

# A LIFETIME OF LEARNING

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## WORKING TO ERADICATE CORRUPTION BY ENCOURAGING TRANSPARENCY

As Defiance College graduates, JoAnne and I have always been interested and involved in our global community. So when I was invited to teach a seminar for law students in Mongolia, I jumped at the opportunity. The invitation came from the Center for International and Legal Studies (CILS).

There were approximately twenty-five law school students in the International Law Department of the National University of Mongolia (NUM). For three weeks in September 2006 they repeatedly heard their guest professor from the United States (me) chant that transparency is critical to good legal systems or other dispute resolution schemes because “it is harder to lie, cheat, steal and cover up incompetence or mistakes when the whole world is watching.” In order to understand the context of our visit, it is helpful to know a little about recent trends in the legal profession, as well as the social context of Mongolia today.

### FROM TRIAL LAW TO DISPUTE RESOLUTION

During the last half of the 20<sup>th</sup> century, a slow tidal wave of change in dispute resolution took place in the United States, following what had already begun in the international realm. Courts began to uniformly compel parties to arbitrate their disputes. When resolution of serious business disputes shifted from courts (litigation) to conference rooms (arbitration), I decided to retool and become a more active participant in the arbitration world. While the skills are similar in some ways, the rules differ significantly. For many years lawyers involved primarily in litigation have fought, unsuccessfully, to prevent the tidal wave of compulsory arbitration.

Within the part of the legal profession that specializes in resolving business disputes, I am something of a schizophrenic. I serve simultaneously as a member of the board of directors of the International Academy of Trial Lawyers (IATL), a group dedicated to the rule of law preservation of civil

justice systems, and as a director of the American Arbitration Association. Arbitration is part of a group of dispute resolution procedures known as alternative dispute resolution because they are alternatives to litigation in the very civil justice systems the IATL is dedicated to preserving.

For more than a decade the IATL has sponsored as its primary international initiative a Rule of Law<sup>2</sup> program that brings lawyers from the Peoples Republic of China to the U.S. to expose them to the U.S. justice system and to live with fellows of the IATL and their families. In 2004 fellows of the IATL were invited to Beijing and I participated in a unique workshop with members of the law faculty at the Central Party School, which all leaders of the Communist Party in China must attend.

In 2006 CILS inaugurated its Senior Faculty program, which is another type of rule of law initiative. Instead of bringing lawyers or students from developing nations to the U.S. or western European nations for exposure to mature legal systems and the rule of law, the Senior Lawyer program places experienced lawyers from the west in law schools located in most of the former satellite nations and republics of the former Soviet Union.

Because of my experience in China, I accepted the invitation to teach International Arbitration in Mongolia. Although not an experienced



international arbitrator, I had spent many years handling domestic arbitration disputes and teaching arbitration skills. Law in a developing nation would serve as incentive to learn more about the skills, knowledge and judgment required to resolve disputes between people and business interests from different cultural and legal traditions.

### **MONGOLIA 2006**

Mongolia achieved its independence from China in the 1920's after several centuries of dominance. The independent republic of Mongolia was a loyal ally of the Soviet Union until its demise in 1989. Russia helped Mongolians living north and west of the Gobi and the great steppes to fight for their independence. Independent Mongolia fought alongside Russian troops in WWII and remained a loyal client state of the Soviet Union to the bitter end. The residents of what is now the autonomous region of Inner Mongolia became a minority population within the Peoples Republic of China.

Mongolia is unique among the divided nations of the 20<sup>th</sup> century in that the division was not along Cold War lines but rather between the two giants of the world communist movement. Russian influence, including architecture, a modified version of the Cyrillic alphabet and overlapping culture, remains omnipresent in the capital city of Ulaanbaatar (Ulan Bator or "UB" for short).

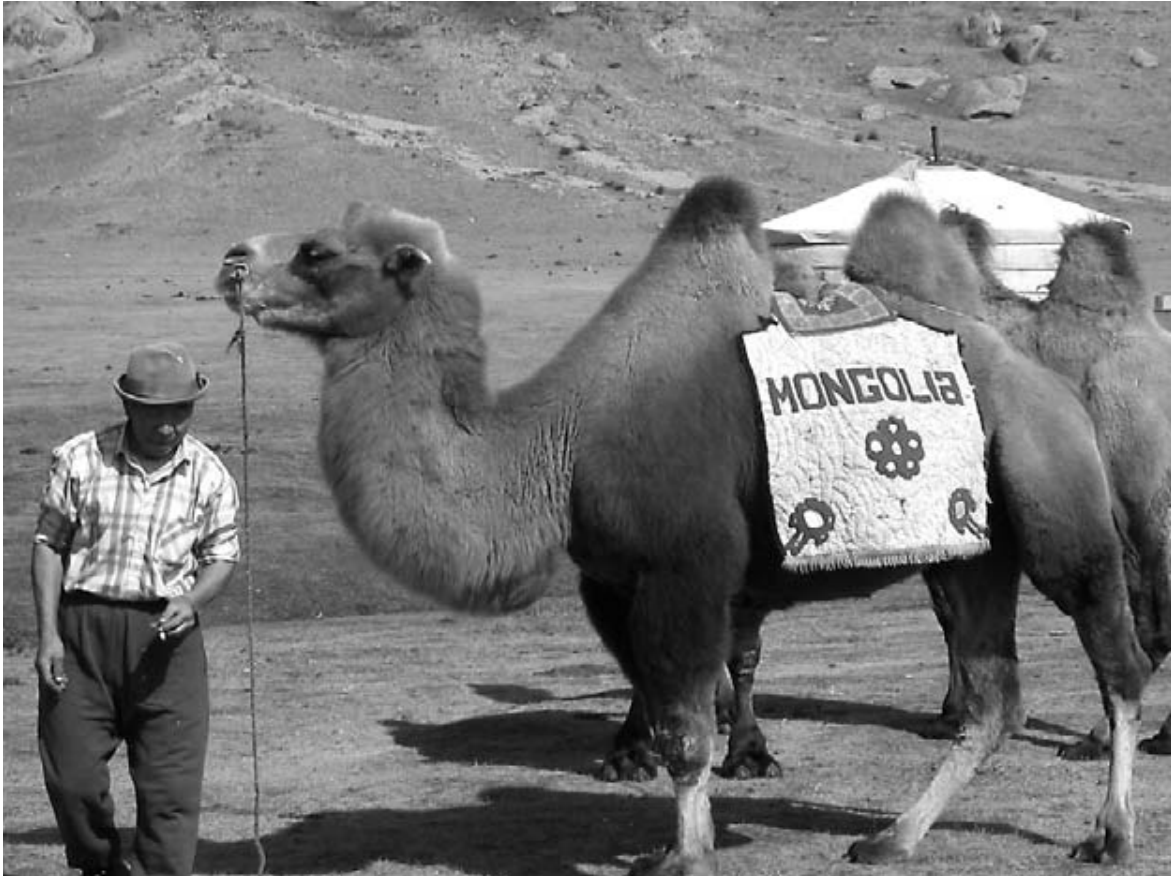
When the Soviet Union collapsed in 1989, Mongolia went through the same shock therapy transition that Russia and many of its former client states experienced. With varying degrees of success and hardship, it transitioned from a centrally controlled command economy, with government ownership of virtually all assets, to a free market economy based on recognition of property rights, enforcement of contract right, and respect for the rule of law. In Mongolia, as in Russia and other former Soviet satellites, the masterminds of economic transformation tried to dismantle the rotten economic model of real socialism and replace it with liberal capitalism by focusing on the technology of the process. This was done without realizing that liberal capitalism will not work without trust. Trust became the victim of speed in the developing nations of the Soviet Union after the fall of the Iron Curtain. The result is a culture of corruption and black markets that a former chief economist of the World Bank, Joseph Stiglitz, views as a primary impediment to the very capital investment required to insure the long term viability of liberal free market capitalism (Stiglitz, 2002).

Corruption is not new, nor is it unique to developing nations. However, it is a kind of economic parasite that saps the vitality out of economies throughout the world. Equally important and even more troubling is the explosion of black markets, the handmaidens of corruption. Black markets

are more troubling because unlike corruption there are no international conventions of uniform condemnations of them. However, black markets are in some ways admirable. It is hard to be critical of those who are willing to work at several jobs in an economy that is not providing adequate wages to survive.

A good example of the relationship between the formal and informal (black market) economy in Mongolia is taxi service in UB. There are fairly typical small yellow taxis that appear to be licensed and metered. Then there is everyone else who owns a car and keeps an eye out for Mongolians walking with their back to traffic and their left arm waiving for the first taxi to stop. Many UB residents blame the city's awful traffic on the fact that so many people from the countryside come into the city, bribe the licensing authority to avoid taking the driver's test, and join the city's massive informal economy by becoming a taxi driver.

The Chairman of the Mongolian National Chamber of Commerce and Industry (MCCI), Mr. S. Demberel, estimates that the informal economy is nearly 25% of the total Gross Domestic Product. The former Chief Operating Officer of the most successful privately owned bank in Mongolia, the Khan Bank, considers this a ridiculously low estimate. He estimates that the total



revenues generated by the informal economy represent at least two-thirds of the GDP. The World Bank estimates that the official Gross Domestic Product in U.S. dollars was 1.6 billion in 2004. With a total population of 2.5 million, 36% of whom live below the officially defined poverty line, Mongolia had an official annual per capital Gross National Income of \$600 US in 2004. Most troubling is the fact that 23% of the population live in extreme poverty on an income of less than \$0.40 per day (World Bank, 2004).

Despite these figures, The World Bank 2002 Country Brief (World Bank, 2002) begins with the following assessment:

The past decade was a time of change for Mongolia – change from autocracy to democracy, change from a centrally planned to a market economy. During this time, progress in many areas was remarkable. Mongolia adopted the new Constitution with principles of democracy and private ownership at its core; administered prices and exchange and interest rates were set free; a modern, two-tier banking system was established; and doors for private initiatives were opened. Economic growth replaced contraction starting in 1994. Inflation which reached three-digits in the early 1990s dropped to below 10 percent in the past 3 years and Mongolia has become one of the most open economies in the region, with its trade turnover totaling 125 percent of GDP in 2000.

Valid statistical data regarding corruption is notoriously difficult to come by the world over. A survey conducted by the Market Research Institute, with the financial support of the Asia Foundation (2006), investigated the character and impact of corruption in the Mongolian business sector. The findings are compelling – albeit in imperfect English.

The goal of the survey was to study how often entrepreneurs face corruption and what size of corruption they do. To our question ‘How often do you have to make bribery in order to have your work run smooth?’ 66.1% said ‘sometimes’, 9.4% answered ‘always’ and 24.4% said ‘never’. From these figures we can come to a conclusion that three fourths of people are involved in corruption.

In response to a request that the survey respondents name five organizations that are most corrupted, judicial institutions were listed by 41.6% of the respondents, the second largest number, with the Customs Office, Tax Office, Police and Banks as the top five on the list. This type of data is what has

caused the World Bank to make eradication of corruption its highest priority (Asia Foundation, 2006).

UB also has large quantities of foreign aid operations, both government and NGO sponsored. Organizations as diverse as The World Bank, International Monetary Fund, USAID, the Peace Corps, Princeton in Asia and George Soros' Open Society have extensive operations in Mongolia. In fact, there are hundreds of millions of dollars of aid money each year that are available to be spent in Mongolia. Some appear to be spent well and some appear to be squandered. Some are not being disbursed because of the recognition that the intended uses will prove ineffective at solving the problems they are designed to address. Some of the volunteer efforts in Mongolia appear to be helping alleviate the suffering there and improving civil society, while other volunteer efforts appear completely ineffective.

