CROSS-CULTURAL DIALOGUE

California Legal Community Works with Dui Hua to Help Improve Human Rights and Juvenile Justice in China

Daisy Yau and Maria A. Yuen

China’s human rights violations often make international headlines. From a lawyer’s perspective, the persecution of Chen Guangcheng was especially troubling. As a blind, self-taught lawyer, Chen advocated on behalf of women who were forced to have late-term abortions in order to comply with China’s one-child policy. He was sentenced to more than four years in prison for his work, after which he was subjected to nineteen months of illegal house arrest before making a narrow escape to the U.S. embassy in Beijing in April 2012. After tense negotiations, Chen was granted a student visa and is currently studying at New York University School of Law.

The U.S. government has long been concerned with human rights violations in China. “When we see reports of lawyers, artists, and others who are detained or [who] ‘disappeared,’ the United States speaks up both publicly and privately,” said former Secretary of State Hillary Clinton during a November 2011 speech in which she mentioned Chen and Tibetan self-immolations, which continue to...
take place. While the Chinese government is somewhat more amenable to discussing human rights in private, it often bristles at public discourse. Chinese officials were especially dissatisfied with the publication of photographs showing American officials celebrating Chen's escape in the U.S. embassy and responded by calling Chen “a tool and a pawn for American politicians.”

As lawyers well know, a strictly adversarial approach is not always best. Settlement discussions and mediation have been shown to produce better results for both sides. In recent years, a joint effort of the Dui Hua Foundation, a San-Francisco-based nonprofit, and members of our legal community demonstrates how concrete human rights developments can be achieved through mutually respectful dialogue.

Dui Hua (which means “dialogue” in Chinese) was established in 1999 with a focus on gaining clemency and better treatment for political and religious prisoners in China through the promotion of human rights in a well-informed and mutually respectful dialogue between the United States and China. In years past, Dui Hua facilitated many discussions and hosted expert exchanges between the United States and China on matters relating to criminal justice and treatment of prisoners. In 2007, Dui Hua hosted a senior researcher with the Supreme People's Procuratorate Institute for Procuratorial Theory on one such exchange. While this visit focused on adult detention facilities, the last stop was San Francisco Juvenile Hall. There, the researcher explained that China was seeing an alarming increase in delinquency, largely due to the social impacts of rapid economic growth, and had responded with plans to build a national legal framework for juvenile cases. An idea thus emerged for a juvenile justice expert exchange with China's Supreme People's Court (SPC), the country’s highest judicial body.

In October 2008, the first Juvenile Justice Expert Exchange took place with Dui Hua leading an SPC delegation on visits to juvenile courts, probation offices, and juvenile halls in Chicago, Illinois; Washington, D.C.; Laurel, Maryland; and San Francisco, California. At first, the SPC delegates were reluctant to sit through presentations on the role juvenile psychology plays in the juvenile justice system and preferred to focus on the procedural and operational aspects of detention facilities. However, by the
end of the exchange, the SPC delegates found that the presentations on juvenile psychology were most valuable and that juvenile psychology should be considered as Chinese legislators drafted China’s new juvenile procedures. (The new juvenile procedures took effect on January 1, 2013, as part of China’s amended Criminal Procedure Law.)

In May 2010, the second Juvenile Justice Expert Exchange took place with an invitation from the SPC for Dui Hua and a delegation of U.S. legal professionals, which included San Francisco Superior Court Judges Lillian Sing and Julie Tang, to visit China to observe their juvenile courts. During a mock trial, U.S. delegates were impressed by the design of China’s juvenile courtrooms, where judges sat with the accused in a circle, rather than behind a bench on a raised platform. “Throughout our exchange, it became clear to me that China’s primary focus in its development of juvenile jurisprudence is in the best interests of the child through education and rehabilitation,” said Patricia Lee, managing attorney for the Juvenile Division of the San Francisco Public Defender’s Office and a participant in the exchange.

In September 2012, Dui Hua facilitated the third Juvenile Justice Expert Exchange with the SPC. During this third exchange, the SPC delegation focused on methods for implementing the new juvenile procedures slated to take effect in January 2013 and on rehabilitative justice with an aim to decrease imprisonment of juveniles. (In 2010, 64 percent of juveniles tried in China received custodial punishment, compared with around 27 percent in the United States.)

