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Media Law Education for Journalists in Hong Kong

Commentary:

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An anti-corruption agency raids seven newsrooms. The government considers national security legislation with far-reaching repercussions for journalists. Privacy laws targeting paparazzi and others in the media are proposed. A broadcaster is admonished for comments made on air to public officials. An editor is jailed for contempt of court.

These events and others in Hong Kong over the past several years demonstrate the volatility of media law developments in the Special Administrative Region, now part of the People's Republic of China. Since the 1997 return of the former British colony to Chinese sovereignty, Hong Kong has been struggling to define and shape the legal terrain on which journalists operate. The imposition of the Basic Law, Hong Kong's mini-Constitution; a dramatic rise in libel suits; new laws and proposed legislation attempting to rein in an active media, and the fact that Hong Kong no longer has to automatically apply British common law to issues that arise have resulted in a Byzantine environment for the evolution of media law.

Media law education for journalists has long been recognized as essential. In the United States, media law is a required course in most accredited journalism and mass communications programs. An increasing number of programs in Asia are now teaching media law also. In July 2002, at the annual meeting of the International Communication Association in Seoul, South Korea, a panel on "Education in Mass Communication Law in Asia" surveyed such efforts in the Philippines, Singapore, South Korea and Hong Kong. In November 2004 a media law conference at Beijing's Communication University of China (formerly Beijing Broadcasting Institute) also examined media law education.

As a lecturer in media law at the Journalism and Media Studies Centre at the University of Hong Kong, I participated in both conferences. We discussed the challenges of teaching media law and I addressed the particularities of educating journalists about the uniquely intricate legal landscape of Hong Kong. These intricacies include:

- The legacy of harsh media laws that remain from more than 150 years of British rule and that relate to official secrets, defamation, sedition and reporting on court proceedings.
- The big shadow China casts on press freedom, despite the "one country, two systems" principle that governs its relations with Hong Kong – a shadow made darker by the PRC's direct intervention in constitutional matters in Hong Kong. (In 2004, the National People's Congress Standing Committee in Beijing interpreted key provisions of the Basic Law to prohibit universal suffrage for Hong Kong elections in 2007 and 2008).
- Hong Kong's own legislation and regulations of the media, formed largely under an undemocratic political process.
- Increasing litigiousness that has seen dozens of major court cases in the past decade against the media in Hong Kong, the emergence of large jury awards that has encouraged even more lawsuits and the unusual propensity of local media companies to sue each other.
- The growing globalization of media law in such areas as jurisdiction, libel and copyright that affect journalists here.

In August 1999, I visited Hong Kong for the first time. As a U.S.-trained lawyer and city editor of *The New York Times*, I was asked to help launch a new English-

language, international journalism program at the University of Hong Kong and to teach media law, among other topics. I came for a week to assess whether to assume the post.

Shortly after my arrival, I saw evidence of the complicated media law terrain. A government-linked think tank released a proposal to create a statutory press council that would have authority to single out and impose fines against newspapers for what it considered to be violations of privacy. In support of its proposal, the think tank cited numerous laws and cases from around the world, including the United States. After reading the proposal, I saw that some of the U.S cases were cited out of context or inaccurately described. I quickly contacted Floyd Abrams, a leading First Amendment litigator in the U.S., whom I had gotten to know in my years as a legal journalist. I asked Abrams, who had argued some of these cases before the U.S. Supreme Court, to help prepare a response; his analysis was submitted to the government and was published in the leading Chinese-language newspaper, *Ming Pao*. This newspaper and other media organizations loudly criticized the proposal and the think tank went back to the drawing board.¹

I soon concluded I would find many such interesting challenges if I worked in Hong Kong and made plans to return in January 2000 to start teaching graduate students, most of whom were local working journalists. My experience in law and journalism was as a prosecutor and as a reporter, editor and producer in print and television in the United States, including as legal editor of *The New York Times Magazine* and as editor-in-chief of *The National Law Journal*, a newspaper for lawyers. What could I bring with me?

I could not just import my U.S. cases into Hong Kong, where the laws are largely based on British models, but as the Hong Kong proposals for new privacy laws demonstrated, knowledge of U.S. law would be a critical component for any program that must reflect the increasingly global media law environment. Returning to Hong Kong, my challenge was how to adapt to the local environment.

In Hong Kong at that time, media law was being taught at the undergraduate level at Chinese University by Kevin Lau, senior editorial writer and senior legal officer for *Ming Pao* who has law degrees from HKU and the London School of Economics and Politics. (Hong Kong Baptist University offered a broader media law and ethics course for its journalism and communication students). Media law was not being taught at the two law schools in Hong Kong,² nor was there a current textbook. The last one, available only in Chinese, was published in 1995 before the handover. I met with Lau, who generously shared his undergraduate curriculum and materials; his contributions helped me understand some of the parameters of Hong Kong media law.

The difficulty though was to find the right approach for my graduate students, mainly working journalists, who would bring their practical experiences to the classroom and who could take their classroom training back to the newsroom on a weekly basis. I needed to construct a course that gave immediate practical information but also provided skills and a theoretical framework that would be useful long after they left the classroom.