### **IN COUNTRY ACTIVITIES**

I learned much more about Mongolia, its history, and its legal system than my law students learned about arbitration. Approximately half of the students understood about half of what was said in English even with significant repetition. I relied upon the students most comfortable with English to tell the others in Mongolian what had been discussed. Attendance began to dwindle until word got out that students were engaged in mock arbitration. For the rest of the seminar new faces would show up each day in class to watch the arbitration activities. It was fun and well attended. The students adopted us - JoAnne and me - and helped make our stay in Mongolia delightful. Several of the students have since competed in the first Mongolian mock arbitration contest and won.

In the process, the seminar gave birth to a mission far broader in scope and enduring - to help eradicate corruption in Mongolia and other developing nations. It began with numerous lectures and publications urging greater transparency in the rules that govern arbitration of international disputes. It will continue as part of my daily message for the remainder of my professional life.

Because of my involvement with the China Program of the International Academy of Trial Lawyers, I will travel to Beijing each fall to participate in the process of interviewing lawyers who apply to be delegates to the United States, so I will be able to visit Mongolia regularly. Our relationships with other faculty and former students remain strong. Hopefully, one of the talented young Mongolian lawyers that I have worked with will play a significant role in helping Mongolia to be the exception to the rule of developing nations that have fallen into a culture of corruption.

## REFLECTION

In reviewing the McMaster School's mission to educate students for responsible citizenship; produce responsible, committed global citizens; and graduate leaders who understand the importance of individual liberties in improving the human condition, we have given considerable thought to what our experiences might reveal about opportunities for service-based education in countries such as Mongolia. Perhaps the most passionate current voice for this type of mission is Nicholas Kristof, columnist for the *New York Times*. In his Sunday column March 11, 2007, Mr. Kristof wrote once again about poverty in Africa and announced a contest for a university student and a high school teacher to travel with him on a reporting trip to Africa. Mr. Kristof gives a scathing indictment of American universities.

I often hear comments from readers like: "It's tragic over there, but we've got our own problems that we have to solve first." Nobody who has held the hand of a starving African child could be that dismissive.

That lack of firsthand experience abroad also helps explain why we are so awful at foreign policy: we just don't 'get' how our actions will be perceived abroad, so time and again - in Vietnam, China, Iran, Iraq, Lebanon, Afghanistan and Latin America - we end up clumsily empowering our enemies.

Part of the problem is that American universities do an execrable job preparing students for global citizenship. A majority of the world's population lives on less than \$2 a day, but the vast majority of American students graduate without ever gaining any insight into how that global majority lives. (Kristoff, 2007)

As compelling as his argument may be and as self-satisfied as Defiance College's McMaster School could be at countering the indictment, Mr. Kristof's approach will be insufficient in the long run. Truly responsible global citizenship will require that all citizens try to overcome the most basic human desire for stability and security and adapt to a life in constant transition. Commitment to a lifetime of learning in service to others and incorporating that into a lifetime of personal and professional transitions is a recipe for longer lasting and hopefully more meaningful global citizenship.

In simple terms, never stop learning and never stop asking others what you can do to help them help themselves.



## ENDNOTES

1 The authors, Joe Matthews and JoAnne Hatch Matthews, married for 32 years, have lived most of their lives together in Coral Gables, Florida, a suburb of Miami, where Joe has been a trial lawyer for almost 30 years and JoAnne was first a high school teacher, then the officer manager and paralegal for the law firm where Joe is now a partner. She raised their two children and has been a community and church volunteer leader for more than two decades.

At DC Joe Matthews majored in International Relations, spent a “winter term” in Paris and was one of several national champions (Persuasive Speaking 1974) produced by the then nationally acclaimed Defiance College Speech and Debate Team. JoAnne majored in secondary education and taught business education at Napoleon High School for two years before they moved to Miami where Joe attended and graduated from the University of Miami Law School.

2 “Rule of Law” is a very elastic phrase that is used to describe a wide variety of outreach initiatives from primarily western, developed nations to primarily former communist and developing nations. It is similar to and works closely with various “pro-democracy” initiatives, both governmental and non-governmental. One fascinating description of the Rule of Law comes from Brian Z. Tamanaha in *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004) who said “the rule of law thus stands in the peculiar state of being *the* preeminent legitimizing ideal in the world today, without agreement on precisely what it means.”



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