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Dialogue is written by the staff of The Dui Hua Foundation, a non-profit organization dedicated to advancing the protection of universally recognized human rights in China and the United States.

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Visit Promotes Dialogue on US-China Criminal Justice

As part of its mission to promote dialogue on issues of human rights and criminal justice, The Dui Hua Foundation welcomed Prof. Dan Wei to San Francisco from March 10 to March 17, 2007. An intensive program of activities surrounded Prof. Dan's visit, including lectures, visits to prison and detention facilities, observance of local judicial proceedings, and meetings with academics, judges, and attorneys.

Prof. Dan, law professor and senior researcher at the Institute for Procuratorial Theory of China's Supreme People's Procuratorate (SPP), is a recognized expert in the field of Chinese criminal justice and edits the journal *Chinese Criminal Science*, which is considered China's most authoritative publication in the field of criminology. He has many years of experience working within the procuratorate, the branch of China's legal system concerned primarily with prosecution, investigation of official corruption, and supervision of other legal institutions such as the police, courts, prisons, and "re-education-through-labor" facilities.

Prof. Dan's visit was supported by Dui Hua's Special Program/Development Fund, established in 2005 in large part to fund activities that promote cooperation between the foundation and officials working for human rights in China. By furthering exchanges such as this and last year's visit by Prof. Li Shi'an of the Chinese Association for Human Rights Studies (see *Dialogue* 24), Dui Hua hopes to bring about greater

understanding and cooperation on issues of legal reform and human rights in the United States and China.

Speaking on China's Legal System

Central to the weeklong program were Prof. Dan's presentations at Stanford University and the Boalt Hall School of Law at the University of California, Berkeley. Through a series of lectures, seminars, and meetings with students and faculty, Prof. Dan introduced the procuratorate's function in China's legal system, its role in protecting individual human rights, and the challenges China faces as it pursues the official goal of creating a "harmonious society" governed by rule of law.

Dan pointed out that particularly since 2004, when China's constitution was amended to include a reference to protecting human rights, the procuratorate has incorporated safeguarding the rights of Chinese criminal defendants and prisoners into its mission. A campaign to enforce legal time limits for detention and trial has helped to reduce cases of unlawfully extended detention by 95 percent. The SPP has also taken leading steps to combat the use of torture and detainee mistreatment in the Chinese criminal justice system; according to the latest SPP work report, 930 government officials were investigated for related crimes in 2006.

In an effort to help build the "harmonious society" now being promoted, Dan noted that China's courts and procurator-

ates will need to strike a balance between severity and lenience in their use of punishment for criminal activity. Moreover, the SPP must place greater emphasis on addressing causes of popular unrest, such as illegal land acquisition, environmental damage, bankruptcy among state-run industries, and corruption—all of which have been contributing to the rise in “mass incidents.”

During his frank discussion of the obstacles facing China’s legal reform, Prof. Dan singled out two areas of special concern. First was the role played by “adjudication committees” in the courts and “procuratorial committees” in the procuratorates. These internal bodies are composed of politically-appointed bureaucrats and make decisions about sentencing and prosecutions in “complex” cases. Dan maintained that they unduly hamper the independence of judges and prosecutors and should eventually be eliminated. Even more urgent, in his view, is the need to improve the training and selection of Chinese judges and prosecutors. According to figures he cited, only about 25 percent of all judges and prosecutors in China possess an undergraduate degree in law—the basic training necessary to enter the legal profession as a lawyer.

Dan cautioned against expecting too much, too soon in the area of legal reform in China. Raising the level of professionalism and increasing judicial independence will require years of gradual change. He reminded audiences that China has already taken many significant steps toward

improving its legal system and protections of human rights—such as reforms to the death penalty review procedure enacted in 2007—and that many more plans for improvement are under discussion, including the long-awaited reform of the reeducation-through-labor system.

Visit to San Quentin

In the course of his career at the SPP, Prof. Dan has visited more than 100 detention facilities and prisons in China, and he also has toured similar facilities in several foreign countries. For this Bay Area visit, Dui Hua arranged for Prof. Dan to tour San Quentin State Prison, located approximately 18 miles (30 km) north of Dui Hua’s San Francisco office. Established in 1852 on a picturesque, 432-acre site overlooking San Francisco Bay, San Quentin is the oldest prison in California and presently houses more than 5,000 male prisoners, including over 600 inmates on the state’s death row.

Lieutenant Eric Messick led



Prof. Dan Wei responds to a question following his presentation on China’s legal system at the University of California at Berkeley.