Who are my students? Then, as now, they range in age from early 20s to late 40s. Many work in television, newspapers, wire services, radio and the Internet. About a quarter to a third are in other professions and are looking to enter journalism but at a higher level. They have included teachers, lawyers, engineers, bankers, government civil servants, financial analysts, flight attendants, a pediatrician and an architect. They have widely varying abilities and skills in the English and Chinese languages. In the beginning, they were mostly from Hong Kong, but increasingly over the past five years, they come from other countries such as the United Kingdom, Australia, New Zealand, Canada, South Africa, India, Singapore, Portugal, Japan, Taiwan, the United States and mainland China. Most have undergraduate degrees from outside Hong Kong from such schools as Oxford, Harvard, Yale, Peking University and the University of New South Wales. Hong Kong is an international center for journalists, as represented by our students. They have worked for CNN, BBC, Associated Press, Bloomberg, Reuters, Dow Jones, Star TV and Yazhou Zhoukan, the Chinese language newsweekly for the Chinese diaspora.

The diversity of the students also reflects the international outlook of the professionally oriented program at our Journalism and Media Studies Centre. Media law is one of the program's three core courses; the others focus on ethics and reporting and writing.³ One of the program's key principles is that courses are taught from the perspective of the journalist, so that students gain insight into the issues professional journalists face on a regular basis. Thus, the goals for the 12 three-hour long classes that comprise the media law course were to demystify and explain the law, the legal process and its players and, by doing so, empower the students. The course had to work on several basic levels.

First, as almost none of the students had legal training, the course had to provide an overall introduction enabling them to acquire an understanding of legal language and concepts and the ability to read court cases and conduct legal research. I wanted to share some of the skills I had learned in law school and as a prosecutor in the U.S. that would help them feel more confident when they ventured into legal thickets. Second, the course had to work across cultures. Much Chinese secondary and undergraduate education is based on a traditional lecture format and while most of my classes would feature a lecture component, other parts were designed to encourage students to be more independent, to talk more in class and to analyze on their feet. Third, as the practice of law is essentially specialist in nature, the course had to introduce students to experts who could provide up-to-date, intimate knowledge of their specialties. Over the years, these experts have included law professors, solicitors, barristers, media company counsels, legal journalists, and even a sitting judge. Finally, and most important, students had to receive a firm grounding in media law, primarily as practiced in Hong Kong, but also incorporating key international developments.

To accomplish these goals, we start with such basic legal concepts as the nature of law, rule of law, common law, civil code systems, civil vs. criminal law, enacted law, adversarial vs. inquisitorial systems and jurisdiction. We examine the origins, definitions and sources of law on freedom of expression and freedom of the press, which are not necessarily the same thing. We look at the wordings of constitutions for Hong Kong's own "mini-Constitution," known as the Basic Law, and those from the U.S., Europe, Asia and the People's Republic of China. We look at international

conventions and covenants to dissect their influence on Hong Kong and elsewhere. Only by actually reading constitutions can we begin to assess how much value a nation places on freedom of expression. Later, we see how those values play out in actual court cases.

But it is not enough to read about the law; students needed to experience it first hand. I asked a well-respected judge serving on what is known here as the High Court who has handled both trial and appellate cases (and is himself a former journalist) to open his courtroom for a private, after-hours session with the students. Each year we have done this, it is for almost all of the students the first time they have ever met a judge or even been in a courtroom.

This past year, while waiting for the judge to arrive, many students rushed over to sit in the jury box; others positioned themselves in the barristers' seats or stayed back in the press area. The judge started the session by talking for an hour or so about his work and giving insights into cases and the process; he led them through the forests of the many constitutional issues that have come before him and other judges. He impressed on them that the system of rule of law would fall apart without a thinking, responsible press to make it transparent. Then, he opened himself to a freewheeling Q & A session providing students a rare opportunity to question a Hong Kong judge. Before they left, the judge brought out his horsehair wig for the students to examine; several even tried it on! Later, during the semester, when they saw news articles about the judge's rulings in this or that case, we discussed what they learned that day and how it applied in the latest instance. This courtroom visit remains one of the course's popular components.

Early on in the course, tutorials are arranged for the students on how to conduct legal research. A senior law librarian and a trainer from Westlaw, one of the commercial legal publishing companies, are enlisted to help students learn how to update their legal knowledge. Furthermore, as part of the course requirements, they use these new skills for group or individual reporting projects on media law developments. In 2002, they had the opportunity to do legal research for a real-life purpose: they produced a 16,000-word response to the Hong Kong government's controversial proposal for national security legislation, otherwise known as Article 23, the provision in the Basic Law that requires Hong Kong to have laws on treason, secession, sedition, theft of state secrets and subversion. In their submission to the government, the students provided examples of alternative approaches to national security taken by other Asian nations such as South Korea, which eliminated its seditious libel laws during legal reforms in the late 1980s. Theirs joined hundreds of submissions to the government, which shelved its proposals in 2003 after more than 500,000 Hong Kongers marched in protest.

In just about every journalist's life, he or she needs to know how to read a court case, so students are assigned oral presentations on key media law cases to show they can discern what is important in a court's rendering. They must identify the salient facts, the key arguments of both sides, the court's analysis and its ruling. They are expected to compare this case to others and to bring in other references and applications. After each presentation in class, I follow up with comments and analysis.

During the course, students are responsible for reading more than 30 court cases selected for their value in understanding aspects of media law important to the

practice of journalism. They are many of the same issues journalists face all over the world and include freedom of expression, defamation, privacy, contempt of court, official secrets, access to information, court reporting restrictions, copyright, obscenity and laws affecting newsgathering practices, including the protection of sources. For other readings, students have one required textbook, *An Introduction to the Hong Kong Legal System*,⁴ and dozens of law review articles and chapters from legal texts examining media issues in Hong Kong, the U.K., the U.S., and the PRC, among other jurisdictions. The biggest drawback to many of these readings is that they approach topics from a lawyer's point of view. I am writing a Hong Kong media law textbook⁵ that will parse these topics from the journalist's point of view.⁶

While I give lectures for almost all of these topics, over the five years I have taught this course I also have brought in more than 20 guest lecturers. I am grateful to members of the Faculty of Law at HKU for making multiple appearances, especially Johannes Chan, dean and barrister for many media law cases who has discussed official secrets, contempt of court and, most recently, the legality of government newsroom raids. Other law faculty members who have spoken to the class include Jill Cottrell, the leading academic on libel in Hong Kong; Raymond Wacks, a prolific writer on privacy now retired, and Hualing Fu, who co-wrote a leading textbook on media law of the mainland.

It also is important for the students to hear from local practitioners, including lawyers representing media (or suing them!); those in government who enforce the regulations, such as the deputy director of the intellectual property department, and others with particular insight, such as a former president of the Hong Kong Bar Association and now a member of the Legislative Council who was a leading opponent of the proposed and since-shelved anti-subversion legislation. For mainland China, in addition to Fu, we have been fortunate to have as speakers Wei Yongzheng, a professor in the Department of Law for Communication University of China in Beijing who has written widely on PRC media law, Pu Zhiqiang, a libel litigator in Beijing, and Jerome Cohen, an international lawyer specializing in Chinese law and China's foreign relations and a former director of East Asian Legal Studies at Harvard Law School. One of my favorite speakers was the first one, Patrick Yu, first Chinese crown counsel in Hong Kong, who gave a frank and witty appraisal of the evolution of Hong Kong's legal system.

Some of these speakers are part of an informal group with whom I discuss new challenges in media law. The group also includes Jane Kirtley, former director of the U.S.-based Reporters Committee for Freedom of the Press and now the Silha Professor of Media Ethics and Law at the School of Journalism and Mass Communication at the University of Minnesota; Kyu Ho Youm, Jonathan Marshall First Amendment Chair, University of Oregon School of Journalism and Communication; Mark Stephens, a leading media lawyer in London who gives seminars at Oxford's Centre for Socio Legal Studies, and Mei Ning Yan who teaches media law and ethics at Hong Kong Baptist University.

The course continues to evolve. I turn to the students for assistance on research and for recommendations on improvements. The courtroom visit was among the many suggestions so far. Every year, the curriculum is revised and updated to make it the most current; typically one-third of the readings are changed. The JMSC student intranet website is used for additional study aids, power points for lectures,

speaker notes (and contact information), study questions/guidelines for the readings, additional readings, student presentations, class schedules, guidelines for term projects, previous final exams and model answers. The students are not shy about their evaluations. Some feel the coursework is too heavy (they may be right), while others have cited it as “immensely practical and thought provoking” and beneficial for “critical thinking.”

In response to the charges of overwork, I tell the students that the subject matter may be one of the most important they will ever study. The course’s journalistic and international perspectives help prepare them for the global media world. Its case studies and their participation in research give them hands-on experience. If journalists are to fulfill their watchdog role, then they must become skilled at understanding and reporting the law, including media law.

Endnotes

1. On December 9, 2004, the Hong Kong Law Reform Commission released its final reports recommending privacy legislation and the creation of a statutory press commission. <http://www.info.gov.hk/hkreform>
2. In 2003, the University of Hong Kong Faculty of Law added media law as a course for its law students.
3. Master of Journalism students are required to take a total of seven taught courses and complete a Master’s Project, a 4,000-6,000-word magazine-length article that is a deeper journalistic exploration of a topic.
4. Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System*, Oxford 1998.
5. Contributors for this book, *Hong Kong Media Law: A Handbook for Journalists*, will include Yan Mei Ning, who teaches media law and ethics for undergraduates at Hong Kong Baptist University, and Jill Cottrell, recently retired from the HKU law faculty.
6. The approach would be similar to a chapter I wrote, “Article 23 and Freedom of the Press: A Journalistic Perspective,” for a HKU law faculty book, *National Security and Fundamental Freedoms: Hong Kong’s Article 23 Under Scrutiny*, HKU Press 2005.

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