

3-15-1999

Not So Far Away: Visiting with Women Judges in China

Ann Marshall Young

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>



Part of the [Administrative Law Commons](#), [Comparative and Foreign Law Commons](#), [Judges Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Ann Marshall Young, *Not So Far Away: Visiting with Women Judges in China*, 19 J. Nat'l Ass'n Admin. L. Judges. (1999)
available at <https://digitalcommons.pepperdine.edu/naalj/vol19/iss1/3>

This Article is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

NOT SO FAR AWAY

Visiting With Women Judges in China *

By Ann Marshall Young **

I never expected to go to China. Although its ancient culture and present struggles intrigued me, its graceful art and magnificent landscapes drew me, and my mother's frequent travels there in her last years pulled at some part of my consciousness; it was on the other side of the world, far away from my world and my present struggles. But then I received a notice about a trip to China for women judges. It didn't take me long to decide that I had to go.

The trip offered a unique opportunity for me, both personally, to discover some of what so engaged my mother in her travels and to explore how women's issues manifest themselves in the Chinese culture, and professionally, to see first-hand China's legal system and compare the experiences of women judges there with my own. Having spent some time during the past several years addressing the issue of judicial independence as it relates to administrative law judges, and knowing that implementation of the rule of law in China as it "opens up" to the West is an evolving and vital issue, I wanted to witness for myself how these concerns are addressed in China.

We left San Francisco last May, and spent two amazing weeks in China, traveling to five cities and towns. Our group consisted of five

**Author's Note:* This article, about a trip the author took in May 1998, is a reprint of an article originally published in the *Judges' Journal*, a Quarterly of the American Bar Association Judicial Division, at Vol. 38, No. 1 (Winter 1999).

****Ann Marshall Young**, an administrative law judge with the Tennessee Department of State, Administrative Procedures Division, is President of NAALJ. She is also a member of the Executive Committee of the ABA National Conference of ALJs (NCALJ) and chair of the NCALJ Judicial Independence Committee. The other judges who were part of the China trip were Sacramento Administrative Law Judge Lillian Shek; Yolo County, California, Superior Court Judge Doris Shockley; and Bankruptcy Judges Linda Riegle (Las Vegas) and Diane Sigmund (Philadelphia). The author wishes to thank all of her traveling companions and wonderful Chinese friends, especially guides Cui Lin Lin and Barbara Cobb and translator Liang Feng, for making her trip to China a truly meaningful and enriching experience. She would also like to add that the views expressed in this article are entirely her own and do not necessarily represent the views of her employer or any of the organizations with which she is associated; nor was her trip to China in any way sponsored by her employer or any of these organizations.

women judges and a tour leader from the U.S. - China People's Friendship Association. Our very gracious host in China, the All-China Women's Federation (which is associated with the government and serves many functions, including being somewhat of a social service agency), provided a Chinese guide and translator, with whom we became good friends as we traveled together. We generally met with groups in somewhat formal settings, in which we were served tea or a meal, gave prepared presentations to each other, and then engaged in free-flowing question and answer discussions.

The members of our group brought varying backgrounds and interests to this trip: two of the judges had an interest in domestic violence issues, another in business and economic law. Yet another, who hears employment security cases, had a special interest in the plight of laid-off women workers, whose numbers have increased as China moves much of its industry to a more market-oriented economy. We were all interested in women's rights under the Chinese legal system. We also shared with, and learned much from, our Chinese friends in the areas of juvenile law, discrimination law, and other subjects.

JUDICIAL INDEPENDENCE

Given my interest in judicial independence, I wondered how this issue manifested itself in the day-to-day work of judges in China. I knew that in the past, the Chinese judicial system was controlled by the Communist Party. I also knew that in recent years there have been significant changes in China's legal system. For example, in 1995, China's Administrative Litigation Law was passed, permitting Chinese citizens to sue the government for wrongs committed against them. However, despite such progress, I had been told that judicial independence was not a subject that could be discussed openly in China. But I wanted to know for myself.

