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ESSAY

SOME FIRST IMPRESSIONS OF THE LEGAL SYSTEM IN THREE CHINESE CITIES

*Jack B. Weinstein**

I. INTRODUCTION

My recent trip to China was arranged by the Ford Foundation as part of its Chinese legal program. Before leaving here, I met with a number of Americans and Chinese who were escapees, I suppose you might say, from the Chinese government. We discussed current human rights issues. I read documents from the various human rights groups here and in Asia. I also did some preliminary research providing background on China's legal system. It was suggested that I might visit with Chinese whose rights were being abused. I never did visit them in China, however. After consulting with many people, I decided that it would be inappropriate for me, as a sitting judge, to intervene, even in a benign way, since it might interfere with my educational mission and what the Ford Foundation and our American law schools and others were doing to encourage the rule of law in China.

Any of you who want a copy of my preparatory notes, which describe the American system, with brief references to that of China, can have them on request. Of course I modified them in lecturing. I understand they are going to be published in Chinese with some of the colloquy. There were questions, answers and extensive discussion of the hypotheticals in these

* Senior Judge, United States District Court for the Eastern District of New York. This Essay was originally presented as an address to the members of the court and staff of the United States District Court, Eastern District of New York. It was given in the courthouse on Monday, November 13, 1997.

materials.

For a number of years Ford has attempted to assist the Chinese. It has set up Legal Aid Services in a number of Chinese cities and arranged for academics and judges to lecture in China. American judges, of which I was one, and American, Japanese and German academics speak on theory and practice.

A good deal of the Chinese system is based upon that of the Japanese which, in turn, originally was organized on the German model. The Chinese's court structure and procedure has been considerably influenced by the example of the American system and by contact with the modern Japanese and European legal systems.

In addition to interchange with Americans and others who went to China, there has been intensive discussions between Chinese jurists and academics and Americans in the United States. Chinese interested in law have been regularly invited to this country by our State Department for some years. A number of them have come to the Eastern District and I have entertained some of them in my own chambers.

Yale, Harvard and Columbia, particularly, have intensive programs for students from China. They include judges, professors, practitioners and students who take Masters degrees. American academics, particularly those at Columbia, Yale and Harvard, are well known in China and they have had a good deal of influence. A substantial number of people in the Chinese judicial system and in the academic system are now strongly influenced by American law and their American studies.

There is an enormous respect for American law and human rights, even in those parts of the government that themselves are trampling on human rights. I am sure that Chief Judge Sifton saw that when he was in Czechoslovakia some years ago. I observed it in Russia, the former Soviet Republics, Peru and at various international conferences. Throughout the world, that is the aspect of our system which is most admired—that and money. The American rule of law and the dollar are matters of intense interest in China.

II. HONG KONG

We flew first to Hong Kong. I had never been there. We flew through dense clouds. Suddenly we burst through the

overcast. There before us was this magnificent city that looks somewhat like Rio de Janeiro from the air. It is a beautiful harbor in a bowl of verdant forests. The skyscrapers and beaches in the city are mind boggling. Hong Kong even has a funicular that goes up one of the large mountains, on top of which is, of course, a multi-tiered shopping center.

This is one of the most commercial parts of the world. In the main part of the city are new hotels, which are magnificent. They are as good or better than anything in any other part of the world. One four star hotel is piled on another with escalators going up sides of mountains and through shopping centers. In the center is a lovely park. It is in all respects admirable physically—for the rich.

Hubris abounds, as the following quotation from an article entitled "Do We Still Need Skyscrapers?," by William J. Mitchell, suggests:

Does this mean that skyscrapers are now dinosaurs? Have they finally had their day? Not quite, as a visit to the fancy bar high atop Hong Kong's prestigious Peninsula Hotel will confirm. Here the washroom urinals are set against the clear plate-glass windows so that powerful men can gaze down on the city while they relieve themselves. Obviously this gesture would not have such satisfying effect on the ground floor. In the twenty-first century, as in the time of Cheops, there will undoubtedly be taller and taller buildings, built at great effort and often without real economic justification, because the rich and powerful will still sometimes find satisfaction in traditional ways of demonstrating that they're on top of the heap.¹

The recent financial crisis in the Far East, which has not left Hong Kong unscathed, may have temporarily instilled some humility.

The political system had just changed, when I arrived, from British control to full Chinese sovereignty. I was interested in what the impact would be.

