erie, *supra* note 15, at 68; see also Huo, *supra* note 8, at 262 (noting that the JM degree “represented a new path for high-level practical training for legal talent in China, reflecting not only the significant reform legal education had undergone, but also marking an important transformation in China’s academic and graduate degree system.”). *But see* Su Li, *supra* note 6, at 76 (observing “no clear sign of improvement in Chinese law graduates’ professional skills” even after ten years of JM program implementation).

<sup>34</sup> Mao, *supra* note 11, at 424, 431.

<sup>35</sup> See Frank S. Bloch & Mary Anne Noone, *Legal Aid Origins of Clinical Legal Education*, in *THE GLOBAL CLINICAL MOVEMENT* 153, 156-57 (Frank S. Bloch ed., 2010).

<sup>36</sup> See Liu Xiaodong, *The Study of Legal Clinic Students Involved in Legal Aid*, in *JOURNAL OF EXPERIENTIAL LEARNING IN LEGAL EDUCATION* (Xu Shenjian ed., 2010), available in Chinese at [http://article.chinalawinfo.com/Article\\_Detail.asp?ArticleId=63680](http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=63680) (last visited Dec. 22, 2011); Michael Dowdle, *Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *FORDHAM INT’L L.J.* S56, S79-80 (2000) (describing the origins of Beida Law Students

acknowledged pioneer and most prominent of these legal aid organizations was the Wuhan Center for Protection of Rights of Disadvantaged Citizens [“Wuhan Center”].<sup>37</sup> At the Wuhan Center, student volunteers worked alongside paid staff members to assist members of the community with legal problems, occasionally turning to faculty or lawyers for help.<sup>38</sup> Organizations like the Wuhan Center were outside the regular law curriculum, and students received no course credit and relatively little supervision for their activities.<sup>39</sup> Today, most law schools in China have voluntary student legal aid associations that continue to provide legal information and assistance to their local communities.<sup>40</sup>

In 2000, with support from the Ford Foundation, seven Chinese schools started the country’s first curricular law clinics, which (unlike legal aid associations) provided course credit for participating students and supervision by faculty and legal professionals.<sup>41</sup> These pioneers included three schools in Beijing: Peking University, Tsinghua University, and Renmin University; two in Wuhan: Wuhan University and South Central University of Politics & Law (now South Central University of Economics, Politics & Law); and two in Shanghai: Fudan University and East China University of Political Science & Law.<sup>42</sup> Two years later, four more schools – Sun Yat-Sen University in Guangzhou, Northwest University of Political Science & Law in Xi’an, Sichuan University in Chengdu, and Yunnan University in Kunming – followed suit by starting clinical programs of their own.<sup>43</sup> That year,

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Union’s Legal Aid Society and Fudan University Legal Aid Center, which provided free legal advice and referrals). For more information on the development of legal aid in China, *see generally* Fu Hualing, *Access to Justice and Constitutionalism in China* in BUILDING CONSTITUTIONALISM IN CHINA 163 (Stephanie Balme & Michael Dowdle eds., 2009); Benjamin Liebman, *Legal Aid & Public Interest in China*, 34 TEX. INT’L L.J. 211 (1999); Note, *supra* note 12, at 2139.

<sup>37</sup> Cai & Pottenger, *supra* note 7, at 91; Dowdle, *supra* note 36, at S57; Pottenger, *supra* note 7, at 68.

<sup>38</sup> *See* Cai & Pottenger, *supra* note 7, at 91-92. The Wuhan Center’s efforts received financial support from the Ford Foundation. *Id.* at 92.

<sup>39</sup> *See* Pottenger, *supra* note 7, at 68 (noting in 2004 that academic credit had only recently become available to students working on cases in the Wuhan Center).

<sup>40</sup> Abramson, *supra* note 18, at 320; Interview with Nanjing University student, May 17, 2011; Interview with Yang Xiaolei, May 16, 2011; *see also generally* Liu, *supra* note 36 (describing legal aid centers set up at several legal education institutions). STL students started a legal aid organization called the International Legal Aid Association in April 2010, but the association is not actively engaged in regular activities.

<sup>41</sup> Phan, *supra* note 8, at 128.

<sup>42</sup> Zhen Zhen, *Clinic Legal Education in China*, MCGEORGE SCHOOL OF LAW CONFERENCE PAPERS (Jan. 2009), [http://www.mcgeorge.edu/Future\\_Students/JD\\_Program/Global\\_Impact/China/Published\\_Resources/Conference\\_Papers.htm](http://www.mcgeorge.edu/Future_Students/JD_Program/Global_Impact/China/Published_Resources/Conference_Papers.htm) (last visited Sept. 9, 2012); *see also* Cai & Pottenger, *supra* note 7, at 92; Li Ao, INTERACTIVE TEACHING – CLINICAL LEGAL EDUCATION 16 (2004) (in Chinese).

<sup>43</sup> Cai & Pottenger, *supra* note 7, at 93.

with support from the influential China Law Society, these eleven institutions together formed a national academic organization, the Committee on Chinese Clinical Legal Education (CCCLE).<sup>44</sup>

From the beginning, clinicians and lawyers from the United States have assisted in the effort to build clinical programs in China through workshops, exchange programs, and fellowships funded by the Ford Foundation, the U.S. Agency for International Development, and others.<sup>45</sup> At the same time, Chinese and international clinicians alike have recognized the need for China to develop its own indigenous model of clinical legal education—clinical legal education “with Chinese characteristics.”<sup>46</sup> Since 2002, the CCCLE has assumed the leading role in the development of clinical legal education in China.<sup>47</sup>

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<sup>44</sup> Cai & Pottenger, *supra* note 7, at 93; Note, *supra* note 12, at 2139.

<sup>45</sup> See, e.g., Brian Landsberg, *Walking on Two Legs in Chinese Law Schools: A China/ U.S. Program in Experiential Legal Education*, 16 INT'L J. CLIN. EDUC. 38 (Summer 2011) (assessing the USAID-funded Educate the Educators program to teach Chinese law professors techniques of experiential education); Note, *supra* note 12, at 2140 (observing that “CCCLE places a heavy emphasis on dialogue with American universities, both by sending Chinese educators to the United States to observe clinics and by inviting U.S. educators to China to share teaching methods and experiences”). For a more detailed history of the origins of law clinics in China, see Brian K. Landsberg, *Strategies to Increase the Availability of Skills Education in China*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 45, 49 (2009) (describing partnership between University of the Pacific McGeorge School of Law and three Chinese law schools as well as promotion of experiential education in China by other U.S. law schools in various ways); see also Cai & Pottenger, *supra* note 7 at 91-93; Pottenger, *supra* note 7, at 68-70.

In addition to efforts funded by the Ford Foundation and USAID, other efforts to promote experiential education and clinical legal education in China have included the Temple University Rule of Law Project, which sponsored U.S.-Chinese roundtables on experiential education in July 2007 & July 2009 in Beijing. See TEMPLE UNIVERSITY – BEASLEY SCHOOL OF LAW, RULE OF LAW IN CHINA, [http://www.law.temple.edu/Pages/International/China\\_Rule\\_of\\_Law\\_Roundtables.aspx](http://www.law.temple.edu/Pages/International/China_Rule_of_Law_Roundtables.aspx) (last visited Dec. 31, 2011). The Yale-China Association's Law Fellows Program also sends young lawyers trained in the U.S. to teach law for one year in China. YALE-CHINA ASSOCIATION, LAW PROGRAMS, <http://www.yalechina.org/dynamicpage.php?Id=3&SubId=220> (last visited Dec. 31, 2011). The Criminal Clinical Legal Education Project of International Bridges to Justice similarly has worked to promote clinical legal education in China. See *Five Law Schools in China Join IBJ's Criminal Clinical Project*, INTERNATIONAL BRIDGES TO JUSTICE (Oct. 9, 2008), <http://blog.ibj.org/category/latest-news/page/2/> (last visited Sept. 9, 2012); Jason Yoder, *Robert E. Precht to Launch IBJ's Criminal Clinical Legal Education Project in China*, INTERNATIONAL BRIDGES TO JUSTICE (Mar. 25, 2008), <http://blog.ibj.org/2008/03/25/robert-e-precht-to-launch-ibjs-criminal-clinical-legal-education-project-in-china/> (last visited Dec. 24, 2011).

<sup>46</sup> See Cai & Pottenger, *supra* note 7, at 94 (“One of the CCCLE's goals – to develop models of clinical legal education ‘with Chinese characteristics’ – has been at the forefront of everyone's efforts.”); see generally Dowdle, *supra* note 36 (expressing concern about the suppression of indigenous development of clinical legal education).

<sup>47</sup> Cai & Pottenger, *supra* note 7, at 93; see also Margaret Martin Barry, Filip Czernicki, Izabela Kras'nicka, Mao Ling, *The Role of National and Regional Clinical Organizations in the Global Clinical Movement*, in THE GLOBAL CLINICAL MOVEMENT 279, 286 (Frank S. Bloch ed., 2011).

With its mission to “launch all possible initiatives to promote the spread and development of clinical legal education in China,”<sup>48</sup> the CCCLE engages in both domestic and international projects that balance the internal development of Chinese clinics with the benefits of learning from international colleagues.<sup>49</sup> Among other things, the CCCLE has issued an extensive set of guidelines for Chinese clinical programs setting forth a number of norms for the content, structure, and management of legal clinics and clinical courses.<sup>50</sup>

In the ten years since the CCCLE’s creation, the number of Chinese law schools expressing interest in clinical legal education has multiplied many times. As of August 2012, the CCCLE included 148 member schools, more than 75 of whom now have established formal clinical programs as part of their curricula.<sup>51</sup> Moreover, in today’s rapidly changing China, published statistics and information about clinics are not always accurate or up-to-date. It is therefore hard to know precisely how large the Chinese clinical movement is or to get other reliable, comprehensive information about Chinese clinics.<sup>52</sup>

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<sup>48</sup> Barry, *et al.*, *supra* note 47, at 286.

<sup>49</sup> See Cai & Pottenger, *supra* note 7, at 94; see generally CCCLE WEBSITE, available in Chinese at [www.cliniclaw.cn](http://www.cliniclaw.cn) (last visited Dec. 31, 2011). For more detail on the activities of the CCCLE in its first eight years, see Barry, *et al.*, *supra* note 47, at 287-88. The Ford Foundation initially provided funding directly to clinical programs in China and now provides funding to the CCCLE, which in turn provides resources to individual schools and programs. See Cai & Pottenger, *supra* note 7, at 98; Pottenger, *supra* note 7, at 69-70.

<sup>50</sup> See CCCLE GUIDELINES, available in Chinese at [http://www.cliniclaw.cn/article\\_one.asp?menunum=\\_0\\_0&menuid=2011102135838&menuname=法律诊所课程基本规范指南](http://www.cliniclaw.cn/article_one.asp?menunum=_0_0&menuid=2011102135838&menuname=法律诊所课程基本规范指南) (last visited Dec. 22, 2011).

<sup>51</sup> For a list of CCCLE member schools, see CCCLE WEBSITE, MEMBER SCHOOLS available in Chinese at [www.cliniclaw.cn/school.asp](http://www.cliniclaw.cn/school.asp) (last visited Aug. 13, 2012) (listing 148 schools in Chinese); see also Cai & Pottenger, *supra* note 7, at 93 (noting that 76 institutions had formally integrated clinical legal education into their curricula as of Oct. 2009). In addition to the clinics in mainland China, Hong Kong – a Special Administrative Region of China – has recently embarked on its own experiments with clinical legal education. See Michael Philip Ramsden & Luke Marsh, *Using Clinical Education to Innovate the Law Curriculum and Address an Unmet Legal Need: A Hong Kong Perspective* (June 6, 2012), available at <http://ssrn.com/abstract=2079031> (describing the creation of the Refugee Assistance Clinic at the Chinese University of Hong Kong); see also Stacy Caplow, *Clinical Legal Education in Hong Kong: A Time to Move Forward*, 36 HONG KONG L.J. 229 (2006) (advocating for the creation of a law clinic program at Hong Kong University). Hong Kong universities are not affiliated with the CCCLE at this time.