Prof. Dan, Dui Hua Executive Director John Kamm, and Dui Hua staff members Joshua Rosenzweig and Martin Witte on an extensive tour of San Quentin, highlighting among other areas the prison’s factories, the main prison yards and cell blocks, and the dining facilities.

The visit offered a firsthand look at one of the most pressing issues facing San Quentin and most prisons in California: severe overcrowding. The prison is at nearly 60 percent above its design capacity, which is actually low compared to the entire state prison system (currently more than 95 percent above design capacity). Hundreds of inmates are being housed in the prison’s gymnasium until the completion of new facilities that are intended to alleviate space problems.

The final stop on the tour was San Quentin’s execution chamber, where the death penalty has been carried out on condemned prisoners via lethal injection or, rarely in recent years, lethal gas. A federal court ruling in December 2006 has effectively halted all executions in California while the court considers whether the state’s revised procedures on the implementation of lethal injection sufficiently address concerns that the procedure violates the Eighth Amendment prohibition of “cruel and unusual punishment.”

Judicial & Jail Systems

Prof. Dan also gained insight into the local judicial system, and as with Prof. Li Shi’an’s visit in 2006, Judge Julie Tang of the San Francisco Superior Court helped the foundation

arrange an informative program highlighting a range of proceedings heard in US criminal courts. Prof. Dan, Kamm, Rosenzweig, and Witte observed attorneys carefully question potential jurors during the jury selection process known as “voir dire.” They also witnessed a portion of a preliminary hearing to determine whether witness testimony in a rape case could be admitted at trial and saw the presentation of videotaped testimony in a murder trial.



Prof. Dan Wei with John Kamm, San Francisco District Attorney Kamala Harris, and her colleague Linda Klee, chief of administration.

Proceedings to handle misdemeanor offenses were shown as a possible model for China as it seeks to reform its reeducation-through-labor system.

A tour of San Francisco’s new jail facility in the neighboring city of San Bruno was the main focus of the afternoon, with Dui Hua Director Magdalen Yum joining the group. In sharp contrast to the antiquated facilities at San Quentin, which is based on the old linear model, the San Bruno Jail is a modern facility opened in August 2006. The jail houses prisoners in “pods” with bright, airy cells that open onto communal space overseen by guards on a high-tech platform. The San Bruno Jail is not at full capacity and is entertaining requests from the state to house inmates from state prisons. It offers programs on curbing domestic violence and drug abuse as well as courses to help inmates earn high school and college degrees.

To learn more about the local legal structure, Prof. Dan met with San Francisco District Attorney Kamala

Harris later that day. Ms. Harris and Linda Klee, the district attorney office’s chief of administration, explained the function of the office and briefed Dan on cooperative programs being undertaken with Russia.

Juvenile Justice

The final day of Prof. Dan’s program in the Bay Area concentrated on learning about the way juvenile criminal cases and defendants are handled in San Francisco. Prof. Dan joined Kamm and Rosenzweig for a visit to the Youth Guidance Center, home to both the Juvenile Probation Department and the Juvenile Division of the San Francisco Superior Court. The group met with Chief Probation Officer William Siffermann and Garry Bieringer, project coordinator of the Juvenile Detention Alternative Initiative, to hear how San Francisco was attempting to reform its system of juvenile detention to include more community-based alternatives for both pre-adjudication and post-dispositional detention. Siffermann arrived in San

Francisco after decades of work experience in the juvenile justice system of Chicago’s Cook County, long considered a national model.

After touring the new Youth Guidance Center detention facilities, Prof. Dan and Dui Hua observed proceedings in the courtroom of Judge Lillian Sing, who helped plan the morning’s program. The visit closed with the Dui Hua group meeting with Patricia Lee, the managing attorney in

the Juvenile Unit of the Office of the Public Defender, and Walter Aldridge, managing attorney of the Juvenile Division in the Office of the District Attorney.

Foundation for Future Cooperation

Prospects for cooperation between Dui Hua and the court and prosecutorial branches of the Chinese justice system are especially good in the areas of adult parole and youth probation. America’s parole system is in a state of disrepair, while China’s is functioning quite well. On the other hand, America has years of experience in the area of juvenile justice, whereas China is only now creating its first experimental juvenile courts. By working to promote dialogue in areas where both countries recognize deficiencies, and by striving to create conditions for concrete improvements, Dui Hua envisions forging new relationships and friendships that can be used to pursue its overall goals of transparency, accountability, and humanitarian treatment of prisoners. ■