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**NEW UNDERSTANDINGS MEDIATING
BUSINESS LAW IN THE THAI AND VIETNAMESE TRADITIONS:
A HERMENEUTIC APPROACH TO LEGAL EDUCATION**

A Dissertation

Presented to

The Faculty of the School of Education

Organization and Leadership Program

In Partial Fulfillment

of the Requirements for the Degree

Doctor of Education

by

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San Francisco

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This dissertation, written under the direction of the candidate's dissertation committee and approved by the members of the committee, has been presented to and accepted by the Faculty of the School of Education in partial fulfillment of the requirements for the degree of Doctor of Education.

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TABLE OF CONTENTS

CHAPTER

I. THE RESEARCH PROBLEM

Statement of the Problem.....	1
Purpose of the Study.....	3
Background of the Problem.....	4
Summary.....	9

II. REVIEW OF THE LITERATURE

Introduction.....	10
A. Country Setting of Thailand.....	10
Historical Development of the Thai Legal System.....	11
Relationship Between Economic Development and Current Legal Environment of Thailand.....	16
Cultural Understanding in the Thai Society.....	20
B. Country Setting of Vietnam.....	24
The Meaning of Law in Vietnam.....	25
Emergence of Vietnamese Legal Environment Through the Influence of Economic Development.....	29
Cultural Understanding in the Vietnamese Society.....	36
C. Educational Response to the Changing International Legal Environment.....	40
Summary.....	47

III. RESEARCH PROCESS

Introduction.....	48
Conceptual Background.....	48
Participatory Research.....	56
Research Design Process.....	58
Data Collection.....	58
Research Participants.....	59
Entree.....	63
Time Line.....	64
Categories of the Research.....	65
Category One: New Understandings Through a Fusion of Horizons.....	66
Category Two: Achieving Communicative Competence.....	66
Category Three: Meaning of Business Law in the Emerging International Legal Community.....	67

Field Study.....	68
Research Analysis and Procedures.....	70
Journal.....	72
Background of the Researcher.....	72
Summary.....	74
IV. DATA PRESENTATION AND ANALYSIS	
Introduction.....	75
Living in Tradition.....	75
Thai Values and Traditions.....	76
Vietnamese Values and Traditions.....	82
American Values and Traditions.....	87
Cultural Understanding As Part of Legal Discourse.....	91
Fusion of Horizons.....	93
The Universality of Communicative Competence.....	104
Achieving Mutual Understanding.....	107
Comprehensibility in a Foreign Context.....	109
Trust in Relationships.....	113
Communicatively Competent Legal Transactions.....	120
Meaning of Law and Education in the International	
Legal Community.....	124
Opportunities and Challenges in Thailand.....	125
Opportunities and Challenges in Vietnam.....	129
Implications for the Future of American International	
Legal Education.....	134
Summary.....	140
V. APPROPRIATION OF NEW UNDERSTANDINGS FOR	
INTERNATIONAL LEGAL EDUCATION	
Introduction.....	141
Application of Critical Hermeneutics.....	141
Phronesis: Implications for Legal Education.....	150
Recommendations.....	153
Suggestions for Future Research.....	156
Final Reflections.....	157
APPENDICES	
Appendix A: Map of Thailand.....	159
Appendix B: Map of Vietnam.....	161
Appendix C: List of Participants.....	163

Appendix D: Letter of Introduction.....	166
Appendix E: Letter of Thanks.....	168
Appendix F: Selected Journal Entries.....	170
SELECTED BIBLIOGRAPHY.....	193

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CHAPTER I

THE RESEARCH PROBLEM

Statement of the Problem

Over the past decade the developing countries of the Pacific Basin region have emerged rapidly as important economic contenders in the international community. Among the nations in Southeast Asia leading the way towards the twenty first century are Thailand and Vietnam, whose fertile business environments, driven by the desire for economic growth and prosperity, have spawned the necessity for international business attorneys, capable of conducting legal transactions in culturally diverse settings. As a result, it has never been more imperative to educate legal practitioners about the relationship between business law and culture. As stated by Fritz (1982: 71), "(b)ecause of this interrelation between communal value and law, legal research must explore the cultural factors influencing law and its effectiveness." International business law should not be studied as an autonomous endeavor, but as an essential part of a cultural whole.

The American legal community is currently facing significant changes in the way business law is being practiced in the developing countries of Thailand and Vietnam. Continually fluctuating economic conditions that foster modifications in current legal systems, as well as a persistent shift towards a more globally interdependent business arena, have fostered the need for a new type of international lawyer. International attorneys must begin to learn the importance and distinction between law and culture in

counterparts. American lawyers need to be educated to recognize and understand Thai and Vietnamese tradition as sources for the creation of meaning and to achieve the necessary communicative competence for learning to successfully mediate legal interactions. Legal transactions do not occur in a vacuum. Instead, they are the result of relationships between individuals who must not only better understand others, but themselves as well.

The American legal system continues to overlook the importance of Asian participants in the worldwide business community. New directions in the global economic and social systems have created an environment full of possibilities. However, failure to understand the changing dynamics in our society in relation to the rest of the world will cause great hardships for those business attorneys uneducated for the new millennium. As reflected in the words of Halloran (1996: 4-5),

...Americans...have shown few signs that they are ready to cope with this Asian renaissance. Rhetoric in the United States occasionally points to a Pacific century, Asia's economic achievements are gradually being recognized, and export promotion to Asia has begun. But there is much more to the transformation of Asia than economics, and little of the magnitude of the changes appears to have been comprehended by the West. In the nineteenth century, Britain and Europe dominated the world in politics, economics, culture, and military power. The twentieth century has been the "Age of America," with the United States the only remaining superpower at the end of the century. The twenty-first century will see the rise of the East with such strength that it will break the monopoly of the West on world power.

Change in the global structure is inevitable. Therefore, the way in which we educate individuals to understand and interact with the people of Asia, in particular Thailand and Vietnam, is of the gravest importance.

In general, the legal education system in the United States does not promote the type of curriculum development that encourages cross-cultural understanding as part of fundamental law classes. Most law schools advocate education which does not reflect the need for cultural understanding that is essential for international legal practice. As such, attorneys are unprepared to comprehend the importance of traditions and communication as necessary factors for the practice of international law. Legal education must assume a more active role in creating new understandings of both the American and Thai and Vietnamese cultures, while simultaneously encouraging individuals to act responsibly in the shaping of a different future for the larger society.

This study examines the legal environments of Thailand and Vietnam in relation to the influence of culture in both settings. Specifically, it identifies the opportunities and challenges presented to law firms working in the Thai and Vietnamese contexts, in order to educate attorneys in successfully conducting international legal business transactions. Moreover, this dissertation explores the possibilities for new meanings in the global business law arena between Asian American law firms and the host nationals and the implications for future understandings in international legal practice and education development.

Purpose of the Study

The purpose of the study is to provide a deeper understanding of the relationship of legal business transactions between American attorneys and participants in the Thai and Vietnamese environments. The study examines Thailand and Vietnam as separate entities with unique histories and traditions. It demonstrates the necessity to develop a new educational

approach for international law practices that is reflective of the individuals who create meaning through legally based relationships. Furthermore, through a communicative competence approach, it examines the possibilities for new understandings about the way international business law is conducted by American law firms in the Thai and Vietnamese contexts.

This research project investigated the practice of law by foreign attorneys in Thailand and Vietnam. Conversations were conducted in Thailand, Vietnam, and California with individuals from both the legal and business communities. The purpose of the conversations was to engage the participants in discussions regarding the current legal conditions in the international legal arena, the influence of tradition in the Thai and Vietnamese contexts, the successful achievement of communicative competence with foreign associates, and prospects for the future development of legal education in an interconnected global environment. Participants were encouraged to convey their experiences in Thailand and Vietnam and how they might be used to educate other attorneys considering the prospect of doing business in Asian countries.

There has never been a more exciting time for international lawyers to be involved in the developments of the global marketplace, particularly when educated with the tools to achieve success. The intent of this research project was to enable American attorneys to accurately address the issues involved in international business and create new understandings with unlimited possibilities for the future.

Background of the Problem

One of the most significant international developments during the last decade has been the emergence of countries in the Pacific Rim who have demonstrated great economic growth and potential. In Southeast Asia, the countries of Thailand and Vietnam have shown remarkable economic progress in their respective attempts to lure foreign investment and develop into major international players in the business arena. Thailand and Vietnam have committed themselves to a development approach based on the principles of a market economy. As a result, the Thai and Vietnamese societies have created numerous opportunities for entrepreneurs of the global business community.

Although Thailand and Vietnam have chosen similar paths for economic development, the countries are by no means at the same stage in the development process. Thailand began its push towards industrialization during the 1950's, while Vietnam first began to encourage foreign investment in the late 1980's. However, both Thailand and Vietnam are currently the most promising countries in the Southeast Asian region in terms of opportunities for international business participants. Thailand and Vietnam are strategically located in the Pacific Rim to monitor the activities of the region and provide an important gateway to the other countries in the area.

The economies of Thailand and Vietnam currently present difficult environments for business operations and activities. The many challenges created in the economic sector are coupled with, and most often complicated by, legal systems that are continually changing in order to accommodate the increase in international business activity. Legal development in both countries has occurred alongside economic change.

However, both the Thai and Vietnamese governments have attempted to structure legal systems to handle the incoming investments and to address the concerns of foreigners either investing or conducting business in their countries.

As international participants partake in business transactions in Thailand and Vietnam, the need for attorneys is essential. While the rewards from investing or doing business in Thailand and Vietnam may be high, the risks are equally as large, especially for those individuals who do not understand the accompanying legal practices and culture of the host country. As Brahm (1990: 70) points out, "(t)he countries of the region vary with regard to what they want and don't want by way of foreign investment, and their laws are tailored to fit those wants. An understanding of the laws, guidelines and incentives covering foreign investment in Asian countries is therefore essential to business success." International business attorneys are needed to advise clients on the intricacies of engaging in legal transactions and building successful relationships for future endeavors.

Influencing the practice of international business law are the respective cultures that operate within the boundaries of Thailand and Vietnam. Any American law firm intent on developing overseas business should not only understand the foreign country's legal market, but the local culture as well. Attorneys often fail to comprehend the cultural influences that dictate the working environment of a foreign country and are, therefore, unable to serve successfully the needs of their customers.

A country's legal system is rooted in the culture of a society. Law serves an integral part of a community and mirrors the deeply held traditions of a society. The legal structure of a country is a dynamic system

that seeks to maintain a sense of peace among personal interactions. According to Fritz (1982: 70), "...law is the cultural knowledge that people use to settle disputes by means of agents who have recognized authority. In essence then, law is but a reflection of the beliefs and the needs of the society it is intended to serve." Therefore, to understand the laws of a foreign country it is necessary to develop a knowledge about the cultural influences that determine how legal proceedings and practices will be conducted.

Moreover, American law firms are becoming increasingly globalized in today's interdependent world. American lawyers are having to work with non-American counterparts in order to conduct business. Law in the business community is no longer practiced in a completely domestic environment. Many aspects of business involve legal knowledge on an international scale. Large American law firms with networks of foreign offices are not just the exceptions, but fastly becoming the rule in business, as foreign operations are increasingly central to a firm's practice in order to provide clients with representation in the financial centers around the world (Beattie 1993: S22). Therefore, the type of education to prepare American attorneys for the practice of business law in foreign environments is of the utmost importance in today's global society.

In light of the numerous challenges and opportunities presented by conducting legal transactions in the international arena, it has never been more paramount for attorneys to be educated about the relationship between law and culture in order to develop better possibilities for the future. International lawyers need to learn more than the mere intricacies of a foreign legal system. For at the heart of every legal transaction lies a unique history that encompasses various traditions, beliefs, and values.

International business lawyers must, therefore, seek a different educational approach that encompasses legal understanding within a cultural context. Success for attorneys of the global marketplace is inherently tied to cultural understanding.

We are currently in the midst of a transformation in the international community which will see a more dominating presence of countries in the Asia Pacific region. Undoubtedly, Thailand and Vietnam will be two Southeast Asian countries that will be significant players in the international business arena. Legal education must, therefore, look at the possibilities for forging new relationships which will endure well into the next century. These thoughts are reflected in the words of Baker (1991: 18):

For the next millennium to be one of the Pacific, a strong sense of community must emerge based on shared prosperity and common values....By accommodating Asia's diversity..., uniting around shared principles and interests, and forging the economic ties that bind the region, our vision can be realized and a new trans-Pacific partnership achieved.

As the world becomes increasingly interrelated, there exists a need to analyze the legal environments in combination with the cultural traditions of a country to achieve success in the international arena. A critical review of the legal relationships and cultural influences in the Thai and Vietnamese societies will contribute to more meaningful business interactions for all parties involved. New understandings will only be created through communicative competence developed on the basis of mutually shared trust and respect between small groups of people working together. Harmonious relationships between all business associates will never result. However, only those individuals committed to achieving

cooperation and mutual understanding as part of their business relations will be participants in a potentially communicatively competent atmosphere.

Summary

The research project, as detailed in Chapter I, presents an argument in favor of educating international business attorneys for the successful practice of law in the countries of Thailand and Vietnam. There has never been a more critical time in the history of the global marketplace for international law firms to understand the traditions that comprise and determine the contexts that legal transactions occur, while simultaneously seeking to create original solutions and opportunities for all individuals involved in the business process. This project suggests that a greater understanding of the traditions and history that bind both Americans and people of different countries could lead to more possibilities for agreement between participants of the international legal community.

In the following section, Chapter II, a review of the literature pertinent to the legal environments and cultural influences of Thailand and Vietnam and an examination of the current state of legal education for international attorneys is presented. This is followed in Chapter III by an outline of the research process and the theoretical framework used throughout the course of the project. Chapter IV discusses the data obtained from conversations with the participants and the theoretical implications for the practice of international law. Finally, Chapter V presents a new understanding of the current state of American legal education and suggests the adoption of a hermeneutic approach which allows for the appropriation of a different future for international business attorneys.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

In order to discuss the practice of business law in Thailand and Vietnam an understanding of those countries' legal, economic, and cultural backgrounds is necessary. The following review of the literature presents four principal areas of analysis for both Thailand and Vietnam. The first area briefly describes the country settings of Thailand and Vietnam. The second topic provides a historical perspective of Thai and Vietnamese legal system and the role law has played in their respective societies. The third area explores the current legal climate which has emerged from the economic policies and strategies of Thailand and Vietnam. The fourth theme examines the Thai and Vietnamese culture and its influence on business relations and practices. Without the background provided by an understanding of the general characteristics, legal history, current economic development, and the cultural issues which define the social fabric of a country, any knowledge of the legal environment facing those attorneys working in Thailand and Vietnam would be artificial. Finally, the preceding review is followed by an examination of the current legal education of international attorneys and possibilities for future understandings.

Country Setting of Thailand

Thailand is located in Southeast Asia on the Gulf of Thailand and the Andaman Sea (Appendix A). The country shares boundaries with

Myanmar, formerly known as Burma, on the west and northwest, Laos on the east and northeast, Cambodia on the southeast, and Malaysia on the south. In 1939, the country was officially named Thailand, meaning "land of the free" (Dutt 1993). Throughout their history, Thailand is the only Southeast Asian nation never to be colonized and has existed as a unified monarchy since 1350 (Neher 1991; Dutt 1993). As such, the citizens of Thailand, "were able to choose and mold a political system that fits Thai culture" (Neher 1991: 23).

Today Thailand has a population close to 60 million (Dutt 1993). Ethnic Thai make up about 75 percent of the population, ethnic Chinese about 14 percent, and the remaining 11 percent include Malays, Khmers, Mons, and the Yumbri, Semang, Moken, Lawa, Kui, Karen, Meo, Yao, Akha, Lahu and Lisu tribes (Cummings 1990: 21). Furthermore, Thai is spoken by an estimated 85 percent of the population (Le Poer 1989: 69).

Historical Development of the Thai Legal System

The legal system of Thailand must be understood within the context of the evolution of Thai law and the role law has played in societal decision making. As such, it is essential to have a historical perspective of the Thai legal system in order to provide a more complete understanding of the current Thai legal environment facing international business lawyers.

Thailand's indigenous legal tradition can be traced back many centuries, although the details of its history are quite sketchy (McDorman 1988: 916). While little written history survived the destruction of the ancient capital of Thailand in 1767, a compilation of the previous laws, referred to as the Code of Three Seals, was completed in 1805. The Code was divided into two categories: the *Thammasat*, which is the Thai version

of the Hindu *dharmasatra* and is based on the Hindu Code of Manu; and the *Rajasatham*. The *Thammasat* consisted of law that provided a set of ethical propositions, constituting the Thai fundamental view of law, and applicable to both subjects and the sovereign (McDorman 1988: 916: 1988: 402). The *Rajasatham* was a compilation of the decisions and orders issued by the sovereign that were intended to uphold the moral precepts of the *Thammasat*. Only those decisions or orders that were believed to be eternal Law were promoted to the status of *Rajasatham*, which eventually had the same authority as the *Thammasat* (McDorman 1988: 402-403; 1988: 916). As described by McDorman (1988: 916-917), "(t)his process of incorporating man-made law into part of the 'sacred' text is 'said to be the most ingenious device invented by Thai traditional law.'"

The law found under the Code of Three Seals was not intended for individual use, but rather for state use to regulate state officials and relations between the state and the people (McDorman 1988: 403). For in analyzing the Law of the Three Great Seals, Dr. Petchsiri (McDorman 1988: 403) contends that the Three Great Seals did not deal directly with the individuals because societal harmony cannot be provided through law and coercive power. According to McDorman (1988: 403), Dr. Petchsiri correctly claims that,

...the emphasis of Eastern jurisprudence is on harmony of social relationships and, therefore, that a rule-oriented system like that of the West, which presupposes disputes, is inconsistent with a social setting where there is a strong expectation that disputes should not arise or, if they do, are to be settled by mutual understanding.

Therefore, because Thai indigenous law was not rule-oriented, other informal methods of social control were more important, including the religious beliefs of Theravada Buddhism and an individual's social status. Such informal controls maintained social order and were oriented towards the community as a whole.

The importance of an individual's social status in upholding a system of social order in Thailand was especially significant. Thai society, according to Dr. Petchsiri (McDorman 1988: 403), was a "status community" which centered on "reciprocal exchanges and personal preference" between individuals of different social status. The person with the higher status was to provide protection and influence to those of a lower status who was expected to perform services when called upon. As such, social status provided the informal means for resolving disputes and establishing moral obligations between the members of the Thai populace (McDorman 1988: 403-404). As explained by Engel (1990: 339), "(d)isputing and dispute resolution were grounded conceptually in traditional culturally based definitions of persons, obligations, and norms in each society."

The indigenous law of Thailand was replaced in the 1800's by Western legal codes due in part to economic and external political factors. Many Westerners considered the Thai legal system to be confusing and often harsh and by the mid 1800's demanded that Thailand sign a series of treaties which provided that foreigners would only be bound to their own national law. Furthermore, all disputes would be tried in an international court where only non-Thai judges would preside. According to McDorman (1988: 917), "(b)y emulating Western laws, it was hoped Siam could avoid providing a pretext for becoming colonized, and further that special,

extraterritorial legal privileges Westerners enjoyed could be removed.” Only in the 1930’s did Thailand once again acquire full sovereignty over foreigners.

The adoption of a Western legal system introduced Thailand to the positivistic legal tradition of law being legitimated by its source, i.e. from the sovereign, rather than from the *Thammasat* or *Rajasatham*. However, as argued by McDorman (1988: 406),

From the Western positivist perspective, law does not arise from morals, customs and rules of the universe. Yet in Eastern societies it does. Legal codes based on the narrow Western perspective of law are...largely extraneous to the Eastern individual. Western law is “rights oriented” while Eastern law is “duty oriented”. Societal relations in Thailand are an interaction of mutual duties.

Nevertheless, the legal system created in Thailand to replace the Code of Three Seals is a combination of traditional and modern influences. Traditional law and custom is applicable in certain circumstances and areas within Thailand, while a significant portion of the modern legal system is made up of criminal, civil, and commercial codes adopted from the British and other European legal systems with some modifications borrowed from India, Japan, China, and the United States (Le Poer 1989: 193). Thailand also has an extensive body of administrative law that consists of royal decrees, executive orders, and ministerial regulations.

Implemented in 1908, the rule-oriented, positivist approach to law, which continues to exist in Thailand today, guides individuals through the process of dispute resolution. The Thai judiciary is an independent branch of the government. Members of the judiciary are highly regarded in the Thai society due to the close connection maintained between the monarchy and the judges. However, despite the high status of the judiciary, the court

structure and formal legal system are most often avoided by Thai individuals. According to O'Neill (1992: 1166),

Thai attitudes concerning the utility of social confrontation and the role of the law as an arbiter of social conflict diverge from those prevalent in common-law countries. In contrast to Anglo-Saxon societies, confrontation and the expression of "anti-social" emotions such as anger, hatred and annoyance are given greater negative social value in Thailand. As a result, Thais seek compromise, arbitration or the voluntary restitution of wrongs, and an appropriate settlement may depend upon such extraneous factors as the social status of those involved.

A legal resolution of disputes is not necessarily the preferred method in Thailand. The formal forum of adjudication provided for in the rule-oriented legal system in Thailand is inconsistent with the social setting which advocates the settlement of disputes through mutual understanding. However, as described by Engel (McDorman 1988: 409),

Despite the creation of a national judicial system with its adversary process and adjudicative procedures, the traditional practice of mediating private wrongs has remained strong in Thailand. There has been a continuity with the past, even within the very institution that would appear to destroy customary juridical practice. The procedural codes themselves, while creating a process by which the court can adjudicate legal matters brought before it, also provide the mechanisms by which mediation is achieved....In short, the process of mediation is supported both by tradition and by specific provisions in the procedural codes themselves.

The formal legal system in Thailand is not interpreted in the same manner by Westerners. Law does not condition social and economic decision making in Thailand as in the United States. Therefore, it becomes essential for the international legal practitioner to understand the evolution of the Thai legal system and the prevailing attitudes concerning the role law

plays in decision making. Moreover, the historical perspective must be accompanied by an understanding of the current economic issues facing Thailand which define the legal atmosphere facing international business lawyers.

Relationship Between Economic Development and Current Legal Environment of Thailand

Thailand is a country that is changing fast in an increasingly global environment. It is a country that has actively encouraged development as a means to achieving economic prosperity. Thailand foresees the keys to its development as free markets and exports (Clark 1993: 21). As such, Thailand has become a nation rich with opportunities for businesses of all types.

Thailand is among the world's fastest growing economies and has "become Asia's new land of opportunity" (Chittmitrapap 1990: 8). During the course of the last ten years, exports and investments have transformed Thailand's traditionally agricultural environment into a semi-industrialized economy. Thailand has actively promoted economic expansion in a wide variety of areas of the economy. According to Fallows (n.d.: 285),

One could argue, and many Thai officials do, that the ultimate explanation for the country's rapid growth lies in its own distinctive traits, not in decisions made outside its borders. Thailand, in this view, has succeeded because Thailand itself is pleasant and attractive, making foreigners...eager to work there.

Moreover, Chittmitrapap (1990) argues that Thailand is fastly becoming Asia's fifth newly industrialized economy (NIC). Thailand has received

heightened attention from foreign investors who see the country as a place brimming with economic promise.

The factors responsible for Thailand's economic success include a commitment to a free-market policy and export-driven strategies carried out by highly trained and conservative technocrats (Neher 1991: 40). Thailand's officials are not said to be as, "steeped in personalistic, clientelist politics as their predecessors or their peers in neighboring countries" (Neher 1991: 40). However, those individuals in charge of determining economic policies have carefully reviewed pending development projects to ensure that they will contribute overall to economic growth for Thailand.

Thailand has always taken a supportive approach toward private sector activities and encourages foreign investment in order to promote economic development, employment and technological transfer (East Asian Executive Reports 1992: 18). The Board of Investment (BOI), established by the Investment Promotion Act of 1977, is Thailand's principle investment promotion authority. The Board of Investment is able to encourage investment in various sectors and locations that will help Thailand achieve its economic development goals by awarding fiscal and nonfiscal incentives to both local and foreign investors (East Asian Executive Reports 1992: 19). Furthermore, the Board of Investment is a powerful organization that has been receptive to foreign business (Gibney 1995: 60).

Most recently, there has been a definitive shift in attitudes and practices by the Thai government, as the country seeks private sector development through direct foreign investment as a means to providing foreign exchange (Private Investment and Trade Opportunities 1992: 6).

Subsequently, Thailand has become a country filled with opportunities for international attorneys practicing business law. Page (1994) argues that one of the only possible local choices for lawyers is Thailand. The potential Thai market of over 50 million people is enormous and the domestic economy continues to grow at a remarkable rate (Stewart 1991: 11). Thailand is strategically placed to monitor the Southeast Asian region and offers numerous opportunities for practicing law.

The need for business attorneys in the expanding economic environment of Thailand is essential. In Thailand, there exists relatively few international lawyers (Montagu-Pollock 1991: 35). Thailand's quest to develop into a major economic player in the global marketplace has created a need for good lawyers who can help strengthen the country's financial center. Because of the clear need for foreign lawyers, the Thai authorities have looked the other way when it comes to violations of the 1962 Alien Business Law (Montagu-Pollock 1991: 37). The Alien Business Law specifically prohibits foreigners from practicing law in Thailand, as the actual legal work must be conducted by Thai nationals (Stewart 1993: 12). The practice is restricted to Thai nationals with degrees from Thai law schools (McDorman 1988: 920). Instead, foreign attorneys can only work as business consultants in Thai based law firms.

Thailand has approximately 25,000 registered local attorneys, but only about 30 to 40 percent of these individuals are considered capable of advising foreign businessmen (Montagu-Pollock 1991: 37). Becoming a lawyer in Thailand requires only a four year undergraduate law degree (Horne 1991: 62). Legal training emphasizes less liberal arts and more lectures and memorization of the civil and criminal codes (O'Neill 1992: 1168). Thailand's universities turn out an estimated 4,000 new attorneys

every year. Montagu-Pollock (1991) argues that law schools in Thailand are relatively easy to get into, as the teaching of law requires little equipment. As a result, many Thais study law merely to earn a degree and are not interested in practicing law as an occupation. The ultimate lack of skill of the Thai lawyers has spawned an increasing need for international business attorneys. As Montagu-Pollock (1991: 37) states, "(t)he poor quality of Thai lawyers has created great demand for the handful of foreign-run law firms or partnerships during the past three years of economic prosperity and booming foreign investment in Thailand."

The emerging international market has become more sophisticated, requiring specialized skills and expertise for foreign attorneys. Thailand is a nation short on lawyers capable of meeting international demands and failing to keep pace with rapid economic growth. Many believe that Thailand is not adequately served by its lawyers (Stewart 1993: 12). As stated by one lawyer, "(w)hat we need more of now are practitioners who have got the right experience but have not got bad habits" (Stewart 1993: 12).

Despite the evident necessity for the increased presence of foreign attorneys in Thailand, there exists a history of hostility and adverse feelings towards Western law firms. International law firms are often faced with the difficult task of conducting business in a Thai environment that is suspicious of Westerners. The underlying hostility to foreign involvement, argues Stewart (1993), seems somewhat curious, especially in a country whose major legal practices were constructed by a group of predominant Bangkok based foreign lawyers. McDorman (1988: 920) suggests there may be several reasons for the Thai distrust of foreign attorneys,

Social status in Thailand is most frequently based upon position in the bureaucracy and practicing lawyers are outside of this. Lawyers are usually associated with disputes and confrontation, which are not considered a societal value. Traditional society did not provide a high status for business people and lawyers are often associated with business. Finally lawyers did not exist prior to this century, so society is still uncertain of how to regard them. The position of lawyers, however, is changing as societal values change, in particular, as status derived from wealth becomes more accepted.

The need for foreign attorneys to participate in international business transactions in Thailand cannot be denied. Economic development can only occur within the context of the global marketplace. Therefore, Thailand's push to become an international player in the world business arena has created an environment in which lawyers from across the globe will be interacting with members of both the Thai legal and business communities.

Thailand is a nation with increasing opportunities for international attorneys. However, legal transactions will only be successful if the influences and motivations of the Thai people and society are thoroughly understood. The traditions and history of Thailand give meaning to the present legal system, practices, and attitudes towards foreign lawyers. New understandings will only be possible through shared meaning developed by mutual trust.

Cultural Understanding in the Thai Society

The legal system and structure of Thailand is inherently connected to the traditions which bind the Thai people. It is impossible to discuss the concept of practicing law in the Thai society without examining the values, beliefs, and preunderstandings that create the basic foundations and

meaning for the Thai people. As stated by Mulder (1990: 1), "(i)t is the ordinary peoples' values, ideas and perceptions--even misconceptions--that constitute a world view and mould a shared style of life. These subjective values, ideas and perceptions, whether inherited from tradition or newly evolved, provide the logic of social behaviour for the participating individuals." Thailand is a nation whose shared understandings constitute the reality and meaning of life.

Approximately 95 percent of the Thai citizens are Theravada Buddhists (Cummings 1990: 24; Dutt 1993). Buddhism is such an integral part of the Thai way of life that it is often thought of as the key to the total Thai culture. Blanchard (1958: 491) contends, "(t)he great emotional attachment all Thai have to the doctrines and rites of the Buddhist Order is an essential base of their lives; Buddhism is constantly woven into their thought and actions." Buddhism is a dominant force in Thai life and has played a principal role in defining basic Thai beliefs and values that are characterized as part of the country's customs and practices.

The practice of Buddhism by the majority of Thais creates an organizational and ideological link between it and the state (LePoer 1989: 96). The Thai Buddhist sees the human world from an individualistic ideology. The Thai Buddhist is aware of the world as composed of individuals, each with a different purpose and attributes (Kulick and Wilson 1992: 66). Buddhism teaches the Thai to concentrate on self-cultivation more than social works. However, an individual personality is admired only insofar as it does not cause anger or frustration for others, as Thai socialization places a strong emphasis on conformity (Mulder 1990: 102). Thais desire to keep relationships peaceful in order to minimize any needless difficulties associated with social interaction (Moore 1974: 183).