I had the impression from meeting some Chinese women judges who had visited Nashville in 1997, that there might be some similarities between the working situations of Chinese judges and U.S. administrative law judges. While in China, I was able to confirm this impression. For example, much as U.S. administrative law judges are considered to be hired employees rather than appointed or elected as

U.S. judicial branch judges are, Chinese judges are selected through a similar hiring process. And just as federal and some state administrative law judge applicants in the U.S. go through an examination process, judicial applicants in China must pass an examination as part of their judicial selection process. (Judicial applicants must also be over 23 years old, Chinese citizens, and law school graduates; Communist Party membership is no longer required, although many of the older judges are still members. In addition, before becoming a judge, an applicant must spend two years as a court reporter, writing down verbatim what is said in cases heard by other judges, thereby learning how to conduct her own cases.)

Also, in China, the idea of supervising the work of judges is not as strange as it might seem to most judges in the U.S. The one exception to this observation in the U.S. is that in many administrative law judge offices, supervision of judges is commonly accepted--although quite a controversial issue among administrative law judges nationwide, whether the supervision is performed by agency personnel or supervising judges.

Just as with U.S. administrative law judges, many Chinese judges work in the same offices with government prosecuting attorneys. When some in our group wondered about the potential conflict of interest in this, I was interested to hear one of the U.S. judicial branch judges in our group point out the similarity to an U.S. administrative agency having both judges and prosecuting attorneys in the same department.

I wondered what sorts of influences came to bear upon judicial decision making in China. Knowing that with administrative law judges, sometimes "behind the scenes" influences exert more actual pressure than do the sorts of public criticism that all judges can suffer from time to time, I suspected that this was likely also true with Chinese judges. Thus, I supposed, just as here, much depends on the backbone and personal integrity of individual judges when it comes to the fairness of legal proceedings and how closely they comply with the rule of law. And I expect that, in China, just as with some administrative law judges here, integrity and backbone take on added importance to the extent that judges do not have the practical independence enjoyed by U.S. judicial branch judges, and are more dependent upon the good will of those who may have control or

influence over their working conditions and jobs.

These are some of the issues that arise on a regular basis in meetings of U.S. administrative law judges. So I had a very personal interest in knowing how Chinese judges experience their day-to-day work, in how the process really works on a very nuts-and-bolts level, and in how Chinese judges deal with the pressures that some administrative law judges encounter here.

I did not feel comfortable asking about these things right away. For one thing, our discussions were conducted through a translator. And even though she was extremely good, the translation process was rendered more difficult by the legal terminology that came up in our discussions.

THE CHINESE LEGAL SYSTEM

Time limitations made us choose our questions wisely. So we began by learning some basic facts. First, China has a hierarchical court structure, both for appeals and, to some degree, for the supervision of lower courts by higher courts. The courts are separated into several divisions, including a criminal division, a civil division, an economic division, an administrative law division, and specialty courts such as intellectual property courts, railway courts, and others. Of the total 177,500 or so judges in China, approximately 16 percent, or some 28,400, are women. (Of the approximately 100,000 lawyers, 30 percent are women. And unlike here, they actually want more lawyers there!)

The Chinese legal system does not yet have a procedure of publishing decisions that would constitute precedent, but the sophistication of court systems varies with how urban or rural the setting is. We met with women judges in Beijing and Shanghai, both quite cosmopolitan cities, as well as in Taiyuan and Xian, medium-sized cities, and in Yangquan, a smaller town.

Through our discussions of domestic violence we learned that in criminal cases involving serious injury or death, the state will prosecute the case against the alleged offender, whereas the state does not prosecute less serious offenses. Persons affected by less severe violence have the right to prosecute their own cases, often with the help of local neighborhood committees and women's organizations. Some in our group found this problematic. With the Chinese I imagine it is a

question of resources.

Another aspect of the Chinese legal system that many here would find unusual is the existence of women's courts. These specialty courts were created because of the historic subjugation of women in China, the effects of which remain today in the form of the reticence of some women to assert complaints, especially to males, even when they are badly mistreated. So, in keeping with the quite progressive laws relating to women's rights, there are women's courts, with all women judges, to hear most any kind of case involving women.

