From the White House to Huangshan: 
Professor Liebman Advises Senior U.S. and Chinese Officials

It was a busy spring for Professor Benjamin Liebman, the Robert L. Lieff Professor of Law and the director of the Center for Chinese Legal Studies. In the course of two months he found himself meeting with Vice President Joe Biden at the White House, addressing a conference on judicial review convened by officials from National People’s Congress in Huangshan, speaking to hundreds of students at four law schools in Zhejiang and Henan, and participating in the U.S.-China Legal Experts Dialogue at the Diaoyutai State Guest House in Beijing.

Liebman met with Vice President Joe Biden and senior White House advisers on February 8, 2012, to discuss human rights and legal reforms in China. Liebman, a leading expert on China's legal system, was the only scholar invited to the White House for the gathering. “Vice President Biden made his view clear that developing a society that provides robust protections of basic rights is in China’s interest both politically and economically,” said Liebman. He added that there is a growing awareness that human rights issues in China must go beyond high profile cases and address the rights of average Chinese citizens.

Liebman at the White House. Liebman met with Vice President Joe Biden and senior White House advisers on February 8, 2012, to discuss human rights and legal reforms in China. Liebman, a leading expert on China’s legal system, was the only scholar invited to the White House for the gathering.

“Vice President Biden made his view clear that developing a society that provides robust protections of basic rights is in China’s interest both politically and economically,” said Liebman. He added that there is a growing awareness that human rights issues in China must go beyond high profile cases and address the rights of average Chinese citizens.

Liebman’s meeting at the White House took place a week before a visit to the United States by Chinese Vice President Xi Jinping, who became China’s top leader later in the year. The meeting was thought to signal the Obama administration’s commitment to human rights issues abroad, as well as its interest in China’s stability and growth. Liebman added that White House officials also showed a strong interest in understanding some of the broader trends influencing the development of the Chinese legal system. “The U.S.-China relationship is extremely complex,” he noted. “It is clear that human rights and rule of law issues continue to be one important aspect of the relationship.”

Despite the slowing pace of legal reforms in China, Liebman pointed out in the meeting that deepening Chinese rule of law reforms is in the interest of both the U.S. and China. “There is a lot of instability in China; in the long run, China needs to continue improving its legal system if it is going to enhance stability,” he said. “There remain significant areas for potential cooperation between the U.S. and China on rule of law issues.”

In particular, Liebman explained that there is a large constituency for legal reform within China, including many officials within the legal system, who believe legal reforms should be deepened. “Despite recent setbacks and very serious ongoing problems,” he said, “it is also important to recognize the progress China has made.”

U.S.-China Legal Experts Dialogue. Liebman and Sarah Cleveland, the Louis Henkin Professor in Human and Constitutional Rights and faculty co-director of the Human Rights Institute, were in Beijing the week of April 27, 2012, as part of the United States delegation to the latest round of the U.S.-China Legal Experts Dialogue.

The discussions, co-sponsored by the U.S. State Department and China’s Ministry of Foreign Affairs, focused on the benefits and practical implementation of the rule of law. The U.S. delegation was led by Assistant Secretary of State for Democracy, Human Rights, and Labor Michael H. Posner and State Department Legal Adviser Harold Hongju Koh. Senior Judge Hu Yunteng led the Chinese delegation. Attendees included dozens of officials and nongovernmental experts from both the United States and China.

“It’s about fostering dialogue. There are areas in which we can work together,” said Liebman. “Being engaged with people trying to make [China’s] legal system stronger is a good thing.”

(continued on next page)
Liebman was joined on the trip by his Law School colleague, Cleveland, an expert in international human rights who recently completed a two-year term at the State Department as the counselor on international law in the office Legal Advisor Koh. She helped develop the State Department’s position on U.S. litigation involving international and foreign relations law issues.