Thai society organizes itself in a hierarchical manner, in which most relationships can be characterized by superiority versus inferiority. It is considered impossible to observe correct social conduct until the superior/inferior roles have been determined and agreed upon (Cooper 1990: 43). Emphasis on hierarchy, obligation, and respect are among the first things that a young Thai child will learn. Mulder (1990: 109) states:

To be bashful and shy, or 'to have a thin face', is a positive quality of people who restrain themselves in life by not giving offense to others. It is a training in solicitude and circumspection in facing others, especially strangers and superiors. This feeling should mature into the more refined attitude of *kreengcaj*, an attitude which expresses awareness and anticipation of the feelings of others. *Kreengcaj* behaviour leads to kindness, self-restraint, tolerance, and the avoidance of interpersonal irritation.

The Thai people avoid becoming involved in situations which will disrupt social harmony. Thai culture promotes self-mastery and a cool heart (*cajjen*) in the everyday pressures of social life (Mulder 1990; Cooper 1990). Furthermore, the Thai language is used to establish status and address individuals through the most appropriate means (Cummings 1990: 36). Language serves as a reinforcing factor of the class structure.

A Thai develops mutual obligations and relationships with other individuals, but does not classify them into specific categories in order to decide how to treat them (Kulick and Wilson 1992: 67). The way that a Thai behaves towards another person is dependent on the previous history of mutual services or obligations between them. As stated by Kulick and Wilson (1992: 67), "(t)his gives the Thai social intercourse much variety and choice of relationship. It encourages--or perhaps it springs from--a strong individualistic streak." In the Thai society an individual attempts to

build a unique network of personal relationships, finding security if necessary in the dependence on a chosen patron (Kulick and Wilson 1992: 75).

The relationships among individuals, rather than the placement of blame most often dictates the Thai response to conflict. The Thai seeks to avoid confrontation. As stated by Commerce Minister Amaret Sila-on (O'Neill 1992: 1167),

Many people from the West and particularly Thai people who were educated in the West and have not really become Thai again...think that Thailand is a society of law, like the Anglo-Saxon societies...We are not a society of law. Thailand is a society of relationships. It is not what is right or wrong in Thailand; it is who did it. If it was done by your friend or your cousin, then it is alright. If it was done by somebody you don't know or don't like, then it is wrong.

The role of relationships in the Thai society cannot be overemphasized. The maintenance of social order stems from inherent Thai cultural beliefs which transcend all aspects of community living.

The Thai notion of reality has enabled the members of their society to understand themselves in relation to the changes brought about by economic development and modernization. Accordingly, the structure of social life is believed to exist on two separate planes (Mulder 1990: 151-152). First, there is a private communal level that extends over time. Secondly, there is public hierarchical level that is temporary. It is the public hierarchical plane that helps to understand the Thai response to modern times and the importance of development.

Moreover, modernization within Thailand is said to be changing traditional Thai behavior. Kulick and Wilson (1992: 66) claim there are three layers that must now be used to examine, identify and describe the

Thai individual. The first is the traditional bottom layer, found mainly in rural areas, which underlies the other levels of behavior in the towns and is the most difficult for foreigners to understand and know. The second, or middle layer, is the modernized urban Thai behavior in which the tradition system is modified in light of the increasingly modern demand and opportunities of urban life. Finally, there is the third and most recent layer of the Westernized behavior at the top of society. The third level behavior is practiced by well-educated middle or upper class individuals who have adopted some Western customs.

The historical development of the Thai legal system, current economic trends, and the country's cultural influences combine to create a comprehensive understanding of the atmosphere awaiting international legal participants. Law does not exist as an independent and isolationary set of principles or rules. Instead, the Thai legal environment has emerged out of the traditions and values of the past and created a living system of the present that is continually changing in light of present conditions and challenges.

The following sections address the historical development of law in the Vietnamese society and the cultural values and beliefs influencing its people. Vietnam, like Thailand, is a culmination of numerous variables, all of which are born out of the traditions and history of the country.

Country Setting of Vietnam

Vietnam is a nation located along the eastern coast of mainland Southeast Asia (Appendix B). More specifically, Vietnam is bordered by China to the north, Laos to the west, and Cambodia to the southwest. The country of Vietnam has experienced a marked turbulent history and is

currently governed under communistic rule. However, it remains one of the most homogeneous societies in Southeast Asia (Duiker 1993). Of its population of over 65 million citizens (Neher 1991: 157), the ethnic Vietnamese comprise nearly 90 percent of the total population (Duiker 1993) and are the majority throughout the country except in the mountain regions. As a homogenous social group, the Vietnamese exert great influence on national life through their control of economic and political affairs (Cima 1989: 93).

The Meaning of Law in Vietnam

Any understanding of the Vietnamese legal system must first begin with a historical perspective of the development and the role law has played in the Vietnamese society. The advent of the current legal environment in Vietnam is superseded by the prior legal influences of the country. Only in having a knowledge of the legal tradition from which the Vietnamese society has developed, will a foreign attorney understand the climate that awaits. As such, three major legal systems existed in Vietnam prior to the country's current strategy for economic growth by means of a market based economy.

The first of the three legal systems that contributed to contemporary legal thought in Vietnam was East Asian, existing prior to Vietnam's colonial period. Vietnamese law was derived from the Chinese imperial codes (Gillespie 1994: 326). The legal code, known as the "Hong Duc Code" or the "Le Code", became the country's governing body of law for more than 300 years and is considered the most important document in Vietnamese legal history (Nguyen 1989: 142). Furthermore, Nguyen (1989: 142) argues,

The Code reflected the unusual genius of the Vietnamese legal tradition....[T]he Code addressed the unique customs and practices of Vietnamese society and became a model for subsequent legal development in Vietnam. Some practices were even accepted into modern Vietnamese law. Although subsequent rulers rejected the Code, many of its provisions became customs in Vietnamese society. These customs traditionally had binding force superior to that of official law.

In pre-colonial Vietnam the legal system did not center on an individual's rights. Gillespie (1994: 326-327) describes the Vietnamese environment as follows,

In a society ruled by virtue, private property rights existed only when allowed by the rigid Confucian pillars of hierarchy, authority and harmony. Even these narrow rights were rarely enforced, since resort to the courts exposed one, and by extension one's family or clan, to loss of proper virtue.

Vietnamese law under Le Code only dealt with relationships between the state and individuals. The state would not help individuals assert their private rights against other individuals in a horizontal manner, only vertical interaction existed (Gillespie 1994: 327).

Private commercial relationships remained part of customary practice and were not governed by the official rule of law unless they threatened tax collection or the social order (Gillespie 1994: 327). Trade was organized by a set of interlocking obligations, whereupon the more distant the relationship the weaker the obligation. In Vietnam, the status within the family and community determined one's personal obligations (Gillespie 1994: 328). However, little is known about many of the customary rules of the Vietnamese society.

Only as a final resort were disputes referred to clan or village leaders. Dispute resolution had little to do with an individual's rights and,

according to Gillespie (1994: 328-329), "...aimed to restore stability and harmony to family/clan trading relationships and thereby enhance the social authority of the clan or village elite. Commercial rights were often sacrificed in pursuit of these social goals." Conflict resolution in Vietnam sought to restore harmonious personal relationships by making people aware of the importance of living together despite their obvious differences (Cua 1991: 285).

With the French colonization of Vietnam came a new legal system based upon the European Napoleonic Code. The French rights based law was not warmly received by the strongly established neo-Confucian legal culture (Gillespie 1994: 329). Subsequently, the French created a parallel legal system in which the French citizens and other Europeans were governed by a civil law system that replicated the one found in France, while the pre-colonial codes and customary practice governed the indigenous Vietnamese and Chinese (Gillespie 1994: 329). Commerce continued to be guided by customary rules. However, many Vietnamese bureaucrats, judicial officers, and lawyers studied the Western rights based law introduced by the French.

Following the rule of the French, the legal system reflected the socialist form of government, which continues to remain in existence in Vietnam today. After nationalizing and redistributing the land that had belonged to the landlords and the French, the Vietnamese Working Party (VWP), later referred to as the Communist Party of Vietnam, brought the agriculture and industry sectors under state or collective ownership, thereby, substantially altering the legal system that previously existed. As explained by Gillespie (1994: 332):

Despite the Chinese and Soviet influence, the modus operandi of legal administration remained peculiarly Vietnamese; the VWP ruled almost unfettered due to the fragmented and porous legal structure. It was the rule of men, not the rule of law. The French colonial law, which had classified individuals based on their relationship to property, gave way to VWP policy, which focused on class and nationalism. The VWP often did not make public or strictly follow the few laws it enacted. Operating in this legal vacuum, the People's Supreme Court often had to manufacture law on a case-by-case basis.

The legal situation in Vietnam resulted from the anti-legalist attitude of the anti-colonial Confucian influenced intellectuals and the founders of the Viet Minh who were educated in the Soviet Union (Gillespie 1994: 332-333).

The Vietnamese court system has remained extremely weak for several decades (Sidel 1994: 170). During Vietnam's years of war with France and the United States, civilian courts were in many instances non-existent. Since 1975, the Vietnamese courts have been both politically and structurally dependent upon the national and local party organizations (Sidel 1994: 170).

Despite the numerous changes and continual changes to the legal system, the Vietnamese people have maintained a strong preference for compromise. As stated by Chang (1994: 39), "...Vietnamese parties generally prefer to settle disputes through conciliation rather than an adversarial process. If conciliation fails, the idea of settling a dispute in a Vietnamese court is still quiet daunting...." This clear cultural preferences has been incorporated into the Vietnamese legal and legislative doctrines, which urge disputants to settle their differences amicably by exploring all avenues for compromise. Moreover, in Vietnam, the good of the society continues to outweigh the good of the individual.

Beginning in the late 1980's, the Vietnamese government embarked on a structured and cautious legal reform, following the Vietnamese Communist Party's public commitment to economic development. The principle task of the Party has been to produce legislation that is capable of both guiding and managing the economic reform process (Sidel 1993: 223). However, legal reform is complicated by the Communist Party's desire to replace a centrally planned economy with market principles and building a legal and administrative framework, while simultaneously refusing any challenge to one-party rule (Hiebert 1990: 16; Schwarz 1995: 22). Subsequently, the current Vietnamese legal system continues to evolve in conjunction with and in response to the government's economic agenda.

Emergence of Current Vietnamese Legal Environment

Through the Influence of Economic Development

In December 1987, Vietnam enacted the Law on Foreign Investment, designed to act as the catalyst for economic growth (Quinlan 1995: 98). With this law Vietnam began an overhaul of its economic and legal systems that were specifically created to encourage foreign investment. The Investment Law was amended in 1992, with the clear intention to use foreign investment as the principal means to rejuvenate the Vietnam economy (Taylor 1994: 472-473). The Investment Law's preamble specifically states, "in order to expand economic cooperation with foreign countries, develop the national economy and increase exports on the basis of the efficient exploitation of natural resources, labor, and all other potential of the country" (Taylor 1994: 473). The Vietnamese government has reduced state subsidies, encouraged private enterprise,

and passed laws promoting foreign investment (Worthy 1990: 66). With its new investment laws Vietnam has been able to begin its move towards a market economy.

The Constitution of Vietnam, which characterizes Vietnam as a socialist state, was substantially revised to reflect Vietnam's shift towards a market based economy, and took effect on April 18, 1992 (Singam 1994: 52; White 1994: 14; Massa and Stults 1993: 1893). The Constitution of Vietnam is considered the supreme law of the land, with all other supplemental legislation passed or declared by the National Assembly, the Standing Committee, the government, or the individual ministers, which must be consistent with the Constitution (Singam 1994: 52). The Constitution established the Supreme People's Court, the highest court in the land, and the local People's Courts, which exist at every administrative level (Salter 1994; Singam 1994). The legality of a particular piece of legislation can only be debated and determined by the National Assembly, with all Vietnamese provinces subject to identical laws and legislation (Salter 1994: 13). As Vietnam continues to draft new laws to meet the needs of a market driven economy, the role of the legislature will take on increasing importance (Schwarz 1995: 22).

Vietnam has started only recently to develop a legal system more conducive to economic growth and investment. The legal system itself is still quite fragile and many of the new laws have not changed old behaviors (Vecchi 1991: 21). In some cases laws and contracts have been ignored and enforcement has often been lax in nature (Quinlan 1995: 98). The new laws are often only general in nature, with interpretation varying from government office to government office (Vecchi 1991: 21-22). As described by attorney Robert Brown (1994: C5), Vietnam's existing legal

framework is, "an often fragmented and conflicting collection of legal norms and institutions that were adopted since 1987 on an ad hoc basis rather than according to any legislative strategy." According to Thompson (1995: 1), "(a)s Vietnam scrambles to cope with accelerating investments from abroad, its laws governing the foreign companies...are themselves in a state of flux. And because the consequences aren't always fully thought out, the laws are sometimes revised again -- and again." Moreover, as described by Scown (1994: 10),

Vietnam is still the flavor of the month in emerging market circles, and it will take a great deal of effort for Vietnam to squander its opportunity. However, to attract the level of investment Vietnam needs, legal changes of the most fundamental nature and a wholesale reduction of bureaucracy are needed.

The legal environment of Vietnam operates within a system of communism and is struggling to move toward a market oriented economy and keep pace with the governments commitment to economic progress.

As Vietnam continues to make the transition to a market economy through a policy of economic renovation, or *doi moi*, responsibility for economic decisions will shift from government planners to individuals and businesses (Brown 1994: C1). Consequently, changes in the legal system will be required to create a framework reflective of legal rights and obligations that encompass the interests of the international business communities needs and interests. As argued by Brown (1994: C1), "(n)ew laws and regulations are required not only in the economic sphere, but in all areas in which individuals, enterprises and government agencies rely on the legal system to protect their rights and to define their obligations." Moreover, Vause (1989: 281) maintains that,

The elements of a legal system necessary to create a favorable investment climate include the existence of an adequate body of published rules, including rules regulating foreign investment, domestic legal relations, and international agreements. Secondly, there is a need for a fair and equitable dispute resolution procedure applicable to foreign investors, their Vietnamese partners, and the host country, addressing both domestic and international issues and remedies.

However, legal progress will not occur in a swift manner as the mere concept or notion of legal contracts, with their accompanying responsibilities and liabilities, is a relatively new concept to many individuals in Vietnam (Quinlan 1995: 98).

Despite the difficulties in developing a legal system, the Vietnamese government has structured and implemented a legal system that attempts to handle incoming investments and address the many concerns facing foreign investment firms conducting business in the country (Brahm 1992: 27). The Vietnam authorities have shown a dedicated commitment and given the highest priority to the re-establishment of the rule of law (Brown 1994: C4). The Vietnamese laws adopted since the implementation of the numerous reform policies have sought to improve the conditions necessary for increased business activity. As the economy of Vietnam continues to develop and change as new circumstances present themselves, so too does the Vietnamese legal system. According to Scown (1995: 31), in order, "...to attract the type of multinational investment Vietnam seeks, a transparent reliable legal system is essential." The changes in the legal framework are concentrated on addressing issues arising from economic change, new concentrations of capital, incoming investments, and establishing competent institutions capable of handling and monitoring these developments (Brahm 1992: 27). Furthermore, Vietnam's emerging

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legal system offers a number of different opportunities for foreign investment (Connor 1994: 483).

More specifically, the Vietnamese government recently took a bold step by adopting the country's first Civil Code, which went into effect on July 1, 1996. The Civil Code is one of the most significant developments to the Vietnamese legal system in many years. Burke et al. (1996: 9) characterize Vietnam's Civil Code,

In the wake of the country's comprehensive legal program, it updates and harmonizes fundamental principles of law in areas ranging from legal capacity to private international law. While debates have already emerged about the interpretation of some of its basic principles, the Code has clarified dozens of issues that had proven intractable under former law.

The Civil Code attempts to create the legal foundation necessary to free up production capabilities, promote democracy, and ensure social equality and civil rights, while promoting the traditions of unity, mutualism and other national characteristics (Burke et al. 1996: 9, 17). Vietnam has undertaken the difficult task of transforming its legal environment in a manner which not only meets the needs and demands of the foreign investment community, but also maintains a sense of the Vietnamese traditions and values.

However, the long-term development of a legal system more conducive to a market economy is currently hampered by an inadequate resource of trained attorneys and judges and a general lack of understanding among ordinary Vietnamese as to what a legal system entails (Hiebert 1993: 24). Legal training, received from law schools located in Vietnam or other socialist countries, including the Soviet Union, has been dominated by Socialist/Marxist economic theory, providing limited

instruction in Western legal concepts applicable to a market economy (Howell 1992: 19). The shortage of lawyers has crippled the progress of the legal reform. Vietnamese Justice Minister Loc states that the country, "has less than one tenth of the lawyers it needs" (Hiebert 1993: 26). Hanoi's Law College graduates approximately 600 lawyers a year and its branch in Ho Chi Minh City graduates about half that number (Hiebert 1993: 26). Only a small number of the students that graduate are able to pass the two year screening test and be admitted to the bar association. Once the students have passed the bar they have no trouble finding jobs, as attorneys are in great demand to serve the needs of the country's increasingly international clientele (Hiebert 1993: 26). However, the demand for domestic lawyers far exceeds the supply. Most of the Vietnamese bar members are engaged in criminal defense work, while only a small number of the remaining legal personnel have the experience and training necessary to handle sophisticated commercial transactions (Golin 1995: 65).

Although law practice by foreign attorneys is considered illegal in Vietnam, it has been both tolerated and in many cases encouraged by local authorities who recognize that skilled local counsel often acts as an incentive to foreign investors (Golin 1995: 63). The Vietnamese government issued a decree restricting the types of services foreign lawyers could provide and offering law firms the opportunity to turn their representative offices into branches. The mandate entitled Circular 791 (Schwarz 1995: 34)

...obliges the 25 foreign law firms operating [in Vietnam] to apply for a branch license by January or leave Vietnam. Law firms, eligible to open up to two branches, must put at least

two full-time lawyers in each branch and must hire lawyers with at least five years' experience. They may not hire Vietnamese lawyers; they can employ Vietnamese "law trainees" for up to three years but the trainees may not advise on Vietnamese law.

In accordance with the mandate, the Vietnamese Ministry of Justice awarded branch licenses to six foreign law firms on May 18, 1996, bringing the number of foreign firms with branch status up to twenty (AP-Dow Jones News Service 1996: B6).

Foreign law firms are strictly limited to providing legal advice, or consulting, on international issues. Only local Vietnamese run law firms, employing locally trained attorneys, can advise clients concerning Vietnamese law. Foreign lawyers are only permitted to practice in Vietnam within legal consulting firms that have been licensed and can only give legal advice on laws of the country where they are licensed and on international laws if it is indicated on their professional licenses (Dang and Su 1993: 6). However, law firms that have opened Vietnamese offices have included Vietnamese attorneys as part of their staff, recognizing the need to have intimate knowledge of the local legal structure and environment (Blackman 1994: 6-7). Furthermore, local law firms cannot employ foreign lawyers, nor establish partnerships with foreign firms (Schwarz 1995: 34).

Although Vietnam has an underdeveloped legal and regulatory framework, it represents a massive opportunity for international lawyers (Nigel 1994: 27-31). And although, "many foreign competitors have gained a leg up on their U.S. competitors, U.S. firms should neither write off Vietnam nor ignore one of Asia's most dynamic emerging markets" (Quinlan 1995: 12). Law firms operating in Vietnam are strategically

located in the Southeast Asian region to monitor business activities and opportunities (Nigel 1994: 27-31). As stated by Himelstein (1992: 5), "...Vietnam once again presents an alluring economic opportunity." However, Scown (1993) argues that such optimism should not negate the inevitable risk of doing business in Vietnam. As Scown (1993) states,

With its stifling bureaucracy, weak legal system, limited infrastructure and lack of capital, Vietnam is a chancy business environment. To justify this risk, an investment in Vietnam should have the potential to be enormously profitable. If not, investors may find the cost of their education in Vietnam prohibitively expensive.

Vietnam offers immense possibilities for international business attorneys. However, success will only result with an understanding of the cultural influences and the role they play in determining the legal structure. Legal transactions will only be created and understood in relationship with Vietnamese counterparts.

Cultural Understanding in the Vietnamese Society

To know and understand the Vietnamese people and their rationale for conducting legal transactions, it is necessary to examine the culture of the Vietnamese people. Only through understanding and appreciation for the individuals who compose the society of Vietnam will it be possible to gain insight into Vietnamese decision making and policy implementation.

Several different religions are practiced in Vietnam, but most Vietnamese are Buddhist (Cima 1989: 120). Of the nation's citizens, it is estimated that 80 percent are Mahayana Buddhists (Neher 1991: 157). However, traditional Vietnamese practices combine Buddhism, Taoism, and Confucianism (Jamieson 1993: 11). In effect each of the belief

systems fulfill different social, religious, and emotional needs in Vietnamese society (Duiker 1995: 168). Vietnamese culture has incorporated the various religious beliefs and practices into the everyday practices of the Vietnamese people.

The Constitution of Socialist Republic of Vietnam adopted in 1980, proclaims that "citizens enjoy freedom of worship, and may practice or not practice religion...[but] no one may misuse religions to violate state laws or policies" (Cima 1989: 120). However, since independence, the Vietnamese society has been secularized so that most residents do not actively practice or pursue their religious beliefs (Neher 1991: 157). Nevertheless, thousands of years of continued religious influences have given meaning to the basic principles and practices of everyday Vietnamese life.

The Buddhist influences have left an indelible mark on the Vietnamese concept of time. The Vietnamese culture does not see time as linear. The Vietnamese, instead, conceive of time as cyclical and recurrent in nature (Cohen 1990: 87). The Vietnamese believe there, "will always be another day, another season, another life in which to achieve one's goals" (Cohen 1990: 87). As a result, the Vietnamese feel less pressure to accomplish things in an immediate manner.

Traditional Confucianist thought continues to be an important institution in Vietnam. The Confucianist principles from Vietnam's Chinese heritage stress centralized political authority and the concept of duties of subordinates to superiors (Neher 1991: 157). Maintaining harmony is an important cultural element that plays a role in defining the Vietnamese world view (Jamieson 1993: 11). According to traditional Vietnamese ideas there exists a universal, harmonious moral order. Order is only

present when each person carries out his or her duty by fulfilling the obligations of a subordinate to a superior, and vice versa. When harmony does not exist among the cosmos, the ruled may perceive that the emperor has lost the "mandate of heaven" (Neher 1991: 166). The mandate of heaven ideology, grounded in the traditions of Confucianism, illuminates the authority relationships that prevail among the Vietnamese people and govern their daily interactions.

In placing great value on sustaining harmonious and pleasant relationships, the Vietnamese may prefer to tell "little white lies" in order to avoid offending someone with the blatant truth (Cohen 1990: 88). Vietnamese also maintain harmony by not expressing their personal opinion or providing a negative response. Although a Vietnamese may say "yes" (*da*) in the course of a conversation, it does not automatically mean he or she is expressing approval or commitment (Cohen 1990: 88). The answering of "yes" by the Vietnamese listener only tells the speaker that what is said has been understood.

The Vietnamese display a sense of politeness, sensitivity, modesty, and humility in their interactions with others, which is behavior attributable to cultural modesty, historic caution around foreigners, and the many years of political upheaval in which the Vietnamese people were unable to speak casually to outsiders (Cohen 1990: 87). The Vietnamese are formal people in that they expect others to behave in an appropriate manner. The Vietnamese may be flexible and forgiving when it comes to relations with non-Vietnamese, but will still expect others to be polite, elegant, and command respect (Engholm 1995: 214). The Vietnamese command respect, but do so in a non-domineering or patronizing way. The task of engaging in conversations may include a gesture of modesty. The

Vietnamese avoid boasting, but may often express themselves, "in a self-deprecating fashion--a manner of conduct some Westerners find cloying" (Cohen 1990: 87). Vietnamese often use implied meanings when discussing a sensitive subject, instead of being direct and to the point. Moreover, many Vietnamese consider direct eye contact as behavior that is excessively rude or bold (Cohen 1990: 87).

According to Engholm (1995), the most salient aspect of the Vietnamese society is the importance placed on the family and village. Despite the move towards urbanization and economic development, "the village-oriented psychology of the Vietnamese people remains. Family values take precedence over all other priorities" (Engholm 1995: 215). A Vietnamese sense of identity is derived from his or her position in the family, which is reflected in the language used to address one another.

Vietnam's success in driving out foreign invaders has created a strong sense of nationalism among the people. The ability of the Vietnamese to emerge from many years of foreign rule with many of its traditions intact, is proof of the country's nationalist tendency that has long pervaded its history (Neher 1991: 157). To add to the Vietnamese inherent nationalist quality, socialist education and ideology have concentrated on the nationalist struggle and the triumphs of the Vietnamese people (Engholm 1995: 215). Nationalism has been the key concept for understanding the history and politics of Vietnam. The Vietnamese political culture represents the steadfast survival of what is Vietnamese in the face of a long history of outside influence. The integration of historical political ideals with an imported communist organizational model, has created a communist identity that is to be considered no less Vietnamese (Cima 1989: 204). Moreover, as Engholm

(1996: 216) says, "(e)ven after decades of war and suffering, the Vietnamese are gently, friendly, and hospitable; but they are also strong, determined, and shrewd negotiators. In fact, they are often quite frank and tenacious."

Trust within the Vietnamese society is hard to win and maintain. Not only do the Vietnamese mistrust foreigners, but they have also fostered a mistrust among fellow Vietnamese. Successful relationships are based on a shared past that is built over time. An individual's trustworthiness is determined by being accountable, acting according to one's word, demonstrating a sense of sincerity, and respect (Engholm 1995: 216-218). Despite the different cultural traditions and beliefs, the Vietnamese will treat others as guests in their country. Understanding will take place only in the context of shared relationships grounded by mutual respect and trust.

Vietnam is a country rich in tradition and history which has served as the foundation for the creation and meaning of law within the social context. International attorneys practicing law in Vietnam need to understand the interrelationship between the legal system and the culture to successfully begin to examine and evaluate the environment which awaits them.

The final section of the literature, presented below, analyzes the current state of legal education in the United States. It looks at those areas of law related education that are important to the development of a new approach to international legal understanding.

Educational Response to the Changing International Legal Environment

The changing dynamics of the international business community have created numerous opportunities and challenges for attorneys in the

United States seeking to practice law in foreign countries. It, therefore, follows that the legal education of international attorneys must encompass an understanding of both the legal environment and the cultural influences of the host country. Lawyers need to understand the relationship between law and culture and its effect on international legal operations and practices. Attorneys must be educated to realize the importance of different legal traditions and the cultural factors that determine the relationships between legally connected parties.

The practice of law in the United States continues to become more international in nature. Between 1991 and 1995, the number of overseas branches of American law firms increased from 196 to 345 (Klien 1996: A1). There is no such thing as a truly domestic practice anymore, as all business has become international (Bentley 1996: C1). With the increase in global activity it is paramount to discuss the education of attorneys, in particular international practitioners. Lawyers can no longer limit their scope of understanding to a purely domestic knowledge base. Instead, they must recognize and understand they are members of a larger global community in which education in the traditions of other countries legal systems and culture is essential.

Currently, international legal practitioners have demonstrated a lack of knowledge concerning the basic features of foreign legal systems. As argued by Matthew and Zumbar (1988: 13), "(b)y temperament and training, we Americans are not well equipped to deal with our new situation. We are thrown into contact and conflict with peoples whose history and motivations we scarcely understand." The lack of training of lawyers and of effective communication between cultures is related to a deficiency in the basic knowledge of other legal systems, caused by a general lack of legal

scholarship in comparative legal studies (Cummins 1985: 421). In all parts of an international practice, lawyers need to be able to work closely with the intricacies of foreign legal systems. Any law firm from the United States intent on developing an overseas business should understand the foreign country's legal market and the local culture (Pederson 1991: 18).

The lack of knowledge provided by studies in comparative law have made attorneys insensitive towards the differences between international legal systems. The teaching of legal scholarship in the United States has led attorneys to become too limited by nationalistic assumptions (Cummins 1985: 424). The practice of international business law is not limited to domestic legal understanding. Instead, international legal transactions must be examined in the context of the host country's cultural environment. Consequently, as Pederson (1991: 18) argues, "U.S. law firms with no international experience often fail to comprehend the cultural differences between working in the United States and in a European or Asian city."

The legal education of an international lawyer must provide a basic understanding of the relationship between a country's legal system and its social condition. Knowledge regarding a foreign legal environment should begin with the basic premise and belief that legal systems evolve over time to reflect the structure of a society and culture. As argued by Nguyen (1989: 146),

The law of each society reflects not only the social conditions of the state, but also the spirit and traditions of the people. The existence of certain laws indicates the presence of a particular problem the law is intended to address. The factual contours of the problem may change, but certain underlying principles such as fairness to litigants, integrity of the judicial system, or preservation of cultural values and national heritage remain consistent.

Law is an integral part of a country's social fabric. Fritz (1982: 70), argues that law is the cultural knowledge that people use to settle disputes through agents who have recognized authority. Therefore, Fritz (1982: 71) maintains that, "(b)ecause of this interrelation between communal value and law, legal research must explore the cultural factors influencing law and its effectiveness." Law is merely a reflection of the values of a given society and should not be studied as an autonomous entity.

A legal system must be rooted in the culture of a society in order to survive over time (Fritz 1982: 71). Law reflects the beliefs and needs of the society it serves. Law should, therefore, not be viewed as an independent variable, but an integral part of the cultural whole (Fritz 1982: 71). Law, according to Geertz (1983: 215), "is local knowledge; local not just as to place, time, class, and variety of issue, but as to accent--vernacular characterizations of what happens connected to vernacular imaginings of what can." Law is constructive, constitutive, and formational (Geertz 1983: 218). Therefore, to educate international lawyers it is imperative to provide an understanding of the interconnection between law and culture.

The importance of cultural inquiry as part of the education for international practitioners cannot be overstated. While understanding the legal nuances of a foreign environment are critical to any lawyers success, a lack of cultural knowledge of the local people will clearly lead to many difficulties in the business arena. Culture plays a defining role in giving meaning to the members of a society. Human nature is not independent of culture. As stated by Geertz (1973: 52):

When seen as a set of symbolic devices for controlling behavior, extrasomatic sources of information, culture provides

the link between what men are intrinsically capable of becoming and what they actually, one by one, in fact become. Becoming human is becoming individual, and we become individual under the guidance of cultural patterns, historically created systems of meaning in terms of which we give form, order, point, and direction to our lives. And the cultural patterns involved are not general but specific...It is in man's *career* (italics in original), in its characteristic course, that we can discern, however dimly, his nature, and though culture is but one element in determining that course, it is hardly the least important.

Moreover, culture is a language of interaction that is learned, shared, and transmitted in a given society (Fritz 1982: 70). Through culture individuals bring meaning to their social environments. No where is the influence of culture more apparent than in the legal system of a nation.

