

Chinese Justice: Starting from Scratch

By Mary Angell

Jackson attorney Curt Haws is studying law in a country where the average citizen has no idea what a lawyer is. He's a student of the Tsinghau Law School in Beijing, China, enrolled in the first formal legal course ever offered to law students and professionals.

Now in his second semester at the school, Haws said his life has come full circle. His interest in China was sparked nearly 30 years ago when he was a missionary in Taiwan, where he learned the language and fell in love with the culture. He subsequently earned his Bachelor's in Asian Studies and International Relations.

"My plan was always to go back to Asia," he told the *Wyoming Lawyer* during a visit home last December.

Haws and his wife, Charisse, met and were married while in law school. After graduation from Brigham Young University in 1987, they moved to Los Angeles, where he worked for Jones, Day, Revis and Pouge. When the couple traveled to China in 2004 to adopt their second daughter, Mia, his love of the country was rekindled.

"When I found this opportunity I thought, 'Boy, I really want to be part of that,'" Haws said.

His wife and daughters have remained in Jackson, where he maintains a private practice in addition to serving as general counsel to Town Square Inns, which operates the Antler Hotel, the 49er, the Cowboy Village and other hotels and restaurants.

Driven by its economic success, China is enacting laws at a "mind-numbing pace," Haws said.

"If you were to buy a set of statutes last year, it would be woefully out of date by now," he said, adding that because China has had no court system, no judges and very few laws, the average citizen doesn't even know what constitutes a crime.

"That's precisely how Mao Tse-Tung wanted it," Haws said. "Whatever he decided was a crime was a crime."

As the country strives to develop its first legal system, the instructors are learning more from their students than vice versa.

“They are far less interested in the exam process than in our analyses of their system and our suggestions for where improvements could be made,” Haws said. “It’s literally a chance to be involved in the development of a (legal) system.”

“I’ve spent a lot of time out in the street, just talking to regular people – not the politicians, not the academics in China, but the regular folks, cab drivers, ladies at the fruit stands,” he said. “They don’t really understand. When I tell them why I am there, what I am doing, they say, ‘Why?’”

In China, the laws that do exist apply differently – or not at all – depending on a person’s status. Government officials and people of higher social status have historically received preferential treatment, and the inequities remain today.

Haws recently wrote an analysis of international banking practices for the People’s Bank of China, contrasting practices of other countries with China’s. Those he interviewed during his research often responded to questions about banking law violations by saying, “That (law) applies to privately owned banks, but not to state owned banks.”

China’s new civil law system differs vastly from the United State’s common law approach, Haws said.

“There’s no case law, no precedent,” he said.

Judges serve primarily a clerical role and their rulings, usually made by a panel, are issued with very little discussion of law or fact. Even in complex civil cases, decisions are usually three or four paragraphs long, stating simply that the conduct violates statute.

Until recently, most judges were former military officers. Only in 2004 did China establish a judicial exam and code of ethics and require judges to have a minimum legal competency. Subject to party and government pressures, they have had no judicial independence, Haws said.

“It is a concept so foreign it’s scary to them. They’re afraid of a strong, independent judiciary,” he said of China’s legal community. “But the judges will continue to gain power in their system. They’re certainly trying.”

As the system develops, Chinese lawyers are no longer limited to serving as government counsel. They are opening private practices and increasing in number. Now there are about 300,000 attorneys in the entire country of China, with the highest concentration in large cities like Shanghai or Beijing.

Being in a country devoid of a judicial system has given Haws a deep appreciation of what we have as citizens of the United States.

“When you are here and having to deal with our system, it’s easy to think our system is messed up. When you see even a developed system like Italy or Spain or France – even Great

Britain – our system is the best in the world,” he said. “We try so hard to be fair and provide a level playing field for everybody. We don’t always get there, but we are so far ahead of everyone else we should never get down on ourselves and our legal system. It just the best – bar none. I walk with a sense of dignity and pride as a U.S. trained lawyer.”

While in Beijing, Haws is working part-time in the Beijing office of Lovells, a London-based international business law firm, where most of his colleagues are Chinese.

“It’s very interesting to talk to them,” Haws said. “They’re trying to figure it out, too. They’re making it up as they go along.”

And the code of ethics is not very strongly ingrained, he said.

“One problem international firms have experienced is local attorneys they have hired feel no compunction in leaving the firm with little or no notice to go to work for the other side of a matter in which the firm is involved, taking with them all of the files they can obtain,” said Haws.

Another practice U.S. attorneys would find shocking is that in China, the judges conduct the discovery in a case – often accompanied by counsel, who pays the judges’ travel expenses, buys them gifts and treats them to lavish dinner parties.

“The People's Supreme Court has recently passed the Judges Law which now prohibits this kind of activity and ex parte contacts, but according to the local practitioners, the practice is well ingrained and will take time and effort to change,” Haws said. “At the present time, the ethical lawyer may find him or herself at a disadvantage – especially in rural areas where change is slower to occur.

“If you were to take a snapshot of their system and compare it with the United States or Great Britain, you’d say it is just awful – very, very immature,” he added. “But if you compare it to (what China had in)1980, it’s gone an amazing distance. Most of the lawyers are very young and very idealistic. They’re very anxious to modernize the system and bring it up to international standards, but the vestiges of the old system are very strong. It will take years to break down.”

Haws said he’s not sure how he’ll put his knowledge of Chinese law to use.

“Chinese law is an underdeveloped market in Wyoming,” he said with a chuckle. “I think I can corner the market.”

Haws could serve as either corporate or private counsel to someone wanting to do business in Asia; the growing interest in China has created a demand for professionals who understand the country’s new legal system and its culture, he said.

“Opportunities will be plentiful,” he said. “The trick is to find an opportunity that will allow me to be in both places I love: Beijing and Wyoming. I’m not focusing on the next step. I’m just thoroughly enjoying what I’m doing.”

Mary Angell is a freelance writer from Cheyenne, Wyoming, and a frequent contributor to the Wyoming Lawyer.

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