Hong Kong has two fine law schools with decent libraries. Since they now have extensive computer systems, the students have access to almost everything in current law, including our

1. William J. Mitchell, *Do We Still Need Skyscrapers?*, SCI. AM., Dec. 1997, at 112.

teaching materials. And the faculties were excellent. I lectured before one of the faculties and met with other professors. They seemed as good as those in American schools.

There are currently about 45,000 law students in mainland China and about 100,000 lawyers. The number of law students is increasing. By the year 2015 China's bar will probably begin to approach the numbers of lawyers we have, although many people take the law degree the way they do in Germany—as a college undergraduate degree rather than as a professional degree.

They are beginning to change their legal education system. In the most influential university in Beijing, Tsing Hua, a university that combines Harvard and MIT in its power and in its ability to influence government people, a law school is being started based on American law school techniques. An advisor and visiting professor there is Howard W. H. Chan. He practiced and was a judge here in New York for a short time after graduating from Columbia Law School. He now has gone back to assist this new law school. At the moment, the school is being financed, in part, by a Chinese individual who is himself bankrolled indirectly by funds from our courts.

I learned at one of the many banquets I went to that there are some 400 people in Beijing with direct computer-telephone lines to the United States. When we file an opinion, it goes to Beijing, where it is typed by two people separately on computers. The two versions are mechanically compared, corrected and sent back here to be put into our systems. I was told that this is the most efficient and cheapest way to transcribe our opinions. As we speak, there are hundreds of people re-typing our opinions in Beijing.

Hong Kong is almost a clone of the British system. It is uncanny to walk into the courtrooms in Hong Kong because it is as if you were in a courtroom in London. To enter a criminal courtroom in Hong Kong is to enter a courtroom, almost identical physically in every way, to one in London. The attorneys dress the same way with wigs and gowns. The judges have the same robes. The jurors act the same way. They are there taking things down in notebooks. The trials are run exactly as I recall them being run within the last year when I was in London.

Criminal cases are conducted much more efficiently there and in England than in the United States. In some respects,

the trial is close to the European model because there are relatively few live witnesses. Testimony is agreed on in advance in a kind of protocol of what the witness would say. The judge has a copy. The prosecutorial and defense counsel have a copy. They agree in advance on what the jury should be told this witness or that witness will testify to, and, as a result, trials are much briefer than ours.

In mainland China they have the prosecutorial system, which I am sure Chief Judge Sifton observed in Czechoslovakia and which I observed in various countries of Eastern Europe and Central Asia when we visited. Since there are juries in Hong Kong criminal cases, there are almost no adjournments—as there are in the continental China system. The trial moves swiftly in one or a few back-to-back sessions.

I observed a murder trial in Hong Kong. It went very quickly with a jury. The judge explained what was going on to the jury succinctly and well. Court proceedings were in English.

I also observed an appeal of a property dispute case before three judges in Hong Kong. That went much more slowly than one of our appeals in the Second Circuit. This was not, as far as I could tell, a “hot” bench. There was a lot of talk back and forth between judges and counsel of a very relaxed kind, with the lawyers being as close to contempt of the judges as they could get away with, saying “my lord” with just a slight verbal sneer, and the judges giving them back equal darts and slashes.

The appeal took about four or five times longer than it would have taken in our court of appeals or in our court. Whether the judges were not prepared or whether they were just putting on this kind of English underplaying act to suggest that it was all off the cuff, I don’t know.

The trial lawyers in Hong Kong were as well trained and well prepared as ours are. The situation in mainland China is not as good. I saw a similar real property dispute tried when I was in Shanghai; the comparison is interesting, as I will note in a moment.

I talked to many law people in Hong Kong, including members of our consulate, sociologists, academics, litigators, and the head of their bar association in Hong Kong, who is a member of the New York Bar Association—a woman who would be a top partner in any law firm in our country. All

agreed that the legal situation in Hong Kong would not change substantially in the foreseeable future. There would be one country, two systems, under the agreement.

There were slight clouds on the horizon during the period we were in Hong Kong. They were celebrating the revolution in China and they ripped down Taiwanese flags. That hadn't been done when the English were in charge. They were also beginning to talk about reducing some of the social security net. As one sociologist I spoke to put it, the mainland Chinese were ready to show the Hong Kong people how to run a capitalistic system and make a real profit. Of some concern is the fact that many adults that teach in English are now required to teach in Chinese.

So far as the basic Hong Kong legal system is concerned, it will probably continue as is into the foreseeable future. Some of the judges come from different parts of the Commonwealth. I talked with one of the female judges who came from New Zealand. The courts are staffed by judges from different parts of the Commonwealth as well as from Hong Kong. The Chief Judge is from Hong Kong. It is a fascinating system, with very able people in charge.

Of course, there is no longer an appeal to the Privy Council in London. There is an appeal with respect to some narrow issues involving security to the Supreme Court of China.

The British legal system has continued to exist, as you know, throughout the world and, very often, quite effectively in preserving human rights. Human rights I think will be fairly well protected in Hong Kong in the near future, but not to the extent they were in the past. So far as the effect of Western systems on mainland China, I have the sense that the Americans will have more influence than the British-Hong Kongers will.

Hong Kong was beginning to expel some people or have discussions about expelling some people, who had come in illegally. They face problems of illegal immigrants much like those we deal with in the United States.

There was a good deal of talk about improving housing for the poor. The apartment of a sociologist where we dined was comparable to the apartments across the park from our Brooklyn courthouse, overlooking the harbor, and quite impressive.

III. BEIJING

We flew to Beijing. I had been to Beijing three or four years ago as a tourist. It has expanded considerably. Building goes on day and night under flood lights. Large sections of the city were built in the last few years.

To a tourist, the capital of China may seem somewhat less interesting than other Chinese cities, except for such attractions as the Great Wall and Emperor's Palaces. There are long, wide boulevards with fourteen and sixteen lanes dividing the metropolis in various directions. It is obvious that they were designed for speeding traffic, but they would also be useful to move tanks quickly. They reminded me, on a smaller scale, of some of the capital cities in Central Asia improved by the former Soviet Republics on an Ancient Roman Imperial model.

One of these huge boulevards goes by Tiananmen Square. There was a huge picture of Mao hung at one end of the square as a reminder, I suppose, that he is still to be venerated. There are few pictures of him around in public now and there was only one statue of him that I can recall seeing. He is still respected. Most people, I think, understand how many tens of millions died as a result of his policies. One policy previously not known to me was his encouraging a high birth rate. This will create a problem much worse than ours in social security as the bulge of present young adults retires and a much smaller work force has to support a huge population of older people beginning in the first third of the twenty-first century.

I lectured to judges and academics at various law schools in Beijing. Again, I was impressed by the quality of the professors. They are not paid very much—much less than the professors in Hong Kong—but they were devoted to their work. They were beginning to do some consulting and some worked with some of the law firms, so a few would supplement their salaries, but not nearly as much as our American law professors.

The students I saw were good. They were much like our students working in the United States law school libraries when I saw them. They asked sensible questions. Many of them wanted to come to the United States to study. They were partly motivated by the knowledge that some of those who have studied here are now making an enormous amount of money in China—\$100, \$200, or \$300 an hour working with

foreign corporations and lawyers. Money is beginning, to some extent, to distort the whole Chinese system.

The judges get paid much less than ours do. Judges right out of law school earn about \$100 a month, but they get bonuses. They are provided housing at nominal rent. Those senior judges that I met have very good housing, equivalent to what we have in the middle income apartments across the park from our court. The most senior have chauffeured cars. Much to my surprise, the housing that they are assigned can apparently be handed down to their children and grandchildren. So, in effect, they have a peculiar tenure in the apartment and that makes up for some of the shortages of salary payments. Of course they get free medical care. As far as I can tell, senior judges receive somewhere about \$4,000 a month in Shanghai. With bonuses and perks, they are not in a bad position.

The judges were very much interested in our system. They have now adopted a new criminal code and new criminal procedures in the main cities. They are trying to put the new system into effect so there has probably been some improvement in the court-human-rights situation. If you are overtly against the Party, however, I imagine none of those rights or procedures are very effective. But the average alleged criminal is beginning to get more in the way of legal protections.

I did observe one criminal trial and a civil trial in Beijing. The criminal case appeared to be a showplace type trial. I do not know whether they set it up for me. It was held in a huge courtroom, looking like a high school auditorium, with a large, raised stage. Three judges sat up on a platform in stage center, the judge in the uniform, with two lay people, one on each side. The prosecutorial staff, in uniform, was in a box over in stage left and the defense counsel was in a box on stage right, in civilian clothes. The defendant stood in a small cage at stage center, front. Soldiers kept marching in regularly to relieve each other every fifteen minutes or so. I felt as if I were on Broadway watching a play.

The defense counsel, obviously a seasoned woman lawyer, was making points. The prosecutor seemed to have intended that the defendant be convicted at that moment in the case.

The defendant had bought some tiles and some bathroom fixtures for his new house (interesting private capitalism at work), and the prosecutor claimed that they were stolen. The person who sold the material to him was the watchman in a

plumbing warehouse who was making private deals. The state claimed that the defendant knew there was no authority to make the sale. The defendant said he did not know. He said he had paid a reasonable price since they were outmoded. He had a signed receipt.

On cross-examination, the worker who had given the receipt was asked by defense counsel: "Well, why did you sign the receipt?" He replied, "I was practicing my signature." That did not go over well with the presiding judge. They adjourned the case because, I suppose, they might have been embarrassed by having the defendant acquitted right then and there. The prosecutor was not happy. He went back to make further inquiry.

It was an interesting trial because the defendant said with respect to the reading of one person's testimony taken outside of court by the prosecutor—just as they do in Hong Kong, as I've already pointed out—that he was lying. We would have brought the witness in for cross-examination, but they did not. The Russian influence is still strong, although they are moving towards the American system.

They may be approaching our practice in some respects too quickly, toward dependence upon the adversarial system and upon lawyers to gather information rather than upon the prosecutor or the judge to gather evidence. That is partly a result, I think, of the huge increase in cases, particularly commercial cases. They do not have enough judicial power. With the increase in number of trained lawyers, an adversarial system utilizing lawyers to prepare cases more expeditiously may be desirable.

They are interested in our forms of discovery. They are interested in the adversarial system. In some cases, as I have suggested, they may be going too far. Some judges seem to believe that they should not inquire about the evidence, but just rely on the lawyers. I explained to them that we have much more activist-type judges in our court system than that theory would support. I was very impressed on how they are trying, at least in the ordinary run of cases in the main cities, to enforce a good deal of due process and the rule of law.

Bear in mind that in 1978 there was really no Chinese legal system. Many judges had been unseated or sent out to the farms. The lawyers had been, as part of the Mao-type revolutionary young people's scourge, destroyed professionally.

Many of the books were burned. This is one of the reasons the libraries aren't as extensive as they had been. They destroyed their legal system. Now they have built it up in just a few years. It is beginning to blossom and expand.

So far as commercial cases involving foreigners, there was a definite attempt, particularly in Shanghai which I'll tell you about in a moment, to be fair. They understood that they were not going to be able to participate in the international commercial market unless they had a fair legal system.

The judges who attended the course asked about our commercial cases. They were interested in mass torts. They were curious about all of the details of how we present our cases; how the judges control the cases; why people listen to us; and why government officials do what we order when we issue a decree commanding an official to do this, that or the other thing.

Obviously there is not the judicial independence that we have. There is, however, a strong tendency towards an impartial rule of law much like the one I observed about 1990 in Moscow and some of the Baltic republics, where they were making the switch from the Soviet communist system.

The amount of building is astounding. A good many of the commercial buildings are probably partly empty. They seem to be overbuilding, particularly office buildings. Enormous skyscrapers line and are set way back from these huge boulevards. And, of course, there are the beautiful hotels that are available for foreign businessmen and for people like me.

On my last evening in Beijing I was asked by a state department official what my one impression of Beijing was. I said it looked like it was ready for a "burst in the bubble." It reminded me of land speculation in Florida many years ago. So far, however, China does not appear as adversely affected as South Korea or other Far East nations.

I like to walk in a city. Beijing is not a city that I cared for because it is spread over such an enormous area that you can not really cover much by walking. Hong Kong is a place where you can walk. Shanghai also invites pedestrian traffic. They are real old-time cities. Beijing is a city laid out on a super-human scale. Although there were some beautiful buildings, it was not, for me, an inviting city.

The judges of Beijing were impressive. They wanted to learn. The academics were interested. The students were very

much aware of the American system.

I had an interview with one chief judge in a formal setting in one of the new courthouses in Beijing. Photographs were taken. Brochures showing the court's ping pong players and recreational dances, as well as courtrooms were distributed. This was real Party stuff. The whole operation seemed somewhat outmoded. The real work seemed to be going on in small courtrooms, half the size of those of our magistrate judges. Domestic relations issues seemed to constitute the bulk of the work in progress.

IV. SHANGHAI

Shanghai was also a city we had visited a few years ago as tourists. It was growing at an enormous rate—perhaps more swiftly than the capital.

It is a city that I like. It is somewhat exotic. They have the old International Settlement and the strolling areas along the river on the Bund that the Germans and French and the British had built up before the Japanese invaded. They have the most colorful skyscrapers with all kinds of strange roof lines and lights. From the old city at night, it looks like a fairyland or World's Fair.

An enormous TV tower on three huge legs dominates the new part of town. It gives you a feeling of excitement and fun. The people are interesting, too. They are moving around busy, rushing. It is like being in New York at rush hour or around Christmas on Fifth Avenue near Rockefeller Center.

Shanghai has a decent subway system which is a combination of New York's and that of Washington, D.C. There is no graffiti. It is perfectly clean. It cost about three cents or so, in American money, to take the ride. I did not have to pay. I told them I was an American judge and I wanted to examine their system. They let me in to examine one of the stations as trains rolled in.

Traffic includes all kinds of cars and taxis. The basic road system in older parts of the town consists essentially of fairly narrow streets. What they have done is build elevated highways, much like our elevated highways, around the center of the city. As a result, a good deal of the auto traffic moves quickly. But, between the bicycles and the cars and the pedestrians, it is almost chaotic in older parts of town.

Instead of having, as they do more frequently in Beijing, the underground passageways at intersections based on the Moscow model that some of you are familiar with, they provide graceful overpasses curving around buildings at some key intersections. They are Chinese in feeling. If you want to get across an intersection, you go up and around. That is pleasant, particularly since there are flowers up there in the air. You really feel that you are part of the living, throbbing, urban system. Traffic flows beneath you.

The big department stores, unlike those in Beijing, are huge edifices, with great big central openings, that are eight or nine stories high with escalators dominating the inside, adding interest and sparkle. Everybody uses escalators. They use escalators and moving sidewalks in Hong Kong, as well as in Shanghai, to an amazing degree.

The people are full of spirit. They are well dressed—not quite as good as Fifth Avenue, but pretty good. You no longer see the old blue tunics as under the Mao regime. The clothing in the stores and other materials are of good quality. All of the famous international shops are available to the rich. If you have a lot of money, you can spend it just the way you would on Fifth Avenue—same stores, same prices, same merchandise, essentially the same kinds of people spending and decking themselves out.

The Shanghai judges I met were, I thought, a cut above the Beijing judges in verve. They were more exciting and interesting. There was more of a commercial international atmosphere in Shanghai than in China generally, even before the war. Their questions were much more direct. They were interested in the details of how our system operated and what changes they might make. The judges told me, and I believe, that a foreigner would get a fair shake. If you just committed a common crime or had a commercial problem, you'd be okay in the courts.

Their system was changing, almost under our eyes. I attended a commercial and a criminal trial in Shanghai. The criminal trial went very well. I did not see the whole of it because they do not have the jury system, so, as in the German system and the French system, the trial can extend over a long period of time. What I saw impressed me as a fair attempt to get the information necessary for decision.

I observed a commercial case much like the one I saw in

Hong Kong, involving a substantial property dispute. They have many such disputes in Shanghai because they are now moving into a quasi-private property system. There are 99 year leases of land, private ownership of the buildings and transfers of property from generation to generation. All this creates many new legal problems arising from property disputes, as in Hong Kong.

The civil trial had a somewhat different feel from that in Hong Kong, though. I do not know whether my being there (I was escorted by interpreters throughout and accompanied by a senior judge) had any impact. The lawyers did not appear. If that had happened in our court, we would have sent the marshal out for them. In Shanghai, however, apparently the lawyers have so much business and are making so much money that they can get away with some flouting of the civil courts.

Lawyers' fees are supposed to be fixed, but I understand that lawyers are taking more than the schedules call for—ten percent of the claim and an under-the-table contingency. Money corrupts and levels all over the world.

After the commercial case, I was asked by a Chinese judge what I thought of the trial. I said, "It was very interesting. They asked all of the right questions, but they did not do what our judges do. It was a case involving, essentially, what we would characterize as 'impossibility to complete the contract.' Our judges would have wanted the parties to explain exactly why it was impossible to complete the building contract. Our judges would have asked questions along those lines. They would be assisted by experts and others." But the judge in charge there did not actively do that. The proceeding was much more passive and abstract. This was an interesting revelation to me. In a sense, they may be slipping back, past where we are with respect to passivity of judges and full reliance on counsel to conduct the litigation.

Shanghai has a beautiful museum, a world class museum. It is housed in a magnificent new building. The collection is remarkable, particularly because during the last revolutionary period the wild kids tried to destroy everything old. Their ceramics and brasses and other ancient artifacts are astounding and presented in a beautiful way.

They have just built a huge opera house. The architecture, I thought, was excellent. The Party's central headquarters is shabby, of Stalinist architecture and passe. By contrast to the

nearby huge architecturally brave new hotels, it is unimpressive.

The Shanghai people think they are the best in China. They take a great deal of pride in what they do. And the banquets were a little better than they were in Beijing or even in Hong Kong.

V. IN GENERAL

In general, I was fairly impressed, except in the field of human rights. This is a system of law that has been almost totally destroyed within the last twenty years. It was being built up from scratch. The judges and others are genuinely devoted, I think, to providing a system that will allow them to believe that they possess the rule of law on a world class model.

I felt very good about this trip. In fact, much better in many respects than I did after coming back from Moscow or Central Asia in the earlier 1990s and late 1980s. There I had a feeling of erosion and deterioration of standards. These Chinese people, I thought, were on their way up.

Nevertheless, the unemployed, once they shift into a fuller capitalist system, are going to put an enormous strain on the country. Whether they will slip into a deep depression, with repression, and lose all the benefits of their momentum towards a better judicial system, is hard to predict.

It is clear, however, that our State Department has done fine things in the past few years in bringing Chinese lawyers and judges here. What the Ford Foundation has done and what our academic institutions like Yale, Columbia, and Harvard have accomplished in explaining our system has made an enormous difference in the prospects for human rights in China. Our government and nongovernment agencies are most impressive. Our legal system is genuinely respected as an appropriate model for the future.

I could tell you other things, but I'll ask for your questions for the remainder of our time together.

A VOICE: You mentioned that there are commonwealth judges sitting that are continuing to hear cases within Hong Kong after Hong Kong has become a part of China.

SPEAKER: Yes, a New Zealand judge and other commonwealth judges are sitting permanently in Hong Kong.

There is no longer an appeal to the privy counsel as there used to be for all the commonwealth. The Hong Kong Supreme Court will answer most of the questions. The judges, their accents, their approach, the English humor, the understatement—if you closed your eyes or even if you kept them open, because the Court looks the same, you would think you were in Old Bailey or the Central Court in London.

A VOICE: Can you tell us more about how the Chinese system works?

SPEAKER: I brought our court some of the materials from the District Court in Beijing that I visited, showing pictures and brochures. It is a showcase type of place with respect to this big area. But there are lots of little courtrooms where they handle cases involving disputes and minor crimes. There is a lot of mediation throughout the country as the primary way of solving disputes.

There are some excellent films available in the United States. I saw one of them (*The Story of Qiu Ju*), which is shown at Harvard when they teach Chinese law up there. The son of the former Dean at Columbia is at Harvard now and he is becoming an expert on mass torts in China.

Some of our American students are going to China. There is a large and growing interchange. You have a feeling, at least in the commercial centers, that these people think a lot like we do. You see that with respect to Chinese immigrants. When they come over here, they have a certain zest for life and knowledge that is quite impressive in our schools—not quite as commercial perhaps as the Koreans, but full of life and the urge to move ahead.

Now, there is also beginning to be a good deal of private institutional—Non-Governmental Institutional—attempts to protect consumers. While I was there, there was one consumer group in one of the inland cities with a population of some five million people that had just gotten out a press release in the *China News*, which is the daily Party English Language newspaper. It indicated that a non-governmental organization had just forced a number of manufacturers to turn back some thirteen million dollars to consumers because they had sold bad television sets that did not show what they were supposed to show.

They are starting to use some mass tort techniques, although they have an opt-in rather than an opt-out procedure.

You pay up-front legal fees to the Court depending upon how much you are suing for. There is a tendency not to ask for too much because you have to pay a fee based on what you are requesting. But there is apparently a growing bar that is interested in doing that kind of work against manufacturers, and also to some extent, I was told, in connection with environmental matters handled on a mediation basis.

Of course when the Party decides to do something, that is going to be it. This Yangtze Three Gorge Dam is widely opposed, except in the Party. But it is going to happen and millions of people are going to be dispossessed. There is not a chance of stopping what may be an environmental disaster. In this country you would be involved in federal courts forever, until hell or the Yangtze froze over.

So there is that difference. The commercial private enterprise—the money economy—is pushing all this other stuff into the background.

JUDGE NICKERSON: Did you get any impression of the legal system in the rural areas outside the big cities?

SPEAKER: No, because I never got out there. I am told it is much more rudimentary. In many of the areas, I am told, it is the old generals who are the judges, but they use a good deal of mediation.

I received varying reports on how much change had taken place, but I got the sense that there was an attempt being made to impose a more effective criminal procedure. They had adopted on a national basis a new criminal code.

These changes were gradual, I gathered from American professors who were teaching there as well as from Chinese professors and judges. Although the centers that were being reformed first were apparently in Shanghai and Beijing, new attitudes were gradually spreading throughout the country. To the extent that there were commercial joint international ventures in the inner parts of the country, they too would benefit from a new respect for what we would call the rule of law.

VOICE: Did you observe any pro se litigants while you were there?

SPEAKER: There weren't any pro se litigants that I observed. The pro se litigants are generally in a mediation situation. There is a legal aid system partly paid for by the government and partly paid for by the Ford Foundation. Ford has poured a great deal of effort into China and I think very sensi-

bly so.

VOICE: Was it only legal type books that were destroyed in 1978?

SPEAKER: No. They destroyed art and private collections. They forced academics of great international stature to the farms. It was a terrible destructive thing. Reportedly over 30 million people starved to death.

Now, as I said, there are still pictures of Mao, but not much. When I asked about it, the Chinese said: Well, we say he was seventy percent right and thirty percent wrong. They may change the percentages, to give less credit to Mao in the future.

CHIEF JUDGE SIFTON: Did you extend any invitations to judges to come over and visit us?

SPEAKER: Yes, I said come over here and visit us. Some of them have already come over. Columbia regularly has a group visiting our court. Some were absolutely charming. Perhaps they put the charming ones in charge of American jurists.

In order to avoid overeating at the banquets—where it seemed as if they served forty or fifty courses—they kept coming—I enforced my vegetarian rule. I would only eat vegetables. The word went around, “the judge wants vegetables.” So they brought out all kinds of exotic vegetables and each banquet became more exciting for a vegetarian.

When I said I grew vegetables in my garden, a judge in Shanghai drove over to the hotel where we were staying. He produced a car with lights flashing to take us to the airport. He presented me with a packet of vegetable seeds: “We know you like this particular vegetable more than any other. We hope you will grow it and enjoy it.”

I should add to my pre-trip notes a few final remarks from the “China in Transformation” edition of *Daedalus*, the Journal of the American Academy of Arts and Sciences. Tu Wei-ming, the editor, in his introduction suggests, “China is at an ideological crossroads, confronting a profound identity crisis which will fundamentally restructure her national character.”² That may be an exaggeration; character of a huge, diverse society is less easily changed than institutions.

2. Tu Wei-ming, *Introduction: Cultural Perspectives*, DAEDALUS, Spring 1993, at vii, ix.

As to institutions, the law does seem to be changing. There is an essay by Professor William P. Alford (of Harvard, an expert on Chinese law, that it was my pleasure to meet in China), which is worth quoting:

it is too early to know what Chinese justice might look like if and when individuals . . . have the chance to mold it in a more affirmative way than at present . . . , mindful of the instrumental fashion in which China's elites have throughout history so frequently deployed the law. For only when China's elite and masses alike recognize the possibility of law aspiring to serve higher ideals of justice, as well as immediate political purposes, will China be able to move away from being . . . a country possessed of " . . . an unwritten law beyond the written law"³

It is really impossible to know at this point which direction the law in China will take—towards a past as an instrument of oppression and manipulation, or a future of equal justice and a rule of impartial law as we think of it. What seems clear from the merest contact with the Chinese legal system is the need to do all that we can in assisting China to move in the path we would like to see it take. Our own government and nongovernmental agencies seem to me to be proceeding on sound lines to assist in the fairly limited way foreigners appropriately can. As to the question of human rights, I am not in a position to say how we can most effectively act to protect them in China.⁴

3. William P. Alford, *Double-Edged Swords Cut Both Ways: Law and Legitimacy in the People's Republic of China*, DAEDALUS, Spring 1993, at 45, 63.

4. On one of the Jewish High Holy days, my wife and I sought entry into the old Synagogue in Shanghai, but were told the government had closed it for the Holidays. Some differences in attitude between Americans and Chinese regarding human rights can be expected.