

View from the Great Wall

The University of Oklahoma could have had no better good will ambassador to the People's Republic of China than the multi-talented, insatiably curious and disarmingly charming professor law, Dr. R. