

SHARING THE HEAT

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Since this issue of the journal is to recognize and celebrate the role of international law at the University of Wisconsin Law School, particularly in the past twenty-five years, I will begin unabashedly by noting three developments that occurred when I was dean. In my first year in that position, 1984, I helped to shepherd David Trubek's excellent idea for the Institute for Legal Studies¹ (which remains influential in both local and foreign areas of expertise) through what were still uncertain political paths to faculty approval. In the same year, Columbia University Law School agreed to send us one or two fully funded Chinese graduate students each year from their Ford Foundation grant. In 1989, the faculty approved the East Asian Legal Studies Center, and at the urging of the then and present director, Charles Irish, I persuaded the chancellor to implement the financial plan that sustains the center to this day.²

My direct involvement in overseas legal development in recent years includes eight years in Indonesia—from 1993 to 1997 and from 2000 to 2004, after which I returned to teaching at the law school. This work strongly resembled my early professional years when I worked full-time for ten years in three African countries between 1961 and 1973: four years in Sudan with the university and the judiciary's law reports project; two years in Zambia as co-founder of a law school; and four years as the last expatriate law dean in Ethiopia, where my term began with three Ethiopian faculty members out of twenty-one and ended with a majority-Ethiopian faculty. One of the expatriates I recruited to help achieve this result was Brun-Otto Bryde, author of the lead article in this issue.

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¹ Institute for Legal Studies Website, <http://law.wisc.edu/ils> (last visited Aug. 8, 2007).

² East Asian Legal Studies Website, <http://law.wisc.edu/ealsc> (last visited Aug. 8, 2007).

My motive for going to Africa was never more complicated than thinking that at a time when so many colonies were becoming independent and their trained legal personnel so few, I could be useful. People were interested, but those were pre-Peace Corps days, and I searched for a job for a year without success. My good fortune was that on the way to Africa with a one-way ticket, Frank Sutton hired me to work at the Ford Foundation in New York, and not long after I was working on the foundation's project in Sudan. After that, the projects came easily.

Frank, the foundation, and a host of academic advisors had pragmatic ideas about law and development but nothing particularly specific at that time. Many of us felt grateful in 1964 to Wisconsin's Willard Hurst for his classic *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin 1836-1915*—which showed that law could affect development.³ How different times and places could affect the equation has spawned a rich if inconclusive literature. Some of the best have originated at the Wisconsin Law School.

Obviously one does not need a final theory of law and development to work in the field. First, I want to suggest that you not do it the way I did, by long-term assignments, even if you are interested in an academic career. Clearly there are many non-academic alternatives, such as law firms with overseas postings, and these can intersect with a university post.

Within the academic community, the mainstream thinking—certainly the mainstream behavior—is to build an expertise and then occasionally and for brief periods share that expertise overseas. This can be quite interesting to the provider and useful to the recipient. For example, short-term advisors from the United States were very helpful in getting the Indonesian Competition Commission (an anti-trust government agency) up and running.⁴ Unfortunately, short-term advisors can also occasionally evoke what I remember about Vice President Nixon, whose short stops in places like Berlin convinced him he was an expert on Eastern Europe.

The best pattern for a genuine foreign expert in academe is to have language fluency before spending two or so years doing in-depth

³ WILLARD HURST, *LAW AND ECONOMIC GROWTH: THE LEGAL HISTORY OF THE LUMBER HISTORY IN WISCONSIN 1836-1915* (1964).

⁴ See Columbia University Workshop Report, *Considering Competition Law in Indonesia: Challenges and Approaches* (Oct. 2000), available at <http://www.columbia.edu/cu/csis/publications/Oct18.pdf>, for current debates.

research abroad, combined with enough local service to avoid being a careerist. Kathryn Hendley at the Wisconsin Law School is a good example, and there are others at Wisconsin and elsewhere. Next to these in-depth scholars are the persons who spent a year or more abroad working at a law school or with USAID or similar organizations. They had a reasonable amount of time both to make a contribution and to build a local expertise, including language skills. Spending more than one year abroad is usually better because the person has time to settle in and become more effective. I think of Quintin Johnstone of Yale who was the dean of a law school in Ethiopia for two years. Wisconsin is particularly strong in faculty with such successful experience. I should underline *successful* because not all who aspire to such an experience succeed. Just recalling the beginning and end of my time overseas, the British head of the commercial law department in Sudan went home in a straitjacket and in Indonesia an American advisor fled after only one week of work.

There are, however, some disadvantages to long-term stays overseas of the sort that I did. Although they were often long assignments, they usually began with little notice, with the consequence that learning the local language was a task to be combined with a full-time job. My aptitude for absorbing a foreign language is negligible; I bristle when someone asks “did you pick up” whatever. My strength was in not giving up. For two years, every night and weekend I tried to learn Indonesian, though I did not tell people how hard I worked because there was nothing to show for it—until, finally, there was. Another disadvantage of a long stay overseas will soon become apparent to those who do it because they “like to travel.” I did have some fantastic travels during my work abroad, but most of the time you are plunked down in one spot with a house, a commute, a boss—the whole catastrophe.

A third disadvantage of long stays overseas is that you are over there, while your potential rivals may be at headquarters networking and moving up the ladder. I recall discussing this with Jim Hurlock—at the time, a representative for White & Case in Belgium, France, and England—who agreed. But I mention it because despite the dangers, Jim ended up as the managing partner in their New York office for many years.

In the event you are attracted to extended stays in foreign parts as a legal academic, I will describe the justification that has most reassured me. It starts with a notion that I think most teachers share. One of the high points of teaching is to make a real difference for the

better in the life of a student. Usually you cannot know if it has happened, although it is welcome evidence if the student tells you that it did, often years later. Such changes usually take time. For that reason I have long felt that primary school teachers who teach the same students all day have more impact on their students, for better or worse, than the average university teacher. Yet the magic moment can occur at the university and in law school. Sometimes it can be the teacher's scholarship, particularly on local issues, that puts a student into a new orbit. To use teaching and mentoring to upgrade a person's skills generally takes a prolonged period, especially when the qualified instructors in this process may be so few. Offsetting this, in every developing country we were able to identify a small but well-skilled support staff.

In Indonesia, one of our goals was to help forty young law teachers (and a few young government lawyers) to achieve a significant jump in their careers. Once they made the jump, they were more qualified to teach the new generation of students as well as provide a higher national level of legal expertise. The final stage of a long process was for the law teachers to earn a master's degree in the United States, which they did—twelve of them at the University of Wisconsin. The selection, preparation, and winnowing of the candidates took years, not months. At the same time, we helped to upgrade law books and teaching materials to give the teachers better tools for their new skills. In this work we shared the heat—both literally, given that Indonesia is in the tropics, and in a political sense, because we maneuvered through the university and government intrigues and jealousies. The need for such efforts is routine on long-term assignments.

Sharing a terrorist risk is not routine, but my boss (James Agee, an ex-Navy seaman) and I did just that after 9-11, since our employer, USAID, ordered a "voluntary evacuation" and we stayed. "Voluntary evacuation" meant families had to leave, and employees could leave and work in Washington D.C. if they so chose. After the Bali bombings in October 2002, the United States ordered a "mandatory evacuation" to D.C., but in fact about 5 percent of us were asked to stay and we did.

The aftermath of 9-11 also prolonged the tasks of getting our young faculty members to the United States because the processing time for a visa kept lengthening. It went from a few weeks to several months, with no guarantee of success. We changed our computer submissions to Washington almost daily as the rules shifted, and tried end-runs at the

embassy. In the end, we got every visa—a small example of why sufficient time and a dedicated support staff are essential.

I look back on my extended times abroad with no regrets and considerable good feelings. Those feelings include my personal choice, and you have to decide what is right for you. Romantically put, I'd rather be with Lawrence in the desert than with Allenby in Cairo.