Judicial Review. A few weeks earlier, in March, Liebman traveled to China to speak about judicial review and mechanisms for ensuring the consistency of law at an international symposium organized by the law commission of China’s National People’s Congress, China’s top lawmaking body, in Huangshan, Anhui. In his talk, he noted that the American legal system is a product of unique historical and cultural conditions. But he added that all “systems need some institution that reviews the legality of the vast range of legal and administrative norms that emerge in any complex society.”

Liebman also addressed the role of robust public debate in the democratic process and cited the importance of transparency in ensuring that government agencies and legislatures follow the law. “The American example suggests that the formal processes and institutions do not succeed on their own, but rather are supported by a legal and political culture in which transparency, professionalism, and respect for process are deeply rooted,” Liebman told the symposium. China has taken steps to improve transparency, he said, by adopting new rules on open government information. But he added that more can be done, noting the importance of creating mechanisms for ordinary people to challenge laws they believe are invalid.

In an interview, Liebman said he does not expect China to have a system of judicial review by courts anytime soon. “But China is very serious about taking steps to ensure that local laws and administrative regulations are consistent with national laws,” he added. “They are thinking hard about what are the best mechanisms for facilitating review of the vast range of legal documents now in force in China.”

In his remarks, delivered over two days of meetings in Huangshan, Liebman noted the importance of professional norms and review by lawyers prior to the enactment of legislation in the U.S., which seeks to ensure that laws are constitutional long before cases ever reach the courts. “This is important for China, where lawyers are just beginning to take on roles advising the government,” he said. Liebman added that another message he tried to articulate is that “uniformity is not the only value. Pluralism is also an important value in the U.S. system.”

Zhejiang and Henan. Following the meeting in Huangshan, Liebman delivered lectures on his current research on medical dispute resolution on consecutive days at four Chinese Law Schools: Zhejiang University in Hangzhou; Zhengzhou University in Zhengzhou, Henan; Henan University in Kaifeng; and Henan Normal University in Xinxiang, Henan. When in China, Liebman lectures frequently in Chinese and also talks to students, judges, and lawyers in smaller cities. “It is really important to be talking to high-ranking government officials, to understand what’s going on at the top,” he said. “It is equally important to get out there and talk to the people at the local level to know what’s happening.”

At Chinese law schools far from major cities like Beijing and Shanghai, Liebman said, often he is the first foreign academic to speak to students in their own language. “I talk to them about my research in China,” Liebman said. “My goal is to encourage them to do their own research. Many of these students will have an important role in their country in the future.”
Professor Curtis Milhaupt Addresses Beijing Business Forum on Chinese State-Owned Enterprises

Curtis J. Milhaupt traveled to Beijing in mid-2012 to deliver a special presentation on China’s powerful state-owned enterprises (SOEs) at an event sponsored by AmCham China, the American Chamber of Commerce.

Milhaupt, the Parker Professor of Comparative Corporate Law, the Fuyo Professor of Japanese Law, and the director of the Center for Japanese Legal Studies at Columbia Law School, is currently conducting research into China’s SOEs. His July 9 presentation examined problems related to governance and global investment presented by these powerful and politically connected Chinese companies.

In his presentation, Milhaupt raised questions about the competitive implications of Chinese SOEs for U.S. firms operating in China; how an SOE-dominated domestic Chinese economy affects the emergence of private firms; and whether regulatory institutions in developed economies are equipped to address hybrid business-political actors like Chinese SOEs as they expand into global markets.

The event, sponsored by AmCham China’s Public Policy Development Committee, featured a Q&A session following the presentation that offered guests the opportunity to discuss these and other issues with Milhaupt, whose recent scholarship on SOEs and state capitalism was featured in The Economist earlier this year.

Milhaupt, a leading expert on Asian legal systems and comparative corporate governance, also testified this past February before a Congressional hearing held by the U.S.-China Economic and Security Review Commission. The commission was established in 2000 to report on the national security implications of the bilateral trade and economic relations between the U.S. and the People’s Republic of China.