<sup>52</sup> See, e.g., Susan Bennett, *Reflections on Three Weeks: The “China Rule of Law Project: Training Clinical Teachers in China”* 11-12, McGEORGE SCHOOL OF LAW CONFERENCE PAPERS (Jan. 2009), [http://www.mcgeorge.edu/Future\\_Students/JD\\_Program/Global\\_Impact/China/Published\\_Resources/Conference\\_Papers.htm](http://www.mcgeorge.edu/Future_Students/JD_Program/Global_Impact/China/Published_Resources/Conference_Papers.htm) (last visited Sept. 9, 2012) (noting how little the American clinicians learned, despite their efforts, about Chinese clinics, students, and their Chinese colleagues’ lives as teachers during a three-week workshop in China). Moreover, proponents of clinical legal education in China may have an incentive to emphasize the positive developments and downplay some of the challenges or non-successes as they try to build institutional and societal support for the new venture. As a result, the published information available may not accurately reflect the reality.

Despite the research limitations, it appears that some of China's earliest clinical programs are now well-established and well-regarded both domestically and internationally. In Wuhan, for example, the Center has evolved from a volunteer student organization with paid staff lawyers to a robust clinical program with six divisions and an explicit social justice mission.<sup>53</sup> In another example, Northwest University of Politics and Law in Xi'an ("Xibei") has created four different clinics with broad student, faculty, and local participation.<sup>54</sup> The legislation clinic at Xibei, for example, works with "government agencies and civic organizations to propose and craft legislation that affects socially disadvantaged groups."<sup>55</sup> Sun Yat-Sen University has two vibrant clinics, one that represents workers in disputes with employers, often going as far as administrative proceedings to resolve disputes, and one that focuses on environmental protection issues.<sup>56</sup> At Sichuan University, approximately 60 students a year participate in criminal justice and labor law clinics, while additional students continue to participate in legal aid cases outside of the formal clinical program.<sup>57</sup>

Other programs, on the other hand, are still in the early stages of trying to incorporate new methodologies into a traditional curriculum. Although the CCCLE encourages schools to move toward live-client representation in clinical programs,<sup>58</sup> some programs consist solely of simulation courses. Others, according to anecdotal evidence, apply the label "clinical" to any course with an element of experiential learning. There is no question, however, that clinical legal education in one form or another is becoming popular.

As in other parts of the world, the primary stated goals for clinical legal education in China include building practical skills, providing needed legal assistance, and instilling a commitment to public interest in students.<sup>59</sup> In pursuit of these goals, Chinese clinics, like clinics in the United States, cover a wide range of themes.<sup>60</sup> Some

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<sup>53</sup> See Cai & Pottenger, *supra* note 7, at 96-97.

<sup>54</sup> *Id.* at 94-95.

<sup>55</sup> Note, *supra* note 12, at 2151-52.

<sup>56</sup> Interview with Cai Yanmin, May 12, 2011.

<sup>57</sup> Abramson, *supra* note 18, at 324. According to Abramson, problems in the clinical program at Sichuan University include student status before tribunals and a lack of sufficient teaching materials and reference models. *Id.*

<sup>58</sup> See CCCLE GUIDELINES, *supra* note 50, at part III-1.

<sup>59</sup> Note, *supra* note 12, at 2140; Su Li, *supra* note 6, at 79-80 (noting that legal aid in law schools is an important way of learning legal skills); see Phan, *supra* note 8, at 129-130, 136 (describing goals of the Chinese clinical model to include skills training and "heightened critical thinking" and noting that one aspect of providing legal aid to disadvantaged groups is that Chinese clinicians strive to teach the "ability to work with members of subordinated communities in ways meant to facilitate social transformation").

<sup>60</sup> Zhen Zhen, The Present Situation and Prosperous Future of China Clinical Legal Education, Speech at the UCLA/IALS Sixth International Clinical Conference (Oct. 7,

focus on substantive areas such as “women’s rights, labor rights, civil rights, rights of the disadvantaged, rural or farmer’s justice, environmental protection, and criminal (including juvenile) justice.”<sup>61</sup> Others emphasize particular approaches to problem-solving, such as litigation, legislation, alternative dispute resolution, or law translation for minority people.<sup>62</sup> Regardless of theme, they share a focus on Chinese domestic issues. In contrast to some clinical programs in the United States, for example, there are no mainland Chinese law clinics focused on international human rights or international law.<sup>63</sup>

As with the diversity of subject matter, many Chinese clinics look a lot like U.S. clinics in methodology – on the surface at least. The CCCLE guidelines, issued in 2009, advise that a legal clinic course should combine a classroom component of lectures and class discussion with the opportunity for students to engage in legal practice.<sup>64</sup> Professors should strive to make the classroom more interactive and participatory, using teaching methods such as role play, videos, working in teams, moot courts, and other appropriate methods.<sup>65</sup> The legal practice component should ideally take place in the context of a real case and should include individual, prompt, and pointed supervi-

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2005), <http://cdn.law.ucla.edu/SiteCollectionDocuments/workshops%20and%20colloquia/clinical%20programs/zhen%20zhen.pdf> (last visited Sept. 17, 2011); *see also* Cai & Pottenger, *supra* note 7, at 94. The CCCLE guidelines encourage clinics to select a particular theme or emphasis. CCCLE GUIDELINES, *supra* note 50, at parts 1 & 2.

<sup>61</sup> Cai & Pottenger, *supra* note 7, at 94.

<sup>62</sup> *Id.*; Dou Mei, Lin Lei, Wu Zhongming, An Innovation in Clinical Law Education of Nationalities Universities- the Establishment and Operation of Law Translation Clinic for Languages of Ethnic Minorities and the Few, Speech at the UCLA/IALS Sixth International Clinical Conference (Oct. 7, 2005), <http://cdn.law.ucla.edu/SiteCollectionDocuments/Workshops%20and%20Colloquia/Clinical%20Programs/Dou%20Mei.pdf> (last visited Dec. 28, 2011). The law translation clinic established at the South-Central University for Nationalities in Wuhan trains students to qualify as translators and assists in translating a variety of legal documents, from court papers and proceedings to evidence.

<sup>63</sup> Although one Chinese article mentions that international law is an area of focus for Chinese law school clinics, *see* Liu, *supra* note 36, I have been unable to learn anything further about any clinic in China engaged in international legal work, such as the name, location, and focus of the clinic. In contrast, examples of internationally-focused law clinics in the United States abound, including the Allard K. Lowenstein International Human Rights Clinic (Yale Law School); the International Human Rights Clinic (Harvard Law School); the International Women’s Human Rights Clinic (Georgetown University Law Center); the Transnational Legal Clinic (University of Pennsylvania Law School); and many more.

<sup>64</sup> CCCLE GUIDELINES, *supra* note 50, at Part I-4. *But see* Phan, *supra* note 8, at 140 (observing that there was debate in Wuhan about whether to even have a classroom component and noting that most Chinese clinics do not develop the classroom component fully — or sometimes at all—to help structure the learning process).

<sup>65</sup> CCCLE GUIDELINES, *supra* note 50, at Part II-1-V. For an example of the classroom curriculum of one legal clinic, *see* Wuhan University’s teaching plan, *available in Chinese at* <http://lawlab.whu.edu.cn/3/36/2009-05-31/775.html> (last visited Dec. 20, 2011) (including simulations, moot court, and other exercises).

sion of students by professors outside of class.<sup>66</sup> Substantively, supervision sessions should include attention to student attitudes and learning methods, to interpersonal relationships, and to the substance of the case or legal problem at issue, among other things.<sup>67</sup>

The type of legal practice experience afforded to students varies. As mentioned above, some clinical programs do not involve any live-client representation at all. Among those that do, most clinics are oriented toward litigation and consultation, although some, like Xibei's legislation clinic, engage in more policy-oriented projects.<sup>68</sup> Statistics gathered by the CCCLE and supported by anecdotal evidence indicate that the vast majority of clinical student activity outside the classroom takes the form of legal advice and consultation: as of 2009, students and supervisors had provided such advice in over 25,000 situations.<sup>69</sup> In contrast, during the same time period they handled 3,600 legal aid cases, less than 1/6 the number of consultations.<sup>70</sup>

Several factors may account for the emphasis on providing free legal consultations as opposed to engaging in lengthier representation of clients in cases. First, existing Chinese laws do not permit students in legal clinics the same rights when handling cases as legal representatives.<sup>71</sup> Law students may appear in Chinese court only in the role of "citizen representative," where they have limited access to documents and, sometimes, to their clients.<sup>72</sup> This challenge is particularly acute in criminal cases.<sup>73</sup> In civil matters, however, the lack of status for student representatives in the judicial system has apparently not significantly hindered the ability of some clinical students to participate

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<sup>66</sup> CCCLE GUIDELINES, *supra* note 50, at Parts I-6,7; II-3-III.

<sup>67</sup> *See id.* at Part II-3-III.

<sup>68</sup> Note, *supra* note 12, at 2149; *see also* PEKING UNIVERSITY LAW SCHOOL, WOMEN'S LAW STUDIES AND LEGAL SERVICES CENTER PROJECT NEWSLETTER (2009), *available in Chinese at* [http://www.cliniclaw.cn/article\\_view.asp?id=699&menuid=2009877734521&menuname=%B9%AB%D2%E6%B7%A8%C2%C9%B7%FE%CE%F1%D6%BE%D4%B8%D5%DF%CF%EE%C4%BF](http://www.cliniclaw.cn/article_view.asp?id=699&menuid=2009877734521&menuname=%B9%AB%D2%E6%B7%A8%C2%C9%B7%FE%CE%F1%D6%BE%D4%B8%D5%DF%CF%EE%C4%BF) (last visited Sept. 17, 2011) (describing legal consultation efforts of volunteers in the legal services center); 1 CHINA UNIVERSITY OF POLITICAL SCIENCE AND ENVIRONMENTAL RESOURCES LAW CENTER RESEARCH PROJECT BULLETIN (2009), *available in Chinese at* [http://www.cliniclaw.cn/article\\_view.asp?id=700&menuid=2009877734521&menuname=%B9%AB%D2%E6%B7%A8%C2%C9%B7%FE%CE%F1%D6%BE%D4%B8%D5%DF%CF%EE%C4%BF](http://www.cliniclaw.cn/article_view.asp?id=700&menuid=2009877734521&menuname=%B9%AB%D2%E6%B7%A8%C2%C9%B7%FE%CE%F1%D6%BE%D4%B8%D5%DF%CF%EE%C4%BF) (last visited Sept. 17, 2011) (describing legal advice hotline for victims of pollution and litigation undertaken by law center).

<sup>69</sup> Cai & Pottenger, *supra* note 7, at 94; Interview with Cai Yanmin, *supra* note 56.

<sup>70</sup> Cai & Pottenger, *supra* note 7, at 94.

<sup>71</sup> Cai & Pottenger, *supra* note 7, at 98; Zhen, *supra* note 60, at 23; *see also* Wang, *supra* note 7 (noting that one problem in the development of Chinese clinical legal education is the dispute over whether students can undertake the responsibilities and rights of real client representation); *see generally* Liu, *supra* note 36.

<sup>72</sup> Cai & Pottenger, *supra* note 7, at 98.

<sup>73</sup> *Id.*

in cases almost as fully as practicing lawyers.<sup>74</sup> Although Chinese clinicians are engaged in efforts to institute an official “student-practice rule,”<sup>75</sup> the lack of such a rule may partly explain the current emphasis on providing limited legal advice rather than longer-term client representation.

Another contributing factor simply may be the current state of the Chinese legal system, the legal profession, and dispute resolution in China. Many Chinese prefer to address disputes through informal dispute resolution or petitions because they consider the court system unreliable or unavailable or because the law itself is not yet developed.<sup>76</sup> Of those who do engage in litigation, only 10% use legal counsel.<sup>77</sup> In some areas, the key to success is not adversarial litigation but mediation skills to harmonize relationships.<sup>78</sup> Culturally, relationships, or *guanxi*, play a very important role in China, and as a result, having a network of relationships and influence may be more significant than legal skill in achieving a desirable outcome.<sup>79</sup> This might also reduce some prospective clients’ desire to rely on law students and clinics for assistance.

Yet another explanation may lie in part with the students themselves. Clinical legal education expects students to participate and assume responsibility in a manner to which they are not accustomed. For many, their clinic experience is the first time they are truly challenged to think creatively and solve problems. Although this is not unique to Chinese law clinics, this contrast to the traditional form of education is particularly acute in China. Chinese clinical law students, many of whom are only 19 or 20 years old, sometimes lack the maturity to fully assume the responsibility of handling a case for a client.<sup>80</sup>

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<sup>74</sup> *Id.*; see also Interview with Cai Yanmin, *supra* note 56.

<sup>75</sup> Zhen, *supra* note 60, at 23; see also Sun Yu, *The Issues and Resolutions of Chinese Legal Clinic Education in its Process of Localization*, 31:5 JOURNAL OF SUIHUA UNIVERSITY 159, 161 (Oct. 2011) (in Chinese) (discussing proposals for a student practice rule); Xu Fei, *The “Clinical Road” of the Legal Aid Organizations in University*, 6 LAW AND ECONOMY 55, 56 (June 2009) (in Chinese) (same).

<sup>76</sup> William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the PRC*, in RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA 287, 290-91 (William P. Alford ed., 2007) (“Resort to law and lawyers remains very much the exception in Chinese affairs both large and small.”); Bennett, *supra* note 52, at 10; Carl F. Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT’L L. 103, 104-105 (2006) (examining the system of “petitioning” practices in China “that parallel, overlap, and in some cases replace formal legal channels” and noting that citizen use of these practices significantly exceeds use of courts and other formal channels).

<sup>77</sup> Alford, *supra* note 76, at 292.

<sup>78</sup> Su Li, *supra* note 6, at 87; see also Fu, *supra* note 36, at 166-167 (discussing emphasis on mediation in legal aid centers, particularly in cases where the parties have long-term relationships or where the respondent is politically influential).

<sup>79</sup> McMorrow, *supra* note 14, at 1095-1096.

<sup>80</sup> See Bennett, *supra* note 52, at 5-6 (noting that Chinese clinical educators spoke pes-



As a result, Chinese legal educators may perceive legal consultations to be a more appropriate degree of challenge for their students.

Compounding these elements are the sheer numbers of law students participating in clinical programs, particularly compared to the number of faculty available to supervise them. As many as 2,300 (or more) new students participate in clinics each semester.<sup>81</sup> CCCLE guidelines advise that the ratio of students to supervisors should be no more than 30:1 per clinic,<sup>82</sup> and anecdotal evidence suggests some clinics maintain even higher ratios and/or rely heavily on non-faculty members to provide student supervision.<sup>83</sup> In contrast, American guidelines recommend that clinical programs in the United States maintain a ratio of no more than eight or ten students per supervisor,<sup>84</sup> and the results of the Center for Applied Legal Study's 2010-2011 survey of American law schools indicate that "[o]ver 75% of law clinics have student-teacher ratios of 8 to 1 or less."<sup>85</sup> Faculty mem-

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simistically about students' "ability to take responsibility for their clients and for their education" and that Chinese students were too inexperienced, immature, and ill-equipped by their university education to accept clinical methodology); Zhu, *supra* note 7, at 76 (noting how the spoon-feeding style of high school education, age, and protection of children by their families makes it hard for Chinese students to adapt to skills training in higher education).

<sup>81</sup> Cai & Pottenger, *supra* note 7, at 94.

<sup>82</sup> CCCLE GUIDELINES, *supra* note 50, at part 2.

<sup>83</sup> The criminal law clinic at Qinghai Nationalities College School of Law, for example, apparently enrolls 180 students each semester, with two instructors. See QINGHAI NATIONALITIES COLLEGE SCHOOL OF LAW CRIMINAL CLINIC, <http://www.cliniclaw.cn/lawc/bylaw.page.asp?infol=26&modeId=10> (last visited July 3, 2012). Although it is difficult to get reliable data about actual student to faculty ratios, it appears that several clinics enroll 30-50 students per term, with sufficient faculty and practitioner supervisors to limit numbers to 8 to 12 students per supervisor. In her 2005 article, for example, Pamela Phan describes the clinics at the Wuhan Center as having one clinic instructor supervising eight students at a time, working in pairs. Phan, *supra* note 8, at 136. See also Interview with Clinical Supervisor (May 16, 2011) (describing clinical program at one school that enrolled 40-50 students each semester with three supervisors); Email from Former Renmin University Law Clinic Student (June 9, 2012) (noting that the clinic had 33 students with 4 supervisors).

<sup>84</sup> AALS Committee on the Future of the In-House Clinic, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 565-68 (1992).

<sup>85</sup> David A. Santacroce & Robert R. Kuehn, *The 2010-11 Survey of Applied Legal Education*, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, 18 ("CSALE Study") (2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (last visited Aug. 14, 2012). One reason for the difference in student to supervisor ratios may be the challenge of financing clinical legal education in China. In China, as in many countries around the world, there is a lot of pressure to make clinical legal education cost effective and to serve large numbers of students. The contrast in recommended student/faculty ratios raises questions about the comparative nature of faculty supervision in U.S. clinics and Chinese clinics. Additional empirical research is necessary to develop a more comprehensive understanding of supervision in Chinese law clinics and may yield recommendations applicable more generally for increasing student access to quality clinical legal education in institutions that lack the resources to maintain low student to supervisor ratios.

bers with large numbers of students may find it easier to provide adequate supervision to students who are not responsible for handling full client representation.

More generally, the status of clinical teachers in China poses challenges to the successful operation and growth of clinical legal education programs. Few clinical professors in China have the luxury of teaching solely in the clinical program. On the contrary, professors generally do not get credit or recognition for their clinical work and are therefore expected to teach a full load of two to six other courses each semester.<sup>86</sup> Simultaneously, they are expected to engage in research and scholarship in their non-clinical specialties.<sup>87</sup> No independent promotion or assessment mechanisms yet exist for Chinese clinicians.<sup>88</sup> These circumstances explain in part the frequent need to supplement the full-time professors in the clinic with other experienced legal professionals<sup>89</sup> and also, perhaps, explain the *Shenzhen Daily*'s apparent misperception about my own teaching status at STL. Moreover, some clinical programs do not even adhere to CCCLE's recommendation that at least one full-time professor teach and supervise in the clinic.<sup>90</sup> The absence of full-time professors in the clinic, however, leaves the impression that clinical programs are incidental or secondary to the project of legal education.

In addition to the status and number of clinical teachers, other challenges confronting the Chinese clinical movement include the "expense and financing" of clinical programs,<sup>91</sup> the lack of standards for teaching and evaluating student performance,<sup>92</sup> the difficulty of coordinating with the legal system and legal profession,<sup>93</sup> and the more general challenge of overcoming a deeply ingrained preference among many faculty, students, and institutions themselves for traditional pedagogy.<sup>94</sup> This preference for traditional education creates obsta-

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<sup>86</sup> Some full professors are expected to complete 80-90 teaching hours per year. Abramson, *supra* note 18, at 316-17 & n.43.

<sup>87</sup> Zhen, *supra* note 60, at 24.

<sup>88</sup> *Id.*

<sup>89</sup> See Su Li, *supra* note 6, at 80 (describing the insufficient number of clinical teachers to reach a large percentage of students).

<sup>90</sup> CCCLE GUIDELINES, *supra* note 50, at Part 1; Interview with Clinical Supervisor (May 16, 2011)(explaining that no professors teach in the law school's two clinics because the professors are more academically focused and may not even be licensed to practice law).

<sup>91</sup> See Note, *supra* note 12, at 2147 (describing limited resources for funding clinics); Zhen, *supra* note 60, at 23-24; see generally Cai & Pottenger, *supra* note 7.

<sup>92</sup> Zhen, *supra* note 60, at 26. *But see* Note, *supra* note 12, at 2148 (describing the concern that too much standardization and consistency will stifle creativity needed to develop new ways of addressing legal needs).

<sup>93</sup> Cai & Pottenger, *supra* note 7, at 100; Zhen, *supra* note 60, at 28.

<sup>94</sup> See Phan, *supra* note 8, at 142-43 (describing student and faculty preference for

cles in setting up, funding, and maintaining adequate support for clinics. It also perpetuates the perception in many Chinese universities that clinics are much less important than required courses.<sup>95</sup>

A related, overall challenge is the “localization of clinical legal education.”<sup>96</sup> Chinese clinicians themselves express concern about how clinical legal education can take root and grow in China, anticipating that “it will be a long process for the clinic legal education to integrate into Chinese legal educational system and to be identified with and accepted by educational, judicial and other circles of society.”<sup>97</sup>

In sum, Chinese clinical legal education has captured the imagination of educators, students, government officials, and even the media with its novelty and potential. It has flowered since 2000 at a rate mirroring the growth and development of China itself. At the same time, to prevent its blossoms from fading away in the future, clinical legal education in China, like in the United States, must find a way to overcome the obstacles of “resources, academic politics, a preference for theoretical and doctrinal teaching rather than experiential learning, the large number of required courses in the curriculum, and acceptance of the status quo by the legal profession and the judiciary.”<sup>98</sup>

## II. THE CENTER FOR CROSS-BORDER ADVOCACY AT PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW

### A. *The School of Transnational Law*

The innovative yet practical spirit that has propelled China to explore ways of reforming its professional education has also given birth to the unique program at the Peking University School of Transnational Law (STL). Located at the Shenzhen Graduate School, Peking University’s only satellite campus,<sup>99</sup> STL is the first school in China to offer a JD degree, in conjunction with the Chinese JM degree. It

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traditional methods); *see also* Zhu, *supra* note 7, at 85-86 (discussing student and faculty preference for traditional courses over legal skills courses).

<sup>95</sup> Note, *supra* note 12, at 2147.

<sup>96</sup> Zhen, *supra* note 60, at 25.

<sup>97</sup> *Id.* at 26; *see* Phan, *supra* note 8, at 140 (referencing Michael Dowdle’s observation that localization or indigenization of curriculum development is a common theme at Chinese clinical education conferences).

<sup>98</sup> Landsberg, *Walking on Two Legs*, *supra* note 45, at 45.

<sup>99</sup> Peking University’s Shenzhen Graduate School includes seven separate schools. *See* PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW, ABOUT PKU SHENZHEN, <http://www.stl.pku.edu.cn/en/Content.aspx?NodeCode=925002004> (last visited Aug. 14, 2012). On the main campus in Beijing, Peking University maintains a law school separate from STL that offers more traditional Chinese law degree programs. *See* PEKING UNIVERSITY LAW SCHOOL, ACADEMICS, [http://en.law.pku.edu.cn/article\\_one.asp?MID=20091124137967&MenuId=20091124158039&menuname=Academics](http://en.law.pku.edu.cn/article_one.asp?MID=20091124137967&MenuId=20091124158039&menuname=Academics) (last visited Aug. 14, 2012).

opened in 2008 with a mandate to “draw upon the best features of American legal education and adapt them to a Chinese context. Symbolizing the intellectual potential of U.S.-China cooperation, STL aspires to become the best law school in Asia and one of the top law schools in the world.”<sup>100</sup> STL awarded China’s first JD degrees in June 2012.

To realize his innovative vision for the law school, Peking University Shenzhen Graduate School Chancellor Hai Wen enlisted American Jeffrey Lehman, the former president of Cornell University and dean of the University of Michigan Law School, to be STL’s founding dean. STL’s first American associate dean, Stephen Yandle, served as associate dean of the Yale Law School for over fifteen years.<sup>101</sup> Permanent and visiting teachers from around the world comprise the JD program faculty, all of whom teach in English.

The JD curriculum resembles those at U.S. law schools in substance and pedagogy, albeit with a heavier focus on international and comparative law. Students enrolled in their first two years at STL participate in the mandatory Legal Practice Program, which is “designed to address the special needs of students who are not native speakers of English as they master the techniques of legal research, writing, and oral advocacy.”<sup>102</sup> In addition, required JD courses include, among others, contracts, torts, property, criminal law, civil procedure, transnational law, professional responsibility, business associations, due process and equal protection, and theories of statutory interpretation. Electives include transnational real estate transactions, international torts, French law, European Union law, employment law, international debt restructuring, family law, corporate finance, and many more. Overall, students need at least 107 credits for the JD degree.

These courses emphasize not only learning substantive legal rules but also developing “critical skepticism, the mastery of different forms

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<sup>100</sup> STL WEBSITE, <http://www.stl.pku.edu.cn/en/Content.aspx?NodeCode=925002001002> (last visited Aug. 14, 2012). According to the STL website, “STL is financed from a combination of sources: student tuition (the equivalent of approximately \$10,000 per year), university subsidies, support from the city of Shenzhen, and support from the Institute for China-U.S. Law & Policy Studies (“ICUS”). ICUS is an American 501(c)(3) organization that was created in 2006 to support the ongoing development of China’s legal system in the direction of international standards of clarity and predictability. To support STL, ICUS has attracted contributions from the C.V. Starr Foundation, as well as from private individuals and law firms.” *Id.*

<sup>101</sup> *Id.* Yandle became acting dean of STL during the summer of 2012, when Lehman became Vice Chancellor of NYU Shanghai, “a comprehensive liberal arts and sciences research university.” NYU UNIVERSITY, *Press Release: Jeffrey S. Lehman, Former Cornell President, to Lead NYU Shanghai* (April 5, 2012), <http://www.nyu.edu/about/news-publications/news/2012/04/05/jeffrey-s-lehman-former-cornell-president-to-lead-nyu-shanghai.html> (last visited Aug. 14, 2012).

<sup>102</sup> STL WEBSITE, *supra* note 100.

of legal reasoning, and a heightened capacity for ‘negative capability’ and ‘sympathetic engagement with counterargument.’ Students are taught how lawyers around the world are considered members of a public profession, with special duties to ensure that law is a force for good in society, and to help promote the cause of greater social justice.”<sup>103</sup> Pedagogical approaches include the Socratic method, lecture, seminars, and simulations. The students, many of whom are studying in a second or third language, must often spend significant amounts of time preparing for class.

In addition to the JD curriculum, students pursuing the Chinese JM degree need 56 Chinese law credits, including 36 in required courses and 20 in elective courses.<sup>104</sup> The Chinese law courses are taught primarily by professors from Peking University Law School in Beijing.

### *B. The Center for Cross-Border Advocacy*

#### *1. Getting Started: Designing a New Kind of Clinic*

In Fall 2009, the founding dean of STL, Jeffrey Lehman, contacted me about the possibility of creating a live-client clinical program at the young school. The challenge and adventure of the undertaking were too much for me to pass by, and in the spring of 2010, I embarked on the project of designing the Center for Cross-Border Advocacy. Before the Center could begin operations, we needed to decide what kind of work the clinic would do and whom we planned to represent. I then had to determine how the Center would operate and what the classroom component would look like.

One of the first challenges in creating a clinic for STL was finding a meaningful type of work we could do from China without adversely affecting our clients. As an American attorney, with no Chinese language skills or background in Chinese law, I did not even consider the possibility of a clinic that would engage with the Chinese judicial or administrative systems. Rather, in keeping with the STL emphasis, I sought a focus for the clinic that would take students beyond the borders of China, at least figuratively, and expose them to alternative legal systems. Yet at the same time, any non-local representation of clients before tribunals or agencies would have to be conducted entirely on paper (or electronically), without a need to physically appear in court in the United States or elsewhere.

I quickly settled on immigration appeals. The U.S. Board of Im-

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<sup>103</sup> STL WEBSITE, *supra* note 100.

<sup>104</sup> JM students at STL must also take a required course in Classic Marxist Readings. Most, but not all, STL students enroll in the four-year joint JD/JM program. A small number of international students enroll only in the JD program.

migration Appeals (BIA), an agency within the U.S. Department of Justice, has run a Pro Bono Project since January 2001 that is designed to “create[] opportunities to match pro se respondents, who have pending appeals before the BIA, with prospective pro bono counsel. The project seeks to remove traditional obstacles private attorneys face in identifying, locating and communicating with unrepresented aliens.”<sup>105</sup> The BIA Pro Bono Project lead project coordinator, the Catholic Legal Immigration Network, Inc., a non-governmental organization also known as “CLINIC,” matches volunteer lawyers and law students with unrepresented aliens, and CLINIC regularly refers BIA appeals to law school clinics.<sup>106</sup> The organization agreed to include the Center for Cross-Border Advocacy as long as we had a U.S. telephone number and mailing address for communications and a licensed U.S. attorney to enter an appearance in the cases.<sup>107</sup> For the cases that CLINIC referred to the Center for Cross-Border Advocacy, all submissions to the tribunal were on paper, and no oral arguments were presented.

Thanks to the BIA Pro Bono Project screening procedures, client intake for the Center was relatively straightforward, and timing of the appeal was our principal selection criterion. Another advantage to BIA Pro Bono Project cases was their short duration: we had a maximum of six weeks from entry of appearance until our final briefs were due, enabling students to see the process through from start to finish

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<sup>105</sup> BOARD OF IMMIGRATION APPEALS, *The BIA Pro Bono Project Is Successful: BIA Pro Bono Project Evaluation/Program Review Report*, 2 (October 2004), <http://www.justice.gov/eoir/reports/BIAProBonoProjectEvaluation.pdf> (last visited Jun. 27, 2011).

<sup>106</sup> *Id.* at 4-5; CLINIC WEBSITE, BIA PRO BONO PROJECT, <http://cliniclegal.org/programs/center-immigrant-rights/bia-pro-bono-project/0811/bia-pro-bono-project> (last visited Sept. 17, 2011).

<sup>107</sup> Litigating in a tribunal halfway around the world is challenging, and this paper will address some of the most persistent challenges *infra* Part III. Other logistics, although initially time-consuming to arrange, may be slightly less intellectually interesting and are therefore relegated here to the footnotes. For example, to ensure the fastest possible transmission of documents between China and the United States, the Center for Cross-Border Advocacy became a pro bono client of the law firm Arnold & Porter LLP. The law firm provided us with a Washington, DC mailing address and scanned and emailed to us all documents sent to the clinic. When we had filings or correspondence, we emailed them with instructions to the firm in DC. The Center reimbursed the firm for costs incurred, and Arnold & Porter did not participate substantively in the representation of the Center’s clients. A law firm does not have to play Arnold & Porter’s role for the clinic to function: any facility or person with reliable mail service, e-mail, and printing, scanning, and photocopying equipment would suffice. The advantage of a large law firm, however, is greater efficiency and familiarity with the clinic’s professional obligations, increasing our confidence in its reliability as our local counsel. For telephone and facsimile communications, the Center used voice-over-internet-protocol (VOIP) and the internet-based companies Grasshopper.com, Skype, and Send2Fax for telephone and fax numbers with Washington, DC area codes.

(except for the final decision) in a single twelve-week semester.<sup>108</sup> The clinic therefore tried to select cases that would begin a few weeks into the semester and conclude near the end of the semester.

Substantively, the Center for Cross-Border Advocacy focused on representing non-Chinese clients who, like “James” in the *Shenzhen Daily* article, had legal permanent residency in the United States but had been placed in removal proceedings by the U.S. Department of Homeland Security because of one or more criminal convictions.<sup>109</sup> The U.S. government keeps these immigrants in detention during the proceedings to determine whether or not they will be deported back to their home countries. Because they could not afford lawyers, our clients represented themselves in the first instance before the Immigration Court (located, like the BIA, within the U.S. Department of Justice). In some cases, they prevailed in convincing the Immigration Judge to grant them some kind of relief from removal, and the Department of Homeland Security appealed the decision to the BIA. In other cases, the Immigration Judge ordered the immigrant to be deported, and the immigrant appealed that decision to the BIA. Except in very rare cases, the BIA makes the final decision in the case about whether or not the immigrant will be deported from the United States.

At first glance, it seemed only natural for the Center for Cross-Border Advocacy to try to represent Chinese clients where possible. The students’ language skills would be useful, and the cases might seem more meaningful to students because of their shared nationality. A clinic where Chinese law students represent Chinese clients in their foreign immigration matters might also make more intuitive sense to third parties, such as prospective employers of the students or prospective clinic funders.

But I was hesitant. First, thinking logistically, I was uncertain how easily the clinic could function if it focused on serving Chinese clientele. Relatively few of the case summaries circulated to BIA Pro Bono Project participants involved Chinese nationals; individuals from Latin American and African countries seek legal assistance more often through that particular mechanism. Guaranteeing a case with a Chinese client at the right time would not be easy. Also, at the time of the Center for Cross-Border Advocacy’s founding, I spoke no Manda-

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<sup>108</sup> Most courses at STL are compressed into six-week “modules.” There are three modules per semester and six modules per academic year, with a seventh optional module focused exclusively on Chinese law. To date, the only STL courses that have spanned more than one module are the Center for Cross-Border Advocacy course, which extended across two modules, and the Legal Practice Program’s courses.

<sup>109</sup> For more information on removal proceedings, see 8 U.S.C. §§ 1227-1229c.

rin Chinese at all, and I preferred to limit the clinic's representation to clients with whom I could engage in at least basic communications without interpreters (using English, Spanish, French, or German), at least until the clinic was more established.

A more significant reason was political. While I applaud the efforts of many U.S. law school clinics who take on established and politically powerful interests in the pursuit of justice – and in fact, I believe that clinics play a vital role in undertaking such challenges – I felt and continue to feel too ignorant of Chinese politics and power to undertake the same role in China. News reports in the West and anecdotal evidence suggest that the detrimental effects of challenging or offending the Chinese government could go far beyond attempts to shut down or cut off funding for law school clinics that are more familiar in the United States.<sup>110</sup> I remain unsure of the effect that my students' advocacy for a Chinese national who was resisting returning to China would have had on the students' safety and their future opportunities within China.<sup>111</sup> Given the youth and uncertain future of the clinic and of STL itself, it seemed more prudent to stay below the radar at the outset and, as discussed in more detail *infra*, the idea of representing more politically-neutral (in China) third-country nationals had its own appeal. Furthermore, although I found it difficult to imagine that anything the clinic might do would put me in harm's way, my family remained concerned for my safety. So, in the absence of reliable information about conditions in China, I decided to play it

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<sup>110</sup> For examples of attempted interference with or pressure on U.S. law clinic activities, see Peter A. Joy, *Government Interference with Law School Clinics and Access to Justice: When Is There a Legal Remedy?*, 61 CASE W. RES. L. REV. 1087 (Summer 2011); Robert R. Kuehn & Bridget M. McCormack, *Lessons from Forty Years of Interference in Law School Clinics*, 24 GEO. J. LEGAL ETHICS 59 (Winter 2010); see also Aaron C. Davis, *Maryland Budget Plan Diverges on Cutting Shortfalls*, WASHINGTON POST, Apr. 4, 2010, at C04 (describing debate in the Maryland legislature on cutting funding to the University of Maryland environmental law clinic after the clinic sued a chicken farmer with ties to Perdue). For examples of Chinese government actions directed against Chinese lawyers and other human rights advocates, see, e.g., Melissa S. Hung, *Obstacles to Self-Actualization in Chinese Legal Practice*, 48 SANTA CLARA L. REV. 213, 229-30 (2008); see also Associated Press, *Chinese Gets 9 Months for Protesting Detentions of Other Activists Amid Unease*, washingtonpost.com, Sept. 9, 2011; Andrew Higgins, *Chen Guangcheng's Family and Friends Face Tempest of Retribution*, WASHINGTON POST, May 6, 2012; Keith B. Richburg, *Where the 'Red' Spotlight Shines Brightest: Southwestern Chinese Mega-city Becomes Capital of Revolutionary Nostalgia*, WASHINGTON POST, June 27, 2011, at A8.