The legal education of international attorneys must also analyze the problems or disputes common to various legal traditions as a means of understanding the relationship between culture and legal systems. Dwyer-Schick (1992) contends that the studying of legal traditions will give students a better understanding of the interdependency between culture and law. Identification and examination of socially significant law related problems in different legal systems provides insights into the, "rules, processes, and institutions of different cultures, and how participants might resolve their problems within these varying contexts" (Dwyer-Schick 1992: 51). A study of foreign legal systems requires comparison and examination of a country's laws in full awareness of the political, social, historical, economic, and cultural contexts. Studying and understanding the ways in which people from other legal traditions define and solve legal problems will allow for new meanings and understandings in the international business arena.

Law schools have recently begun to acknowledge the need to include an international perspective in their curriculum. Only a few years ago, foreign issues were the specialty of a few scholars at elite American law schools; however, legal education everywhere is now going global (Gest 1994: 66). Foreign law is starting to become part of required courses at many law schools across the nation. According to Gest (1994: 70),

The new international emphasis follows decades of disdain and neglect by law schools of jurisprudence beyond America's borders. Rather, chauvinistically, educators--reflecting private law practice--assumed that problems abroad could be handled by local experts. Now, business deals and the laws that govern them have such global reach that attorneys cannot stay home.

The demands of the global market place have required schools to educate lawyers that are better able to handle international transactions.

Traditional legal education has given little attention to the need for understanding the interrelationship between a legal system and the social traditions from which it evolved. As portrayed by Sheppard (1996: G1),

...law school taught me how to argue aggressively, with no quarter given or taken, and how to fight an opposing point of view with uncompromising technical skill...Even today, no law school aims to help students develop practical wisdom, human insight or the ability to deal empathetically with an opposing view.

The training of international lawyers has largely been inadequate to meet the needs of a foreign practice.

Furthermore, legal educators must not only seek to provide individuals with an understanding of others, but themselves as well. International attorneys practicing in a pluralistic environment cannot begin

to understand what is different about a foreign legal system and culture, if they do not have an understanding of their own circumstances. As summarized by Vance and Prichard (1992: 238-239), "(l)egal educators should not aim merely to acquaint students with a list of cultural concepts, any more than they should attempt only to cover a standard list of general legal rules. Instead,...legal and analytical skills will not help us communicate with one another if we do not share a basic understanding of the culture that has created us." Moreover, Nguyen (1989: 174) contends that understanding one legal system aids in the understanding of another.

International lawyers need a new educational approach for understanding and interpreting the legal systems of foreign nations. International legal education will require a change from an epistemological to ontological paradigm for examining the practice of law. For as stated by Geertz (1983: 232) adjudication,

...will surely involve a shift away from functionalist thinking about law--as a clever device to keep people from tearing one another limb from limb, advance the interests of the dominant classes, defend the rights of the weak against the predations of the strong, or render social life a bit more predictable at its fuzzy edges; and a shift toward hermeneutic thinking about it--as a mode of giving particular sense to particular things in particular places (things that happen, things that fail to, things that might)...Meaning, in short, not machinery.

International lawyers need to fully comprehend that legal systems do not develop autonomously. Subsequently, the education of business attorneys wishing to partake in legal transactions within foreign countries must incorporate both an understanding of the legal environment and the influence of culture in constructing meaning.

Summary

The review of literature presents a historical perspective of the Thai and Vietnamese legal systems in order to provide a comprehensive understanding of the evolution of law and its role within each country's respective society. Such an understanding would be incomplete, however, without an illustration of the influence of current governmental policies which have promoted economic growth and industrialization, on the legal environments in both Thailand and Vietnam. This analysis is supplemented by an overview of the cultural traditions that form the foundations for building relationships and influencing interactions between individuals. The review of literature further provides an understanding of the present legal education of international lawyers and the necessity for a new approach that addresses law related issues within foreign contexts. It is evident from the literature that new meanings which encompass an understanding of the relationship between law and culture within Thailand and Vietnam are needed as part of an international attorneys educational development for success.

The following chapter, Chapter III, describes the research process used for data collection and analysis. A theoretical rationale is presented in order to provide the basis upon which the research project will be studied. Furthermore, Chapter III discusses data collection procedures, research steps, research categories, a pilot study analysis, and a brief description of the background of the researcher.

CHAPTER III

RESEARCH PROCESS

Introduction

The following chapter will discuss the research process used as part of this study. A conceptual framework is presented that details the theoretical rationale upon which the research is based. This is followed by a description of the data collection procedures employed as part of the design process, and the categories and questions used in gathering the data for analysis. Finally, the background of the researcher is described to provide an understanding of the factors that have influenced the creation and development of the research project.

Conceptual Background

This research project uses a theoretical framework grounded in critical hermeneutics. Critical hermeneutics is ontological in nature and seeks to provide understanding through interpretation. For Gadamer and Ricoeur, two principal authors of critical hermeneutics, the concern of hermeneutics is, "with the understanding of being and the relations between beings" (Thompson 1981: 19). Hermeneutic theory proposes a shift from the traditional structuralist paradigm where objectivity and neutrality are valued, to an interpretive approach to understanding in which the importance of individual traditions and histories are recognized as inherent aspects of creating meaning and appropriating a future.

Individuals are situated and belong to the traditions in which they were born. Tradition is something that all individuals are a part of, not

separated from. As Gadamer claims we belong to a tradition long before it belongs to us (Bernstein 1983: 142). Individuals are influenced by their respective historicities, which ultimately provide meaning to one's very existence. As Bernstein (1983: 142) describes, in commenting about Gadamer's work,

...tradition, through its sedimentations, has a power which is constantly determining what we are in the process of becoming. We are *always already* (italics in original) "thrown" into a tradition....It is not just that works of art, texts, and tradition have effects and leave traces. Rather, what we are, whether we are explicitly aware of it or not, is always being influenced by tradition, even when we think we are most free of it....it is important to reiterate that a tradition is not something "naturelike," something "given" that stands over against us. It is always "part of us" and works through its effective-history.

Only in understanding and recognizing that we are bound by our traditions and can never claim to be completely objective, can we begin to mediate between the past and future. Historical understanding provides the gateway to envisioning a different future.

Our understandings are not limited or prohibited by the knowledge of traditions. Interpretation is a creative process in which the prejudices, assumptions, and intentions of the interpreter play a central role in understanding. However, these prejudgements should not be disregarded, as an individuals assumptions provide the horizon of understanding from which the interpretation of experiences is possible. For as Ricoeur (1981: 17) states, "the 'true' histories of the past uncover the buried potentialities of the present." Interpretation and understanding can come only through a fusion of horizons.

A horizon is the range of vision that includes everything that can be seen from a particular vantage point. A horizon may be limited or narrow, but there is always the potential for expansion or opening to a new horizon. As Bernstein (1983: 143) states, "(a) horizon, then, is limited and finite, but it is essentially open. For to have a horizon is not to be limited to what is nearest but to be able to move beyond it." In understanding tradition we must recognize the historical horizon. Such a horizon is not developed by transposing oneself into a historical situation. Instead, a horizon must already exist that allows an individual to imagine another situation or position. Only by understanding one's own horizon is it possible to learn to look beyond the confines of the present horizon and see the larger picture.

In understanding one's prejudices and assumptions the possibility for a fusion of horizons is created. According to Gadamer (1989: 276-277), "the prejudices of the individual, far more than his judgments, constitute the reality of his being." The hermeneutic situation is determined by the prejudices brought to the social text. These presuppositions brought from the historical context constitute the horizon of the present. In testing prejudices there is a direct encounter with the past. A horizon of the present cannot be formed without a horizon of the past. Thus, understanding is the fusion between these two horizons. As Gadamer (McGaughey 1986: 64) says, "(t)ime/history sets us in a primordial relationship to a text as something not simply 'past' in sequence, but also 'present' in simultaneity with the horizon of our life-world." The very essence of meaning is found in tradition. Historical experience comes from belonging to a tradition received from the past.

The horizon of the present has the potential to expand or open towards the remote when it comes in contact with the horizon of another.

Tradition brings into awareness the prejudices of the interpreter and allows open-ended understanding to take place. According to Ricoeur (1981: 76), "(i)t is only in the tension between the other and the self, between the text of the past and the point of view of the reader, that prejudice becomes operative and constitutive of historicity." The process of fusion of horizons is continual, as there is always the combining of the old with the new to form a living system of values. Fusion of horizons allows for new possibilities and understandings.

What we must seek to achieve in a fusion of horizons is, "a fusion whereby our own horizon is enlarged and enriched" (Bernstein 1983: 143). The key to understanding others lies in the ability to understand oneself. True fusion of horizons occurs when an individual can evaluate one's own culture and learn from another. According to Bernstein (1983: 144):

It is through the fusion of horizons that we risk and test our prejudices. In this sense, learning from other forms of life and horizons is at the very same time coming to an understanding of ourselves. Only through others do we gain true knowledge of ourselves.

Fusion of horizons puts the responsibility for change with each individual. Responsible understanding comes from personal evaluation and interpretation. The process of understanding ourselves and the prejudices that bind us is continually ongoing.

Language is the medium through which a fusion of horizons is achieved. Hermeneutic understanding has its foundations in language. Language is not a tool to be used as a means to control others. As Gadamer (1976: 32) explains:

Language, then, is not the finally found anonymous subject of all social-historical processes and action, which presents the

whole of its activities as objectifications to our observing gaze; rather, it is by itself the game of interpretation that we all are engaged in every day. In this game nobody is above and before all the others; everybody is at the center, is "it" in this game. Thus it is always his turn to be interpreting. This process of interpretation takes place whenever we "understand," especially when we see through prejudices or tear away the pretenses that hide reality.

Language is truly the means to universal understanding and is the essence of tradition. Fusion of horizons only occurs through linguistic expression. When the interpreter finds the language that unites him with the text, a fusion of horizons occurs. As a result, the formation of a new manner of speaking is the expression of a fusion of horizons accomplished by understanding. Language provides the medium for interpretation, which ultimately allows for understanding. As Heidegger (1971: 132) claims language is the "house of being." Moreover, language opens the door to understanding not only ourselves, but also alien horizons.

Fusion of horizons is fundamentally interactive. Communication through an ongoing and open dialogue or conversation is essential. Understanding results from "a commitment to carry out a dialog within the full horizons of both speaker and hearer in a way that permits new distinctions to emerge" (Winograd and Flores 1986: 124). Only in conversations and in relationships with others can we understand the traditions we were born into and begin to appropriate a new future, as our horizons come from a world that is co-constructed in linguistic understanding.

It is impossible to discuss new understandings through a fusion of horizons without examining communicative competence. The theory of communicative competence (Habermas 1979), or universal pragmatics, provides a critical approach to examining the act of communication.

According to Habermas (1979: 1), "(t)he task of universal pragmatics is to identify and reconstruct universal conditions of possible understanding." Action oriented towards reaching an understanding can be examined as part of a universal criterion that fundamentally seeks to achieve communicative competence through the medium of language.

Habermas contends that if there is a genuine orientation towards understanding between participants, the speech act must meet four validity claims in order for communicative success to occur (Habermas 1979). A speaker must (1) utter something that is comprehensible, (2) provide the listener with something to understand that is true, (3) demonstrate the intention to express the utterance that will be believed as truthful, and (4) establish the utterance within recognized social norms. Communicative action will be maintained as long as the participants continue to raise simultaneously the four validity claims and not enter into strategic action aimed at manipulation.

Each of the four validity claims, realized through language, corresponds to a domain of reality (Habermas 1979). The domains of reality place the speaker and listener in relation to the world in which communication exists. The first domain is that of language itself. To communicate, language must be comprehensible. The second domain is the external world, which represents the actual facts of the situation. In the external world there are events and objects about which true or false statements can be made. The third reality is internal. The internal domain represents our intentions and life experiences. It is what we believe to be truthful as part of our existence. The fourth domain is referred to as the 'our world', or the world of society. It is the our world that shared values and norms form the framework for social interactions and understanding.

The domains of reality are embedded in every utterance or speech act and incorporate one aspect of the raised validity claims. Successful communicative action, however, is conceived only through the simultaneous interrelationship between each of the worlds.

Communicative action, oriented towards reaching an understanding, is open to critique and evaluation. The theory of communicative competence provides a means of coming to new understandings in a society inherently bound by relationships. Communicative competence allows socially constructed reality to be successful even when inherent differences in cultures and traditions exist. McCarthy (1978: 291) explains:

When fundamental differences in beliefs and values block the initiation or continuation of communicative relations, the possibility of discursively resolving these differences takes on particular significance. It represents the possibility of instituting or reinstating a consensual basis for interaction without resort to force in any of its forms from open violence to latent manipulation; it represents the possibility of reaching agreement through the use of reason and thus by recourse to, rather than violation of, the humanity of those involved.

Communicative competence achieved through the four validity claims and inherent in the domains of reality, provides participants in the dialogic process with a way of creating meaning in relation to others in light of their given interests. By engaging in communicatively competent conversations, it becomes possible to interpret critically the underlying assumptions of the traditions that influence our lives, social relationships, and institutions.

Critical hermeneutics recognizes the concept of discourse as a form of text. Human beings are interrelated and have the capacity to affect others through their actions. As Bellah et al. (1985: 282) explains:

In short, we have never been, and still are not, a collection of private individuals who, except for a conscious contract to create a minimal government, have nothing in common. Our lives make sense in a thousand ways, most of which we are unaware of, because of traditions that are centuries, if not millennia, old. It is these traditions that help us to know that it does make a difference who we are and how we treat one another.

Individuals build relationships and create meaning through discourse.

Meaning comes only from being in relationships with others.

Subsequently, the ability to interpret discourse as text, requires that meaning be revealed in front of the text. That is, the meaning of what is said surpasses the event of saying. Meaning is created through interpretation and is not dependent upon the actual intention of the speaker. It is in the ability of discourse as a text to stand on its own that creates a new world of meaning, full of unlimited possibilities. For as Ricoeur (1981: 178) states, "(t)o understand oneself in front of a text is quite the contrary of projecting oneself and one's own beliefs and prejudices; it is to let the work and its world enlarge the horizon of the understanding which I have of myself." Meaning found through interpretation of discourse provides a sense of purpose to individuals and opens the door to future possibilities.

In retelling the text of the past, individuals of a community are creating the reality of the present and possibilities for the future. Bellah et al. state, "(t)he communities of memory that tie us to the past also turn us toward the future as communities of hope." Through appropriation the meaning of the past is connected with the present. To appropriate, according to Ricoeur (1981: 18), "means 'to make ones own' what was initially 'alien', so that interpretation brings together, equalises, renders contemporary and similar." Appropriation allows the interpreter to enlarge

oneself and receive, "a new mode of being from the text itself" (Ricoeur 1981: 192). Understanding through appropriation allows an individual to look beyond a limited horizon and discover other worlds of possibilities.

Critical hermeneutic theory seeks to provide understanding through interpretation. It recognizes the importance of traditions and the role they play in creating meaning, not only for the present but the future as well. For as stated by Gadamer (Kidd and Kidd 1990: 31-32), the task of hermeneutics is best described as

...to let what is alienated by the character of the written word or by the character of being distanced by cultural or historical distances speak again....But in all the effort to bring the far near that we make by methodological investigation, in all that we learn and do in the humanities, we should never forget that the ultimate justification or end is to bring it near so that it speaks in a new voice.

Hermeneutics opens the realm of possibilities for new understandings through a mediation of the past, present, and future.

Participatory Research

The participatory method of research emerges as a natural extension of critical hermeneutic theory. Participatory research employs the use of conversations in order to gather new information from those individuals who are members of the communities which are responsible for creating and sharing that knowledge. The intent of the participatory method is to actively involve individuals in discourse so that possibilities for new understandings for the issues and problems at hand can be created.

Conversations allow for understanding to occur between two individuals. The significance of a dialogue or conversation is described by Gadamer (1989: 385) as follows,

Thus it belongs to every true conversation that each person opens himself to the other, truly accepts his point of view as valid and transposes himself into the other to such an extent that he understands not the particular individual but what he says. What is to be grasped is the substantive rightness of his opinion, so that we can be at one with each other on the subject.

Conversations create an environment in which there is the possibility for new understandings through interpretation.

The medium for all discourse is found in language. Language opens the world of understanding to all participants and fashions a world capable of providing endless potential for different meaning. For in the words of Gadamer (1989: 389), "(a)ll understanding is interpretation, and all interpretation takes place in the medium of a language that allows the object to come into words and at the same time the interpreter's own language." In the spoken words of the conversational participants lies the capacity for transformation of thought and a subsequent fusion of horizons.

Crucial to the dialogic process is the acknowledgment that both participants are concerned with a common subject matter. In dialogue, conversational partners are able to express their beliefs, assumptions, and opinions in a reciprocal manner with the principle intention of reaching an understanding. Weinsheimer (1985: 208) argues that a,

...conversation does not imply the alternation of assertions which collide at loggerheads until one overcomes the other....But if it is a substantive conversation in which both partners are concerned to reach a mutual understanding, they cannot avoid the issue or leave it undecided and up in the air. They do not simply carry on a discussion but conduct it. When a discussion is conducted, it is led in some direction and toward some destination.

Only in a dialogue in which the participants are oriented towards reaching a mutual understanding is it possible for something different to come to fruition while allowing for the appropriation of a new future.

Opening the possibilities for new understandings through language is the basis for this hermeneutic field research. This study uses a methodology which incorporates the use of conversations as a means of coming to understanding and increasing the realm of alternatives for future action.

Research Process

Data Collection

The data collected for this research project through the participatory method of inquiry came from face to face and telephone conversations held with individuals from Thailand, Vietnam, and California who had either legal or business experience in the Thai and Vietnamese environments. Participants were encouraged by the researcher to reveal their identities as part of the participatory process. As such, in cases where it was both possible and applicable, the conversation began with a brief introduction about the research topic being addressed and the principle intent of conducting the study. Furthermore, the nature and function of participatory research was discussed in order to familiarize the participant with the necessity and intent of the conversational approach. These informal introductions were not recorded.

Conversations took place in a variety of settings, including offices, formal meetings, formal and informal lunches at restaurants, telephone conferencing, and informal gatherings. Those conversations which could be recorded were taped. However, in some circumstances it was not

possible nor appropriate to obtain a viable recording. During those instances, the researcher either took notes during the conversation or wrote notes immediately following the conversation to create a text for subsequent review and analysis. The taping of the conversation occurred only with the full knowledge and agreement of the participant. The right to privacy and anonymity was respected when a participant wanted to state something off the record or wished not to be recorded.

In general, the conversations lasted between thirty and seventy five minutes. In most cases, the participants received a transcription of the recorded conversation for correction and further comment. Transcripts were used only with the participants' consent.

The mutually created texts that emerged from the conversations formed the basis for the research analysis which incorporates a theoretical framework based on a critical hermeneutic approach. From the conversations theoretical themes emerged which provided a platform for examination and analysis.

Research Participants

The research participants included those individuals who were practicing international business attorneys, had significant legal and/or business experience, and exposure to law related education concerning the countries of Thailand and Vietnam. The participants familiarity with the legal aspect of conducting business in the Thai and/or Vietnamese contexts was preferable, but not essential, as a broad range of experiences is most critical in developing an educational approach with possibilities for new understandings in the legal community.

As such, twelve participants (Appendix C), providing representation from the legal and educational sectors in both Thailand and Vietnam, were engaged in the participatory process. Additionally, several informal conversations which were not recorded were held with various individuals. All of the participants either lived and worked in the selected Asian countries or were headquartered in California and had ongoing contact with the legal/business communities of Thailand and Vietnam.

While in Bangkok, Thailand, a conversation was conducted with Dr. Charoen Kanthawongs, an attorney for the Thai based law firm of Tilleke & Gibbins. In addition to acting as of counsel for Tilleke & Gibbins, Dr. Kanthawongs is currently a member of the democratic party for the parliament of Bangkok. Dr. Kanthawongs has extensive experience in dealing with international business transactions in Thailand. Additionally, a telephone conversation was conducted with attorney Say Sujintaya, also a member of the firm Tilleke & Gibbins. Ms. Sujintaya lives and works in Bangkok, Thailand, although she was raised and educated entirely in the United States.

The participants contacted in California who were working with Thai individuals in the international arena included four attorneys and one businessman. Robert Tunnell is an attorney for the international law firm of Gordon & Rees. Mr. Tunnell has been practicing law and conducting business in Thailand since 1970, and currently heads the international division of Gordon & Rees. Carol Goodman is an international attorney for the firm King & Goodman. Ms. Goodman has been working in Thailand and with Thai clients in the United States for the past ten years in the capacity of legal and business advisor and mediator. Douglas Mancill is a practicing lawyer with the internationally reknowned firm of Graham &

James. Mr. Mancill represents foreign and domestic parties in the Thai context and has been doing so since the late 1980's. David Lombardi is presently a presiding federal court judge for the Ninth Circuit District Court of Appeals. Judge Lombardi is the director of the Court's mediation and training division for the entire western region of the United States. In this capacity, Judge Lombardi was invited by the Chief Justice of the Supreme Court of Thailand to train the Thai judges in the process of mediation for both domestic and international legal disputes. Finally, Kon Bahlin is an international businessman with extensive international business and legal experience in the Pacific Basin region.

The conversations which were carried out while in Vietnam occurred in a slightly different format. In Ho Chi Minh City, Vietnam, I was a participant in two forums that were held with individuals who had extensive knowledge regarding the Vietnamese legal environment. The first of the conversations was with Dr. Mai Hong Quy, Dean of the Faculty of the University of Ho Chi Minh City Faculty of Law. The forum was chaired by Dr. Ellen A. Herda, who took care to ensure that the questions pertaining to my needed research data were addressed. The second forum consisted of a discussion with British attorney Lucy Wayne and several of her associates and staff members. Ms. Wayne originally came to work in Vietnam under the auspices of a large British international law firm. However, disillusioned by the practices of a large firm, Ms. Wayne subsequently established her own legal practice known as Lucy Wayne Associates. Ms. Wayne and her co-workers graciously took the time to discuss the legal environment of Vietnam and to address the numerous questions pertaining to my dissertation topic. Participants in the conversation included Dr. Ellen A. Herda and several individuals from the

group that had traveled with Dr. Herda to Southeast Asia. Moreover, a formal luncheon was held with numerous members of the American Chamber of Commerce in Vietnam. Several of the participants included legal practitioners who were working in Ho Chi Minh City for some of the largest American international law firms, including Graham & James and Baker & McKenzie. The luncheon provided an opportunity for the researcher to discuss several areas of interest that were related to the my topic with persons who had acquired an intimate knowledge of the business arena in Vietnam. However, none of these informal conversations were recorded.

Those individuals who agreed to be participants in this research work that resided in California, but had international legal and business experience in Vietnam, consisted of two lawyers and one business executive. Daniel Lanahan is an international business and litigation attorney for the law firm of Ropers, Majeski, Kohn & Bentley. Since early 1990, Mr. Lanahan has been involved with legal matters in Asia. Within the last two years, Mr. Lanahan has taken an active role in conducting legal transactions for a variety of large multinational corporations in Vietnam. He is also the head of the international consulting division of the law firm. Burton Fohrman is a real estate business lawyer for White & Case, one the largest international law firms in the world. Mr. Fohrman has worked in both the Hanoi and Ho Chi Minh offices of White & Case. His international experience is extremely extensive covering a span of nearly thirty four years. Lastly, Chuong Tran is the acting president for James Riedel Associates, Inc., an economic and management consulting firm, specializing in East Asia, with the current focus of its activities in Vietnam, where it represents a number of both Vietnamese and international

companies. Mr. Tran was born in Vietnam, but has resided in the United States since 1973. He not only has held management positions with the likes of Exxon, Standard Oil, and Pacific Gas & Electric, but has also served in the United States Congress as a legislative assistance for international trade and foreign affairs and as a member of the professional staff of the House Banking Committee.

The conversations were held at times and in places mutually available to the researcher and the participant. All of the conversations, except for the one held with Mr. Mancill, were tape recorded. The participants were actively engaged in conversations which were directed, but not limited to, the research questions. The individuals were encouraged to become involved in the conversation in order to create new understandings with the researcher as part of the participatory method of inquiry.

Entree

Due to the nature of the research study, international contacts who had either practiced or had experience with international business law in Thailand and/or Vietnam were critical. In order to gain entry and establish a participant pool, various international organizations, law firms, and individuals with business and legal connections in Thailand and/or Vietnam were contacted.

Depending on the circumstances, initial contact with prospective participants was made vis-à-vis a formal introductory letter (Appendix D) or telephone call. In cases where a possible participant was not known, the introductory letter served as principle access for establishing contact. The letter briefly explained the dissertation topic and ask for their willingness to

be involved in the participatory process. When a likely candidate for participation was either directly known or had been referred by a personal contact or colleague, a telephone call was made to begin the process of communication. If a positive response was received, a meeting was scheduled and the data collection process for the research project was set in motion. All of the individuals who were contacted either directly participated in the research themselves or suggested other people whom I might contact for participation.

Soliciting participation and conducting the conversations in Thailand and Vietnam took a slightly different format. The conversations that were done in Asia during the Summer of 1996, were organized by various personal contacts through the University prior to my arrival, who were either living in the selected Asian countries or were traveling with the delegation. It was quite difficult to establish contact with potential Asian participants from the United States due to the different notions regarding time and planning in the given cultural contexts.

Following the conversation with the various parties, a thank you letter (Appendix E) was sent to the participant for their time, cooperation, and assistance in obtaining research data to be used in the dissertation analysis. The letter also asked the participant to review the transcript of the conversation, make any changes or corrections, and to contact me if they wished to share any additional insights or reflections.

Time Line

Following the completion of the dissertation proposal in April 1996 and the successful oral defense of the proposal to the committee in May 1996, the participatory phase of the research project was scheduled to

begin during the summer of that same year. As such, field research for the process of data collection began with a trip to Thailand and Vietnam in August. In the selected Asian countries conversations were held and recorded with various participants. After returning to the United States, further individuals who were willing to engage in the participatory method of research were identified and contacted. All data collection was completed by the end of the Fall of 1996. As the data field research was being completed, preliminary analysis of the transcripts was begun. The first draft of the written components of the dissertation, including the statement of the problem, review of the literature, research process, data presentation and analysis, and implications and suggestions for future research was to be completed by February 3, 1996, in order to allow ample time to complete any corrections or modifications to the text prior to the defense of the dissertation in May 1996 and before the May graduation deadline.

Categories of the Research

Analysis of the research was guided by the categories for data collection. The categories served as the overarching themes from which pertinent questions will be asked to the participants. The categories directed the conversation topics and provide a framework for the theoretical analysis. In many instances, the subject matter discussed in one category often overlapped into another. However, each category with its corresponding questions was designed to address the given topic as exclusively as possible.

Category One: New Understandings Through a Fusion of Horizons

The very character and meaning of our lives is found in history and culture. The traditions in which we were born form our pre-understandings and assumptions about the world in which we live. Tradition gives meaning to the social structures and institutions in which everyday existence occurs. However, in understanding history it becomes possible to create a fusion of horizons between the present and the past. An individual's prejudices serve as the horizon of understanding from which the critical interpretation of experiences is possible, thereby, creating new possibilities for understanding and action in the presence and recognition of a fusion of horizons.

Questions for Category One:

1. What role has your cultural background and related experiences played in conducting business in the Thai or Vietnamese legal environment?
2. How have traditions and history influenced the Thai or Vietnamese ways of thinking and understanding international business law, which is predominantly based on a Western ideology?
3. How do you change other people's traditions when working in different cultural contexts? How do you change your traditions?

Category Two: Achieving Communicative Competence

Communication aimed at reaching understanding is essential to achieving success in interpersonal relationships. As Habermas (1973: 3) explains, "The goal of coming to an understanding is to bring about an agreement that terminates in the intersubjective mutuality of reciprocal

understanding, shared knowledge, mutual trust, and accord with one another." Only when individuals engaged in conversation make their intentions understandable to others will the world open to new possibilities for future action.

Questions for Category Two:

1. How do you begin to develop business relationships with Thai or Vietnamese nationals that are mutually beneficial and capable of enduring over time?

2. How is mutual understanding between two legally connected parties reached? How are conflicts resolved?

3. How does language promote or impede the communication process in Thailand or Vietnam?

Category Three: Meaning of Business Law Education in the Emerging International Legal Community

Category three focuses on the possibilities for the future education of international business attorneys. It is grounded in the concepts of tradition and communicative competence, and is guided by the need to appropriate a different future. To provide the type of education necessary for lawyers in unfamiliar Asian climates, it is necessary to discuss a new vision and the possibilities of creating avenues for diverse actions. Appropriation can only take place in the context of understanding and a merging of the challenges and demands of the past with a vision of the future.

Questions for Category Three:

1. What is your vision for what United States international business lawyers must do to educate themselves for the practice of law in different cultural contexts within an emerging and continually changing global market place?

2. How can the needs of the legal business community be successfully blended with the traditions of the Thai or Vietnamese cultures of the past and present?

3. What essential factors must be included as part of every international legal practitioners educational development?

4. Where do you foresee the Thai or Vietnamese legal community as participants in the United States business law arena in the future?

Field Study

A pilot study that examined the appropriateness and clarity of the proposed research project was conducted in the Spring of 1996. The field study was used to refine the categories and questions for the research proposal. As such, two conversations were held with individuals who had extensive experience in international business and/or legal transactions. These conversations were also incorporated into the data pool and formed a portion of the basis of the text for this dissertation.

The first conversation was conducted with Kon Bahlin, an international businessman with forty five years of experience in the Pacific Basin region. More specifically, Mr. Bahlin has worked as both an importer and exporter of goods to and from the countries of Japan, Hong Kong, Taiwan, South Korea, Philippines, and Thailand. In addition to his extensive international business experience in Asia, Mr. Bahlin was raised

and schooled in Japan and China for the first twenty five years of his life. During the course of the conversation Mr. Bahlin shared both his business and legal experiences while working in Asia, particularly in the Thai environment. The conversation was recorded and transcribed for further review and analysis.

The second conversation was held with Douglas Mancill, an international business and litigation attorney for the firm of Graham & James. Mr. Mancill has extensive experience in participating in legal transactions in Thailand, where he represents both American and Thai clientele. The conversation yielded valuable data regarding the culture, traditions, and assumptions which guide the practice of law in Thailand. At the request of Mr. Mancill the conversation was not recorded. However, permission was given by the participant to use his name and any information noted during the conversation.