NEW RESEARCH
“Malpractice Mobs: Medical Dispute Resolution in China”

The recent surge in medical disputes in China—both in the courts and on the streets—is the subject of an essay by Professor Benjamin Liebman, published in the January 2013 edition of the Columbia Law Review. The essay, titled “Malpractice Mobs: Medical Dispute Resolution in China,” looks at the interplay between court adjudication of medical disputes and street-level protests arising out of disputes with healthcare providers.

Professor Liebman argues that the threat of protests, often violent, leads hospitals to settle claims for amounts that are greater than courts might award. The threat of violence also influences how judges handle disputes that do wind up in court.

Liebman’s findings go beyond understanding medical disputes. They also provide insight into the evolution of legal institutions in China. “Increased innovation and competence in the courts are not resulting in greater authority,” Professor Liebman contends. “Despite thirty-four years of legal reforms and significant strengthening of legal institutions, the shadow of the law remains weak.”

The article highlights a number of largely overlooked trends in both law and governance in China, in particular what Professor Liebman deems is “state over-responsiveness to individual grievances.” Liebman discusses why legal processes are often not used to resolve contentious social issues.

Liebman’s research involved review of more than 150 lawsuits against medical providers from one municipality in central China and extensive discussions with lawyers, judges, officials, and doctors in a range of cities in China. He presented his initial findings in workshops and lectures at more than a dozen Chinese law schools in 2011 and 2012.

The article can be downloaded from Professor Liebman’s faculty website: www.law.columbia.edu/fac/Benjamin_Liebman.
EVENTS

Fall 2012

Monday, November 12, 2012
Capital Markets Practice in China: Past, Present and Future
Alan Seem ’96, Partner, Shearman & Sterling LLP, Palo Alto

Wednesday, November 7, 2012
China’s Rights Defense Movement: Online and Offline
Teng Biao, Lecturer, China University of Political Science and Law; Visiting Staff Member, Faculty of Law, Chinese University of Hong Kong; Founder and Director, China Against the Death Penalty, Beijing

Wednesday, October 10, 2012
The Rise and Fall of Chinese Legal Education
Carl Minzner ’00, Professor of Law, Fordham University School of Law

Thursday, September 27, 2012
Venture Capital and Private Equity Investing in China
Simon C.M. Luk ’78, Partner, Winston & Strawn LLP

EVENTS

2011–2012

April 23, 2012
Skadden China Fireside Chat
Daniel Dusek, Peter X. Huang, and Jon L. Christianson ’89, Partners, Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates

April 18, 2012
Why Chinese Obey the Law, Methodological Challenges in Studying Tax Compliance Motivations of Chinese Lawyers
Benjamin van Rooij, Professor of Chinese Law and Regulation, Faculty of Law, University of Amsterdam

April 12, 2012
The Evolution of China’s Electoral Law
Zhu Suli, Professor of Law and former Dean, Peking University School of Law

April 9, 2012
A Conversation with Pu Zhiqiang (in Chinese)
Pu Zhiqiang, Executive Partner, Beijing Huayi Law Firm

March 6th, 2012
Toward “Real” Real Property Rights: Land Reform in Modern China
Keliang Zhu, Attorney, Landesa
Roy Prosterman, Founder and Chair Emeritus of Landesa, and Professor Emeritus of Law at the University of Washington
February 29, 2012
China: Political Economy and Authoritarianism
Peter Lorentzen, Assistant Professor, University of California at Berkeley

February 28, 2012
Cross-border Dispute Resolution in the Context of Capital Investment in China
Ji Xiang, Partner, Fangda Partners

February 21, 2012
Death Penalty Reforms in China (in Chinese)
Zhang Peihong, Attorney, Shanghai Zhaijian Law Firm and Vice-Director, Criminal Defense Committee, Shanghai Bar Association

February 15, 2012
Milbank Asia Practice Lunch
Douglas A. Tanner, Partner, and Jessica Yeping Zhou ’06, Associate, Milbank, Tweed, Hadley & McCloy LLP, New York

February 8, 2012
Property across Time and Culture: Land Rights in Ancient China
Kentaro Matsubara, Visiting Faculty, Council on East Asian Studies, Yale University and Associate Professor, Legal History, University of Tokyo