OBSERVING IN WOMEN'S COURT

We attended a session of a women's court in Yangquan, and saw what might best be described as a combination trial/mediation. As is apparently common in China, there was a panel of three hearing the case: a presiding judge, another judge, and a lay juror. A court reporter was also present, as was a court officer who clicked his heels whenever he moved from place to place in the very small courtroom. All wore uniforms except the juror, but we could see a bit of a lacy blouse peeking out from under the uniform of at least one of the judges.

The case involved a young boy who had allegedly been bitten by a dog that was owned by a park. The mother and a friend of hers appeared on her child's behalf. The park manager appeared for the park. (Both parties consented to our observation of their case.) The mother pointed out that the park manager had previously signed a paper saying that his dog had bitten her child, even though the manager was now saying there was no way to prove this. The mother asked the court to order the park to pay for her child's medical care, for the extra food the child craved when he was sick, for his psychological suffering, and for the lost future earnings he might have received as a movie star had he not been disfigured by the dog bite. (This last point elicited one of a couple of instances of soft laughter in the courtroom, which slowed down the somewhat simultaneous whispered translation we were receiving, as our translator broke into giggles.)

The presiding judge ruled that the defendant park manager had not proved that he was innocent, asked whether the parties wished to participate in "reconciliation" of the case, and, after receiving affirmative responses and discussing the case further with the parties,

took under advisement the issue of how much and for what the park should pay.

Some of our group remarked afterward on the judge's pronouncement that the defendant had not proved his innocence. However, others observed that, in fact the man had previously signed an admission and the dog was in the vicinity of the child; therefore, the same result might well have occurred in the U.S., with the judge finding that the man's denials in court were not credible and that his previous admission, along with the circumstantial evidence of the dog biting the child, established by a preponderance of the evidence that the dog bit the child.

The judge in the case may not have received the training to articulate her decision in the framework we are used to, and indeed may not have attended law school, where today concepts such as due process and the presumption of innocence are now generally taught in China. And how much of what she did was according to law or rule, or based on discretion, was unclear.

QUESTIONS AND ANSWERS

To gain a better understanding of some basic process aspects of the Chinese legal system, I tried with one group of judges to explain our different standards of proof in civil and criminal cases, in order to ascertain whether they had similar standards.

When I attempted to ask this question, perhaps because of the nature of the concept, and perhaps in part because of my less than perfect attempt to simplify it for translation, our translator had problems with it, and asked for clarification. Other group members tried to assist, which added to the confusion. Then one of our group suggested that I withdraw the question and that we move on to an easier one. I persisted, somewhat embarrassed at having to insist on asking my question, which I really wanted answered. We had some back-and-forth interchange among our group, and after further explanation, the question was eventually translated and asked: "In our criminal cases, there must be no reasonable doubt about guilt to convict, but in a civil case, to win you have to prove only that the other side more likely did what is alleged. Do you have similar rules?"

This, in turn, produced some back-and-forth discussion among

the Chinese judges. A more junior judge finally answered that in their courts evidence has to be objective, relevant, and presented by a person with knowledge. I concluded from this response that although the judges in this province applied some basic rules of evidence, they did not formally define specific standards of proof for different types of cases. The difference between what kinds of evidence are admissible, and how strong evidence must be for a party to win, did not appear to be a distinction that is explicitly recognized there--although, based on other discussions, I would not be surprised to learn that such a distinction is intuitively applied in actual cases.

In addition to giving me valuable insight into a fundamental process issue of how cases in China are decided and how formal the rules are for making decisions, this interchange was significant to me on yet another level. Our less than smooth interactions seemed somehow to "break the ice" and allow for a greater sense of freedom to speak openly and even to disagree--to say more of what we really thought, rather than just what we thought we should say.

Later, I had an encounter with a young judge who had, prior to our discussion about standards of proof and evidence rules, seemed very skeptical about whether there would be any value in spending the morning of her Sunday off meeting with a group of women judges from the U.S.--who, I imagine, she thought might be self-important and over sure of ourselves. I could see the skepticism in her face: "Why are you here? What can you tell me?" However, as we were leaving the court building that afternoon, this young judge ran up to me, called me by name, and, in English, said she was glad to have met me. Her smile was open and unabashedly friendly, totally different from her demeanor before our little mix-up about the standards of proof question.