While engaged in both conversations I was able to test the appropriateness of the proposed research questions and learn the nuances of successfully conducting a conversation with a chosen participant. From the conversations I learned that it is essential to discuss my background and what has led me to pursue research on the proposed topic. In detailing my experiences, both participants were more receptive and willing to share their traditions, culture, and experiences. The research questions themselves yielded data that can be used as part of a theoretical analysis within the selected research categories. However, when asking the questions I discovered that I needed to consider the diversity of the participants and their related assumptions and experiences, in order to tailor or rephrase the questions in a manner that would allow the participants to provide the best possible answer. Moreover, I learned that I

do not need to follow the research questions exclusively. Instead, the questions should serve as a guide for the process of data collection. The natural evolution of the conversations generally provided the answers that directly corresponded to the research categories.

It became evident from the data ascertained from the conversations with Mr. Bahlin and Mr. Mancill that the various concepts of tradition, communication, and education were clearly applicable to the proposed research categories. Each participant discussed both their personal experiences and the preunderstandings and assumptions regarding the traditions, culture, and history of Thailand and its people. The participants related their understandings of how legal and business relationships are developed and maintained through communicative competence. Finally, Mr. Bahlin and Mr. Mancill shared their respective visions of the necessary issues that should be included as part of a legal business education. The conversation data clearly provided a text that when analyzed through the use of a theoretical framework grounded in critical hermeneutics readily addresses the concepts of fusion of horizons, language, and communicative competence. Moreover, this pilot study demonstrated that through the participatory research process communicative competence can occur as part of a meaningful and transforming event.

Research Analysis and Procedures

The analysis of the data, or transcribed conversations, was performed on two levels. The first level of analysis examined the content of the data collected. The transcripts of the conversations with the various participants were carefully read several times in order to develop a sense of the text as a whole. From these readings relevant themes were

identified. The preliminary analysis provided a means for interpretation. By interpreting the texts, the foundations for new understandings had been laid. Furthermore, each reading of the transcription provided a new and different understanding. For as Bernstein (1983: 139) states, "(t)his is why Gadamer tells us that to understand is always to understand differently." The first level of analysis provided the researcher with an initial understanding that would only grow and open the door to new possibilities.

The second analysis used a critical hermeneutic framework to provide a theoretical basis for interpretation. In this stage, the transcripts from the conversations were again read and the theoretical categories for the research were applied. In applying hermeneutic theory to the data, new understandings and meanings were discovered enlarging the possibilities for interpretation and the ultimate appropriation of a different future. Only through the process of interpretation was the text able to speak to the researcher from a distance. According to Ricoeur (1981: 131),

In my view, the text is much more than a particular case of intersubjective communication: it is the paradigm of distanciation in communication. As such, it displays a fundamental characteristic of the very historicity of human experience, namely that it is communication in and through distance.

It is through the interpretation of the text that a new world of possibilities is opened up to the reader. For as stated by Ricoeur (1981: 192), "(t)he reader is rather broadened in his capacity to project himself by receiving a new mode of being from the text."

Analysis of the ideas by use of a theoretical rationale grounded in hermeneutics created the basis for this dissertation. However, both levels of analysis are interwoven in the presentation of the data.

Journal

A personal journal was kept during the entire research process in order to record my reflections, notes, and new understandings. The journal served as a way to document, in a non-academic manner, my thoughts as they occurred. The data recorded in the journal also provided an additional source for the research analysis. Moreover, the journal provides a text which is open to interpretation and can lead to new understandings. Selected journal entries are contained in Appendix F.

Background of the Researcher

Believing in the importance of understanding others in the context of their traditions and histories, I have struggled to find meaning in a world that teaches and promotes the value of objectivity and neutrality. Nowhere have I found such stark polarity as in the legal community. And at no other time in my life have I truly believed in the need to create new understandings and opportunities for better relationships and more meaningful interactions between individuals.

When I was young girl I dreamed of becoming an attorney. I studied hard and dedicated my life to finishing college and attending law school. However, along the road of life I discovered other interests and was afforded many opportunities for personal growth and learning. My life had subsequently taken a new direction by the time I finished college. It was at that point I realized how much I enjoyed studying people of different

cultures and building relationships with others very different than myself. During the course of my master's work in international business, I exclusively studied Asian cultures, people, and histories. I traveled and worked in Japan and Switzerland, where I learned not only a great deal about others, but myself as well. Upon completion of my graduate studies I believed I had finally found my niche. However, my journey had only begun.

It was not until I began studying in the doctoral program at the University of San Francisco, while simultaneously working in a law firm, that I finally began to understand and make sense of the world in which I live, and began to focus clearly and articulate my vision of the future. I soon also discovered that the desire and pangs to attend law school had not died. The only difference was that I now understood how I might combine my belief in meaningful international education with the structuralist approach of legal transactions. The first step was in developing this proposed research topic. The second step was in my application and acceptance to law school. I have made a dedicated commitment to combining international business law with cultural understanding and to educate attorneys on the importance of meaningful communication.

It is my belief that every action we take is influenced by our traditions and values. Only when we stop to examine and reflect upon our actions, can we begin to create meaningful relationships capable of new and better understandings for the future. I believe that as a member of the global community I can make a responsible contribution to the development of education for international business law.

Summary

Chapter III outlined the research process employed as part of this dissertation study. It provided a summary of the theoretical framework to be utilized in the analysis of the data and the rationale behind the use of a participatory method of inquiry. It described the research design process, including data collection procedures and the research participants. The chapter also presented the research categories and corresponding conversational questions used to gather the research data, as well as the results of a pilot study and the type of analysis conducted on the research data. Finally, a descriptive background of the researcher and the traditions which have influenced this project was provided.

The following chapter, Chapter IV, presents the data gathered from the conversations and presents a preliminary analysis. Descriptions and quotations from the conversations are incorporated with theory to provide a narrative for the project. Data is presented in accordance with the research categories developed for use during the conversations.

CHAPTER IV

DATA PRESENTATION AND ANALYSIS

Introduction

This chapter presents the data and analysis created as part of this research project. The themes were derived from the readings discussed in both the review of the literature and the conceptual framework. To better understand the significance of the data collected from the conversations held with the various participants, both the data and the analysis are presented concurrently in order to illustrate a more congruent and holistic view of the research situation.

Living in Tradition

But how will we know who we are without our past?

*--John Steinbeck, *The Grapes of Wrath**

The very essence of meaning in our lives is found in the traditions and histories into which we were born. Understanding, according to the hermeneutic approach advocated by Gadamer (1976, 1989), cannot exist without full recognition of the traditions that bind us. These traditions form our preunderstandings and basic assumptions about the world in which we live and function. In other words, tradition fashions the horizon from which every individual interprets the world around them. Understanding results only through the process of interpretation, which is inherently connected to the prejudices and bias that the individual brings to the social text.

Tradition, as conveyed through history and culture, shapes who we are in the process of becoming. Tradition forms the horizon which constitutes a given set of possibilities of an individual and the associated prejudices that establish the basis for the preunderstanding of personal and historical experience. The power of tradition and its prevailing influence in the lives of all individuals is described by Bernstein (1983: 142) when he says,

It is not just that works of art, texts, and tradition have effects and leave traces. Rather, what we are, whether we are explicitly aware of it or not, is always being influenced by tradition, even when we think we are most free of it. Again, it is important to reiterate that tradition is not something “naturelike,” something “given” that stands over against us. It is always “part of us” and works through its effective-history.

The importance of tradition and history cannot be denied or ignored, especially for those American attorneys who have aspirations of successfully practicing business law in either Thailand and Vietnam. Each of the societies present a unique set of cultural values that form the horizon from which all interpretation and understanding takes place. The participants in this study addressed the values and traditions which related to the practice of business law in an international setting and are discussed below.

Thai Values and Traditions

The Thai culture has influenced the very way in which law is viewed and received in the society. It is only through the act of interpretation that law is understood within the cultural context and is capable of providing meaning to a society. Hermeneutics essentially holds that we, as interpreters, are interactive with the text, and it is through the interaction of

bringing to the text our preunderstandings and prejudices, that we are able to give meaning to the text. As described by Winograd and Flores (1986: 28) hermeneutics, "...takes the act of interpretation as primary, understanding it as an interaction between the horizon provided by the text and the horizon that the interpreter brings to it...(E)very reading or hearing of a text constitutes an act of giving meaning to it through interpretation." It is the act of interpretation which is primary to understanding. Gadamer (1989: 307) writes, "(i)nterpretation is not an occasional, post facto supplement to understanding; rather, understanding is always interpretation, and hence interpretation is the explicit form of understanding."

The reflections of Dr. Chareon Kanthawongs illustrate the role of tradition as part of the act of interpretation. As such, when questioned about how the Thai traditions have shaped the legal environment, Dr. Kanthawongs replied that the very purpose of law in Thailand is an entirely different concept than that of the West. In describing the Thai legal tradition Dr. Kanthawongs states,

I would like to say the differences is the way the people look at the laws, as such. In the Orient, including Thailand, the people will come to see the lawyer when they are really in bad shape. Prior to that they don't come to see the lawyer, if they come it is from the local cultures, they will come to see the lawyer when they want to do something in Thailand that costs such and such money....If they like to know the law and so that they can operate properly they will want to know what they should do or should not do. The people in the Orient, I think, instead of coming to see the lawyers, they go to see the fortune tellers first for what they should do...and then the fortune teller will tell them what to do and what not to do, and after they are in bad shape they come to see the lawyer.

Dr. Kanthawongs goes on to contrast the Thai concept of law and the role in which it plays within the Thai society, with the American tradition of law.

In his words,

But to my understanding, to my observations, the Americans are quite different from the oriental people. They are fairly well law abiding people. They try to follow the rules and the laws....But the Thai people don't care much about the law. They only care how to get the job done, legally or illegally....That's why it creates all the problems in our society. Even the law, everyone violates it without any big problems. So that's why it creates problems.

Dr. Kanthawong's explanation and understanding of the Thai legal environment clearly demonstrates that the history of the Thai people defines and creates a vantage point from which they view the world.

An understanding of the Thai legal environment is further commented on by American attorney Robert Tunnell. Mr. Tunnell believes that Thailand has a functioning legal system, but it is the Thai people who make every attempt to avoid legal confrontation. Moreover, the Thais often do not find their own legal system to be an effective means for solving problems.

Mr. Tunnell continued his discussion of the Thai legal environment when he reflected on the Thai notion of a legal relationship between two parties. In his words,

Its often the case in a lot of these cultures, the contracts do not have the same meaning that they have with us. Their understanding of a contract is an evolving situation that people have an agreement or understanding of one point but circumstances change or something else develops then the meaning of their legal relationship should also change. Westerners often find that a very different thing to understand, but, although I almost think that there is a logical point to it, and it is important for people doing business to understand

that is their perspective that you might have an agreement on one thing at one point but later on, because of all kinds of other factors, then they would view it as the nature of the agreement has actually changed. Somebody who thinks they have a fixed contract, fixed agreement, knows exactly what he's going to get. He's pretty shocked to learn the deal is different now. People start getting very upset about this and get very emotional. We say we have a deal with you, how come you're not honoring it? Whereas they will say that they are actually honoring their ancient or long-standing practice of understanding that people have an ongoing relationship and it gets out of balance or something changes and in theory you should make an adjustment so that it works out fairly to all parties over a period of time.

Horizons, such as those described by Mr. Tunnell in his discussion of the evolving nature of a legal contract, are continually in the process of being formed, as their validity is constantly questioned through the testing of prejudices and assumptions. A horizon is never truly closed, since the historical movement produced by human existence is not bound to one particular standpoint. Horizons, therefore, change and move with an individual. The horizon of the past from which tradition is formulated is continually in motion. Mr. Tunnell's insights demonstrates how a horizon can constantly change and evolve while simultaneously always reflecting the culture and history from which the horizon evolved. In the words of Bernstein (1983: 143),

A horizon, then, is limited and finite, but it is *essentially* [italics in original] open. For to have a horizon is not to be limited to what is nearest but to be able to move beyond it. Indeed the very idea of a closed horizon is a false abstraction....Horizons are limited, finite, changing, and fluid.

Thus, the preunderstandings that the Thai people bring to the international business environment play an important role in their interpretation of legal activities.

Say Sujintaya revealed how Thai traditions are significant factors in understanding the role legally based business negotiations have assumed in the society when she said,

...Thais are non-confrontational. They don't like to confront each other and as a result people usually skip around the issue or walk around in circles before they get to the point because they don't want to provoke confrontation. And in line with that, if there is a dispute, a legal dispute, most people would try to work it out first.

From her experiences with the Thai people, Carol Goodman discussed the way in which she has seen the Thai traditions influence their understanding of business. In explaining Thai values she said,

Well, they are really interested in hierarchy and order and deference to age and social ranking. There is a lot more of that going on and its very easy to trip over that if you're an American because we're very, our whole bias is to be more meritocratic and egalitarian and there's just an incredible amount of deference given to someone, what kind of family you come from, where you are in the social scheme, so I think they tend to be a little more formal and you have to give deference to people there....I think that there is also more emphasis on group harmony, yet I think there is also more of an understanding that democratic systems have not really taken root in many ways in the Southeast Asian countries. I think this whole emphasis of having everything really democratic and all that isn't necessarily a guiding value, or at least an American corporation or entity would give it value.

Ms. Goodman continued to discuss the inherent Thai cultural influences by suggesting,

You have to realize that whoever you're dealing with is usually in a larger context. There is a lot of family owned businesses. Every decision has to be really looked at in the context of how it's going to affect the family that you're negotiating with or the business enterprise.

In her words, Ms. Goodman reflects how a country's traditions and cultural values transcend time and continue to form the horizon from which all interpretation and understanding takes place. Interpretation is a creative process in which the prejudices, assumptions, and intentions of the interpreter play an essential role in understanding. Therefore, the duty of the interpreter is not to overcome these prejudices, but to understand how they influence our thinking and create misunderstandings between individuals. As explained by Bleicher (1980: 114),

The central task of the interpreter is to find the question to which a text presents the answer; to understand a text is to understand the question. At the same time, a text only becomes an object of interpretation by presenting the interpreter with a question....In understanding the question posed by the text we have already posed questions ourselves and, therefore, opened up possibilities of meaning.

Individuals are influenced by their historicities, which in turn provide meaning to one's very existence through the creation of a horizon where understanding can take place and lead to growth in new directions.

Furthermore, Thai lawyers have historically been viewed as middlemen. In the capacity of a solicitor, attorneys are seen as negotiators who fulfill a rather mundane role. Attorneys working as solicitors or legal advisors in the business environment are a relatively new occupation and their role continues to be redefined as Thailand continues to develop economically. However, as a public servant, according to Dr. Kanthawongs, "...lawyers are the most highly respected government officials, like the judges or prosecutors."

Interaction between members of the global business arena does not occur outside the influence of the Thai history. Interpretation and understanding begin only in full recognition of Thai historicity. As such, the

Thai traditions give people the values from which understanding with international lawyers will ultimately arise.

Vietnamese Values and Traditions

The Vietnamese have a distinct history that has influenced the way in which they participate in legal transactions on an international scale. In attempting to understand the world in which they live, Vietnamese business associates are continually involved in the activity of interpretation. That interpretation is based on a given set of preunderstandings. For as Gadamer (1976: 9) formulates,

It is not so much our judgments as it is our prejudices that constitute our being....Prejudices are not necessarily unjustified or erroneous, so that they inevitably distort the truth. In fact, the historicity of our existence entails that prejudices, in the literal sense of the word, constitute the initial directedness of our whole ability to experience. Prejudices are biases of our openness to the world.

When asked to comment on the types of cultural issues lawyers are confronted when dealing with the Vietnamese, Lucy Wayne stated that their history has not afforded them with an extensive knowledge of Western style legal documents because they have not yet been exposed to the basic international legal practice of doing business. Subsequently, the Vietnamese are not particularly adverse to Western legal concepts, but they have an inherent need to understand them before entering into any sort of business agreement. Ms. Wayne's reflections indicate that the Vietnamese horizon is understood only in the context of their respective historicity. Vietnamese traditions provide the forum for their preunderstandings and the foundations of their actions.

The Vietnamese were further described by Ms. Wayne as being “quite confrontational” in their interactions with others. She comments,

In Vietnam, you can generally tell if you’re sitting opposite the negotiating table from a Vietnamese if they like what you’re saying or if they don’t. If you’re making them cross you generally know about it and I have seen them very cross from time to time....

Ms. Wayne believes that the concept of “losing face” is relevant to the Vietnamese traditions. However, she believes this value can be seen in all parts of the world. Moreover, Ms. Wayne identifies the Vietnamese as being historically “very honest” people.

Chuong Tran explained that the Vietnamese are very practical people and they perceive law as “a technical thing.” They feel that the Americans are “too legalistic” and approach business in a more impersonal fashion. Mr. Tran suggested that the Vietnamese, as part of conducting any type of business, are interested in building relationships and getting to know their partner as a human being. Most importantly, he stated that the Vietnamese have been heavily influenced by their traditions which often come out in very subtle ways when it comes to doing business. In Mr. Tran’s words,

I tell you, guys out there are better educated, they have been through a lot, they survived through a very difficult condition. Oh they are tough, they are very tough. They don’t show it, but they are very tough.

Just as Mr. Tran illustrates how the Vietnamese history of the past comes into play in the present, so too does Daniel Lanahan. He asserts that because the Vietnamese have been regularly invaded for a thousand years they have become “fighters.” As such, this characteristic is evident when the Vietnamese are partaking in a business deal. Mr. Lanahan

contends, "...you just have to understand that they'll wait you out. They're patient too and until they get the deal they want they just won't agree with you." Furthermore, when conducting business the Vietnamese are always mindful of their family and their relationships and obligations to them.

The thoughts of Mr. Tran and Mr. Lanahan convey the importance of preunderstandings in facilitating a link between the past and the present. All understanding within the Vietnamese society takes place only in the context of traditions which form the operative prejudices of its citizenry. Ricoeur (1981: 71) emphasizes the significance of prejudices as part of ontological interpretation, as opposed to the epistemological paradigm, when he says,

...prejudice is not the opposite pole of reason without presupposition; it is a component of understanding, linked to the finite historical character of the human being. It is false to maintain that there are only unfounded prejudices, since there are, in the juridical sense, pre-judgments which may or may not be subsequently grounded, and even 'legitimate prejudices'. So even if prejudices by precipitation are more difficult to rehabilitate, prejudices by predisposition have a profound significance which is missed by analyses conducted from a purely critical standpoint.

According to Burton Fohrman, the legal problems that currently exist in Vietnam are a direct result of the underlying traditions that have formed the backbone of the Vietnamese political environment. In discussing the legal setting of Vietnam in relationship to economic development, Mr. Fohrman gave the following explanation,

The difficulties in Vietnam revolve around the fact that the country is still figuring out where its going. They alternate between opening up and reigning in...They're constantly changing the laws, the rules, the regulations, as they attempt

to go from a communist system to some type of a more open socialist capitalist system.

Dr. Mai Hong Quy in discussing the difference between practicing law in Vietnam and in a Western country illustrated how traditional Vietnamese legal thinking is influenced by their culture values and beliefs. Vietnam historically comes from a situation in which law is not respected or abided by. In her words,

Legal education and doing law now all of our people recognize the role of law in the society now and doing law now we are very, in general I think, all of the occupations recognize the role of doing law now, but legal education and legal thinking for our people is, I think, we have to talk in these areas now, especially in legal education and formulate legal thinking....

Dr. Quy goes on later to explain, "I think you have to follow law and teach people to follow the law and to respect the law because the situation is that now [Vietnamese people] are not respectful of the law."

In the comments of Dr. Quy it is evident that there is a meeting of the horizons of the past and the present. Understanding Vietnamese tradition requires a historical horizon. This horizon is not developed by transposing oneself into a historical situation. Instead, a horizon must already exist which allows an individual to imagine another situation or position. Furthermore, Gadamer (1989: 304) contends that horizons are unlimited by historical situation,

Just as the individual is never simply an individual because he is always in understanding with others, so too the closed horizon that is supposed to enclose a culture is an abstraction. The historical movement of human life consists in the fact that it is never absolutely bound to any one standpoint, and hence can never have a truly closed horizon. The horizon is, rather, something into which we move and that moves with us. Horizons change for a person who is moving. Thus the

horizon of the past, out of which all human life lives and which exists in the form of tradition, is always in motion.

By understanding one's horizon it becomes possible to learn to look beyond the confines of the horizon and see the larger whole of the world picture. In testing their assumptions and presuppositions, the Vietnamese people are in direct contact with the horizon of the past. Subsequently, only by examining their prejudices can the Vietnamese begin to envision new avenues and opportunities of enriched and diverse understanding in the realm of law and in the institutional structures which are designed to promote and enforce legally based principles.

Moreover, in Vietnam, lawyers are not, traditionally, one of the more respected professions. According to Mr. Tran, engineering is considered the most prestigious vocation, with the top two percent of Vietnam's citizens chosen to attend universities to receive technical training. Attorneys in Vietnam have served primarily as intermediaries or consultants for businessmen. Contracts and business negotiations are decided among the owners who only call upon the lawyers after an agreement has been reached to iron out the details. Only after Vietnamese lawyers have established a successful practice are they "respected members of the society."

The cultural beliefs and values of the Vietnamese people have provided a unique position from which all legally based transactions are influenced. Business interactions do not exist outside the given horizons of the Vietnamese business participants. However, it is understanding the significance of the Vietnamese historicity that it becomes possible to develop different solutions to the problems and challenges encountered by international business attorneys.

American Values and Traditions

In discussing the traditions of the Thai and Vietnamese it is important not to overlook the history which composes the American horizon for understanding. The prejudices of the interpreter should not be disregarded from the process of interpretation on the basis that they form a barrier between the interpreter and the tradition in which the text was created. The full acknowledgment of one's preunderstandings is central to understanding that assumptions constitute and determine the nature of our very being. According to Gadamer, history is the foundation for all understanding. In his words (Winograd and Flores 1986: 29),

In fact history does not belong to us, but we belong to it. Long before we understand ourselves through the process of self-examination, we understand ourselves in a self-evident way in the family, society and state in which we live. The focus of subjectivity is a distorting mirror. The self-awareness of the individual is only a flickering in the closed circuits of historical life. That is why the prejudices of the individual, far more than his judgments, constitute the historical reality of his being.

Understanding ourselves comes from an explicit understanding of the historicity of our being. Subsequently, the nature of our being is determined by our cultural background. As such, American traditions and cultural values form the preunderstandings and assumptions that each international business attorney brings with him or her when they do business in Thailand and Vietnam.

Participants were asked to discuss the role that their cultural background and related experiences of being an American have played in conducting business in the Thai or Vietnamese legal environments. The individuals clearly conveyed that American assumptions and prejudices are

critical factors in determining how an attorney approaches a business activity.

Mr. Lanahan commented about the American values that are brought with individuals who have attempted to business in Asia. He said:

Americans tend to be too aggressive. They're not polite and patient as they should be. They should learn to take disappointment in stride and persevere. They should not personalize. Never raise your voice or sound aggravated or annoyed. I see a lot of people negotiate that way. They get frustrated, speak in a louder voice, they think that the others don't understand, and sometimes they don't, sometimes there is a real misunderstanding, other times they do understand.

Ms. Goodman spoke about the many traditional American values that have caused problems for business attorneys in Thailand. She stated Americans are "too impatient." They think that "absolute truth and candor is valued" and should, therefore, put all their "cards on the table." However, "just because you've put all your cards on the table you assume that the other side is putting all their cards on the table and they're not." Americans are not comfortable with the silences which often accompany business negotiations and are inappropriately always jumping in to fill those silences. Moreover, the American society is very low context, giving little attention to anything other than the written or spoken word. Americans have the tendency to assume that "everything is in the words" and "that everything out there is in black and white." She advises that the American should be mindful of what is going on under the surface.

Ms. Goodman concluded that many of the prejudices that Americans carry with them while in Asia have caused considerable difficulties when not recognized and acknowledged. She unequivocally stated,

Every culture has a lot of ethnocentricity and pride, but I think we're just so convinced that we have the best in the world. It seems like Americans are so sure of everything without having to do any research. Some of their assumptions seemed based on--I'm not quite sure what facts they're based on.

It is evident from Ms. Goodman's statements that the historicity of the American attorney plays a predominant role in determining the horizon from which business transactions are understood. A horizon constitutes the believed set of possibilities for an individual and the associated prejudices that form the basis of preunderstanding of personal and historical experience. The horizon is the range of vision that includes everything that can be seen from a particular vantage point. A horizon (Gadamer 1989) is defined by the concept of a "situation" which limits the possibility of vision. However, it is in understanding the assumptions that new possibilities come to the forefront of legal interactions.

An individual's horizon may be limited or narrow, however, there is always the potential for expansion of the horizon. To have a horizon means not being limited to what is nearby, but being able to see beyond it. As Gadamer (1989: 302) explains, "...working out the hermeneutical situation means acquiring the right horizon of inquiry for the questions evoked by the encounter with tradition." Therefore, it is imperative to recognize the legitimacy of one's prejudices and role they fulfill in creating a horizon from which the world is viewed. These prejudices influence the American way of thinking and create misunderstandings between individuals of different cultures when working in a variety of business contexts.

Judge David Lombardi, when commenting on American traditional values, said that one only needs to look at the American Constitution,

Declaration of Independence and the history of the Western frontiers to understand the prevailing American attitude of the strong and silent rugged individualist that is promoted in the society. He stated that the sense of individualism established in American history is not found in Asian cultures where membership in a community is far more important. Americans are more interested in “having control over their own lives and achieving a result that is satisfactory to them personally.” Judge Lombardi’s comments bring to mind the words of Bellah et al. (1985: 142) when they proclaim that, “(i)ndividualism lies at the very core of American culture.”

American prejudices form the horizon from which an American attorney acts and attempts to understand the foreign situation and context. Understanding through interpretation is determined by the prejudices and assumptions brought to the social text. These preunderstandings conveyed from the historical context constitute the horizon of the present. The horizon of the present is constantly being formed because of the implicit need to continually test a given set values and opinions. In testing prejudices there is a direct encounter with the past, requiring an understanding of the tradition from which an individual comes. Thus, the horizons of the past and the present are interrelated, creating the total horizon where an individual operates and develops perceptions regarding the external situations.

Mr. Tran provides a further commentary on the many American presuppositions that often get in the way of conducting business in Vietnam. Mr. Tran stated:

The cultural issues play an important role in the success of doing business in Vietnam, but I think what accounts for most of the failures, especially of the Westerners in Vietnam, is they

misperceive the landscape as being too simple, too easy, because it looks primitive to you once you've landed at the airport. Things look awkward, you know, things look like there is not a system here. And you have that arrogance. It's a very big error to develop that arrogance. We committed that error during the War and we're doing it again in business. And also the condescending attitude that we can come here and teach you how to do your business. That's true that the Vietnamese do need to learn a lot from outsiders, but you shouldn't go in with that attitude. Dressed with that arrogance and that bias, the prejudice, very few people that I have met with--the Western businessmen doing business in Vietnam--come in with the recognition that he or she has to sit down, take the time and take the system apart.

Mr. Tran offers sage words of advice for the American business attorney. He reflects the concept of a horizon and the bringing forth of the present with a connection to the past with an openness to moving forward and creating new interpretations, thereby, enlarging one's horizon and opening it to new possibilities for understanding.

Only when American attorneys begin the process of examining themselves and the traditions which constitute their horizon for understanding will be successful in international business transactions. Understanding one's history affords an individual with the opportunity to appropriate a new future. The interpretation and understanding of American cultural values and traditions brings new meaning to the practice of international law.

Cultural Understanding As Part of Legal Discourse

By examining the traditions and cultural values that have formed the horizons for understanding for the Thai, Vietnamese, and Americans, we are reminded of the words of Gadamer (1976: 8-9),

But it seems to me there can be no doubt that the great horizon of the past, out of which our culture and our present live, influences us in everything we want, hope for, or fear in the future. History is only present to us in light of our futurity.

Hermeneutics recognizes the importance that traditions and cultural values play in giving meaning to our lives. Whether one exists as part of the Thai, Vietnamese, or American heritage, an individual must realize that all understanding is precipitated by the horizon of the past. Legal practitioners do not engage in foreign business activities with an objective and value free set of assumptions. Instead, participants are inherently connected to a history which influences the very way they conduct business relationships. Only by understanding our prejudices does the historical text speak to us and provide a key to new possibilities for future action.

Meaning is conveyed only through historical understanding and belonging. According to Gadamer (1989: 295):

Thus the meaning of "belonging"--i.e., the element of tradition in our historical-hermeneutical activity--is fulfilled in the commonality of fundamental, enabling prejudices. Hermeneutics must start from the position that a person seeking to understand something has a bond to the subject matter that comes into language through the traditionary text and has, or acquires, a connection with the tradition from which the text speaks. On the other hand, hermeneutical consciousness is aware that its bond to this subject matter does not consist in some self-evident, unquestioned unanimity, as is the case with the unbroken stream of tradition. Hermeneutic work is based on a polarity of familiarity and strangeness....It is in the play between the traditionary text's strangeness and familiarity to us, between being a historically intended, distanced object and belonging to a tradition. *The true locus of hermeneutics is this in-between* [original in italics].

Hermeneutics seeks to explain the conditions in which understanding takes place. Therefore, hermeneutic theory offers American attorneys working in Thailand and Vietnam with a means for understanding the importance of tradition and developing new relationships with foreign business associates.

However, the task of interpretation does not end in the mere understanding of a society's historicity. Although business transactions in the legal sector cannot be accomplished without knowledge of the cultural influences of a given society, truly successful and fruitful relationships will only occur when there is a fusion of horizons. That is, the enlargement of ourselves through the understanding, not only of our own horizon, but the horizon of another culture as well.

Fusion of Horizons

I want, by understanding myself, to understand others.

I want to be all that I am capable of becoming.

--Katherine Mansfield

Bernstein (1983) postures, if we understand our own horizon, what are we attempting to do when we understand a horizon other than our own? Since we are ontologically grounded in our situation and horizon that has come to us through tradition, we seek to achieve a fusion of horizons. This fusion of horizons will enlarge and enrich our understanding. The relationship of horizons and traditions to preunderstandings is explained by Gadamer (1989: 306) with his vision of fusion of horizons,

In fact the horizon of the present is continually in the process of being formed because we are continually having to test all our prejudices. An important part of this testing occurs in

encountering the past and in understanding the tradition from which we come. Hence the horizon of the present cannot be formed without the past. There is no more an isolated horizon of the present than there are historical horizons which have to be acquired. *Rather, understanding is always the fusion of these horizons supposedly existing by themselves* [original in italics].