February 6, 2012
Minority Shareholders in China
Liu Junhai, Professor, Renmin University of China School of Law

January 31, 2012
Davis Polk Asia Presentation
Antony Dapiran, Bonnie Y. Chan, Miranda So, Partners, Davis Polk & Wardwell LLP, Hong Kong

November 30, 2011
China’s First Choice-of-Law Act
Xiao Yongping, Dean and Luojia Special Service Professor of Private International law, Wuhan University School of Law

November 22, 2011
Adventures in Chinese Law: A Chat with Professor Ben Liebman

November 7, 2011
Lunch with Judge Xue Hanqin of the ICJ
Xue Hanqin, LLM ’83, JSD ’95, Judge, International Court of Justice

November 3, 2011
Chinese Hacking Through a Legal Lens: National Security & International Law Issues
Adam M. Segal, Ira A. Lipman Senior Fellow for Counterterrorism and National Security Studies, Council on Foreign Relations

October 27, 2011
A Conversation with Charles Li
Charles Li ’91, Executive Director and Chief Executive, Hong Kong Exchanges and Clearing Limited (HKEx)
October 26, 2011
Chinese Law Public Interest Career Panel

Panelists
Thomas Kellogg, Program Director and Advisor to the President, Open Society Foundations
Margaret K. Lewis, Associate Professor of Law, Seton Hall University School of Law
Aaron Halegua, Staff Attorney, Employment Law Unit and Skadden Fellow, Legal Aid Society

October 24, 2011
Judicial Decision-Making in an Authoritarian Regime: Piercing the Veil of the Adjudication Committee in a Chinese Court

He Xin, Associate Professor, City University of Hong Kong School of Law

October 19, 2011
The Complexity of Derivative Actions in Asia: An Inconvenient Truth

Daniel William Puchniak, Assistant Professor, National University of Singapore

October 6, 2011
Representing Multinationals in China: Reflections of an IP Lawyer

Joseph Simone, Partner, IP department, Baker & McKenzie, Hong Kong

October 5, 2011
Reading Empire: Colonial Archive and Euroamerican Discourse on Sovereignty and Law in the Contact Zone of South China, 1720s–1830s

Li Chen, Assistant Professor of History and Global Asia Studies, University of Toronto

September 28, 2011
Human Rights and Rule of Law in China: What Now? What Next?

Thomas Kellogg, Program Director and Advisor to the President, Open Society Foundations

September 28, 2011
Tapping the U.S. Capital Market—Challenges for Chinese Companies

Panelists
William K. (Ned) Dodds, Partner, Dechert LLP
John Du, Partner, Jun He Law Offices, New York
Yingcong (Ying) Lan, Principal, Cornerstone Research
Yuanyuan (Iris) Jiang, Principal, Cornerstone Research

Moderator
Yong Hao (Alex), Partner, Jun He Law Offices, New York

September 26, 2011
Progress or Retrogress? Comments on the Draft Amendment to Criminal Procedure Law of PRC

Guo Zhiyuan, Associate Professor, China University of Political Science and Law

September 21, 2011
The Plight of China’s Criminal Defense Lawyers

Jerome A. Cohen, Professor of Law, New York University School of Law

September 20, 2011
China’s Environmental Tipping Point? New Developments in Environmental Law and Governance in the PRC

Alex Wang, Visiting Assistant Professor of Law, University of California, Berkeley School of Law

The Center for Chinese Legal Studies thanks its global network of alumni for its generous support. Your donations help the Center continue to grow. Thank you!
Oldham Fellows

Several students from Columbia Law School were awarded Oldham Fellowships in 2011-2012. The fellowships, named for John Rochester Oldham ’83 and administered by the Center for Chinese Legal Studies, support work in greater China in public interest, government work, or research. Three students worked in China during the winter intersession 2011 and three more were in China during Summer 2012.