<sup>111</sup> In a discussion at the end of one semester, my students confirmed that they too shared some of my concerns. Although they said they would have liked to have represented Chinese clients, in retrospect they would have been very worried if they had had to argue in writing that a Chinese national would face hardship if deported to China or, in discussing conditions in China, if they had to rely upon evidentiary sources not officially approved by the Chinese government.



safe.<sup>112</sup> Similar concerns led me to decide not to focus on asylum cases.<sup>113</sup> To date, I think the consequences of these decisions have enriched my and the students' experiences in the clinic in ways we did not anticipate, which I will discuss in more detail *infra* in Part III.

Having decided not to represent Chinese clients initially, one of my next concerns, shared by my students, was the willingness of prospective clients to accept representation by a law clinic in China, with Chinese students working on the cases. We did not know what ideas (true or not) or prejudices our prospective clients might have about China and whether those views might outweigh their desire for free legal representation. The hope was that I could alleviate any concerns by assuring them that I, a licensed U.S. attorney, would sign and be responsible for all documents filed in the case as the client's official legal representative before the BIA. To our relief, the Chinese nationality of the students and the physical location of the clinic in China turned out to be non-issues for all of our clients. It is possible some clients were unaware of the situation, as we tried to draw little attention to it, but others clearly knew and did not care. They universally expressed sincere gratitude to the students for their work on the cases. One client even sent a thank you letter to the students written in Chinese characters.

The nature of the Center's cases heavily influenced how the Center functioned. Because each case was an administrative appeal, the main lawyering task was to prepare a written brief setting forth arguments on the client's behalf. Written analysis and the writing process therefore occupied a lot of our attention. Students were immersed in this process from beginning to end. They started by reading the record of all proceedings in the case before the Immigration

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<sup>112</sup> The Center for Cross-Border Advocacy was not the first clinic to face these kinds of difficult decisions about how to balance the engagement in struggles for justice with concern for personal and professional safety. Richard Wilson's informative and thought-provoking analysis of three Chilean clinical legal education programs, for example, acknowledges the "dangerous post-hoc illusion" of criticizing Chilean clinics for failing to engage in struggles with the repressive Pinochet regime. He notes that "Clinical law professors of the era certainly must have thought long and hard about the potential risks to which they might, by seeking a simple ideal of justice, be subjecting their young charges during those years." Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLIN. L. REV. 515, 579 (2002). Anecdotal information about a number of Chinese clinics focused on domestic Chinese issues also indicates that many Chinese clinicians intentionally steer their clinical work clear of hot-button issues that might create risks for their students professionally or personally.

<sup>113</sup> In addition, clients with criminal backgrounds often appear less sympathetic than many asylum applicants and consequently tend to have a more difficult time finding pro bono representation. By focusing on "less desirable" clients, I anticipated encountering less competition for cases from my pro bono and clinical colleagues in the United States.

Judge. They researched possible issues and made strategic decisions about what to argue. Then they prepared many drafts of the brief, constantly receiving written and oral feedback from me and from their classmates. My goal was for the students to assume as much responsibility for the cases as possible throughout the process. Sometimes, however, as counsel of record, I felt an obligation to assume a more active role in editing or making decisions in the case, due both to the fact that almost none of the students were native English speakers and to my belief that role modeling could be beneficial for the students.

Unlike many other law clinics, the Center for Cross-Border Advocacy did not emphasize client communication or fact gathering skills (although it did not completely ignore them) for three principal reasons. First, the clinic was physically located halfway around the world from the clients, making face-to-face interviews impractical and limiting the hours in which telephone conversations could occur. A bigger challenge in facilitating client communication, however, was the fact that the clients were detained in different facilities across the United States. Each detention facility sets its own procedures for attorney-client communications and enforces its own limits. Because of their locations, visits to the clients might be difficult to arrange even if the Center were not in China. Even communicating by telephone – from a U.S. law office or from a Chinese law clinic – was complicated.<sup>114</sup>

Perhaps most importantly, the nature of the cases themselves obviated the need for substantial fact investigation, because on appeal the BIA only considers evidence in the record, that is, evidence already submitted to the Immigration Judge in the first instance.<sup>115</sup> The main purpose of most client communications, therefore, was not to gather facts but to counsel the clients – to explain legal and procedural issues, discuss our recommendations and advice, and answer their questions. Although the bulk of clinic student energy was not spent on developing client interviewing skills, the students did spend time during class and supervision sessions preparing for and reflecting upon client communications, conducted mainly by telephone and letter.

Another distinguishing feature of the Center for Cross-Border Advocacy, at least compared to typical Chinese law clinics, was its small size. The clinic admitted eight to ten students for a twelve-week course each semester. All clinic students participated in the course

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<sup>114</sup> Some detention facilities permit free, short attorney-client telephone calls at pre-arranged times; others only permit clients to make outgoing calls and require attorneys to establish prepaid accounts with outside telecommunications companies to pay for those calls. Sometimes it is possible to leave a message for a detained client; sometimes it is not.

<sup>115</sup> Although exceptions to the “no new evidence on appeal” rule exist for proceedings before the BIA, none were relevant in any of our cases.

seminar. Four of them assumed primary responsibility for the cases, working in teams of two on one case per team. The other students provided assistance and, among other things, role-played the part of opposing counsel in the cases. The emphasis on written work, the collaborative editing process, the frequent supervision sessions, and the fact that the students were working in a second language made the clinic labor- and time-intensive for both students and supervisor. I therefore decided to limit the number of cases and students to maximize the educational benefit to the enrolled students and ensure I could provide adequate supervision.

The classroom component of the course focused on the law and skills that would be most helpful to the students as they worked on their cases. In particular, the seminar explored immigration law, appellate procedure, legal writing, oral advocacy, professional responsibility, and cross-cultural lawyering issues. Teaching techniques included, among others, group discussion, video-based and non-video-based role playing, small group activities, and guest speakers when possible.

## 2. *Goals*

Like many law clinics in China and around the world,<sup>116</sup> the Center for Cross-Border Advocacy had two principal, interrelated goals. The first was a social justice goal: to provide access to the U.S. justice system for poor immigrants by giving them free, high-quality legal representation while sensitizing students to the challenges facing disadvantaged members of society. At the same time, the Center for Cross-Border Advocacy emphasized individual development of professional skills, with a focus on skills with transnational applicability.

### *a. Social Justice*

The primary social justice focus of the clinic was to provide needed representation to immigrants in the United States who would otherwise have none, thereby improving their access to an unfamiliar system and their chances of obtaining a fair outcome. By doing so, the Center for Cross-Border Advocacy contributed in a small way to improving the functioning of the adversarial U.S. immigration adjudication system and hopefully to improving the lives of its clients.

More broadly, the clinic aspired to prompt student reflection on the plight of the disadvantaged not only in the United States immigration system but in other contexts as well. In the clinic course, the stu-

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<sup>116</sup> See Frank S. Bloch & N.R. Madhava Menon, *The Global Clinical Movement*, in *THE GLOBAL CLINICAL MOVEMENT* 267, 268-69 (Frank S. Bloch ed., 2010).

dents explored limits on access to justice and proposals for improvement. By focusing on and thinking critically about an imperfect system outside their own society, they had the opportunity to explore ideas about justice, rule of law, and other concepts that may be particularly relevant for a developing, modernizing legal system like China's. They did so, however, in an environment that may have created fewer risks than if the clinic had confronted these issues directly by working within the Chinese system itself.

The transnational nature of the clinic raises some questions about the impact its social justice mission had on participating students. Did their clinic experience affect how the Center for Cross-Border Advocacy students view the poor and disadvantaged in China? Or did they find it easy to compartmentalize whatever suffering, injustice, or institutional failure they observed, associating it only with the United States? These questions are not easily answered and may not be until more time passes, although initial feedback from students suggests that they do perceive the world, including China, differently after their clinic experience.<sup>117</sup> The clinic's goal was that, with time, the students will be able and willing to compare their critical analysis of the U.S. system to other legal systems and thereby inform and deepen their understanding of Chinese law and society.

Another potential concern related to the Center for Cross-Border Advocacy's social justice mission involves the diversion of local resources. By providing legal assistance in the United States instead of China, the Center's social justice impact in China was at best indirect and delayed. In contrast, the efforts of other Chinese law clinics provide access to the legal system in more local communities with demonstrated need. With the same resources devoted to helping one or two immigrants halfway around the world, how much more impact could a local law clinic have on lives – or institutions – in China? As one Center for Cross-Border Advocacy student expressed, however,

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<sup>117</sup> Some of the students' perceptions of social justice issues emerge in written reflections they prepared during or at the end of the clinic course. One student, for example, wrote, "I will try my best to promote the development of the pro bono working in China because lawyer also have the responsibility to promote fairness and to make the whole society become better." Another observed that "The society needs these people who are both competent and willing to spare great efforts to pursue justice, to help the needed, and somehow to fix the failure of the society. Disappointedly, I find that very little pro bono works done by Chinese law firms and that the legal aid provided by government is of utterly inadequate amount. China is undergoing a quick development. At the same time, it is losing lots of precious values and has left too many people behind." Student Written Reflections (September 2011)(on file with author). In addition to their written comments, informal conversations with the students after they completed the course confirmed a sensitivity to issues involving access to justice for the disadvantaged.

“It is a question of universalism versus territorialism.”<sup>118</sup> To many of the Center’s students, what mattered was helping someone in need, not whether the person was in China or the United States or somewhere else. Moreover, because the Center for Cross-Border Advocacy did not displace a different kind of clinic nor redirect resources available to a Chinese legal assistance program, one may view its social justice contribution as adding to the breadth of efforts by Chinese lawyers and law students to serve the disadvantaged.

*b. Professional Skills Development*

Regardless of their perceptions at the end of the Center for Cross-Border Advocacy clinical course, relatively few of the students identified any aspect of these social justice goals or concerns when they enrolled in it.<sup>119</sup> For the most part, they began the course with the explicit desire to improve their lawyering skills by representing clients in real cases, and skills acquisition remained their primary focus throughout the course.

Because of its unusual cross-border nature, designing the skills component of the Center for Cross-Border Advocacy involved a more complicated set of choices than is typical for more locally-based clinics. Obviously the substantive and procedural law the Center for Cross-Border Advocacy course covered is not pertinent for most Chinese or even international law practices, but the goal was for students to learn professional skills that can translate into a variety of work contexts. Even so, deciding which skills the clinic could or should emphasize had an obviously cultural dimension: are the professional skills necessary for successful administrative appellate litigation in the United States similar to those required for successful Chinese legal practice?<sup>120</sup> If not, what responsibility did I, as an American-trained

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<sup>118</sup> Comments of Center for Cross-Border Advocacy Student (May 9, 2011).