The process of fusion of horizons is ongoing, as there is always the combining the old with the new to form a living system of values.

Mr. Tunnell described the importance of a fusion of horizons and the subsequent transformation that takes place when he said,

I've been in most places, so I have personally a great interest in other cultures and a recognition that ours is not the only culture and that there are a lot of values and worthwhile things that can be obtained from other cultures. You almost have to start with that perspective that if you have an arrogant view that ours is the only culture worth knowing about then you're not going to get anywhere and you're going to have trouble dealing with others who have a different perspective. So to me again it comes back to the point, if you understand what the other party is thinking of you, you can grasp it and then you have a sense and develop a way that you can work with these.

Interpretation and ultimate understanding involves a fusion of horizons between the past and the present. All interpretation takes place not only in terms of an involvement in tradition, but also with the knowledge of the past and how it can be applied to the current social condition and concerns. Fusion of horizons recognizes the relationship between the past and the present for as Wachterhauser (1986: 37-38) suggests,

If we are temporal then we can no sooner divorce ourselves completely from the past than we can ignore our present concerns and perspectives. It can be said that it is precisely this need for application that prevents the past from turning into a sterile deposit of irrelevant facts or an ossified orthodoxy. The need for application, brought about by the

ever-changing needs of the present, is what drives traditions forward, sometimes, of course, even to their breaking point.

Fusion of horizons recognizes the need to combine the past with the present in order to come to new understandings within the social construct.

All understanding that results from a fusion of horizons opens the world to possibilities for new understandings. Understanding, therefore, demands an awareness and understanding of oneself. In order to interpret and understand the past, it is essential and necessary to understand one's presuppositions and assumptions that serve as the foundations for a horizon. Understanding the past does not mean freeing oneself of prejudices. Instead, one must seek awareness of these prejudices. As Brummer (1991: 453) states in commenting on Gadamer's work,

...dialogue is a creative process that brings forth something new and does not simply reproduce what was there in the first place. More takes place in the hermeneutic dialogue than merely a reproduction of the intentions of the author or a confirmation of the prejudices of the interpreter. In a certain sense the text 'speaks' to the interpreter, who not only hears something about the subject matter, but also comes to see himself as his own prejudices in a new light. In this way the historical process of the tradition is carried forward and renewed.

Thus, understanding and experience are inseparable. For the process of interpreting tradition provides a sustaining link to the present and ultimately the future.

The significance of testing one's prejudices and assumptions is characterized in a story told by Dr. Kanthawongs regarding an American lawyer working in Thailand who was hit on the head by a caddie while playing golf. According to Dr. Kanthawongs,

He [American attorney] went and saw the doctor and he reported it to the police and he wanted to take the case to

court. He want to sue to get paid for something. If that happened in the U.S. he complain and he will get something. But I told him that I doubt it here in Thailand, so why don't you try and you will see what will happen. And he did try. He saw the police and the police reported it to the golf course and the golf course told him that its the caddie's responsibility...and he cannot sue the golf course. And he came to that himself. He learned that and he proved that I was correct.

It is in the testing of his assumptions, that the young American attorney was able to come to a new understanding. By learning about the Thai traditions the lawyer was able to recognize his American prejudices in a new way, thereby, enlarging his horizon of understanding.

Fusion of horizons places the responsibility for understanding upon the individual. The expanding of one's horizon through self-inquiring is explained by Ms. Goodman in her continual learning of the Thai cultural traditions. She stated:

What I feel my mission is to keep as abreast as possible with Thai politics and current events what is going on there. To know about the region and to know about the U.S. polices. To have a real interest in their culture. I try to see any movies about Thailand that I see here. I try to keep up with Thai literature. I subscribe to several Thai English language periodicals that come to my office here. I try to know about the religious and cultural history....People are concerned what's going on in their sphere. I feel it is important for me to know what's going on in those spheres and have things to say.

All understanding is related to self-understanding. Consequently, the key to understanding others lies in the ability to understand oneself. By understanding one's history, it becomes possible to understand another. True fusion of horizons occurs when an individual can learn from another person or culture. As suggested by Bernstein (1983: 36), "(i)t is precisely in and through an understanding of alien cultures that we come to a more

sensitive and critical understanding of our own culture and of those prejudices that may lie hidden from us.”

Mr. Tran describes a fusion of horizon that results when an individual encounters another culture like that of taking apart a system. He states that to understand a culture other than our own, we must carefully examine the foreign system to see the logic in its operation and to begin to comprehend the thinking behind the creation of the system. Only when you understand their logic can “you start incorporating your logic with theirs.” Furthermore, Mr. Tran suggests that success will result only when there is a combining of the preunderstandings of both the American and foreign party. In his words,

...whatever you propose to them it has to be compatible with their logic. And if you want to propose any radical changes to them you got to prove to them you're way of doing business in more efficient. By example, not by preaching, you see. But very few people take the time to do that, especially, if I may be blunt, I think most Western businessmen....So what I'm saying is not how to get there, everyone uses a different vehicle, but you just have to understand why they use that vehicle and you work with that vehicle so that if you invite the other guys onto your vehicles you got to make sure that it is compatible with theirs, otherwise they get car sick and they don't go along with you to where you want to take them.

Mr. Tran offers prudent words of advice for the American business attorney that hopes to be successful in Asia. Changing one's horizon does not require giving up one's historicity. Instead, by understanding a horizon that once seemed alien to ours is it possible to create new concepts for working together.

Responsible understanding comes from personal evaluation and interpretation. The process of understanding ourselves and the prejudices

and assumptions that bind us ongoing. Bernstein (1983: 143) contends that we must continually strive to achieve a fusion of horizons, "...whereby our own horizon is enlarged and enriched." Moreover, according to Bernstein (1983: 144),

It is through a fusion of horizons that we risk and test our prejudices. In this sense, learning from other forms of life and horizons is at the very same time coming to an understanding of ourselves. Only through others do we gain true knowledge of ourselves.

The words of Bernstein are addressed in the comments of Mr. Fohrman. When asked whether he seeks to change other people's traditions when working in different cultural contexts, Mr. Fohrman replied,

No, you do not try to change their traditions. First of all, before I go into any place, I try to read up about the country and how business and social matters are conducted so that I am not the ugly American coming in. So I do make that effort to find out some things. Then when I am working on a particular transaction I tell people I am not attempting to do it the way we do it in America....And I don't attempt to tell anybody that we should do it the way they do it in America....We just look at a variety of different ways of dealing with particular situations and try to come up with one that works in their particular culture or their particular country, depending on the local laws.

Gadamer (1989) contends that fusion of horizons is linguistic in nature. Language is the medium through which interpretation and understanding take place. Winograd and Flores (1986: 28) describe Gadamer's position regarding language,

Gadamer devotes extensive discussion to the relation of the individual to tradition, clarifying how tradition and interpretation interact. Any individual, in understanding his or her world, is continually involved in activities of interpretation. That interpretation is based on prejudice (or pre-understanding), which includes assumptions implicit in the language that the

person uses. That language in turn is learned through activities of interpretation. The individual is changed through the use of language and the language changes through its use by individuals. This process is of the first importance, since it constitutes the background of the beliefs and assumptions that determine the nature of our being.

Language is the means to universal understanding and is the essence of tradition. Without linguistic expression, fusion of horizons would be inconceivable. Only when the interpreter finds the language that unites him with the text does a fusion of horizons occur. As a result, the formation of a new manner of speaking is the expression of the fusion of horizons accomplished by understanding. As expressed by Pannenberg (1986: 131), "...the text does not 'speak', but rather the interpreter finds a linguistic expression that combines the essential content of the text with his own contemporary horizon." The act of interpretation through which a fusion of horizons is produced asserts that understanding is an interaction between the horizon provided by the social text and the horizon that the interpreter brings to it.

Fusion of horizons is made possible through the understanding of linguistic expression. Language opens the door to understanding not only ourselves, but also alien cultures. Bernstein (1983: 144) asserts,

To use the language of incommensurably, we can say that the incommensurably of different forms of life or different historical epochs always presents a challenge to us, a challenge that requires learning to ask the right questions and drawing on the resources of our own linguistic horizon in order to understand that which is alien.

The words of Bernstein are reflected in Mr. Tunnell's comments when asked how he reconciles the cultural issues when working in foreign environments. He explains,

For a typical American this is, or maybe a stereotypical [American], that someone might attempt to impose our cultural perspective and ignore or push aside the Asian or Thai point of view which I think is always a mistake, and as you will anticipate from what I have said previously, that I certainly believe that you have to have an understanding of the local or the cultural perspective. You have to be respectful of it and I'm always respectful of other people's values and practices. It would be a great insult to them if you were not respectful of it and go out of your way, and I always like to do this, I think it's a good thing to do, to show an interest in it and it is interesting in itself to learn about people's point of view and their perspective in an attempt to see how that can fit with what your view is for your business purpose.

Although Mr. Tunnell is speaking of a fusion of horizons in relation to the Thai cultural context, his statement poignantly suggests the necessity for any individual working in the international business arena to challenge their way of thinking and attempt to incorporate the foreign understanding into the foundation for a new type of understanding that will allow for different set of possibilities. Mr. Tunnell further elaborates when he says,

There is a process which I think requires a sympathy, empathy and understanding of culture and how the people on the other side of the table are viewing things or understanding things. I know in the Thai context many times you do have to spend a period of time figuring out what their objective is or why they are approaching something or what they want to accomplish and you can then get to the point with them once you understand that and then you see a way that you can work with it....Again, to me what matters is an understanding and empathy or feeling for a culture.

Our horizons come to us through language and culture and create the basic assumptions that guide our very existence. However, our horizons are conveyed only through experience and interaction with others. We as individuals are fundamentally social in nature and use language as a means to understand our traditions and history. As such, fusion of

horizons can be considered interactive. Heidegger (1962) suggests that we already exist in relationships with others. That is, we can never truly separate ourselves from others and the ultimate creation of our history and tradition.

Changing one's horizon is done in relationship with others through the use of language. Only through conversation can a fusion of horizons result, as our horizons come from a world that is co-constructed in linguistic understanding. Bellah et al. (1985: 84) remind us,

There are truths we do not see when we adopt the language of radical individualism. We find ourselves not independently of other people and institutions but through them. We never get to the bottom of ourselves on our own. We discover who we are face to face and side by side with others in work, love, and learning. All of our activity goes on in relationships, groups, associations, and communities ordered by institutional structures and interpreted by cultural patterns of meaning....(O)ur individualism, is dependent in a thousand ways on a social, cultural, and institutional context that keeps us afloat even when we cannot very well describe it.

Thus, fusion of horizons allows for communication in a social context, thereby, creating new understandings about present societal conditions.

Understanding of both ourselves and others is not an isolationary act. Instead, it requires being engaged in relationships with others. Ms. Wayne claims that understanding people does not come from reading a book. It comes from being in the society with people and listening and talking with others. Moreover, Mr. Tran corroborates the importance of relationships in understanding the traditions and histories that define a society when he said,

The key thing is that you mingle with the real people...The problem is that most Westerners go there and they have a sense of urgency. They got to get this done, they got to show

this....You got to structure a learning system yourself by living with the real people.

Mr. Tran further contends,

You got to go and talk to the kids on the streets. You got to talk to the ladies that run the coffee shops. You got to go out early in the morning to the marketplace....You got to go to their home. See how they treat the kids, how social order is established and structured. You don't read books on do's and don'ts.

The traditions and history that individuals share are passed from person to person as part of the communication and dialogues which are shared. Language is the means to understanding and carries the essence of tradition. Abscal-Hildebrand (1989: 93) suggests that we,

...use language consciously to emphasize its dynamic, social, historical construction--not as something that lies outside of us but as something we create within us while we live it with one another, always in some form of community.

Changing our horizon does not require that we give up our traditions. As Abscal-Hildebrand (1989: 93) explains, "...instead, it promotes recreating from among those histories new interpretations of particular historical features that more justly speak to the possibilities for living and working together." By understanding our traditions we are able to make what once seemed remote near, thereby, creating a world full of new possibilities and solutions. Ricouer (1981: 295) most aptly reminds us,

For to recognise the values of the past in their differences with respect to our values is already to open up the real towards the possible. The 'true' histories of the past uncover the buried potentialities of the present.

Fusion of horizons allows for new possibilities and understandings. According to Bellah et al. (1985: 153) we exist as part of a "community of memory" and, "(t)he communities of memory that tie us to the past also

turn us toward the future as communities of hope. They carry a context of meaning that can allow us to connect our aspirations for ourselves and those closest to us with the aspirations of a larger whole and see our own efforts as being, in part, contributors to a common good.” The traditions that bind us as a community open the door to different understandings and the appropriation of new type of society in which we live.

Dr. Quy clearly illustrates that understanding the horizon of the past paves the way to a different future when discussing the relationship between Vietnam and America and the legacy of the Vietnam War. She said:

It is history. This is the past. We are looking toward the future, so we have to have relationships with American people....All my students, they were young and even I when I got--I'm from Hanoi too, and in 1972 when the Americans bombed Hanoi I was there, I was nine years old and I remember--but I think this is history, its the past, we are looking for the future. So, I think, relationships with American people is our first [priority].

Fusion of horizons emphasizes the interpretation of traditions through the understanding of different perspectives and historical experiences. The fusion of horizons allows social concerns to be comprehended, criticized, assessed, and advanced. With our current horizons constantly being developed in conjunction with the past, it is possible to enlarge and enrich our scope of understanding. Fusion of horizons promotes unconstrained communication and discussion, open to learning from the interpretation of others and oneself. Only when we are able to identify our prejudices through a fusion of horizons, can we begin to come to new understandings that are capable of meeting the challenges of the social world.

Before the American attorney attempts to do business in either the Thai or Vietnamese contexts it is imperative that he or she examine the traditions and cultural values that constitute the horizon from which interpretation and eventual understanding will take place. It is the knowledge of these horizons that will allow for a fusion to occur which will open the world to new understandings. The participants of this study had horizons that been changed by the experience of working and living in another culture. The knowledge gained from examining their presuppositions and assumption provided the backdrop for understanding those cultures most alien to their own. Each of the participants provide valuable lessons and insight for business attorneys who hope to successfully work in the Thai and Vietnamese contexts. Most importantly, in recognizing the value of traditions and the role they play in creating the body of knowledge from which understanding is developed, it is possible to appropriate a more prosperous and promising future.

The Universality of Communicative Competence

It is a luxury to be understood.

--Ralph Waldo Emerson

A premise of this study is that communication among legally connected parties partaking in business transactions reflects a rationality grounded in an epistemological approach. Individuals are rarely aware that the most commonly practiced communication processes clearly emanates from the scientific tradition. Therefore, the practice of law in the countries of Thailand and Vietnam requires a new approach to communication that reflects meaningful discussions which provide opportunities for creating

better relationships and more inventive and promising possibilities for the future. While it is important to be mindful of the traditions and cultural values that define a person or society, it is also imperative to recognize the significance of communication in determining the ultimate success of understanding.

The theory of communicative competence, or universal pragmatics, as developed by Habermas (1979), provides a practical approach to analyzing the act of communication. It seeks to explore the components of a conversation that are necessary for reaching understanding between participants. As McCarthy (1979: xviii) summarizes:

The idea of a universal pragmatics rests on the contention that not only phonetic, syntactic, and semantic features of sentences, but also certain pragmatic features of utterances, not only language but speech, not only linguistic competence but communicative competence, admit of rational reconstruction in universal terms.

Only in full recognition of the need to have more meaningful communication between parties will legal practitioners begin to have an insight into the true foundations for a thriving international practice.

When action is aimed at achieving an understanding there are a set of universal criterion that can be used to examine the process of coming to communicative competence. Habermas (1979) puts forth four validity claims which he contends are the basis of any speech act. Habermas (1976: 2-3) explains his theory as follows:

The speaker must choose a comprehensible expression so that speaker and hearer can understand one another. The speaker must have the intention of communicating a true proposition so that the hearer can share the knowledge of the speaker. The speaker must want to express his intentions truthfully so that the hearer can believe the utterance of the

speaker (can trust him). Finally, the speaker must choose an utterance that is right so that the hearer can accept the utterance and speaker and hearer can agree with one another in the utterance with respect to a recognized normative background. Moreover, communicative action can continue undisturbed only as long as participants suppose that the validity claims they reciprocally raise are justified.

Communicative competence presents a timely and relevant theory to examine the dialogic process which takes place between two legally connected parties in the international business marketplace.

Communication is the backbone from which all business transactions develop. Without the ability to enter into a conversation that has the potential to produce an agreement satisfactory to both parties, American attorneys will find only minimal success in their dealings with either the Thai or Vietnamese.

In conducting the research for this project it became evident that although there existed several cultural nuances specific to either Thailand or Vietnam, the basic principles of communicative action were the same for both countries. As suggested by Mr. Tran, "(t)he Asians...have their own way of doing business, but universally all business and the principles of human relationships still hold....People are people and the human feelings are very basic. Our emotions are very much the same." The universality of communicative action, therefore, holds great promise for understanding the dialogic process that occurs between international business participants.

The following sections discuss the application of the communicative competence theory to the practice of international business law in Thailand and Vietnam. The data revealed as part of the conversations held with the participants illustrates the necessity of understanding the elements which constitute successful communication, especially when working in business

environments where small groups of individuals do not share similar traditions and cultural backgrounds.

Achieving Mutual Understanding

Habermas (1979) suggests, that it is essentially irrelevant to discuss the validity claims of speech if the conversational participants do not have an orientation towards reaching an understanding. According to Habermas (1979: 59), communicative competence can only exist if the speaker and hearer are engaged in action that is “oriented to reaching understanding.” In international legal transactions, attorneys are often tempted to break off communicative action when negotiations appear to be going awry. On those occasions when communicative action is concluded, the participants are confronted with a number of alternatives for continued communication. As described by Habermas (1979: 3-4):

One is then basically confronted with the alternatives of switching to strategic action, breaking off communication altogether, or recommencing action oriented to reaching understanding at a different level, the level of argumentative speech (for purposes of discursively examining the problematic validity claims, which are now regarded as hypothetical.

Similar to the thoughts of Habermas (1979), Ms. Wayne contends that it is possible, in a place such as Vietnam, to restore the communicative process when negotiations have broken down by creating a new definition of the situation. Redefining the circumstances allows the validity claims to be reinstated, whereupon, the parties are able to abandon strategic action in favor of communicative action. In describing how the Vietnamese partner will often seek the assistance of the government when problems

arise with the negotiations, Ms. Wayne argues that such a situation can be mutually reconciled. In her words:

Whereas often what you can do is go back and start with the Vietnamese joint partner and say “we got a big problem with this for this reason, this reason, and this reason, do you think you can help us sort it out?” And if you sort it out that way you’ll find that the argument will go away from the ministry level.

By allowing new discussions to take place, the emphasis is returned to communicative action.

Communication aimed at mutual understanding is critical to the development of long term business relationships. The incorporation of strategic action does not seek mutual understanding in which both parties can come to a common accord. Indicative of strategic action is the lack of orientation towards achieving personal success as part of the communication process. Strategic action is technical in nature whose results are both quantifiable and measurable. Individuals openly pursuing strategic action seek not to achieve mutual understanding in which the success of all parties is recognized and taken into account, but are self-interested and seek to attain personal goals and accolades. As such, communicative competence is reached only when the needs of both participants are addressed. The American lawyer practicing in Thailand or Vietnam must, therefore, seek to create a shared world of values from which new understandings can emerge.

Mr. Tran identified the importance of the evolution of the communication process when he said “you have to identify the areas of common interest and perceived mutual interest and benefit. You say these are the areas that I intellectually or practically perceive as being of mutual

interest to both of us.” A business world based on shared values is ripe for genuine agreements grounded in mutual consensus.

Communicative action engages the interests of the parties involved. Each person in the conversation has viable expectations that may be reciprocated by the other party. Communicative action seeks to achieve practical solutions to practical problems, instead of applying technical solutions to practical problems. The words of Mr. Tran have new meaning when combined with those of Habermas (1979: 209) when he summarizes the difference between communicative and strategic actions as follows:

In communicative action a basis of mutually recognized validity claims is presupposed; this is not the case in strategic action. In the communicative attitude it is possible to reach a direct understanding oriented to validity claims; in the strategic attitude, by contrast, only an indirect understanding via determinative indicators is possible.

Furthermore, achieving mutual understanding as part of communicative competence cannot be done solely through technological means. Face-to-face contacts with Thai and Vietnamese contacts are essential for achieving the validity claims of speech. Douglas Mancill claims that a relationship established via telephone or facsimile is not adequate. He contends that attorneys must meet their foreign clients and business associates in person. The amount of information gained through telecommunications is marginal. Mr. Mancill said that visiting the site is imperative, as you are apt to obtain more information in the presence of the person. Additionally, the necessity to develop trust as part of communicative action can only be accomplished through personal relationships formed in the same physical proximity.

Comprehensibility In A Foreign Context

When American attorneys are engaged in business transactions with members of the Thai and Vietnamese communities, the mere comprehensibility of a legal document becomes vitally important. As one of the four validity claims, comprehensibility provides the very foundation from which communicative competence is achieved. Comprehensibility exists through language and is the medium through which all four validity claims are communicated. As Habermas (1979: 67) states,

The model intuitively introduced here is that of a communication in which grammatical sentences are embedded, by way of universal validity claims, in three relations to reality, thereby assuming the corresponding pragmatic functions of representing facts, establishing legitimate interpersonal relations, and expressing one's own subjectivity.

Therefore, comprehensibility is essential to the establishment of Habermas' validity claims. Without basic linguistic understanding of legal terminology and concepts, successful agreements and negotiations will not occur between foreign parties.

Ms. Wayne explains that in an environment such as Vietnam where little understanding of basic legal terminology exists among most individuals, it is essential to thoroughly explain the meaning of all alien concepts to the business partner, otherwise any possible agreement will likely fall through. In her words basic business negotiations has often taken the form of,

...explaining to the Vietnamese simple legal concepts that they had not encountered before. They weren't particularly adverse to those concepts, but they wanted to understand them, which is quite right when you're dealing with any type of legal documentation you've got to [understand]...

Ms. Wayne stated that explaining a contract to a foreign party does not mean you are advising them. Rather, you are laying the groundwork for a successful agreement.

The reflections of Ms. Wayne clearly indicate that the intention of a business negotiation should be to come to a mutually beneficial understanding where both parties come to a new understanding of the situation. The ultimate goal of communication is for the participants to come to some sort agreement that originally seemed impossible. In the words of Habermas (1976: 3),

Agreement is based on recognition of the corresponding validity claims of comprehensibility, truth, truthfulness, and rightness....In addition, two participants in communication can come to an understanding about something in the world, and they can make their intentions understandable to one another.

Comprehension provides the technical aspects for understanding that is capable of spawning new ideas and possibilities for business relations with foreign counterparts.

Ms. Wayne went on to comment about the consequences of not providing the Vietnamese party with a comprehension of a legal document. She stated:

My own way of doing things in Vietnam and advising clients and all that is to make sure that the Vietnamese understand everything about the contents of the contract before he hopefully signs the contract, because if they don't, its very simple what can happen...because they haven't clearly understood something in the contract, because they haven't understood what that means as a consequence of that being in the contract...they're going to say no we won't do this, we didn't understand that was the case and the fact that you have a signed contract is not really going to make a difference.

Once there is a basic understanding of the language of the business agreement new possibilities between the legally connected parties becomes possible. Ms. Wayne claims that, in her experience, once the Vietnamese have understood the legal terminology they are capable of coming up with “their own very sensible commercial view points.”

Language barriers present many challenges for international legal practitioners in Thailand and Vietnam. Basic comprehension of a business transaction will not occur unless the issue of language is addressed. All understanding disseminates from linguistic expression that is based in the realm of reality. Consequently, linguistic communication does not usually contain the four components necessary for reaching an agreement, making it necessary to analyze communicative action from the perspective of the basic principles required for reaching an understanding. For the most part, the participants agreed that language is not a problem if it is recognized that measures must be taken to prevent the cessation of communication due to lack of mutually understood expressions. As argued by Habermas (1979: 26), “(i)t is further assumed that communicative competence has just as universal a core as linguistic competence.”

When asked how to overcome the many misunderstandings that result in business failures in foreign countries, Mr. Lanahan responded,

...this may seem mundane, but it is very important, you must have a very good interpreter. Many misunderstandings and disagreements occur if the interpreters tend to put their own ideas into the message, creating misunderstandings which are only later learned about. So you must have a very good and clear interpreter, that's number one.

Mr. Fohrman suggests the basic business terms are always the same regardless of what country you are operating in. “How you deal with

them, how complicated you make it, depends on the legal system. In Asia, generally, documentation is much simpler than it is in the Anglo-American world.” Subsequently, Mr. Fohrman recommended keeping it simple, that is, “...use the simplest language possible, keep it as short as possible, so that you have the least opportunities for misunderstandings, and then talk through each of the points and make sure that everyone understands.”

In an ideal world however, American attorneys would know the local language. Although it is possible to successfully practice international law in Thailand and Vietnam, as evidenced by the accomplishments of the participants, learning the language will further enlarge the possibilities for mutual understanding in communication. As Ms. Goodman conveyed in her words regarding the importance of language,

I think that any person who really wants to do business in a foreign country, it doesn't matter if its Thailand or not, unless you learn the local language you're only getting a tiny slice of their information pie....(I)f you don't speak the language you're not seeing the whole picture of what's going on at all and I think you're essentially making very uniformed decisions.

A similar position is taken by Kon Bahlin when he claimed that in knowing the local language the element of fear is often reduced. Business people who know a foreign language are not as “scared” when it comes to participating in international activities.

Trust In Relationships

Of overwhelming importance to the establishment of Habermas' validity claims is the development of a sense of relationship prior to the conducting of any business dealings. For the Thai and Vietnamese the sense of community that is created as part of building a relationship with a

prospective business associate is of critical consequence to the future of a successful negotiation. The fostering of relationships provides the mechanism for which trust can be established. From the research it became evident that achieving communicative competence hinged upon the redemption of trust as cultivated as part of a relationship. According to the participants, the validity claim of trust was the most difficult to attain, yet the easiest to destroy. Without trust in the Thai and Vietnamese legal settings true communicative competence cannot exist and the other three validity claims become moot.

The concept of a relationship is essentially the same in both Thailand and Vietnam. In responding to how successful business relationships are developed Mr. Tunnell stated:

I think as in America and in life often times business relationships are based on personal contacts and understandings. I've long believed that the Asians, of course, even place a greater value on that perhaps because they have less formal legal systems or rely less on the binding legal contract and more on a sense that they know the person and they can trust the person because traditionally they do not seek recourse to courts or other legal recourse so that developing an understanding and a true good communication and relationships on a personal level are almost always primary in Asia I think for the reasons I've given. Often that comes before doing business....It all does come back to developing that bond of personal trust and familiarity and friendship.

The theory of communicative competence establishes a means for coming to an agreement in a society inherently bound by relationships. Communicative action recognizes the existence of interpersonal relationships as the decisive factor in coming to an understanding. Participants oriented towards reaching an understanding desire to enter

into a relationship with each other. According to Habermas (1976: 59), "I shall speak of the success of a speech act only when the hearer not only understands the meaning of the sentence uttered but also actually enters into the relationship intended by the speaker." Achieving communicative competence is the result of engaging in a personal relationship with another human being.

Mr. Fohrman similarly commented on the importance of establishing a personal relationship in order to create a mutually beneficial environment as part of the business process. He observed:

The United States is probably the only place in the world, other than maybe Holland, where you can walk in and say "Hi, I'm Joe Smith, let's do a deal," and sit down and start negotiating....Every other country that I've ever worked in, personal relationships are very important. People will want to know you. They will want to have some idea who you are, what your background is, what your family is like, to access you before they actually engage in a business transaction with you. I would say the Vietnamese are no different than a great deal of the rest of the world....you have a long period of time in which you build a relationship.

Mr. Fohrman said that relationships are generally established over informal gatherings, including lunch and dinners, in which the majority of the conversation centers around people and fundamental human interests.

Ms. Goodman's business experiences in Thailand echo the thoughts and observations of Mr. Fohrman. In her words,

It's just a whole different business arena there...Its a long process and it just involves people getting to know you. This is true with anybody who does international business is going to tell you that it takes time to create relationships with people from Asia....They're not going to just jump in and start a business relationship with you right away. It takes time to get to know them.

When business becomes purely transactional and little attention is given to developing a relationship, communicative action in the Thai and Vietnamese contexts will not exist, even in its most embryonic stages. According to Mr. Tran, if you embark on a business expedition and show no desire or curiosity to get to know the host or his interests, then the foreign party will “do business with you with only the intention of exploiting you” which is definitely “not a mutually constructive approach to living together.” Asians are most adverse to those American attorneys that are only interested in the signing of a contract. Instead, they want to feel as if they have a relationship with the American lawyer. Mr. Tran argues, “Asian people are not comfortable talking about business with someone they don’t know much about. So even if they cooperate with you because they have to, they give you all the bogus information....They tell you what they think you expect to hear.” Communicative competence does not exist under these circumstances. The American’s inability to get to know the other party becomes purely strategic in nature and all possibilities for genuine attainment of consensus are dissolved.

Trust as developed through relationship building must also be expressed in terms of honesty. American lawyers must “seek out honest individuals and approach what you want realistically.” Attorneys must show a dedicated commitment to either the Thai or Vietnamese counterpart. Mr. Lanahan suggested that one of the reasons for many of the misunderstandings in Vietnam result from a lack of follow through on the part of the American businessmen. To prosper he said “(w)e [Americans] cannot make promises we do not intend to keep.” If you make an agreement you have to perform it. Moreover, “...you have to be in it for the long haul....You have to keep returning so they know you’re serious.”

Although the Asian markets are often a confusing place to do business, it does not mean they are impossible, “but the bottom line is that the relationship has to be one based on trust and understanding with honest people and if you can do that you can have a successful business.”

Many of the participants conveyed that a sense of patience is needed when doing business in the Thai and Vietnamese contexts. Relationships require an inordinate amount of time to mature. The trust that is needed as part the enactment of the four validity claims comes from continual nurturing of the personal relationship. Mr. Lanahan suggests that personal relationships will build while going through the business negotiation process. He contends, “you may spend months on that and all during that time your improving your personal relationship or its falling apart and your not going to reach an agreement.”