Our local legal community enthusiastically supported the 2012 exchange. San Mateo Superior Court Judge Elisabeth Lee led Chinese delegates on a three-day immersion program at the county’s Youth Services Center, an integrative facility that holds courtrooms, a detention center, a fully accredited school, and the county’s juvenile probation department. San Francisco Judge Julie Tang took the delegation on a tour of the San Francisco Boys and Girls Home, a group home that offers minors short-term placement while their cases are pending or long-term placement during rehabilitation. Santa Clara Judge Carrie Zepeda welcomed the delegation to observe the county’s Juvenile Treatment Court, which specializes in youth offenders with histories of substance abuse. Judge Leonard Edwards (Ret.), Santa Clara County Superior Court gave
a practical presentation on the sealing of juvenile records. UC Hastings College of the Law Dean Frank Wu and Associate Professor Keith Hand led a wide-ranging panel discussion on various juvenile justice matters. In addition to the information-packed programs, Dui Hua, the California Supreme Court, and the major firm sponsors for the exchange (Ropers Majeski Kohn Bentley and Kilpatrick Townsend & Stockton) hosted several receptions and dinners during which the Chinese delegates and members of our local legal community chatted and exchanged ideas in a social setting.

During their visit, the Chinese delegates were introduced to the vital role probation officers play in the American juvenile justice system. Probation officers are charged with conducting a comprehensive and thorough review of each youth offender, including their family background, education, and mental health. Their findings are considered when determining whether to divert a case, what sentencing to impose, and what services to provide. Probation officers also translate court orders into actionable items and monitor compliance. As part of the program, the SPC delegation went with San Mateo probation officers on their unannounced visits to the homes of juveniles on probation. Despite their integral role, however, there are no dedicated juvenile probation officers in China. Instead, juvenile court judges are expected to conduct everything: investigations, adjudications, and home visits. The Chinese delegates were impressed by the individual attention that each youth gets from a network of legal, probation, police, health, and education professionals in the United States. “As judges, we don’t make our decisions in a vacuum,” said Judge Lee.

The new juvenile procedures put into effect on January 1, 2013, adopt measures that are new to China while fully entrenched in the West: diversion (called “conditional non-prosecution”) and record sealing. Western-style diversion brings probation officers together with youths and their guardians to determine the best course of action to get the
youth “back on track.” This might include maintaining certain grades, doing household chores and community service, and observing a curfew. Upon successful completion, the case is closed without being sent to the prosecutor’s office. With record sealing, a youth’s delinquency record is generally kept confidential, thereby removing the “criminal” stigma that often bars young people from access to opportunities for future education, work, and development. This integration of rehabilitative measures into the Chinese juvenile justice system is one of the many changes that respectful dui hua (“dialogue”) brings about. “The 2012 China–U.S. delegation is one further indication of how our two nations can collaborate to share information that can lead to the development of laws, policies, and practices that benefit the well-being of people everywhere,” said Allen Nance, assistant chief probation officer of the San Francisco Juvenile Probation Department and a member of both the 2012 and 2010 exchanges.

Cooperation between the Chinese and U.S. legal communities on common goals such as improving the criminal justice system makes room for discussion of other issues that require sensitivity to human rights between the countries. While China has rolled back or ceased discussions regarding political and religious prisoners like Chen Guangcheng with all Western countries and organizations, it continues to engage constructively with Dui Hua, whose mission is to secure sentence reduction and better treatment for at-risk detainees.

Looking ahead, Dui Hua is now expanding its work to issues relating to women in prison by organizing an international conference on the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). Passed more than two years ago, the rules have yet to gain much traction. They present significant potential to make a positive impact on the lives of women: the world’s fastest growing prisoner demographic. With women uniquely capable of pregnancy and nursing, and more likely than their male counterparts to be a child’s primary caregiver, it is crucial to approach criminal justice with a gendered perspective and ensure that the rights of women are respected. Dui Hua is currently seeking support for its Women in Prison Initiative from the legal community at home and abroad.

Daisy Yau is a senior manager at the Dui Hua Foundation, a nonprofit organization doing human rights work in China. She was previously an intellectual property attorney and graduated from University of California, Los Angeles, School of Law in 2006. Maria A. Yuen is an attorney at the Stein Law Group, a San Francisco business boutique law firm. She may be reached at myuen@steinbusinesslaw.com.

From left, Court of Appeals Associate Justice James Lambden and Senior Judge Ma Dong exchange gifts at a California Supreme Court Reception.