<sup>119</sup> With each semester, more Center for Cross-Border Advocacy students identified some kind of social justice motive for enrolling in the clinic. The students’ increasing sensitivity to this aspect of clinical legal education likely resulted from a combination of my own increasingly conscious efforts to promote the goal and the trickling down of experiences from clinic alumni.

<sup>120</sup> See Su Li, *supra* note 6, at 77-78 (defining legal skills as “the technical ability essential for a lawyer to deal with a particular type of legal practice”, which includes seven specific skills: “(1) the ability to draft legal documents by precisely abstracting the particular dispute at issue; (2) the ability to search and summarize the law and other relevant materials for a particular issue; (3) the ability to negotiate and communicate with clients or other legal professionals; (4) the ability to settle a concrete dispute; (5) the ability to address claims of a certain case by skillfully employing knowledge of procedures; (6) the ability to debate in court and persuade judges; and (7) the ability to lobby for a certain subject matter in legislation and to push for reform of laws.”); see also Phan, *supra* note 8, at 139-140 (discussing what lawyering skills should be part of Chinese clinical legal education). According to the CCCLE and MacCrate Report, skills include learning to communi-

attorney-supervisor-professor, have to prepare my students for their probable professional work environment?

For better or worse, my limited knowledge of the Chinese legal profession precluded me from answering the first question decisively. Instead, in light of STL's nature and mission, I assumed that my principal responsibility was to model skills that would be appropriate in an American professional workplace and to prepare students to be able to function successfully in an American or multicultural legal environment.

The Center for Cross-Border Advocacy course therefore emphasized a number of individual skills-related goals. These included developing further skills in advanced legal writing, research, and analysis in English; practicing oral advocacy in English; and learning to be reflective professionals who think about how and why they are doing something and who can identify ways to continually improve their own performance.<sup>121</sup> In addition, the clinic aimed to help students gain a better understanding of what professional responsibility means for an American lawyer. Its transnational character provided an opportunity for students to explore different sets of norms for ethical professional behavior through class discussion, supervision sessions, and the example I modeled through my own behavior. As will be discussed in more detail *infra*, the nature of the Center for Cross-Border Advocacy also provided students an opportunity to develop valuable cross-cultural communication skills and to think more consciously about cultural differences on a variety of levels.

Because the first clinic students graduated from STL in June 2012, it is too soon to assess how well they integrate their clinic lessons with their future jobs. Ultimately, the relevance of these skills for their future careers will depend on the career paths each individual student follows and the student's own desires to incorporate those skills into his or her work.

### III. THE CENTER FOR CROSS-BORDER ADVOCACY'S ASSETS AND CHALLENGES

As a result of its unique features, the Center for Cross-Border Advocacy had the luxury of avoiding many of the major challenges

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cate with clients, "learning how to deal with different legal problems[,] learning how to develop oral advocacy skills," case planning, analyzing facts, effective problem solving, and prioritizing clients' preferences. *Id.* at 139 (citing work of CCCLE and MacCrate Report).

<sup>121</sup> See, e.g., Paul Ferber, *Adult Learning Theories and Simulations- Designing Simulations to Educate Lawyers*, 9 CLIN. L. REV. 417, 428-29 (2002) (describing the importance for professional life of "learning how to learn from experience" and the role of reflective observation in that process).

other clinical legal education programs in China face, particularly with respect to its students, its status within the law school, and its relationship with other legal institutions. Its external focus helped shield it from domestic political or bureaucratic pressures. At the same time, the Center's unique qualities also yielded challenges that manifested differently than they would in other Chinese clinics. In particular, as illustrated by the circumstances surrounding the *Shenzhen Daily* article, cross-cultural interactions in the Center for Cross-Border Advocacy were inevitable, constantly presenting opportunities for misunderstanding – and also for bridging transnational differences. Overall, the clinic's assets and challenges together offered both students and faculty the chance to confront and transcend difference, broadening their horizons while pursuing the Center's pedagogical and justice-related goals.

*A. The Advantages of Transplanting an American Clinic*

The particularly American focus and structure of the Center for Cross-Border Advocacy minimized to a large extent the obstacles that have been identified by other law clinics in China. First, in contrast to most Chinese clinical students, the Center's students were all graduate-level law students and therefore older and (presumably) more mature than undergraduate students. By the time they enrolled in the clinical course, they had already been immersed in a non-traditional-Chinese form of legal education for two years.<sup>122</sup> Thus, even before they stepped foot in the Center, they had to assume a more active and participatory role in their learning process than their undergraduate Chinese peers and were more prepared for the responsibilities awaiting them. Moreover, the transnational character of the Center for Cross-Border Advocacy also facilitated student work. Because the clinic participated in a well-established pro bono program in the United States accustomed to law student participation, student status did not limit its engagement in activities related to the legal representation of the Center's clients.<sup>123</sup> Developing an effective system of student assessment and evaluation is often a challenge in clinics, regardless of location, but its small size and the close contact between students and clinical faculty alleviated some of that pressure in the Center for Cross-Border Advocacy relative to Chinese law clinics.

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<sup>122</sup> With one exception, all students enrolled in the clinic to date were in their third year of study at STL.

<sup>123</sup> Although law students may appear before the BIA if they meet certain conditions, *see* 8 C.F.R. § 1292.1, for various reasons, no Center for Cross-Border Advocacy student tried to enter an appearance before the BIA. Although they were not officially considered the legal representatives of the client before the BIA, the students signed their names on the briefs underneath mine.

Within the university, the Center for Cross-Border Advocacy did not struggle like its Chinese counterparts for resources, recognition, or equal treatment. On the contrary, STL's structure gave equal status to STL clinicians and the school's other permanent faculty members.<sup>124</sup> As the equivalent of a full-time, tenure-track professor, I taught for twenty-four weeks a year in the clinic, which is more or less equivalent in hours and credits to teaching four non-clinical courses at STL. Unlike Chinese professors, I was not required to assume additional teaching responsibilities outside the clinic. In other words, clinical teaching counted at STL in ways that it does not at other Chinese law schools. Not surprisingly, STL also did not show a preference for traditional Chinese pedagogy over the clinic's experiential model. The school itself is proud of the Center for Cross-Border Advocacy, providing institutional support – financial and otherwise – and publicly promoting the clinic as a showcase for the school.

Furthermore, “localization” was not a priority for the Center for Cross-Border Advocacy. By limiting its work to advocacy in a U.S. administrative forum, the clinic could function successfully without developing relationships with Chinese legal institutions or integrating into the Chinese legal system like other Chinese law clinics try to do. Its external focus thus insulated it from the same need to consider Chinese political realities in shaping the clinical curriculum and caseload. In addition, as discussed above, this provided greater space for students and faculty to engage in critical thinking about the legal structures and access to justice issues at the core of the Center's work.

That said, while the Center's non-Chinese orientation opened up a different space in which students could learn, it also risked creating the appearance of legal imperialism or ethnocentrism. The choice to establish an American law clinic outside the United States in lieu of a locally-developed and locally-oriented clinic potentially implied a preference for the transplanted model over an indigenous one without sensitivity to local needs and wishes.<sup>125</sup> To some, the Center's overt “American-ness” may conjure up thoughts of the Law & Development movement of the 1960s and 1970s, whose efforts “grew out of a

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<sup>124</sup> Many clinicians in the U.S. still aspire to equal status to their non-clinical colleagues. *See, e.g.*, Note, *supra* note 12, at 2137 (noting that clinical instructors at U.S. law schools “enjoy relatively low status, often hired on a short-term basis with comparatively low compensation”). According to data from the 2010-11 CSALE Study, one-third of responding American clinical teachers have some form of tenure or tenure-track employment status, and 36.8% of full-time clinicians may vote on all matters at their schools. CSALE Study, *supra* note 85, at 27-29.

<sup>125</sup> *See* Erie, *supra* note 16, at 61-62 (cautioning against transplantation of “exogenous legal institutions” in China because “legal education reform in China proceeds by the ‘pull’ of domestic actors more than the ‘push’ of external reformers”).



form of legal ethnocentrism, i.e. a belief that desired social change would result from making the legal institutions in developing countries resemble those in the United States.”<sup>126</sup> Mitigating this critique to some extent is the fact that the Center existed as part of a larger institution that itself was transplanted in response to Chinese demand. Moreover, although the Center’s work was “not directly influenced by local needs and context” or undertaken in collaboration with Chinese partners,<sup>127</sup> it was transplanted into soil already made fertile by the work of the CCCLE and others within China, and it shared with other Chinese clinics a desire to improve the acceptance of clinical legal education within Chinese society. Its goal was to explore broader possibilities and opportunities for clinical legal education in China, not to suppress the growth and innovation of clinical legal education “with Chinese characteristics.” Achieving that goal required careful attention to the image the Center projected both externally and internally.

### *B. The Challenge of Cross-Cultural Interactions*

Many of the challenges the Center for Cross-Border Advocacy encountered in its infancy were also the unique product of its transnational nature. The most interesting ones stemmed from the inevitable cross-cultural interactions between students, professor, and clients. I am American, raised in an American culture with American assumptions and habits. My students were Chinese. Our clients came from yet other cultural backgrounds. Therefore, more than in domestic-law oriented clinics in China and the United States, the Center for Cross-Border Advocacy’s cultural triangle offered the constant need and opportunity to confront cultural differences and to identify different strategies to deal with them.

#### *1. Cultural Differences between Professor and Student*

Among the variety of cultural differences that manifested themselves in the Center for Cross-Border Advocacy were those that related to appropriate student and faculty roles and expectations, and to the proper attribution of ideas. Addressing them required constant vigilance and self-awareness on our parts, yet trained us to be more reflective professionals.

One noteworthy issue that regularly arose in the Center for Cross-Border Advocacy was the nature of appropriate interaction between professor and student in a simulated professional environment. As I came to understand, my students and I approached this issue

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<sup>126</sup> Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLIN. L. REV. 465, 473 (2008).

<sup>127</sup> *Id.* at 475.

(consciously or subconsciously) at least in part as the products of our respective cultures, leading at times to frustration but always to valuable lessons for us.

One particular assignment from the Center for Cross-Border Advocacy's first semester illustrates this cross-cultural challenge. In the early stages of appellate brief preparation, I assigned four students individually to prepare outlines of the arguments they were planning to make. No one requested further detail or clarification of the assignment. A few days later, I received their assignments. None resembled an outline as I had expected: each document looked like the first draft of an argument section in a brief. When I discussed the situation with the students, I learned that they had been unsure what I meant by "outline," had discussed the question amongst themselves, and had collectively decided that it would make the most sense to prepare the first draft of the briefs, since the briefs were our ultimate goal. When pressed, they conceded that they had in fact done conventional outlines the previous year in another course, but they had either forgotten or believed such outlines would not be as useful to me as actually writing out the argument.