In Thailand, the solidifying of a relationship will not only help an attorney in the course of current business transactions, but will lead to future legal opportunities as well. Say Sujintaya explains that finding the business connections in Thailand is the hard part; however, “when you find one they’re sort of your connection forever and ever and ever. Not that you don’t have to nurture that. You nurture that relationship and you build on it.”

The American attorney must demonstrate both caution and restraint when encountered with a foreign party who is tempted to rush into a relationship without establishing the necessary trust. Driven by the enormous push to prosper economically, many Thai and Vietnamese enter into business agreements that have not been solidified by a relationship founded on trust. Both Mr. Tunnell and Mr. Lanahan describe similar

situations in which business deals have deteriorated or even collapsed due to lack of trust. In Thailand, Mr. Tunnell contends,

...people are ready to go out and do business. They want to just charge right ahead. Often the dollar drives the younger people who don't need to spend a lot of time...developing so called relationships....I've known of cases and people and circumstances where they have rushed into things that worked out very badly or were subject to falling apart or people didn't live up to their obligations.

Mr. Lanahan comments on a parallel situation in Vietnam,

It [often] doesn't take you years to be trusted in a country like Vietnam, they're moving much too quickly for that. Everything is quick, quick, quick and that's one of the problems. Deals are made so fast that they don't have a good basis in relationship and ultimately fall apart...[due to] misunderstandings.

Closely related to the issue of trust is respect. Respect is demonstrated in the course of being in relationship with others. Mr. Tran pointed out an obvious truth when he stated, "...you earn respect from people by exuding the respect for them." Respect in both the Thai and Vietnamese environments is usually associated with the concept of "losing face." Ms. Goodman believes that in Asian countries such as Thailand the notion of "saving face" is extremely important. However, she is of the opinion that saving face is a universally applicable concept. She stated, "...I'm one who thinks that really smart people here in America should try to help people save face."

Ms. Wayne conveys thoughts closely related to Ms. Goodman when she says,

...I think that's [losing face] the same though anywhere. If someone made a mistake anywhere in the world you don't want to go up to them and say "hah, hah, you've made a

mistake.”...I think there is something to losing face, but I don’t personally find it anymore than you would get in most places in the world.

Mr. Tran further suggested that respect often plays itself out in a number of different formats which are more subtle. According to Mr. Tran:

When you walk in, I don’t care where you’re from, you walk in the house, just by your body language, your look, your smile, people perceive who you are. People get it right away. They don’t understand your language, but can take a look at you and know if you’re respectful, you’re friendly, or whatever.

He continues on by saying,

So you don’t even [have] to know how to behave, just go with the flow, just be nice and gracious, and that’s all you have to do. Be open. Open in a friendly way, in a way that you feel [they] can appreciate and absorb....You know people can sense you...In the first five minutes if you don’t have that warmth...it doesn’t matter how or what your propose, how much money you throw at them, that’s it.

The manner in which Mr. Tran articulates the concept of respect demonstrates the heightened awareness that American business attorneys must have when dealing in high context societies such as Thailand and Vietnam. Trust is perceived and, consequently, developed by individuals in a number of different formats. The fact that trust can even be established as part of one’s body language does not make it any less valuable when trying to achieve communicative competence.

Communicative competence recognizes the need to be sensitive to others people’s needs. Sensitivity translates into a sense of respect for the other parties values and history. Developing trust allows for reciprocity to exist between speaker and hearer. Therefore, trust must be of the sincerest form, otherwise, communicative action is sure to halt. At the most basic level, sincerity, according to Ms. Goodman, is a reflection of

one's manners. She contends, "I think people understand if you're nice and thoughtful and kind and you remember things. I think it all boils down to good manners. Good manners is about being sensitive to other people's needs."

Judge David Lombardi summarized the importance of a trusting relationship as part of communication when he stated,

The only relationship you really have to concentrate on is the relationship that will enable the parties to communicate and to attempt to achieve a mutually satisfactory solution...Its essential to get to the stage of having enough of a relationship to negotiate to make any further progress.

Only when business relationships are developed and nurtured will legally based transactions be successful. One's haste to enter into a legally binding contract in either Thailand and Vietnam, without establishing a relationship inherently grounded in trust, will undoubtedly create future problems in communication.

Communicatively Competent Legal Transactions

Communicative action needs to play an important role in international legal transactions. Attorneys working in the Thai and Vietnamese contexts must have a means for understanding and evaluating the communication process as it relates to legal transactions. Only when lawyers fully comprehend the specific elements involved in achieving successful communication with foreign parties, will they begin to experience dramatic improvements in the way business activities are conducted.

Habermas' (1979) theory of communicative competence presents international attorneys with a new way of examining business negotiations.

Habermas (1979: 1) contends that, "(t)he task of universal pragmatics is to identify and reconstruct universal conditions of possible understanding." More simply stated, it is an approach that investigates the conditions which allow for understanding through communicative action. As Habermas (1979: 2) explains, "I shall develop the thesis that anyone acting communicatively must, in performing any speech action, raise universal validity claims and suppose that they can be vindicated [or redeemed]." Therefore, communication is more than the mere telling or expressing of a given set of words. It requires a mutually acknowledged interaction and demands that certain variables be met. However, the necessary condition for communicative competence to exist between participants is that, fundamentally, all action must be "oriented to reaching understanding" (Habermas 1979: 1). Most importantly, Habermas' validity claims allow participants to understand how agreements are reached and where breakdowns occur. This is essential to the legal profession whose primary tasks remains representing the needs of their clients.

Moreover, each of the validity claims corresponds to a domain of reality (Habermas 1979) in which the speaker and listener are put in relation to the world in which they exist. These worlds or domains of reality include language, external nature, society, and internal nature. The association of each of the validity claims to a domain of reality is significant to the understanding of communicative competence, since individuals do not exist, nor is change created, outside the sphere of reality. As Habermas (1979: 67) explains,

...for every successful communicative action there exists a threefold relation between the utterance and (a) "the external world" as the totality of existing states of affairs, (b) "our world"

as the totality of all normatively regulated interpersonal relations that count as legitimate in a given society, and (c) “a particular inner world” (of the speaker) as the totality of his intentional experiences.

The domains of reality provide the conversationalist with a means for interpreting the various worlds in which he or she operates, thereby, creating opportunities for changed behavior.

Communicative action holds that human beings are linguistically based. Subsequently, the achievement of an ideal speech situation is possible, even in the international business arena where misunderstanding and conflict are often the prevailing characteristics. Communicative competence allows each person to equally contribute to the conversation, even though the two partners may not necessarily be equal. Furthermore, the dialogic process of universal pragmatics implies that one of the participants in the conversation may be convinced by the force of the better argument.

The theory of communicative competence offers American attorneys working in Thailand and Vietnam a method for combining and understanding tradition while, simultaneously, achieving successful communication. Communicative action acknowledges the existence of the participants cultural values and traditions as elements which ultimately influence the conversation process. Habermas (1979), unlike Gadamer (1976, 1989), gives only implicit attention to tradition and history in his theory. However, he acknowledges the fact that the participant in a conversation brings to the text the traditions which constitute his or her horizon of understanding. Habermas (1990) is careful to suggest that cultural assumptions of an individual represent only one component of the

lifeworld that comes into play during a conversation. Habermas (1990: 135) describes the influence of one's lifeworld as follows:

The actor stands face to face with that situationally relevant segment of the lifeworld that impinges on him as a problem, a problem he must resolve through his own efforts. But in another sense, the actor is carried or supported from behind, as it were, by a lifeworld that not only forms the *context* [original in italics] for the process of reaching understanding but furnishes *resources* [original in italics] for it. The shared lifeworld offers a storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use in their interpretive efforts.

Communication oriented toward mutual understanding allows international business attorneys to challenge the underlying assumptions that influence the lives in which they live and work, and to create unlimited possibilities for new and imaginative legal agreements. Universal pragmatics provides the opportunity to critically interpret meaning, as it is revealed through conversations, with the hope of coming to a new understanding. As expressed by Mead in Bleicher (1980: 206):

Universal discourse is the formal ideal of communication. If communication can be carried through and made perfect, then there would exist the kind of democracy...in which each individual would carry just the response in himself that he knows he can call out in the community. That is what makes communication in the significant sense the organising process in the community.

Communicative competence provides a vehicle for reaching new understandings in the international legal arena. It establishes a useful model for the study of interpersonal relationship with American lawyers partaking in business activities in Thailand and Vietnam. Through the use and understanding of communicative action, legal practitioners will be

better able to prepare themselves for the international environment and the continual changes presented in the Thai and Vietnamese contexts.

Communicative competence recognizes that relationships have their foundations in history and tradition which, consequently, is a central criteria for successfully understanding the Asia business environments.

Conversations are a primary facet for the practice of law by international business attorneys. Therefore, the opportunity to engage in conversations is best understood through a communicative competence model.

Meaning of Law and Education in the International Legal Community

If education is always to be conceived along the same antiquated lines of a mere transmission of knowledge, there is little to be hoped from it in the bettering of man's future. For what is the use of transmitting knowledge if the individual's total development lags behind?

—Maria Montessori, The Absorbent Mind

In an effort to explore and understand the legal environment facing American business attorneys working in Thailand and Vietnam, attention must also be given to the future education of these same individuals. A new vision for the practice of law must be incorporated as part of the education for American attorneys working in unfamiliar Asian climates. Equipped with the knowledge of the traditions and cultural values that create meaning in people's lives, as well as an understanding of the components of successful communication, a new type of legal education needs to emerge which allows for the appropriation of a different future. The opportunities and challenges brought forth in the emerging markets of Thailand and Vietnam require a innovative direction for the education of

legal practitioners which combines an understanding of the past in connection with the present and direction towards the future.

This section illustrates the individual perspectives of the participants as to the meaning of business law education in the emerging international marketplace. The reflections of the participants exhibit an awareness of the present conditions which exist in Thailand and Vietnam combined with an understanding of the future of American legal education in providing attorneys with a new way to rethink their position in both society and the international legal community.

Opportunities and Challenges in Thailand

The legal atmosphere of Thailand has and will continue to offer international attorneys an exciting and promising prospect for the future. According to Dr. Kanthawongs, Thailand has many opportunities for American lawyers serious about doing business in an Asian country. As he said during our conversation:

I think here Thailand will be a good market for any foreign lawyer. The reason is that because we are surrounded by what we call "unready neighbors," like Laos, Vietnam, Cambodia, Burma. So there are a lot of investment opportunities in those areas, but the infrastructure are not ready to accommodate them and the services are not ready to accommodate them. So I think that Thailand would be a good place for those investors to come here and to do some other things in the neighboring countries, using Thailand as the base....Thailand would be a good place for many lawyers.

If Thailand becomes a major player in the Pacific Basin region as Dr. Kanthawongs' anticipates, American attorneys will need to better understand the environment they will be encountering. That is, lawyers need to learn about the Thai culture. Understanding the tradition of the

Thai people will enable American attorneys, as Dr. Kanthawongs said, to have “insight” so “they can understand what are the problems.” The words of Dr. Kanthawongs bring to mind those similar thoughts of Bellah et al. (1985: 333) when they explained culture as, “(t)hose patterns of meaning that any group or society uses to interpret and evaluate itself and its situation....[culture is the] constitutive dimension of all human action.” Only by understanding the Thai culture will American attorneys learn how business activities are the mere reflection of the larger social conditions which have been conveyed through history and tradition.

When asked to describe where she foresees the Thai legal community as participants in the international business arena in the next several years, Ms. Goodman responded by saying that the Thais have been and continue to send young students to the United States and Europe for both undergraduate and graduate education. As a result, she believes that the Thais have become “a lot more savvy in how to negotiate bi-culturally than we [Americans] are.” She went on to say the Thais “are creating this whole very very clever confident younger generation that will probably be able to swim circles around us if we don’t watch out.” Ms. Goodman suggested that American attorneys are not in tune with the circumstances surrounding the practice of law in the Thai context and by becoming complacent in their attitudes towards the need for continued education they cannot successfully continue to prosper. Ms. Goodman implied that there are other countries more willing and eager to learn and understand the Thai business environment who will undoubtedly prove to be bigger players in the market.

Ms. Goodman further commented on the fact that Americans find Thailand “a difficult place to do business.” Part of the problem she believes

is attributable to American attorneys unwillingness to take both the time and the effort to understand the culture and tradition of the Thai people and how it influences the way in which business contracts negotiated and other legal matters are resolved. Ms. Goodman believes that Americans are “lazy and un-curious” about Asian affairs which has and will continue to create problems for the lawyer who must understand the integration of Thai culture as part of the business process.

Mr. Tunnell was similarly asked to comment on what role he believes the Thai legal community will play in business law arena in the future. Upon reflection, he argued that the development of international legal standards will require Thai attorneys to come to a common understanding with foreigners regarding many of the basic business practices. Mr. Tunnell contends, “...in a lot of ways they have to begin to change and conform their practices to international standards. He believes many of the Thai traditions and training have limited their participation in the international legal community. From his experiences Mr. Tunnell has observed that, “the Thai’s have not been particularly active in the world stage outside of Thailand and that they have so in part and adherence to a different cultural standard or practice might inhibit what role they can play.” Subsequently, much of the international business transactions inside Thailand are being handled by non-Thai law firms and lawyers.

Mr. Tunnell is suggesting that the Thai legal community must appropriate a different future if it hopes to develop into a thriving business center in the Asian marketplace. The process of appropriation will allow the Thais to recognize their horizon of the past in relation to the present, thereby, creating possibilities for growth as an international contender. Mr. Tunnell believes that the Thais must begin to critique their current

ideologies in order to better address the challenges of an interconnected legal world. Moreover, the Thai legal community needs to assert the kind of leadership necessary that will allow them to dictate their own destiny. Here the words of Linge (1976: xxvii) are brought to mind when he says, “(c)ritical self-reflection does not remove our historicity, nor do the critical methods we develop change the fact that in our interpretation of the tradition we are ‘being played’ by the movement of tradition itself.”

Mr. Tunnell, however, made certain to state that for the American working in Thailand, great pains still must be taken to understand the Thai culture and its influence on the practice of law. He said that although the international community has begun to demand that the Thais perform according to international legal standards, “the Thai culture obviously has an impact on how those [foreign] businesses do and conduct themselves there.” The understanding of Thai culture will occur only as part of the act of appropriation in which one’s world is opened to new ideas. In the words of Ricoeur (1981: 182), “(t)o understand is not to project oneself into the text; it is to receive an enlarged self from the apprehension of proposed worlds which are the genuine object of interpretation.”

From a more pragmatic point of view, Thai lawyers and business people, according to Ms. Sujintaya, must approach business relationships in an entirely different way if they hope to be successful when dealing with foreign entities. Ms. Sujintaya contends that the Thais,

...really cannot afford to continue to act in the traditional Thai way where you are very considerate of each others feelings and you’re afraid to say what you really mean, because you end up not getting the deal that you really want. They have to learn to rely on younger people who are much more aggressive. People who are willing to say things. People who are willing to make decisions. People who are willing to stand

up and defy, not defy authority, but to speak up even if they don't agree with the superiors. And that's a different way of doing business for them...Thais are not very good communicators. You have to read between the lines because often times they say what they don't mean and they don't say what they mean.

In a follow-up to Ms. Sujintaya's response, the question was posed whether she believed that the Thai history and traditions could be blended as part of the suggested approach to the practice of law on an international level. She replied,

Yes, because I think everything is middle of the road. They [Thais] don't want to go to extremes. When you want to reach some kind of amicable settlement its got to be what both sides will gain, as well as what both sides will lose, so its a compromise and that's inherent in their traditions, in their religion and in the way they look at things. So I think it is possible they can blend that into it...But that's along the lines of sort of middle of the road tradition that they have.

The reflections of Ms. Sujintaya clearly illustrates that the Thai legal community, through a fusion of horizons, is capable to coming to a new understanding of the legal situation. According to Weinscheimer, "(o)ur own horizon is constantly in the process of formation, not least through our encounters with the past. It does not remain static, nor is its limit permanently circumscribed like a circle in which we are forever closed." Therefore, changing current business practices does not imply that the Thais must remove themselves from their historical position.

Opportunities and Challenges in Vietnam

The legal environment of Vietnam presents numerous challenges to the international attorney. Vietnam is a young and emerging country in the international business marketplace. In addition to a legal system in a

continual state of flux, many problems with the basic educational structure have made it increasingly difficult to participant in business transactions with other Vietnamese attorneys. As Ms. Wayne explains, “(b)asically, there is not one legal subject in the first two years of their law degree. Until the basic education is changed, the educational system is changed, when you take the law degree you study some law.” Ms. Wayne suggests that the Vietnamese legal education must be comprised of law subjects as opposed to traditional socialist subjects if the Vietnamese want to be successful in creating open market system. Furthermore, she argues that the requirement for training Vietnamese lawyers in foreign based firms must also change. Ms. Wayne suggests,

...from a professional view point there’s an even bigger problem, I think from being a foreign law firm here. We are not allowed to employ Vietnamese lawyers in branches of a foreign law firm in Vietnam. We are strictly prohibited form doing that. We are allowed to employ Vietnamese who have graduated, got the law degree, and we’re allowed to train them for two, or in very special circumstances I think the law says for a maximum of three years. Then once we’ve trained them they have to leave our firms and go to Vietnamese law firms. That doesn’t help terribly in either foreign lawyers that train Vietnamese or having existing Vietnamese lawyers be trained.

Ms. Wayne believes that the problems in dealing with the legal system in Vietnam can all be traced back to “training and learning.”

The comments of Ms. Wayne are supported by Michael Scown (1994: 10) who contends,

...the government should remove the limit on the number of Vietnamese staff a company can hire in each of its representative offices....It makes no sense in a country with an unemployment problem, and it isolates the Vietnamese people from the benefits of foreign commercial activity.

The lack of legal training and education on the part of the Vietnamese will undoubtedly influence the role they will play in the international legal arena. When asked to comment on the future of the Vietnamese as participants in the world business law community, Mr. Lanahan stated that he did not believe Vietnamese lawyers or law firms will be major contenders in international fields. Consequently, large multinational firms are the major players in the Vietnamese market. Even the Vietnamese government hires foreign firms to represent them because the local attorneys do not have the “background experience or training.”

Mr. Lanahan is of the opinion that it will be several years before the Vietnamese lawyers are ready to engage in major international business transactions. He believes that once young Vietnamese students are sent to Western law schools and return to their native country to practice law will there be a change in role of the Vietnamese legal community.

Despite the lack of legal education and training, the Vietnamese are eager to learn and move towards a different future. As Mr. Fohrman observed, “(w)hat I thought was interesting about them is the determination to leap forward from the position that they were in as completely underdeveloped into the twenty first century.” By interpreting their current position the Vietnamese were able to envision a different future in which they would be active participants of the world community. However, forecasting a future could only be done with an understanding of the traditions that had created meaning in the present while simultaneously revealing a different future. The desire to appropriate a new future is reminiscent of the words of Thompson (1981: 19) when he says, “...interpretation gives rise to reflection because appropriation is bound to the revelatory power of the text, to its power to disclose a possible world.”

As Vietnam embarks on a new journey it will be forced to examine many of its preunderstandings that have guided the traditional practice of law. Dr. Quy believes that traditionally many business transactions have been conducted on the basis of relationships, not according to law. However, this situation will have to change, otherwise business people from around the world will not continue to come to Vietnam. Dr. Quy contends that the Vietnamese legal education will have to incorporate the teaching of a system of legalities, rather than a system of relationships. Dr. Quy stated, "...you have to teach people to follow the law and to respect the law...."

Dr. Quy believes commercial law practiced in Vietnam will eventually follow international standards. However, the adaptation of international business law practices will inherently incorporate some aspect of the Vietnamese culture. The traditions of the Vietnamese cannot be completely removed from the formation of a new legal structure. In the development of a new legal system the Vietnamese will, according to Bellah et al. (1985: 292), reappropriate their traditions, "...that is, finding sustenance in tradition and applying it actively and creatively to our present realities."

Dr. Quy further contends that the Vietnamese need to learn about the American culture. In her belief that the Vietnamese must better understand American business practices, Dr. Quy also conveyed her vision for the future of the Vietnamese legal community in international law. As Dr. Quy explains:

Even if Vietnamese companies are going to America to do business, I think we need time to know [the] American legal

system, American way of thinking. You see, because the way you do business in America of course has difference.

Understanding the American way of doing business will require a fusion of horizons for the Vietnamese. Through interpretation the Vietnamese will need to examine their prejudices and come to a new understanding which will allow them see different opportunities to legal and business situations.

Ms. Wayne, Mr. Tran, and Mr. Fohrman also expressed the need for American lawyers to go to Vietnam and experience the people in order to gain a better understanding of the traditions and culture that define the respective societies. Education cannot just come from a book. There needs to be direct contact with those individuals who are living and working with the different cultural contexts. Ms. Wayne said that knowledge of the Vietnamese legal system is gained, "...from being here, from listening to the Vietnamese, from making friends with the Vietnamese." Mr. Tran similarly stated that understanding of the Vietnamese system only results when, "you mingle with the real people." The words of the participants are similar of those of Bellah et al. (1985: 282) when they claim that we are not "a collection of private individuals." Meaning is created only in relationship with one another and cannot be understood outside of tradition. As Bellah et al. (1985: 284) states, "(h)uman beings and their societies are deeply interrelated." Therefore, as Gadamer (1976: 50) states, "(u)nderstanding too cannot be grasped as a simple activity of the consciousness that understands, but is itself a mode of the event of being." As part of being in the world, individuals receive meaning through direct interaction with members of a community.

Implications for the Future of American International Legal Education

Whether working with the Thai or Vietnamese, the American business attorney must be educated to successfully understand the foreign environments that awaits him or her. Law schools and the legal community have a responsibility to educate its members to be more understanding of the basic human condition, not only on a domestic level but on an global level, as well.

It is important for attorneys working in Thailand and Vietnam to comprehend how the needs of the international legal business community are blended with the traditions of the Thai and Vietnamese cultures of the past and present. Mr. Tunnell suggested there has been an ongoing evolution in the global business arena which has resulted in a set of internationally recognized business practices, though many remain unwritten, they are commonly used around the world. The Americans have played a significant role in developing and carrying out these legal standards. However, international legal practices inherently require “local cultural changes and modifications,” which is largely overlooked by American lawyers.

Mr. Tunnell clearly understands that international legal standards are based on the Western concept of law. Therefore, their application to foreign business environments in Asian countries is often difficult, but not impossible. As Mr. Tunnell explains, “...when various cultures go out into the international world, although they may come from their own cultural base and background and that influences them, very often they learn pretty quickly that they have to adjust themselves to international standards and practices.” However, that adjustment does not come without a fusion of horizons. That is, the historicities of the foreign parties are not eliminated

in the interpretation process but incorporated to form a new understanding. The words of Mr. Tunnell are similar to those of Bernstein (1983: 167) when he says,

We cannot escape from the dynamic power of effective-history, which is always shaping what we are becoming. We become fools of history if we think that by an act of will we can escape the prejudgements, practices, and traditions that are constitutive of what we are....But we are also always in the process of modifying and shaping what we are becoming.

Imperative to the success of American attorneys in Thailand and Vietnam is the critical examination of the education received by students in law school. When asked how law students might be better prepared to participate in the international legal arena, Mr. Tunnell responded,

As you may know in law schools, there used to be courses in the old days called comparative law, comparative legal systems, so people go out and study the legal systems of other countries, but I always thought that was a little bit shallow because you're just looking at, well, here the courts, here's your legislative body, there's a king, or there's this or there's that, and here's generally the rules based on civil law versus common law, continental civil code system. Whereas what matters, certainly in a modern context, is that people have an understanding of a history of a country, what is going on in the history of these places and how that has helped form present attitudes and values even in the popular culture. What in the end it comes down to is understanding, how people view things in those countries and what is actually taking place.

In his articulation of a vision for the future, Mr. Tunnell has recognized that individuals are in direct contact with their historicity and the possibilities of the future can only be created out of the reality of the present as it is understood in relation to the past. Mr. Tunnell's words acknowledge the importance of a hermeneutic understanding and bring to mind the reflections of Bernstein (1983: 173) when he says,

A false picture is suggested when we think that our task is to leap out of our own linguistic horizon, bracket all our preunderstandings, and enter into a radically different world. Rather the task is always to find the resources within our own horizon, linguistic practices, and experience that can enable us to understand what confronts us as alien. And such understanding requires a dialectical play between our own preunderstandings and the forms of life that we are seeking to understand. It is in this way that we can risk and test our own prejudices, and we can not only come to understand what is "other" than us but also better understand ourselves.

However, Mr. Tunnell stated that the current law school curriculum may not allow for the incorporation of classes that examine and discuss the importance of understanding traditions and cultural backgrounds for the practice of international law. He believes, first and foremost, law schools should educate their students to have a fundamental background in the basics of law. He stated, "...its really been one of my theories that first you need to be a good lawyer." Mr. Tunnell further elaborated on the practice of law overseas,

You're there as a lawyer to do a job and you should be skilled in the basic arts of what lawyers have to do. Then you should have some idea of the legal environment you're in, that's why comparative law is important and then beyond that to be effective you've got to develop, I think in your own right, that understanding of culture. I think there's a message in terms of law schools ought to teach the message that people need to know about a culture to be effective in it, but I'm not sure law schools can teach that.

The need to have the basic skills in lawyering before entering into the world business arena were further echoed by a young Australian law clerk working for Ms. Wayne when he said:

I think, it goes without saying that one could apply, not only to Vietnam but to any sort of emerging country, and I have been

told by numerous people that as a young lawyer starting, I think you need to get proper training....You need some years of formal experience and a good commercial background before coming here and truly one that is useful in a lot of ways. Formal training in a well structured legal environment would be the first step.

An understanding of the legal environment from which one is educated is essential to the understanding of a foreign legal structure. It is impossible to understand another system without first having the knowledge of the traditions of one's own legal framework and the communities which have influenced basic legal thought. In the words of Bellah et al. (1985: 295) we, "...need to remember that we did not create ourselves, that we owe what we are to the communities that formed us."

When asked what essential factors must be included as part of an international legal practitioners educational development, Mr. Tran responded in a very unique and interesting fashion when he said,

I don't know if you can teach that. You can teach skills, but sensitivity has to be developed by yourself. So what can be taught is probably not in a formal way, but advised to young law school graduates to be open minded and the world out there is different. Not because they're weird or inferior to us, their just being different. And I think once your open minded it shows and your curiosity. People appreciate your being curious and your being ignorant....admitting your ignorance and exhibiting your curiosity is an asset. It is a positive thing.

In many cases the participants offered practical words of advice for the American attorney who wishes to practice in the Thai and Vietnamese contexts. Ms. Goodman, Mr. Mancill, and Mr. Fohrman suggested that it was important to learn the local language. However, they both acknowledged the fact that language is not a part of law school curriculum, therefore, requiring a personal effort and commitment on the part of the individual. Moreover, Ms. Sujintaya recommends that American attorneys

learn to be patient, as well develop the skills of a good listener. Where law school education fails to prepare a lawyer for the practice of international law, the individual must take the necessary steps to ensure an understanding of another culture.

Judge Lombardi expressed concern regarding the type of training law students are currently receiving and suggested adopting different courses as part of the curriculum that would incorporate culture, communication and alternative methods for dispute resolution. In his words,

I think what would be a great idea is to educate attorneys in cross-cultural issues....The problem is in law school you don't get that type of training and experience. You think in terms of who's right or who's wrong, who's the most argumentative, who's the most aggressive, who's the most creative or clever, and you get graded accordingly. In my day, we didn't have any negotiating classes of any kind, much less cross-cultural communication classes....Any time you're going to have reference to the law for three or four years straight, as a way of being analyzed, the problem you're going to have is a real difficulty analyzing the problem any other way. The law is merely one reference point in a negotiation. It may be the most important one of a case and maybe its absolutely insignificant in another one. Young inexperienced lawyers are really not aware that there may be a different way of solving disputes, and maybe even better ways in some cases.

Judge Lombardi recognizes the need to develop law school curriculum reflective of the current needs of society. Since law is a reflection of the culture and traditions of the people it serves, legal education must also be in sync with the needs of the larger community.

The perspectives of the participants in addressing the need to augment legal education is reflective of an even larger societal necessity to develop individuals so that they may be more responsible and humanistic

members of both the local and global community. The participants are calling for a change in the basic premises from which legal education in the United States has been created. These thoughts are similar to those of Bellah et al. (1985: 293) when they say,

...while our universities are under greater pressure than ever to emphasize pragmatic results--technological achievements and career oriented skills--there are voices calling for a reaffirmation of the classic role of education as a way to articulate private aspirations with common cultural meanings so that individuals simultaneously become more fully developed people and citizens of a free society...When education becomes an instrument for individual careerism, it cannot provide either personal meaning or civic culture.

To make responsible decisions for the education of American lawyers who are working in the Thai and Vietnamese contexts, recognition must be given to the historical experiences that are part of envisioning a different future. Through language, a new vision of legal education will be developed which integrates the concept of tradition as its guiding principle. History will provide the link to the past, which in turn will facilitate the appropriation of a different future for legal understanding and instruction. As Gadamer (1976: 25) articulates,

...every successful appropriation of tradition is dissolved into a new and distinct familiarity in which it belongs to us and we to it. They both flow together into one owned and shared world, which encompasses past and present and which receives its linguistic articulation in the speaking of man with man.

Mutual orientations that are developed through communication and a recognition of tradition will change the future of international legal education.

Moreover, each of the participants in the research study come from unique backgrounds that afford them with rare insight into the international

legal business arena. That insight provides a beacon for appropriating a different educational structure for American attorneys, new and old.

Summary

Chapter IV presented the data gathered from the conversations held with the various participants and analyzed it through the use of critical hermeneutic theory. The data and the theory were integrated to provide a more fluent and comprehensive presentation of the research study. Moreover, this chapter examined the theoretical implications as revealed by the analysis of the data.

The following chapter, Chapter V, presents a summary of the study and the implications for the future of international legal education and the practice of business law in Thailand and Vietnam. Chapter V offers a secondary analysis of the theoretical themes disclosed as part of the data presentation and the overarching conclusions which can be drawn from the research project as a whole.