It meant a great deal to me that she and I had somehow managed to connect. It really seemed to me that, even though her English was almost as limited as my Chinese, we had communicated on a very human level with each other on something that was important to both of us: perhaps about persisting even when being urged to go another way--which may, I think, be related to being an independent judge; and about struggling to define the basic "how-to's" of being fair, which is really a pretty basic human concept, when you get down to it, but not necessarily a simple one.

More questions that day and on ensuing days elicited more

“process” information on such issues as the amount of evidence needed to charge as opposed to convict a person. And I think we got a fairly good ground-level view of how China’s legal system is developing and of how, in its “opening up” movement, China is progressing more and more toward full application of the rule of law in its courts.

EX PARTE RULE

But how far have they gotten from the standpoint of the judge and judicial independence, I still wanted to know. I felt I needed to do something other than just use the words “judicial independence” to get a meaningful answer. I needed to use an example. So, with another group of women judges, I explained our *ex parte* rule, and asked whether they had a similar rule. I posed my question as follows: “We have a rule that says a judge cannot talk to or receive information from anyone when all parties in a case are not present. Do you have a similar rule?” The answer was: “We are trying to reform our system in the direction of yours. We have a rule that says that a judge cannot talk to one party unless the other party is present.”

The answer, in the judge’s use of the words, “reform our system in the direction of yours,” told me that the judge who gave the answer knew well the difference between their rule and the rule as I described it. The answer told me that their rule is like some in the U.S. believe the rule should be with administrative law judges, and the way it actually is for some: that while you don’t talk to one party in a case unless the other side is there, it is okay for supervisors and others to talk to you about cases when the parties are not there. Here in the U.S., some administrative law judges have supervisors and government agencies suggesting to them on an *ex parte* basis how to approach certain issues. In China, judges have supervisors and the Communist Party. There are, of course, significant differences, but also some similarities. I am sure that many supervising judges in both countries are concerned with the quality of decision making, and that agencies and the party are concerned with correct policy implementation.

There was not time to ask all I wanted to ask--about rules and procedures, forms of supervision and oversight of Chinese judges, kinds of pressures, how cases are assigned, and how judges feel about these things. Knowing that many administrative law judges are hesitant

to discuss such matters for fear of seeming critical of their bosses, I knew that finding a way to ask some of these questions would be difficult. I can only hope to go back and learn more as soon as I can.

CONCLUSION

I expect Chinese judges are going through what many administrative law judges, and other judges for that matter, all too often experience here--deciding how much to "go along to get along" (or to get reelected, reappointed, or appointed to a higher level judgeship) and how much to apply the law as one reads it to the best of one's ability, even when that reading of the law is not popular or does not follow the "party line," and even when there may be negative consequences.

From many perspectives, much depends on how well and how fully China implements the rule of law in its legal system. The Chinese recognize this--not only the judges and government representatives who speak proudly about how China is working to improve its legal system in accordance with the rule of law, but also ordinary Chinese citizens.

In a June 29, 1998, Newsweek article, written in anticipation of President Clinton's visit to China, reporter Melinda Liu, who opened Newsweek's Beijing bureau in the early 1980s, described her impressions of how China is changing. She recounted having covered the trial of the "Gang of Four" in the early 80s, and coming across some photos of the trial in a curio shop this year. She saw some faces she did not recognize in the pictures. The merchant explained, "These are the judges" (whom Liu had not seen during the trial because the actual trial was closed to the public). Then the merchant said, "See this woman judge? She's very tough, she really socked it to the Gang of Four. . . . We need more people like this tough woman judge."

The women judges we met in China were warm, friendly, and wonderfully without pretense--but also, I think, tough. They are part of a great movement of positive change that appears to be going on in the Chinese legal system. A movement that I as an administrative law judge can identify with--having to do with issues that judges everywhere probably face. Based on my interactions with these women judges, I sensed strongly and came to conclude that they have integrity and backbone, and that they understand implicitly what is at stake in this movement to implement the rule of law in China.

There is a saying in China that women hold up half the sky. The women I met in China hold up at least half the sky, and are, I suspect, very much the kind of people the curio merchant described, and indeed, the kind of people we need more of everywhere.