While this relatively minor failure to follow instructions was a mild annoyance in the short term, I was particularly concerned about how I could prepare the students to avoid a similar situation in an actual (American or international) professional environment, where failing to deliver the expected work product could have more significant consequences. As I reflected on the situation, I faced a number of questions about my own role and my students' responses: Where did our communication about the assignment break down? Had I failed to communicate my expectations about the assignment adequately? Had I failed to encourage the students enough to ask me for more clarification? Had I unknowingly created barriers in our relationship that impeded communication, or had I been unsuccessful in dismantling pre-existing barriers? What role did the concept of "face" play in our interaction?<sup>128</sup> Was this an example of the difference between an "individualistic" and a "collectivist" culture?<sup>129</sup> How appro-

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<sup>128</sup> University of Michigan psychology professor Richard Nisbett defines "face" in Chinese culture as "the need to have the respect of the community." RICHARD E. NISBETT, *THE GEOGRAPHY OF THOUGHT: HOW ASIANS AND WESTERNERS THINK DIFFERENTLY. . . AND WHY* 71 (2003). Sociological literature describes "face" or *mianzi* as "an individual's social position or prestige, gained by successfully performing one or more special social roles that are well recognized by others" or, more simply, as a "function of perceived social position and prestige within one's social network." Kwang-kuo Hwang, *Face and Favor: The Chinese Power Game*, 92 *AMER. J. SOCIOLOGY* 944, 960, 961 (1987).

<sup>129</sup> See Hwang, *supra* note 129, at 959-60 (comparing the generally social orientation of Chinese subjects to the generally individualistic orientation of Americans); Francis S.L. Wang & Laura W.Y. Young, *Cultural Perspectives and Legal Differences Measuring Inter-*

priate would the students' response have been in a Chinese professional environment, and to what extent should that influence my reaction?

As this list of questions suggests, these kinds of interactions provided rich food for thought for me as a teacher, professional role model, and foreigner in China. On the one hand, I was forced to think more carefully and consciously about my expectations for my students and myself and how those have been influenced by my own culture and training. In particular, I realized that I wanted my students to ask whatever questions they needed in order to understand the contours of and expectations for an assignment. But I also wanted them to think independently and critically in the process of completing that assignment – or in identifying obstacles to its completion. Rather than waiting for me to give explicit and detailed instructions about each task, students should take initiative to figure out what to do but should also ask for guidance when they are unsure or to confirm their understandings. As “junior associates” in our clinic law firm, I wanted the students to balance active problem-solving and self-reliance with open, reflective communication about the process.

These expectations were influenced by a culture that values individualism and autonomy and tends to prefer egalitarian relationships.<sup>130</sup> My own training as an American attorney and clinician further reinforced the broader cultural influences. I value critical thinking and analysis and believe in encouraging students to learn by doing, not memorizing or copying.<sup>131</sup> I am not offended by student questions; instead, I welcome them and their potential for enlightening me, even if they may also highlight my own fallibility. I prefer to

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*cultural Interactions and Outcomes*, International Association of Law Schools Conference on Effective Techniques for Teaching about Other Cultures and Legal Systems 9 (May 30, 2008) (describing preliminary results of a study on the effects of intercultural training on Chinese and Western law students and noting that the American law students demonstrated more individualistic traits and the Chinese showed more collectivist traits before the training experience). For discussions about the differences between individual and collective cultures and their impact on communication and lawyering, see, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 45-47 (2001); Paul Tremblay, *Interviewing and Counseling across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373, 400-403 (2002).

<sup>130</sup> See, e.g., Paul Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 163, 166 (2007) (describing cultural differences in relational perspectives); see also Nisbett, *supra* note 128, at 76 (noting a Western preference for equality in personal relations, in contrast to East Asians); Tremblay, *supra* note 129, at 398 (discussing the strong commitment to autonomy in American culture).

<sup>131</sup> See Ferber, *supra* note 121, at 128-29, 134 (talking about the four-stage cycle of learning by experience and the role of active experimentation with concepts in new situations as one stage in adult learning and discussing the importance of learning in the context of actual lawyering from a cognitive theory perspective).

approach evaluation and feedback by encouraging students to self-reflect and self-motivate to improve, and I try to deliver constructive criticism in a way that affirms and supports their efforts. I also believe an ability to ask questions of a supervisor to clarify expectations in advance of an assignment deadline is an important professional skill in most American legal professional workplaces.

My students, on the other hand, approached many of these ideas from a different perspective and different experiences. Even though they had already had at least two years of American-style legal education from American law professors, they usually remained more comfortable with more traditional, less interactive Chinese teaching. For the most part, my students were used to being told exactly what to do. Even if they were relatively more successful at it than many Chinese undergraduate law students, they still struggled to take responsibility for their own learning process and to think creatively to solve problems. At the same time, like the journalist-students who interviewed me for the local media, they often preferred not to ask clarification questions or raise issues that might theoretically call into question my authority, because to them such behavior seemed disrespectful or insufficiently deferential to a professor. Several students expressed a preference for harsh criticism over my gentler approach, because they have relied on strong rebukes in the past as a source of motivation to improve.

Like me, the students were influenced by cultural norms, some of which were deeply ingrained. Their STL law school experience followed more than a dozen years of Chinese education that rewarded “stuffing the duck” over independent and creative thought. Although still largely mysterious to me, “losing face” and “saving face” help define Chinese social relations, as do clear hierarchies of social status.<sup>132</sup> As I understand it, asking me a question to clarify an assignment or a rule might imply that I somehow erred, causing me to lose face before my students. As their teacher, my students owed me great respect and therefore strived to avoid causing any discomfort that might affect our established relationship. The collectivist nature of Chinese society further influenced our interactions, because compared to the highly

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<sup>132</sup> See Hwang, *supra* note 128, at 962 (discussing the role of *mianzi* or “face” in Chinese society and noting that “common strategies of saving face for another include: avoiding criticizing anyone, especially superiors in public; using circumlocution and equivocation in any criticism of another’s performance; according greater social rewards to those skilled at preserving face for others.”); see also LESLIE T. CHANG, *FACTORY GIRLS: FROM VILLAGE TO CITY IN A CHANGING CHINA* 197 (2008) (describing the value Chinese place “on status, self-restraint, and the proper display of respect”); Landsberg, *Walking on Two Legs*, *supra* note 45, at 53 (describing differences between Chinese and U.S. cultures in the context of experiential legal education workshops); see also generally *supra* notes 130 & 131.

competitive American law students with whom I am more familiar, my Chinese law students were much more likely to collaborate to resolve a concern. Thus, rather than receiving one or two non-outlines (and the rest outlines), I received four.

I tried to find balance between these different cultural approaches. On the one hand, I considered it integral to my teaching mission to introduce my students to Western cultural expectations as part of their developing the professional skills necessary to work effectively with American lawyers or companies. The students therefore needed to move beyond their cultural comfort zones, even if the experience was at times frustrating or overwhelming. On the other hand, the cross-cultural challenges we encountered in the Center for Cross-Border Advocacy as we strived to meet sometimes conflicting expectations highlight the need to try different pedagogical strategies and develop greater sensitivity. If I do not explore my own cultural identity and adapt my style from time to time, my efforts to challenge my students could backfire into a cloud of miscommunication. Needless to say, interaction with my students never became boring.

Another often time-consuming challenge in the Center for Cross-Border Advocacy related to the apparent differences between American and Chinese legal conventions for citation and attribution. For instance, some Chinese students “are encouraged (and sometimes required) to read and memorise portions of classical works and use them in their own writing,”<sup>133</sup> and acknowledgment through quotation marks, citations, or other forms of attribution is less common in traditional Chinese writing. In contrast, American writing, and in particular American legal writing, puts a premium on correct attribution,<sup>134</sup> and misuse of sources — even failure to use quotation marks appropriately — can lead to severe consequences.<sup>135</sup>

The students who came into the clinic were generally well-inten-

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<sup>133</sup> Chris Shei, *Plagiarism, Chinese Learners and Western Convention*, 2 TAIWAN J. TESOL 97, 98 (2005) (describing the integral role of imitation in Chinese pedagogy); see also Interview with Center for Cross-Border Advocacy student, Fall 2010 (explaining that she was taught in school that it is a sign of respect to a person to use his or her words even without attribution).

<sup>134</sup> See, e.g., COUNCIL OF WRITING PROGRAM ADMINISTRATORS, *Defining and Avoiding Plagiarism: The WPA Statement on Best Practices*, <http://owl.english.purdue.edu/owl/resource/589/01/> (last visited on Aug. 15, 2011). The WPA Statement defines plagiarism in an instructional setting as, “when a writer deliberately uses someone else’s language, ideas, or other original (not common-knowledge) material without acknowledging its source.” *Id.* at 1. To avoid plagiarism in legal writing, the Legal Writing Institute recommends that writers “1. Acknowledge direct use of someone else’s words. 2. Acknowledge any paraphrase of someone else’s words. 3. Acknowledge direct use of someone else’s idea.” LEGAL WRITING INSTITUTE, *Law School Plagiarism vs. Proper Attribution*, 4 (2003), <http://www.lwionline.org/publications/plagiarism/policy.pdf> (last visited Aug. 15, 2011).

<sup>135</sup> See, e.g., *Attorney Disciplinary Bd. v. Cannon*, 789 N.W.2d 756 (Iowa 2010).

tioned but often relatively unfamiliar with American conventions for attribution of non-original words and ideas.<sup>136</sup> In addition to the broader efforts instituted at STL to educate the student body about these conventions,<sup>137</sup> I spent a lot of time in the clinic emphasizing them as part of professional skills development. That the students were preparing legal documents to use in a common law jurisdiction, where reliance on precedent makes accurate attribution vital, increased the urgency of our challenge. As the client's official legal representative and a supervisor confronted with this cultural difference, I had to do my best to ensure that I promptly identified and addressed questionable uses of sources and borrowed language.

## 2. *The Clients*

The cross-cultural interaction in our clinic extended to communications with our clients, who were neither native-born Americans nor Chinese. Compared to me and to my students, they may have had different expectations and beliefs about the law, lawyers, and much more, based on their own backgrounds and experiences. To represent them effectively, we tried to recognize those cultural differences and understand the impact they could have on the case. A successful attorney/student – client relationship depends in part on figuring out how to reach and be understood by the client. At the same time, in order to develop and execute effective advocacy strategies, the students needed to see their clients as the American tribunal would likely see them, setting aside their own assumptions and sometimes their clients' assumptions.

The most noteworthy differences I observed involved our clients' backgrounds and the students' reactions to them. People make judgments all the time, often without much reflection, about the relative goodness or morality of others and their actions. Yet these value judgments are often influenced by culture. Cultural awareness, therefore, plays an important role in interpreting the facts of a case, particularly

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<sup>136</sup> For examples of integrity-related issues arising in China, see Andrew Jacobs, *Rampant Fraud Threat to China's Brisk Ascent*, N.Y. TIMES, Oct. 6, 2010, available at <http://nyti.ms/dKSRF9> (last visited Feb. 13, 2011); Geoff Gloeckler, *MBA Program Withdraws From China Due to "Widespread Plagiarism," Other Issues*, BUSINESSWEEK, July 26, 2010, available at <http://bit.ly/c6ynni> (last visited Dec. 31, 2011); see also Chang, *supra* note 132, at 195-96 (quoting one Chinese businessman's views on copying).

<sup>137</sup> At the beginning of the Spring 2011 semester, the STL Academic Integrity Committee began implementing a multi-pronged strategy to educate the student body about the school's (American) standards of academic integrity, including proper attribution of ideas and words and the consequences of failing to adhere to those standards. The broad educational effort will ideally reduce the instances of misuse of sources, plagiarism, and cheating among students as well as preclude future offenders from relying on a "cultural defense" of ignorance about the American norms that govern academic integrity at the school.

when, as here, the legal standard is a discretionary balancing test. As mentioned above, each of our clients faced removal as a result of one or more criminal convictions. In order to obtain relief from removal, we had to convince the appellate tribunal – the Board of Immigration Appeals – that our client’s criminal history was not bad enough to outweigh the positive reasons to give our client another chance at life in the United States.<sup>138</sup> With few precedential opinions on the relative severity of different crimes as guidance, it is often challenging for any advocate to anticipate the Board’s reactions to a particular criminal history. Many of the Chinese students in the Center found it particularly hard, however, to distance themselves from their own beliefs about the moral character of anyone who (knowingly) violated the law, especially a drug user.