CHAPTER V

APPROPRIATION OF NEW UNDERSTANDINGS FOR INTERNATIONAL LEGAL EDUCATION

Introduction

Through the conversations with the participants much was revealed about the future direction of international legal understanding and education. Those interviewed acknowledged the experience of the present while always mindful of the influence of the past. The past shaped their beliefs and was reflected in their vision and thinking of those involved in the international legal arena. The participants expressed a sense of hopefulness that their insights would be both beneficial and contribute to the development of a better understanding for the practice of law in Thailand and Vietnam. Moreover, the conversations provided an opportunity to question the values that have guided American legal assumptions while seeking to create a new future of increased knowledge among people of different countries and cultures. The participants provided a template for the open discussion of legal education and the growth of the human race.

Application of Critical Hermeneutics

The practice of law by American attorneys in Thailand and Vietnam has presented many opportunities and challenges for the development of the type of legal education that is inherently reflective of the changing dynamics of the global marketplace. The conversations overwhelmingly conveyed the need to explore the role of tradition as it is revealed in the

very foundations of foreign legal environments and as a component of communication. At the heart of the discussion for the inclusion of tradition in legal education is the acknowledgment that the past creates meaning in the present and it is in understanding the past that a future can be imagined. As Linge (1976: xvi) states when commenting on Gadamer's concept of understanding, "(w)e are conveyers of the past into the present. Even in the most careful attempts to grasp the past 'in itself,' understanding remains essentially a mediation or translation of past meaning into the present situation." Therefore, meaning can only be revealed through a mediation of the past and the present.

Legal systems and the subsequent practice of law does not exist independently of the traditions and history of the people it was intended to serve. Law is the mere reflection of the cultural values of a society. As such, it is impossible to advocate adopting a legal educational approach which ignores the significance of tradition in creating meaning. As educational leaders, the learning of culture and historicity is imperative for the teaching of law. The need to connect with the past is expressed in the words of Gadamer (1989: 303) when he says:

The task of historical understanding also involves acquiring an appropriate historical horizon, so that what we are trying to understand can be seen in its true dimensions. If we fail to transpose ourselves into the historical horizon from which the traditional text speaks, we will misunderstand the significance of what it has to say to us.

Education aimed at teaching the significance of tradition does not, however, mean that individuals must transpose themselves into the historical situation, wherein they are forced to abandon their values, beliefs, and preunderstandings. As Gadamer (1989: 305) says, "(b)ut into this

other situation we must bring, precisely, ourselves.” Individuals come to the table with a horizon filled with prejudices and presuppositions that cannot be disregarded or ignored. By understanding that the horizon of the present is created out of the horizon of the past, individuals will be more capable of coming to new understandings that will enlarge their scope of possibilities for the future. In Gadamer’s (1989: 305) words, “(t)o acquire a horizon means that one learns to look beyond what is close at hand--not in order to look away from it but to see it better, within a larger whole and in truer proportion.”

Legal education, therefore, must focus on developing students’ understanding of not only the American situation, but that of the Thai and Vietnamese traditions as well. The practice of law in foreign contexts demands engaging in dialogues which will allow for interpretation of different meanings through historical understanding. However, understanding does not necessarily equate to agreement. Through the process of interpretation knowledge can be acquired that will allow for self-reflection and evaluation. As Gadamer (1989: 303) contends, “(i)n conversation, when we have discovered the other person’s standpoint and horizon, his ideas become intelligible without our necessarily having to agree with him; so also when someone thinks historically, he comes to understand the meaning of what has been handed down without necessarily agreeing with it or seeing himself in it.”

Education grounded in the exploration of different cultures and traditions opens the door to the possibilities of broadening oneself. The greatest achievement will come when we risk and test our prejudices. According to Bernstein (1983: 128), “(t)here is no knowledge without preconceptions and prejudices. The task is not to remove all such

preconceptions, but to test them critically in the course of inquiry.” Creating the type of education in which students are taught to challenge their present knowledge base will enable them to envision and construct a world full of different options. Bernstein (1983: 173) reflects on this concept of education when he says:

A false picture is suggested when we think that our task is to leap out of our own linguistic horizon, bracket all our preunderstandings, and enter into a radically different world. Rather the task is always to find the resources within our own horizon, linguistic practices, and find experience that can enable us to understand what confronts us as alien. And such understanding requires a dialectical play between our own preunderstandings and the forms of life that we are seeking to understand. It is in this way that we can risk and test our own prejudices, and we can not only come to understand what is the “other” than us but also better understand ourselves.

Learning to understand the prejudices that influence the way in which we examine and interpret the reality of life is the answer to the appropriation of a new future. An understanding of the preunderstandings that constitute the horizon of the present open an individual to what may be considered remote, thereby, creating new possibilities for future action. As explained by Ricoeur (1981: 76),

This relation between the self and the other gives the concept of prejudice its final dialectical touch: only insofar as I place myself in the other’s point of view do I confront myself with my present horizon, with my prejudices. It is only in the tension between the other and the self, between the text of the past and the point of view of the reader, that prejudice becomes operative and constitutive of historicity.

International legal education must provide students with the tools to analyze themselves through a critical examination of their prejudices. Only

when attorneys truly understand themselves in relation to the past will they begin to appropriate a new vision for the practice of international law.

Traditions form and shape the very core of our existence and are capable of being reconstituted through critical inquiry and examination. Historical understanding allows us to appropriate a different future through honest dialogue. It is not possible to ignore the historical past of those participating in the educational process, but is possible to change their horizons. This belief is similarly reflected in the words of Bernstein (1983: 162-163) in discussing the importance of appropriating a new vision through the process of dialogue,

...if we think out what is required for such a dialogue based on mutual understanding, respect, a willingness to listen and risk one's opinions and prejudices, a mutual seeking of the correctness of what is said, we will have defined a powerful regulative ideal that can orient our practical and political lives.

Thus, it is essential that legal education include a means by which students have the opportunity to critically evaluate the traditions of the past in order to reveal those values which may be erroneous and prevent future success. Legal education must give students the tools to question tradition in order to develop a more thorough comprehension of the present situation.

The medium through which legal practitioners will come to better understand the world in which they exist is linguistic in nature. Interpretation comes from being in conversations with others and allows for shared understandings to emerge. A fusion of horizons comes to fruition when individuals engage in meaningful dialogue. As Gadamer (1976: 29) proclaims, "(f)or language is not only an object in our hands, it is the reservoir of tradition and the medium in and through which we exist and

perceive the world.” In language we encounter the horizon of the past through a questioning of the prejudices that distort and hide the reality of the present. Furthermore, according to Gadamer (1976: 57), “...the elevation of the dialogue will not be experienced as a loss of self-possession, but rather as an *enrichment* [original in italics] of our self, but without us thereby becoming aware of ourselves.”

In every dialogue we have the potential to discover something different about ourselves in relation to others. Legal education must allow for the type of conversations that encourage the free exchange of ideas and provide the springboard for mutual understanding. Individual growth in learning about the cultures of Thailand and Vietnam will not be accomplished as an isolationary act. Only when legal practitioners engage in dialogues with others will they make the connection between the past and present and the future world that is revealed before them. Conversations spawn new directions with new ideas reached through shared meaning. As Weinscheimer (1985: 211) explains:

The interpreter best understands himself as a participant in a continuing conversation, one that pre-dates his own consciousness and will post-date it....Conversation is the process of concept formation, of coming to mutual understanding and reaching a common meaning. But this continuing process in which shared concepts are formed takes place with the language of dialogue.

Thus, through communication individuals are able to transform who they are, thereby, uniting themselves in a common understanding from which to move forward.

Part of conveying the significance of tradition in any legal curricula is teaching the concept of appropriation. According to Ricoeur (1981: 18), appropriation means to make what once was considered alien your own.

Through the process of appropriation the meaning of the past is connected with the present. Appropriation can occur only when individuals distance themselves from the text, whether written or dialogic in nature. As such, the text has the ability to stand on its own. It is the ability of the text to reveal itself in front of the text that creates a world of new meaning full of unlimited possibilities. As described by Ricoeur (1990: 87-88),

Ultimately, what I appropriate is a proposed world. The latter is not behind the text, as hidden intention would be, but in front of it, as that which the work unfolds, discovers, reveals....It is not a question of imposing upon the text our finite capacity for understanding, but exposing ourselves to the text and receiving from it an enlarged self...

Appropriation acknowledges the history of the past while paving the way towards an inventive future with individuals from different cultures and traditions.

The research further suggested the need to develop a new approach to communicating with participants at the international level. Attorneys working in Asia must be provided with the tools which will allow them to develop communication skills for reaching mutual understandings and creating business relationships that will evolve and mature over the course of time. Communication for legal practitioners is vitally important to their success. Legal transactions do not occur irrespective of the individuals who are pursuing business relationships. Attorneys are there to represent and serve the needs of their clients. Inherent in that relationship is the need to communicate. Thus, Habermas' (1976) communicative action approach offers a fundamental approach for attorneys to examine the dialogic process and come to a new understanding of the critical elements which comprise successful conversations.

Communicative competence offers legal practitioners with opportunities for learning and sharing with other people. Through learning there are possibilities for shared understandings of the current conditions that will affect the future. International lawyers need to continually develop common agreements with their business partners as the global marketplace changes and presents new challenges for the successful continuation of business relationships.

Conversations bridge the gap between people of different cultures and traditions. Changing the words of discussion can move people into directions for new possibilities. True communication brings statements and old positions into question, thereby, creating new grounds for discussion. New understandings brought forth through the process of communicative action sets the stage for different action in relation to others. Only by changing our understanding of a situation is it possible to change current behavior and reasoning.

If legal education is to move in the direction in which it advocates the hermeneutic concept of fusion of horizons it must automatically encourage and teach communicative competence. The achievement of an agreement with someone else about a shared world comes only via communication in the form of a conversation or dialogue. If individuals come to understand that there are specific criterion that constitute communicative competence the possibilities for shared meaning will undoubtedly increase. As Bleicher (1980: 163) contends, "...the ideal speech situation counterfactually circumscribes the conditions in which true consensus may emerge." An understanding of Habermas' validity claims would give legal practitioners the means for understanding the essence of communication as it applies to international business transactions.

Communication oriented towards reaching an understanding opens the world of possibilities for attorneys working on both the domestic and international level. It is imperative that future curriculum does not teach attorneys to negotiate with the attitude that one party must always prevail at the expense of the other. Communication is not about who can argue the best or is more forceful in their presentation. Instead, communicative competence provides a forum in which communication, aimed at reaching an understanding, can achieve agreement based on true consensus. Communicative competence allows the force of the better argument to prevail but only in the context of a shared understanding.

Traditional legal education is adversarial in nature. Relationships are not based on mutual understanding, but on opposition. However, successful communication cannot be fostered when there is little opportunity for shared understanding. International attorneys conducting business in Asia operate in a unique atmosphere where outward conflict does not have the same value as it has in the United States. Subsequently, communication must be used not only to achieve general agreement on legal issues, but also as part of resolving conflicts in a mutually acceptable manner. Communicative competence recognizes the importance of attaining a common understanding. For in the words of Bellah et al. (1985: 7), "(i)t is through communication that people have a chance to resolve their differences, since there is no larger moral ideal in terms of which conflicts can be resolved. Communication...is the essence of our being on this planet."

The current legal educational structure for international lawyers who desire to practice in Thailand and Vietnam is inadequate for the demands of the emerging global marketplace. Legal education must begin to

incorporate the application of critical hermeneutic theory to curriculum development in both law schools and continuing education courses. Legal relationships will not be improved in the Asian contexts unless American education creates opportunities for students to learn more about themselves in relation to others, as well as develop the necessary communication skills for everyday practice of law.

Phronesis: Implications for Legal Education

Many of the participants in the research suggested that the current law school curriculum is not conducive to the incorporation of a hermeneutic approach in which tradition, fusion of horizons, and communicative competence are taught concurrently with the fundamental legal courses. I, however, do not agree with this contention. As educators, we have both an ethical and moral responsibility to provide an education for attorneys, which will not only teach them the foundations of law, but will enable them to develop as human beings. Partaking in business activities on an international scale requires a perspective of the basic humanity which connects us all, regardless of culture, history, or tradition. If we do not teach and encourage people to fully mature as better human beings we will not have accomplished the primary goal of education. Whether it is a student attending law school or a seasoned practitioner who is considering the practice of international law in Thailand or Vietnam, legal education must combine practical skills with moral knowledge.

Legal educators have a responsibility to take appropriate action from the understanding that is acquired as part of interpreting a new direction for legal education. That action ultimately requires ethical knowledge. Ethical

knowledge is not objective knowledge. As Weinscheimer (1985: 188) explains:

One does not merely size up the situation; one does not want merely to know what is the case or to determine what would be the right reaction. The ethical situation is not detached like an object from the person trying to understand it, for it presents a choice that he himself has to make. It requires a decision, not only knowledge but action and involvement....(T)he knowledge implicit in successful ethical decision and action cannot be merely theoretical....(E)thical knowledge--the knowledge that governs moral action--must be applied to historical life that is not always the same but also different.

Therefore, the purpose of ethical knowledge is to govern a person's actions.

Ethical knowledge is much like technical knowledge in that it can be intrinsically applied and is taught by those who are experienced in its use. However, a person does not fashion himself ethically as if creating an object. Rather, one must have a moral knowledge which is incorporated into their very being and exists as part of self-knowledge. Gadamer (1989) describes this moral knowledge as phronesis based on his reading of Aristotle, and as Weinscheimer (1985: 189) explains:

Phronesis, the ethical knowledge involved, is neither pure, theoretical, epistemic knowledge that is an end in itself; nor is it technical knowledge in which means are applied to something else as an end. Rather it is knowledge applied to oneself, self-knowledge. Thus means and ends are fused.

Thus, the act of appropriating a new educational vision for those individuals practicing law in the international legal arena requires phronesis. Educators have an obligation to change the current direction of legal curriculum to be more reflective of the needs of the people it is

intended to serve. Choosing to transform legal education demands that a judgment be made about the present system. That is, choosing between the universality and the particularity. It is in the making of that judgment that phronesis will come into play. In the words of Weinscheimer (1985: 191),

Such judgment is not impulsive but deliberate. It cannot merely subsume the particular under the general, and thus it requires a weighing of both. It requires reflecting and deliberating with oneself. This is phronesis, the virtue of reflective deliberation that determines right application.

The current educational state of international legal education demands an immediate change. As educators, we must open ourselves to an alternative way of defining problems, making curriculum, and proposing solutions for the betterment of legal education. Educators must look inside themselves in order to find both the understanding and courage to make a commitment to change.

Educational reform requires that individuals assume personal responsibility for change. Legal educators must seek to combine right thinking with right action. As Bernstein (1988: 166) explains in commenting on the work of Gadamer,

In a variety of subtle ways Gadamer shows us what is wrong with that way of thinking that dichotomizes the world into "objects" ...and "subjects"We do not comprehend what the things themselves "say" unless we realize that their meaning transcends them and comes into being through the happening or event of understanding. And we do not understand ourselves as "subjects" unless we understand how we are always being shaped by effective-history and tradition....The approach that pervades so much of Gadamer's thinking and helps to give it unified perspective, his practical-moral orientation, is directed toward reminding us, and calling us back to, an understanding of what it means to be finite

historical beings who are always “on the way” and who must assume personal responsibility for our decisions and choices.

From the conversations with the research participants, it is obvious that at all levels of legal academia there is a desire to educate legal practitioners to succeed in the Thai and Vietnamese environments. Part of being successful on an international level will require a change in the educational structure. That is, law school curricula, as well as continuing educational courses for members of the American Bar Association, must begin to reflect the changing requirements brought forth in the international legal arena. All international business attorneys should have the basic foundations for understanding the influence of tradition specific to the American, Thai, and Vietnamese legal environments, and the tools necessary to communicate for reaching shared understandings. American attorneys must be reminded that they are members of the legal and global communities and, therefore, have a responsibility to contribute to both accordingly.

Recommendations

As a result of this research project several recommendations can be made to the world of academia from the foregone findings. It is clear from the research that a new understanding for the education of international legal practitioners working in the Thai and Vietnamese contexts is necessary. Furthermore, any proposed educational approach must be responsive to the fact that American attorneys have as much to learn about themselves as they do of others.

In suggesting a new approach to international legal education it is recommended that a critical hermeneutic framework be adopted.

Hermeneutic theory proposes a shift from the traditional educational paradigm where objectivity and neutrality are valued, to an interpretive approach to understanding in which the emphasis is given to the traditions and histories of individuals. An educational structure grounded in critical hermeneutics attempts to establish transformative curriculum goals that are meaningful to students. Hermeneutic education recognizes that the inherent aspects of creating meaning and appropriating a new future come from understanding ourselves in relationship to the past. Furthermore, it allows for the inclusion of the teaching of other cultures and how we might learn from an understanding of their historicities and beliefs. Legal education based on a hermeneutic philosophy reminds us that the practice of law does not occur as an autonomous endeavor. This is of paramount consequence to the conducting of business law in the Asian legal environments of Thailand and Vietnam.

The education of international lawyers for Thailand and Vietnam should not be limited to law school curriculum. Although a different approach to legal education must be incorporated at the law school level, as that is the most logical place for new understandings to begin, we must not forget about the continued education of those individuals who have already passed the bar. Any member of the legal profession who aspires to practice business law in Thailand or Vietnam must begin to see themselves in a different relationship with those around them. Whether as part of law school curriculum or consulting courses for practicing lawyers, legal education must include an understanding of the connection between the past, present, and future and encourage personal development through the recognition of the inherent humanistic values that form the foundations for ethical actions.

Most importantly, participation from members of a variety of different communities who work in the international sphere will be a vital part of creating a new vision of legal education. Participants must include legal educators, practicing international lawyers and judges, and individuals from the business community who have experience in Asian environments. These participants must be encouraged to enter into the type of dialogue which will allow for different understandings to emerge about the future direction of international legal education. Through participation in conversations individuals are able to actively reflect upon the present situation and propose solutions that are in tune with the working conditions of the future. Conversations enable participants to move towards communicative competence, thereby, reaching a consensus or genuine agreement on what international legal education should look like.

Furthermore, the implications from the above stated recommendations clearly show the applicability of a critical hermeneutic approach to both international and domestic legal instruction. Although this dissertation advocates a change in legal education for international attorneys, cultural understanding at the domestic level is also essential. The finding of this research indicate that understanding tradition and communication are issues that need to be discussed and incorporated in all areas of legal curricula.

It is my hope that these recommendations will be shared with both members of the international legal community conducting business in Thailand and Vietnam and law school educators. The American legal educational system is at a critical turning point and it is my desire that the findings of this research will help to spawn a new era of legal development and instruction.

Suggestions for Future Research

There are many avenues and opportunities for future research in international legal studies. The field is only beginning to be explored more intensely as we become increasingly interconnected on a global scale. Many of the conversations with the participants suggested several areas in which additional research could be conducted.

Additional research is necessary for developing the specific types of law courses for the practice of international law in American law schools. Although I have indicated the need to adopt a hermeneutic approach to legal education, I believe further investigation is needed to examine current curriculum trends in order to open a dialogue with educators about the needs of the students and the larger international legal business community.

During the course of the research project the lack of legal education and training on the part of the Thai and Vietnamese continually surfaced. Research that would examine the current status of legal education in Thailand and Vietnam would be extremely useful for understanding the needs of foreign parties and how their traditions and historicities could be successfully blended with the demands of the Western business environment. For the most part, legal transactions which occur in Thailand and Vietnam are facilitated by foreign law firms and attorneys. Thus, research which explored how the Thai and Vietnamese could appropriate their own future in the international legal community would be of great value.

A more extensive study of communicative competence and its role in legal transactions is yet another area for further research. The application of communicative competence as part of business negotiations and conflict

resolution would be of great usefulness to international legal practitioners. Moreover, the communicative competence theory is similar to that of mediation currently taking place within the American court system and in many international contexts. An inquiry into the relationship between the two methods would be a proportional interest.

Finally, the concept of community and the importance it plays in conducting legal activities could be explored. The idea of relationships and how the partaking of specific business activities affected the Thai or Vietnamese larger communities frequently emerged. An examination of the role of community in Asian countries and its influence on legal transactions would provide a significant area for future research.

Final Reflections

Researching and analyzing the current status of legal activity in the countries of Thailand and Vietnam through a critical hermeneutic approach, provided an opportunity to reach new understandings and create new meanings for the future of international legal education. It allowed me, as well as the research participants, to both interpret and understand the practice of law in the Thai and Vietnamese contexts from a different perspective. Moreover, it allowed for the critical examination of the American legal system and the necessary changes that are needed in the corresponding educational structures.

This study revealed the importance of understanding the traditions of one's past in order to begin to appropriate a new future. Understanding the practice of international business law in Thailand and Vietnam from a historical perspective opens new horizons for attorneys. Furthermore, it provides the key to creating a different educational forum for the study of

law in foreign environments. Only by retelling the past will it be possible to appropriate a new identity for American legal education.

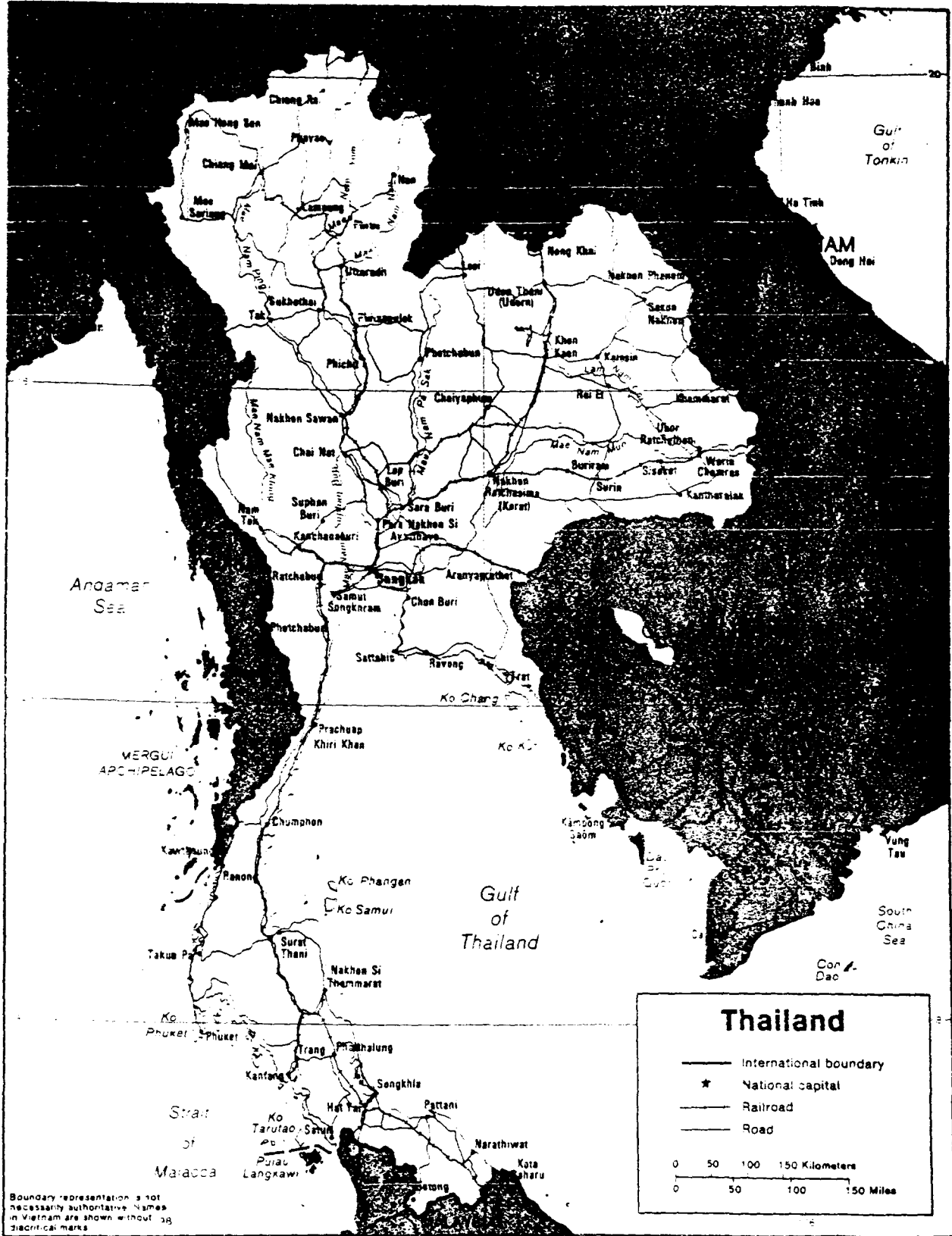
Each of the stories told by the research participants, as captured in the conversations, revealed a new way of examining international business law in the Thai and Vietnamese contexts. The conversations held the potential for helping us to change our way of thinking and to change our actions as we reflect and imagine what we, as educators, want international legal education to look like.

The research study clearly indicates that we must begin to make responsible decisions for the future of legal education. Global interdependence dictates that a new paradigm for examining the practice of law needs to be adopted. Such a paradigm should be grounded in hermeneutic theory, where individuals will have the opportunity to move in new directions by understanding that the past holds the key to developing the kind of future where great achievements are possible. The power a critical hermeneutic inquiry is stated in the words of Ricoeur (1981: 295) when he says, “(f)or to recognise the values of the past in their *differences* [original in italics] with respect to our values is already to open up the real towards the possible.”

It is my sincere hope that this research project will provide a basis in which open and honest dialogue about the practice of international business law in Thailand and Vietnam can begin to foster changes in American legal education and instruction and create opportunities for the growth of humanity.

APPENDIX A

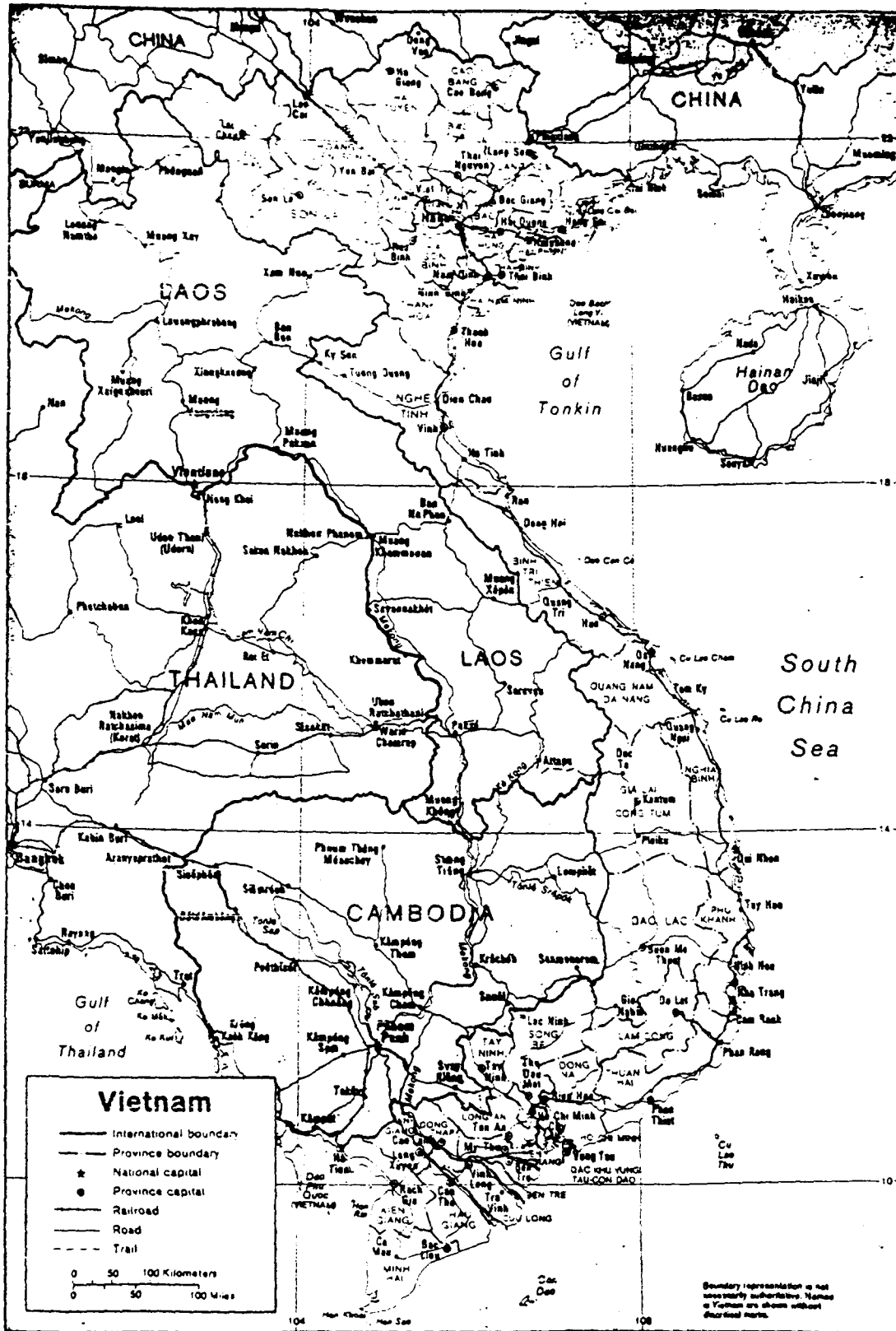
Map of Thailand



Source: Geo-Data: The World Geographical Encyclopedia (Kurian 1989)

APPENDIX B

Map of Vietnam



Base 3004°0.546744) 12 85

Source: Geo-Data: The World Geographical Encyclopedia (Kurian 1989)

APPENDIX C

List of Participants

PARTICIPANTS

Thailand

Kon Bahlin
Businessman
San Francisco, California

Carol Goodman
Attorney
King & Goodman
San Francisco, California

Dr. Charoen Kanthawongs
Of Counsel
Tilleke & Gibbins
Bangkok, Thailand

Judge David Lombardi
Ninth Circuit District Court of Appeals
San Francisco, California

Douglas D. Mancill
Attorney
Graham & James
San Francisco, California

Say Sugintaya
Deputy Director & Head of Intellectual Property Group
Tilleke & Gibbins
Bangkok, Thailand

Robert G. Tunnell
Of Counsel
Gordon & Rees
San Francisco, California

Vietnam

Burton H. Fohrman
Attorney
White & Case
Los Angeles, California

Daniel J. Lanahan
Attorney
Ropers, Majeski, Kohn & Bentley
Santa Rosa, California

Dr. Mai Hong Quy
Dean of Faculty
University of Ho Chi Minh City Faculty of Law
Ho Chi Minh, Vietnam

Chuong S. Tran
President
James Riedel Associates, Inc.
Oakland, California

Lucy Wayne
Attorney
Lucy Wayne & Associates
Ho Chi Minh, Vietnam

APPENDIX D

Letter of Introduction

167

Date

Name
Title
Organization
Address

Dear _____ :

I am currently a student in the doctoral program in the school of education at the University of San Francisco, and am in the midst of writing my dissertation. The topic of my dissertation is New Understandings Mediating Business Law in Thai and Vietnamese Traditions: A Hermeneutic Approach to Legal Education. As such, I would consider it an extreme honor if you, or a member of your staff, would consider being a participant in the research process. As a participant, we would have a conversation, at your convenience, which would last approximately one hour, in order to discuss your thought on the above topic.