Elizabeth Skeen ’13, worked on two projects during the four-week winter break. She researched the experiences of Chinese students who participated in the “Summer Work and Travel” J1 visa program to the U.S. Her interest in the J1 stemmed from the walkout of 400 foreign students hired by a Hershey’s plant, 80 of whom were Chinese. The students thought they were signing up for cultural exchange, opportunities to practice English, and relatively high salaries. Instead they found themselves wrapping chocolates for Hershey’s. Elizabeth’s other research surrounded the revisions to China’s Criminal Procedure Law. Her work led her to believe that one important but underappreciated part of the criminal procedure revisions were the articles that allowed the police and prosecution to conduct relatively unconstrained “electronic investigations” of suspected criminals.

Henri Benaim ’13, also traveled to China during the winter recess to research the Basic Law of Hong Kong. He reported a clear difference in the perception of the Basic Law between scholars on the mainland and scholars in Hong Kong. Mainland scholars did not view the Basic Law as a constitutional text, but rather a law like all laws of the PRC passed and promulgated by the National People’s Congress, but “with constitutional characteristics.” Hong Kong scholars, in contrast, gave the law constitutional weight.

Yae-Ji Park ’13, studied the relationship of the Red Cross Society of China (RCSC) and the government using the 2008 Wenchuan earthquake as her case study. RCSC insisted that they had authority to set priorities, agenda, and partnerships without government interference. Others perceived the RCSC to be a de facto government organization. She found that the RCSC often does play the role of a government agency, even though in 1993, legal ties between the organization and the government were cut. Evidence from her research suggests that these relationships have not been truly severed, but only repackaged.

The Oldham Fellowship also supported three students in greater China during the summer of 2012. Angela Zhu ’14, interned with the Jiangsu Province People’s Procuratorate. She ended the summer with a solid foundation in the workings of the criminal justice system in China, particularly the treatment of public officials under charges of corruption. She worked in a group that authorizes warrants, approves arrests, and charges criminals. An objective of hers was to understand how criminal justice actually works on the ground, not just in theory. “I [wanted] to find out what rights [people] believed they had,” she said, “whether they had legal representation, and whether they believed there was any political interference in their cases.”

Jasmine Jin ’14, worked at the Taiwan Legal Aid Foundation (LAF), Shilin branch office. Because the LAF is the largest legal aid organization in Taiwan, Jasmine felt that her work there allowed her valuable insight into the modern legal landscape of Taiwan. She worked in three areas: 1) Consumer Debt Clearance; 2) Legal Aid for Victims of Human Trafficking; and 3) Legal Aid for Migrant Workers. She also explored how debtors can apply for debt relief and court-approved restructuring plans for unreasonable conditions or terms. She was able to compare the law of Taiwan with the laws of a range Asian countries and with the U.S.

After graduation, Tina Wang ’12, joined Editor Chen Xiaoping as a part-time staff member of China Law Digest, an online publication that highlights China’s legal news and developments—current cases that are in the media spotlight, translations of Chinese-language op-eds and commentaries, and legislative and regulatory developments. In addition to researching and translating Chinese legal news and commentary, Tina has helped improve the site’s traffic and sustainability and helped sharpen the site’s design and focus areas: rule of law and constitutional changes, social justice and the protection of underprivileged and minority groups, and law related to social development. “In having regularly translated and edited the news articles and commentaries culled for the digest in the past,” Tina said, “I was struck by the oft-observed gap between the promise of legislation and reform and the reality of enforcement and cases.”
Inside

From the White House to Huangshan ............................................................... 1
Workshop on New Research on Chinese Law .................................................. 2
Professor Curtis Milhaupt Addresses Beijing Business Forum on Chinese State-Owned Enterprises ......................................................... 3
New Research – “Malpractice Mobs: Medical Dispute Resolution in China” .................................................. 3
Events: Fall 2012 ......................................................................................... 4
Events: 2011–2012 ....................................................................................... 4
Oldham Fellows ......................................................................................... 7

Please direct questions, comments, or changes of address to the editor of the newsletter, Paulette Roberts at prober@law.columbia.edu. Our website address is www.law.columbia.edu/center_program/chinese.