Moral character arose as an issue in our cases outside the context of criminal behavior as well. In one case, for example, we planned to argue that our client having family in the United States weighed in his favor as a positive equity. One afternoon, a student on that team came to see me, clearly distressed. She felt uncomfortable about our client and our argument, because our client had left his parents behind in his home country and had not stayed in touch with them at all. To my student, this behavior was a clear sign of bad character, because a son’s responsibility to his parents is extremely important in her culture. She consequently worried about how this unsavory fact would affect the BIA’s determination and her own ability to advocate zealously for the client. Yet, in contrast, I had paid little attention to the family in the home country, focusing my attention instead on his connections with his wife and children in the United States. Her particular concern had not, before then, registered to me as significant. In discussing our reactions, the student and I realized that we needed to identify our own cultural assumptions and then step back in order to identify the best ethical strategy for advancing our client’s interests, which here entailed considering the issue from the perspective we expected the tribunal to have.

As we grappled with the facts of each case, the sometimes unexpected discoveries we made in the Center for Cross-Border Advocacy lent themselves, among other things, to rich discussions about the role of the lawyer and how it relates (or should relate) to our own morals

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<sup>138</sup> In order to obtain cancellation of removal, a form of relief from removal available only once to lawful permanent residents, a lawful permanent resident must meet certain statutory requirements and persuade the Attorney General or his/her delegate that relief is warranted as a matter of discretion. 8 U.S.C. § 1229b. The exercise of discretion is guided by an examination of the totality of the circumstances, balancing positive equities against adverse factors. *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998).

and ethical responsibilities. Before we successfully identified our assumptions, they also contributed to a fair amount of anxiety within the clinic. Although students in Chinese law clinics representing Chinese clients in Chinese proceedings may also wrestle with their own assumptions about their clients (or their professors), students in the Center for Cross-Border Advocacy consistently and explicitly engaged with these challenges in a more structured environment. The process was not always easy, but confronting cultural differences in both large and small ways led to ample growth opportunities for the students and for me. Through its cross-cultural and transnational experiences, the Center for Cross-Border Advocacy offered its students a global perspective and broader horizons that will hopefully serve them well as China assumes a larger role on the world stage.

#### IV. REPLICATING THE CROSS-BORDER AMERICAN LAW CLINIC IN CHINA & ELSEWHERE

The Center for Cross-Border Advocacy started in 2010 as an experiment in clinical legal education at a school, STL, that is also an experiment. It evolved during the short time I was there and hopefully will continue to evolve in response to the realities it confronts.

Overall, the clinic was a success at STL. STL seeks to train transnational lawyers, and the Center for Cross-Border Advocacy satisfied that mission by offering students training across borders. It exposed students who chose to attend STL to one particular model of lawyering, which is likely quite different from the models they will encounter in the Chinese legal system. The Center for Cross-Border Advocacy, therefore, provided a unique opportunity for students to develop familiarity with the American legal system and lawyering across cultural differences. If they do go on to professional careers that bring them into contact with American law or lawyers, this familiarity will hopefully reduce some of the cross-cultural challenges and misunderstandings that would otherwise arise. At the same time, the Center for Cross-Border Advocacy did not profess to teach Chinese students how to be *Chinese* lawyers, nor did it attempt to transplant an American model into a Chinese legal curriculum. It made no claim that American lawyering or American clinical legal education is the best model for China, only that it adds value in certain circumstances.

The Center for Cross-Border Advocacy also enjoyed preliminary success in its social justice mission. Five of the clinic's first six clients are home again with their families in the United States, and all of the clinic clients have expressed gratitude to the students for their help. Proud of these outcomes, STL chose to showcase the clinic for a high-level Chinese political visitor to the school in spring 2011. And the



Peking University Shenzhen Graduate School administration's interest in the clinic ultimately led to publication of the *Shenzhen Daily's* article and its Chinese-language counterpart.<sup>139</sup>

The question arises, however: is the experiment worth replicating elsewhere in China or in the world? If done carefully, the preliminary answer is yes. An American-style clinic in the model of the Center for Cross-Border Advocacy could add value to legal education in China and potentially in other parts of the world if it is either situated at an STL-like transnational law school or if it coexists at an institution alongside a more locally-focused law clinic.

The major advantage to establishing a cross-border clinic within the same institution as a Chinese-law-based clinic stems from the potential for beneficial cross-fertilization of ideas between students and faculty in the two programs. A Center for Cross-Border Advocacy-like clinic could offer its students – and indirectly their classmates – a more global perspective on professionalism, ethics, and cross-cultural issues. By seeing students in the cross-border clinic struggling with a range of cultural differences, students in other clinics might find their own horizons broadened. Moreover, because the clients and laws at issue are foreign, this type of clinic could also offer students elsewhere an opportunity to engage in critical thinking and analysis of issues in a less politically charged environment. At the same time, by seeing their classmates working within the Chinese system and representing the poor and disadvantaged in China, it may be easier for students in a cross-border clinic to recognize ways in which their work abroad can have applications at home. From informal and formal student exchanges of information, they can gain a better understanding of the realities of law practice in China, on which an American-oriented, cross-border clinic can shed little light.

The benefits of these exchanges could also extend to faculty members learning symbiotically from each other. For example, if I had had Chinese colleagues also teaching clinics at STL, we could have offered each other periodic insights into cultural differences affecting our teaching, our students' learning, and the representation of clients in the clinics. Our different backgrounds could enrich our experiences and ideas about experiential learning methodology, ethics, and other issues. And the collaborative opportunities could benefit all parties involved. Furthermore, continued exposure to different models and ideas could expand the possibilities that Chinese clinicians consider as they pursue the development of a new kind of legal education in China with Chinese characteristics without doing so in an im-

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<sup>139</sup> See *supra* notes 2 & 6.

perialistic, culturally insensitive way.

Yet significant obstacles also stand in the path toward replicating the Center for Cross-Border Advocacy model elsewhere. One challenge is language. To assume any real responsibility for legal representation based in a foreign jurisdiction, students must have sufficient ability in the language of that jurisdiction. To attend STL, for example, students must have achieved a certain level of English fluency, and admission to the Center for Cross-Border Advocacy depended in part on English language ability. Other institutions with different student populations may find it more difficult to sustain a clinic operating in a foreign language.<sup>140</sup>

Resources pose an even bigger challenge. It is already difficult to find sufficient resources to fund clinical legal education in China, and the prospect of financing two differently-oriented clinical programs within the same institution may be unrealistic in most instances.<sup>141</sup> Except at the rare transnational school like STL, if there is insufficient institutional support, with insufficient resources, to establish and maintain two quite different clinical programs, a cross-border clinic will not make sense for a number of reasons. First, where there is substantial unmet need for legal assistance locally, it becomes difficult to justify the diversion of legal assistance resources. A cross-border clinic also potentially serves fewer students and clients at a higher cost to the institution, and the impact of the values and skills the students develop may be more difficult to gauge.

A potentially lower-cost alternative to establishing cross-border clinics within other higher education institutions is to strengthen existing international partnerships and establish new ones. An American law school, for example, could partner with a Chinese school to facilitate student and clinical faculty exchanges following several different models. In one version, an American clinician could supervise a cross-border clinic in China as a visiting professor for one or more semesters with funding and logistical support from her or his home institution. Following the model of the Yale-China Association's Law Fellows Program, international clinicians could also work and teach alongside Chinese colleagues for extended periods of time in Chinese-oriented clinics.<sup>142</sup>

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<sup>140</sup> Some of the benefits of cross-fertilization of ideas between faculty members in cross-border and locally-based clinics would also be diluted if the colleagues are unable to communicate easily in a shared language.

<sup>141</sup> Maintaining a low student to supervisor ratio, as is standard in American law clinics, will further increase the cost of a cross-border clinic as compared to its local counterpart.

<sup>142</sup> See YALE-CHINA ASSOCIATION WEBSITE, *supra* note 45. The Fulbright Scholars program also provides opportunities for Americans to spend time teaching and working in clinics in China and other countries. Peggy Maisel, for instance, describes her own collabo-

Alternatively, with adequate preparation and cross-cultural sensitivity, law schools could establish more opportunities for students to participate in internships or exchange programs at foreign law school clinics, immersing them in a different cultural and legal environment for several weeks. The exposure to these differences would bring many of the same benefits as a cross-border clinic to both the exchange students and their host faculty and fellow students. Individual programs could be tailored to meet the needs of and build upon the strengths of the participants involved. In another innovative model, students from law schools in different countries could collaborate on clinical projects of a transnational nature, traveling to each others' countries or to a third country. For example, clinicians from the University of Malaya in Malaysia and the University of Pasundan in Indonesia recently established a cross-border opportunity for students at both universities to work together in both countries to address issues relating to Indonesian migrant workers.<sup>143</sup>

Even without physical travel from one country to another, students and faculty could also take advantage of constantly improving technology to work together across borders on clinical projects. Creativity and initiative can lead to countless new programs that will help improve the quality of lawyering and break down traditional barriers to cross-cultural communication and access to justice. The Center for Cross-Border Advocacy is hopefully just the beginning.

#### CONCLUSION

China is in the midst of a period of rapid change, growth, and globalization. As one element of China's ongoing transformation, Chinese clinical legal education is emerging as an exciting and innovative opportunity to provide Chinese law students enhanced practical skills training while serving unmet legal needs among various communities within China. Because it is still relatively new and because its

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rative efforts as a Fulbright scholar at the Law Faculty of the University of Natal in Durban, South Africa, as well as those of a number of other international clinicians who have consulted at educational institutions overseas. Maisel, *supra* note 126, at 489-90; *see also* Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 *FORDHAM INT'L L.J.* 374, n.160 (2007) (describing visits to and from South Africa by clinicians funded through various programs). Other organizations involved in facilitating exchanges include the American Bar Association Rule of Law Initiative and the Open Society Justice Initiative, among others. Maisel recommends, among other things, that "U.S. scholars consulting overseas follow the lead of their hosts in establishing or modifying the goals and agenda for the project." Maisel, *supra* note 126, at 490.

<sup>143</sup> Asnida Suhaimi & Norbani Nazeri, *Working with Migrant Workers: A Cross-Border CLE*, International Journal of Clinical Legal Education Conference, Durham, England (July 12, 2012).

approach is so different from traditional Chinese legal education, clinical legal education in China has acquired an enthusiastic and imaginative group of supporters but still faces many obstacles on its path to institutionalization with Chinese characteristics.

Fortunately sheltered from many of those obstacles, the Center for Cross-Border Advocacy represents an exciting innovation within the innovative world of clinical legal education in China. As the *Shenzhen Daily* article captured in part, the Center for Cross-Border Advocacy offered students the opportunity to make a global impact and refine skills that are particularly appropriate for practicing law on a global or transnational stage. They had the chance to learn strategies for dealing with cultural differences and recognize cultural assumptions more quickly, perhaps even quickly enough to prevent the kind of miscommunication that manifested itself in the process leading to the *Shenzhen Daily* article. By representing immigrants in need in the United States, the Center for Cross-Border Advocacy provided China with another way to be proud of the impact it is having around the world.

Even if the Center is ultimately considered a success, replicating that success in a cross-border clinic outside of a school like STL will not be easy and will require careful attention to avoid creating the impression of Western imperialism or endangering the more indigenous development of clinical legal education. But if the resources and will to support this kind of clinic exist, more Centers for Cross-Border Advocacy could complement existing programs in ways beneficial to the students, the faculty, the law schools, and ultimately the local legal system. In the meantime, the Center for Cross-Border Advocacy at STL will hopefully continue to evolve under new leadership and experiment with new approaches to cross-border pedagogy and representation, contributing in its own way to the reform of Chinese legal education.