Your assistance with this research would be greatly appreciated and valued. If you could let me know your response as by _____ it would be of immense help, as I am trying to compile the list of individuals who will be part of the research pool as soon as possible, in order to meet my dissertation deadlines.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me. I look forward to hearing from you and the possibility of working with you on this exciting and challenging project.

Very truly yours,

Leslie A. Manteuffel

900 Santa Dorotea Circle
Rohnert Park, CA 94928
(707)526-7370 day
(707)584-5638 evening

APPENDIX E

Letter of Thanks

169

Date

Name
Title
Organization
Address

Dear _____ :

I would like to take this opportunity to thank you for your assistance and cooperation as a participant in my dissertation research process. I thoroughly enjoyed the occasion to have such a wonderful conversation.

Enclosed please find a copy of the transcription of our conversation for your review and further comments. Please feel free to contact me to share any additional insights or reflections you might have.

Thank you again for your generosity of time. I greatly appreciate your help with this endeavor and look forward to talking with you soon. In the meantime, if you have any questions, or if I can be of further assistance, please do not hesitate to call.

Very truly yours,

Leslie A. Manteuffel

(707)526-7370 day
(707)584-5638 evening

APPENDIX F

Selected Journal Entries

SELECTED JOURNAL ENTRIES

This appendix to the dissertation provides a selection of journal entries recorded during the research process. The journal was kept to document my thoughts, reflections, and various notes on the events that transpired during the research and writing of the actual dissertation. Examples of some of the most relevant and revealing journal entries are provided below.

May 2, 1996 - Successfully defended my dissertation proposal!! I never thought I would even make it to this point when the semester began. This was the most grueling semester of my academic career. However, in the same breath it was also the most rewarding. The completion of the proposal has given me the confidence to believe that I will one day, soon, obtain my doctorate degree. Yet I remain apprehensive, for I know the most difficult part of the dissertation process is about to begin. There is no time to rest!!

May 18, 1996 - Went to Debbie Findling's apartment for lunch following a brief gathering of the Anthropological Research class. It feels good to be among fellow students who are experiencing the same feelings about the research and writing of the dissertation. There is much excitement in the air. My thoughts keep coming back to the same thing--I hope next year at this same time I will have successfully defended my dissertation.

May 25, 1996 - Attended the graduation ceremonies for the School of Education. Saw my best friend graduate with her doctorate in International Multicultural Education. She gives me such inspiration and I am so happy for her.

May 26, 1996 - Today was my niece's christening. Wondered what she would be like when she grew up. What type of educational instruction she would receive as she went through life? Would it be meaningful and provide her with the tools to make responsible decisions? Would she understand the importance of her past and learn to interpret and reflect upon the prejudices and preunderstandings that constitute the horizon of her present? Most importantly, would she be given the type of education that would allow her to appropriate a new future full of unlimited possibilities in a globally interconnected environment? In reflecting upon these questions, I realize that I cannot change the world, but I can make a conscious choice to try and change the people around me ("my sphere of influence"). As such, I believe that I have a responsibility to write the type of dissertation that could create possibilities of new understandings in international legal education. Hopefully, one day, my niece will be the beneficiary of my commitment to educational change.

June 9, 1996 - I read an article this morning in the newspaper which discussed the type of education lawyers are receiving in the United States. The article reaffirms what I have believed all along. That is, lawyers are not being taught to "develop practical wisdom, human insight or the ability to deal empathetically with an opposing view." The comments of the author reflect the primary contention of my dissertation topic--attorneys need to be educated differently in today's environment, especially if they hope to practice in foreign contexts, such as Thailand and Vietnam. This article will be perfect as part of my literature review!!

June 16, 1996 - Had a long discussion with my Mom and Dr. Herda about going on the Southeast Asian trip and foregoing the pursuit of law school until I complete my dissertation. After much thought, I have decided

to go on the trip. Dr. Herda provided me with much support and encouragement that I feel I have made the right decision. She told me she has already started setting up conversations for me in both Thailand and Vietnam. This trip is going to make my research so much more credible. I am extremely excited, but much needs to be done in preparation for the trip. August 1st will be here before I know it!!

July 13, 1996 - Continued to prepare for trip by revisiting my interview questions and rereading the theoretical section of my proposal. Every time I read the theory, I come away with a new understanding. This is the whole foundation of critical hermeneutic theory, where interpretation and understanding are a continual and ongoing process. Through a fusion of horizons I am capable of appropriating a new future for myself full of new understandings and possibilities. That is, my horizon of understanding continues to be enlarged, it is not limited and finite.

July 26, 1996 - Spoke with a new attorney in our office who provided me with some possible contacts that might be able to help with my research in Vietnam. Things are really starting to come together. As the trip nears, I am getting more excited.

July 27, 1996 - Continued to read more theory in preparation for the trip, since I can't pack all of my books. Read portions of Gadamer's Truth and Method regarding tradition. The importance of tradition will be of the utmost importance for my dissertation, since I am addressing the influence of the Thai and Vietnamese cultural values and traditions as they relate to the practice of law in both countries. It is in the understanding of tradition that we come to understand who we are. For in tradition lies the prejudices that constitute the very existence of our being.

July 30, 1996 - The trip is only two days away. Spoke with Dr. Herda again about some possible contacts in Vietnam and Thailand. She tells me things tend to work themselves out when we get there, as the Vietnamese and Thai work on a different time schedule than Americans. Dr. Herda reminds me that the purpose of my trip is two fold. Number one, I will be there to conduct research for my dissertation. Number two, I am there to have FUN!!

July 31, 1996 - Today I received a Vietnamese dictionary as a going away present, which surprised me because this person, admittedly, has no real interest in Asia. However, he has taken an interest in my research, even reading my proposal, which leads me to believe that I can help to change his many assumptions (misinterpretations) about Asian people. Moreover, maybe he will learn to understand a little hermeneutic theory!

August 1 - 2, 1996 - Left for Southeast Asia!! On the flight to Taipei spent a great deal of time reading historical information about the countries we will be visiting. Got a little nervous when I read about the number of land mines still active in Cambodia and the recent terrorist activity against foreign tourists by Khmer Rouge followers in the northern portions of Cambodia. In fact, I was not the only one a little concerned. Wondering if we were going to be traveling by plane or boat (the most dangerous means of transportation, other than by car) to Ankor Wat, my fellow travelers made me ask Dr. Herda how we would be traveling. Dr. Herda laughed, but to all of our relief it would be by plane.

August 3, 1996 - Arrived in Saigon. It is impossible to put into words what I saw when we left the airport. My general impression was that everything seemed so primitive and chaotic. It was like nothing I had imagined or read. What was immediately apparent was the Vietnamese

curiosity in Americans. The warmth and friendliness of the Vietnamese came shining through, especially in the words and actions of our guide, Cindy. Our car ride through downtown Saigon (Ho Chi Minh City) was truly an experience. There are relatively few vehicles and most of them are taxis. Everyone either rides a bike or a moped. The pollution in the city is overwhelming. It was easy to forget that I was in a communist country with all the activity of the city. However, the influence of communism could be visibly seen on the billboards that were posted along the streets which displayed pictures of Ho Chi Minh and contained the hammer and sickle symbols.

That afternoon we toured one of Vietnam's national museums, the presidential palace, a local Buddhist temple, the Cho Ben Thanh market, and a lacquer ware factory. All the sites provided a physically evident glimpse into the culture, values, and history of the Vietnamese people. The influence of Vietnamese tradition had clearly manifested itself in the sites I had seen.

August 4, 1996 - Up early to begin a self guided tour of Ho Chi Minh City. As we traveled around the city, via cyclo, the level of poverty that existed was astonishing. I hardly expected, nor could I have prepared myself for what I saw. What was especially disheartening was the number of children on the streets begging from the foreigners. Vietnam seems to be existing in the midst of extreme economic disparity among its citizens. This was evident when I looked out across the Saigon River, from the Saigon Floating Hotel, to see these shacks located amongst huge neon advertisements for some of the largest corporations in the world.

Went to the American Embassy, which happened to be somewhat eerie. A flood of images came rushing to my mind from the video footage I

had seen as the last Americans were airlifted from the roof of the building. It was strange to see the structure that has created so many mixed emotions among Americans about Vietnam and the War. Although I personally do not have any memory of the War, I know that Americans continue to struggle to understand who they are in relation to the War. Many Americans still have much healing to do when it comes Vietnam.

Since it was Sunday, we went to the Cathedral of Notre Dame. The church was filled with parishioners who were hearing mass said in Vietnamese. The church was a distinct reminder of the French colonization of the country and its continued legacy as part of Vietnamese culture. In stark contrast to the European influence, we later visited a traditional Vietnamese temple. However, I did not expect to see the neon signs which were displayed as part of the temple decor. It appeared that the past and present were harmoniously coexisting in a religious context.

Our final sight seeing destination was the Court House and Ministry of Justice--a place I definitely wanted to visit, given my research topic. It was an impressive building of European design. Unfortunately, it was not open for public viewing.

August 5, 1996 - Met with Dr. Mai Hong Quy, Dean of Faculty at the University of Ho Chi Minh City Faculty of Law. The forum was chaired by Dr. Herda who ensured that the questions pertaining to my needed research data were discussed. Dr. Quy provided very useful material that will be able to be incorporated into my dissertation analysis. However, she seemed to have difficulty expressing herself freely due to her position and role within the Vietnamese government. The most profound revelation made by Dr. Quy was her understanding of the need for the Vietnamese people to begin to respect the law and the legal structures responsible for

their enforcement and promotion. She was genuinely interested in how to improve the legal education of the school's students, given the fact that the majority of them were employed by the government. She also stated that the Vietnamese must begin learning Western concepts of law, if they are to exist in a capitalist marketplace and participate in business negotiations with foreign entities. Furthermore, Dr. Quy was questioned regarding Vietnamese feelings about Americans given the history of the War. She commented by saying that the Vietnamese are now looking towards the future and must begin to develop relationships with American counterparts. Much to my surprise, Dr. Quy's comments clearly spoke to the hermeneutic concept of a fusion of horizons. For it is only in understanding the horizon of the past that a different future will be appropriated by the Vietnamese people.

Even though Dr. Quy provided me with extremely useful and theoretically significant material, I became somewhat concerned that my research questions may not be specific enough for collecting the type of data I needed for my project. However, this feeling would soon change when our group visited a foreign attorney by the name of Lucy Wayne.

Lucy Wayne is a British attorney who has opened her own office in Ho Chi Minh City. Ms. Wayne and several of her staff members made themselves available for a conversation with members of our delegation. Ms. Wayne turned out to be a truly delightful person who provided valuable insight into the practice of law in Vietnam. Unlike most foreign attorneys, she has taken the time to learn and integrate herself as part of the Vietnamese business community. Ms. Wayne discussed the traditions that have influenced the way in which Vietnamese business people view law and the numerous problems that often result from working in the

Vietnamese context. Her comments regarding the type of communication that must exist between two legally connected parties will be an essential part of the data analysis. Habermas' theory of communicative competence is readily applicable to Ms. Wayne's reflections concerning the need to develop relationships with the Vietnamese before successful business negotiations will result.

That evening a group of us went to dinner at Le Biblioteque, a restaurant owned by Madame Dai, a former prominent attorney and supporter of the South Vietnamese government. Apparently, after the invasion of the North Vietnamese, she no longer practiced law. Following our meal, Madame Dai invited us to a private showing of a band which played traditional Vietnamese music. It was outstanding!!

August 6, 1996 - This morning we visited the War Crimes Museum and the National War Museum (Gi Long Palace). The War Crimes Museum was a propaganda filled complex. However, it was also a moving display of the atrocities of war. The National War Museum provided a vivid depiction of the history of war in Vietnam. The museum devoted only a small section to the war with the United States, which puts in perspective Vietnam's long and continuous history of war with other countries. It was also evident that the Vietnamese government put very few funds into the preservation and upkeep of the museum, as many portions were visibly neglected and in serious need of repair. It would be a shame for the government to loose such a national treasure, which clearly captures a part of Vietnamese tradition.

A special lunch was held with the American Chamber of Commerce. The majority of participants were attorneys who were currently working in Vietnam. I was able to have informal conversations with several of the

members in attendance who provided useful background information for my study.

Later that afternoon our group visited a dental hospital run by Dr. An, whose life is dedicated to providing dental care, especially to children. We provided the children with clothing and toys. It was remarkable to see their faces light up when they received the gifts. Many members of our group were saddened by the experience. I, however, found it quite uplifting, since I knew these patients were the lucky ones. They were going to be given a “second chance” in life. Much of what we take for granted in this country is truly a luxury for the Vietnamese people. The dental hospital was definitely a humbling experience.

This was our last night in Vietnam. I am sad to leave as I would have like to seen more of the country. Although I experienced four wonderful days in Ho Chi Minh City, I feel I am leaving with only a cursory knowledge and understanding of the country. When I reflect upon my experience in Vietnam I am profoundly influenced by the notion that Vietnam is a country struggling to maintain its identity and cultural heritage in the midst of capitalist driven development. The Vietnamese must seek to understand their past, so that it may be combined with the present, in order to create a more meaningful future.

August 7, 1996 - Arrive Cambodia. Just flying into Cambodia was a unbelievable sight. From the air you see a country that has not experienced the effects of economic development. Temples and shrines, as well as vast plots of untouched vegetation, are clearly visible from the air. The sheer unadulterated beauty of the country is amazing.

One of our stops was the central market place. This was the first time I have seen so many people with missing limbs. These individuals are the living proof of the Khmer Rouges' reign of terror.

Continued to see more of the damage done by the Khmer Rouge and his government when we visited the prison and the killing fields. The utter horror imposed by one man goes without saying. The rest of the world would be shocked if they only realized the extent of the devastation experienced by the Cambodian people. I sense that I have been profoundly changed by the experience of this tragedy. My deepest sympathy goes out to the all the individuals of Cambodia.

August 8, 1996 - Spent most of the day sightseeing at various locations in Phnom Penh. We also visited an orphanage sponsored by the German government. The children there were absolutely adorable. I only wish I could have brought more things for them. Although small gifts can't provide these children with loving homes and families, you could see in their eyes the happiness they experienced with our mere presence and attention.

Before finally visiting the Minister of Education, our group was afforded with a unique opportunity to tour Cambodia's national library. Here we were able to see some of the oldest writings that were preserved by an underground network of individuals during the era of the Khmer Rouge. In the wake Cambodia's holocaust, the country is visibly struggling to preserve every semblance of its cultural heritage and tradition. One cannot help but be saddened by the Cambodian experience.

August 9, 1996 - Departed for Siem Reap to see Ankor Wat. No words can describe what I saw that day, so I won't even begin to try. As

the saying goes--you have to see it to believe it!! Ankor Wat is truly an awesome sight and it exceeded any and all expectations.

August 10, 1996 - Returned from Ankor Wat and saw a few last sights in Phnom Penh, including the Royal Palace, Silver Pagoda, and the National Museum. With every experience I grow to appreciate, understand, and love the Cambodian people. Cambodia is a country rich in tradition--I only hope its people do not forget its importance, as the country seeks economic growth and development similar to many of its Asian neighbors.

As we leave for Thailand, the final leg of trip, I hope to one day return to Cambodia.

August 11, 1996 - My first day in Bangkok, Thailand. I can't believe how excited I am to be here. I have studied Thailand for years and my opportunity to see the country first hand has finally arrived. I will also be conducting additional conversations as part of my research project, which I am anxious to complete.

Spent the day visiting the Royal Grand Palace, Kings of Siam Residence, and the Emerald Buddha. These are truly remarkable displays of Thai culture. While visiting the Royal Grand Palace I saw a marble replica of Ankor Wat. Our guide described the importance of Ankor Wat to the history of the Thai people. He said that, in the ancient world, Ankor Wat was the mecca for Southeast Asian civilization. Therefore, many of the ancient Thai landmarks both resemble and face in the direction of Ankor Wat. This historical and cultural link between Thailand and Cambodia was extremely interesting and is something that seems to be overlooked in most academic texts.

Just as in Vietnam, the disparity between the rich and poor was visibly evident while we traveled by boat on the waterways that connect various parts of Bangkok. In amongst houses that appeared to be falling apart, were, what could be described in Thai terms, as mansions. These sights remind me of the problems that developing countries, such as Thailand, encounter when they seek economic development for the purely selfish reasons of the government and the ruling elite. Economic progress does not come without its costs, especially for the many poor people who live in the countryside who come to the big cities in hopes of “getting rich quick,” only to find that a privileged few have access to such wealth.

Our day in Bangkok is concluded by with a traditional Thai dinner and classical dance show. The culture of Thailand remains alive in the young people who continue to perform the traditional Thai dances. It is an honor to have experienced a small portion of the cultural heritage of the Thai people.

August 12, 1996 - Today was the Queen’s birthday, which means a national holiday for all of Thailand.

Most of our group was sick, but we traveled to the ancient capital of Ayuthaya, nonetheless. Our first stop was a drug addiction healing center. The head monk was an former American mercenary who has made a commitment to helping drug addicted individuals from around the world, as well as those Southeast Asians who have fallen victim to the opium trade of the Golden Triangle. The healing center provides a safe haven for these people and helps them to successfully overcome their dependency problems. It is truly a unique place.

Our continued journey takes us to many of the country's ancient ruins. Once again I am amazed to see the close resemblance of the ancient structures to Angkor Wat.

August 13, 1996 - Our final day in Thailand. Through a personal contact of Saninuj Sawasdikosol (Pong), I was able to have a conversation with Dr. Charoen Kanthawongs, an attorney with the Thai based law firm of Tilleke & Gibbins and a member of parliament. Dr. Kanthawongs was a perfect choice for a conversation, as he has insight into both the Thai and American legal systems. Dr. Kanthawongs readily addressed the cultural issues that often impede the success of American attorneys who are working in Thailand. He clearly understood that people of different cultures operate from different assumptions, which require examination and understanding if they are to change. He told a story (a narrative) about an American attorney who, while working in their Bangkok office, tried to employ the American notion of adjudication when confronted with a situation in which he believed he should be compensated for an act of negligence. It wasn't until the American attorney tested his preunderstandings and assumptions that he came to understand the Thai legal system in a new light. Dr. Kanthawongs thoughts are reflective of the basic premises of Gadamer's work, when he explains that we cannot begin to understand ourselves, let alone others, if we do understand the prejudices that create the very meaning we find in our lives. Such understanding requires a fusion of horizons.

I left the conversation with Dr. Kanthawongs feeling as if both of us had come to a new understanding about the direction in which the practice of international business law in Thailand needs to go, in order to foster more successful relationships between foreign parties.

As a final activity, Dr. Herda took the remaining members of our group, who were still healthy, to her favorite jeweler. After much contemplation, I found the ring I had to have. The jewelry purchase was a nice way to end the trip and gave me something to forever remind me of Thailand.

Our last evening was concluded with a spectacular meal. I was both sad and excited about the return home. I was looking forward to sharing my experiences with my friends and family, but I was also ready to begin planning a return trip.

August 14, 1996 - On the long plane flight home I had much time to reflect on my experiences. I knew that I would never be the same person. My horizon had been enlarged. My preunderstandings of the past had been tested, thereby, creating a fusion of horizons. The encounter between the past and the present had profoundly changed me as a person. As part of this fusion of horizons I will be able to appropriate a different future. That future will come in the form of my dissertation. I will bring to the research data and analysis a new understanding of the way in which business law in Thailand and Vietnam is conducted and practiced. Moreover, I will have a better understanding of the educational needs of international attorneys.

August 20, 1996 - Shared the photographs of my trip with a friend who, I think, every time we discuss Asia, learns something new. What amazes me most, is that each time we have a conversation about Vietnam, his principle thoughts are of the War. His beliefs and understandings about Vietnam are so different than mine. The memory of the War creates his horizon of understanding, which include all of his preunderstandings and presuppositions about the Vietnamese people. However, that doesn't

mean his horizon cannot change. So I continue to work on him!! There is hope!!

August 24, 1996 - First day of the Fall semester. I have registered for class. Being at school reminds me that I need to get going on the remainder of my research.

September 8, 1996 - Watched "Good Morning Vietnam," for the second time, at the suggestion of my brother-in-law, who had looked at my photographs from the trip and said that many of the pictures reminded him of scenes from the movie. He was right. It was interesting to watch the movie after having been there only a month before. Every time I see or read something about Vietnam I come to understand the Vietnamese people in a different way.

September 22, 1996 - I have completed the first set of transcriptions from the conversations held during my trip overseas. I continue to try and schedule additional conversations with attorneys here in the United States, which seems to be somewhat difficult given the fact that many of the individuals I have contacted have busy schedules and have expressed an unwillingness to help me out with my data collection. But I remain hopeful that the right individuals will come along.

October 15, 1996 - Was able to complete another conversation with Carol Goodman, an attorney working in San Francisco, who has extensive experience in Thailand. Ms. Goodman was very practical in her approach to the practice of law by Americans in Thailand. She expressed the belief that Americans do not take the time to understand and learn the cultural values and traditions of the Thai people before doing business in the country. She said that Americans bring with them many assumptions that

result in numerous misunderstandings and problems when dealing with the Thais.

Interestingly enough, when I asked her what Americans need to be taught in order to be more successful in Thailand, Ms. Goodman responded by saying that she believed that “it all boils down to good manners.” She said that good manners are essential for international work, as good manners are about being sensitive to other peoples’ needs.

In reflecting upon the conversation with Ms. Goodman, it seems that many of her thoughts are similar to Lucy Wayne. Ms. Wayne, in talking about the concept of “losing face”, expressed the notion that one must exhibit a sensitivity towards others, regardless of the country a person may be working in. Basic human respect seems to be a crucial aspect of international communication, which is reaffirmed in Habermas’ validity claims for universal pragmatics.

October 24, 1996 - Had a conversation with Robert Tunnell, an attorney with Gordon & Rees. Mr. Tunnell has been practicing law and conducting business in Thailand since late 1970, and currently heads the international division of Gordon & Rees. An outstanding conversation with an extremely intelligent and reflective man, who demonstrated a unique understanding, unlike many American attorneys, concerning international legal practice. Every word spoken by Mr. Tunnell related in some way to hermeneutic theory. I could not have scripted his comments any better. His words alone, could constitute an entire dissertation analysis. I can’t wait to read the transcript of the conversation!! This is the type of conversation Dr. Herda says is truly rare. I only wish I could have spent more time with him.

Mr. Tunnel referred me to a colleague of his in Thailand, Say Sujintaya, whom he believed could answer many of my research questions. He graciously offered to make the initial contact to explain the purpose of my telephone call.

November 7, 1996 - I was finally able to make contact with Say Sujintaya for our telephone conversation. Ms. Sujintaya is an American attorney working at the law firm of Tilleke & Gibbins in Bangkok, Thailand. She was able to provide me with significant insights into the traditions of the Thai people; how tradition influences the way in which the Thais view law and the legal profession; and how Thais participate in contractual negotiations. The most prevalent theme expressed by Ms. Sujintaya throughout the conversation, was the need for the Thai people to change many of their traditional business practices, in favor of more western concepts, if they hope to be international business contenders.

November 17, 1996 - Met with Daniel Lanahan who heads the Pacific Rim division of Ropers, Majeski, Kohn & Bentley. Mr. Lanahan spent about an hour and a half with me and at the end of our conversation said how much he enjoyed talking about Vietnam, as there are relatively few individuals who have taken such a great interest in the country.

Mr. Lanahan was happy to discuss, at great lengths, the topic areas of my dissertation. He provided a very candid look at the Vietnamese society and traditions, as well as a discussion of the necessary elements for successful communication and understanding. He has clearly seen the many mistakes made by American attorneys working in Vietnam and suggests that by changing their assumptions they will change their behavior.

The conversation with Mr. Lanahan left me feeling as if we had both come away with a new understanding of Vietnam. Although we had different ways of expressing our thoughts about the issues concerning the practice of international law by Americans in Vietnam, we were essentially saying the same thing. Mr. Lanahan has been trained and works from a positivist paradigm. However, in his words one can find ontological expression and understanding.

November 26, 1996 - Completed another conversation with Chuong Tran, a Vietnamese born businessman. He was absolutely wonderful. I had originally scheduled only one hour with Mr. Tran, but the conversation went so well that we ended up spending three and a half hours together. Although a good majority of the conversation was not recorded, since we continued our conversation over lunch, he provided much needed data that addressed all my research categories.

Mr. Tran's reflections offered a unique insight into examining the way in which business relations are conducted in Vietnam. We were able to discuss the traditions that influence the way Vietnamese view business relationships and the most commonly made mistakes (assumptions) by Americans. What struck me as the most insightful, was Mr. Tran's belief that there existed an inherent need to teach people to be better human beings. Mr. Tran suggested, if people are honest, display a sense of sensitivity, and merely act accordingly, they will be amazed at the success they achieve in a place like Vietnam. He stated that, for the most part, all human beings are basically the same, with similar desires and emotions. Mr. Tran's comments remind us that there exists a basic humanity that connects us all.

I left this conversation feeling as if we had both come to a new understanding about the future role of American legal/business participants in Vietnam. Americans have much to learn in order to be successful in the Vietnamese context.

November 29, 1996 - Telephone conversation with Burt Fohrman. Due to Mr. Fohrman's change in schedule, I was unable to meet him in person at his home in Santa Rosa, as we had originally scheduled. Instead, Mr. Fohrman suggested that we have our conversation over the telephone from his office at the law firm of White & Case in Los Angeles.

I was referred to Mr. Fohrman by Daniel Lanahan, who stated that Mr. Fohrman had extensive international experience, including having worked in Hanoi and Ho Chi Minh City. Mr. Fohrman provided me with much valuable research data. His reflections conveyed an understanding of the Vietnamese people and the subsequent practice of law.

The concept of relationship building as part of doing business in Vietnam consumed much of our conversation, as all aspects of the communication process seemed to be fundamentally linked to developing a good relationship. Mr. Fohrman stated that Vietnam is really no different than any other country in the world, except for the United States and Holland, when it comes to the development of personal relationships. He said that most international business negotiations begin with a period in which individuals get to know each other. It is in the relationship building phase that a sense of trust is developed. Perfect data for analysis. Mr. Fohrman also explained how mutual understanding between two legally connected parties is reached when comprehensibility is often an obstacle when working with individuals from different countries. His comments clearly support Habermas' validity claims for communicative competence.

Furthermore, Mr. Fohrman expressed how understanding people of other cultures and traditions must be preceded by an understanding of what it means to be an American. He said that he does not try to change the traditions of the Vietnamese people, but instead, tries to change himself. These thoughts are similar to those of Gadamer, who contends that change can only result from an examination of the prejudices and assumptions that form our horizon. More good research data!!

December 24, 1996 - Received a book from a friend for Christmas entitled Being Peace, by Thich Nhat Hanh, a Vietnamese poet, Zen master, and chairman of the Vietnamese Buddhist Peace Delegation during the war. The book was especially significant since it required this person to think about something Asian, which was almost more important than the book itself. However, upon opening the book, I was immediately taken by one of the author's quotes which read, "If we are peaceful, if we are happy, we can blossom like a flower, and everyone in our family, our entire society, will benefit from our peace." Hanh's words bring to mind the thoughts of Bellah et al. in Habits of the Heart, in which they suggest that American society has lost a sense of responsibility to one's community. As members of a community we have a responsibility towards others and we must make personal choices to change our behavior for the good of humanity. This includes education.

January 3, 1997 - I finally had my last conversation--a bonus. Although I really did not need to do another conversation, I had been working on setting a meeting with this individual for a long time. It was my great fortune to have made contact with David Lombardi, a federal court judge for the Ninth Circuit District Court of Appeals. Judge Lombardi is the director of the Court's mediation and training division for judges for the

entire western region of the United States. In this capacity, Judge Lombardi was invited by the Chief Justice of the Supreme Court of Thailand to train a multitude of Thai judges in the methods of mediation. As anticipated, the conversation with Judge Lombardi proved to be very insightful and could be readily incorporated with the already existing data and analysis of the dissertation.

Judge Lombardi's comments revealed a man that practiced many hermeneutic principles, but didn't even know he was doing so. He offered great insight into the need for attorneys to communicate in a manner which will lead to new understandings, where all parties benefit from the negotiated agreement, especially in international contexts. His reflections are clearly in line with those of Habermas.

The most revealing and interesting part of our conversation came when we began discussing the education students are receiving in law schools across the United States. Judge Lombardi was very candid in his comments when he said law schools are not teaching students to communicate and creatively solve problems. Law schools teach students to look at things in terms of who is right and wrong, not solutions that would be amicable for both parties. Judge Lombardi's insights reaffirm my belief that law school curriculum must be changed in order to teach students the importance of traditions and communication for the practice of international law.

January 22, 1996 - At the dinner table tonight, my Mom and I were discussing the cultures and traditions of several Asian countries, including Thailand and Vietnam. She stated that while reading various portions of my dissertation, as well as many of the other papers about Asia I have written, she has come to have a better appreciation and respect for Asian

people. I proceed to tell her it is not that she now “appreciates” Asian cultures, it is that she understands them differently. In testing her prejudices and assumptions she has had a fusion of horizons, whereby, the horizon of her present has had a direct encounter with the horizon of her past. The result of this fusion of horizons is that she now has a new understanding of Asian countries. When I explained to my Mom that she had experienced a fusion of horizons, she finally understood, in a very real context, what the hermeneutic theory she had been reading really meant.

February 2, 1997 - Tomorrow I turn in the first draft of my dissertation. I can't believe I have finally made it over the toughest hurdle!! Although I know much work still needs to be done, I am relieved to have made it this far. This is the first time I have come up for air in months. I can finally see the light at the end of the tunnel--a May graduation doesn't seem so unrealistic anymore. The writing of this dissertation has truly changed me. My theoretical understanding has grown by leaps and bounds during this research. It has all seemed to “click” at the right time.

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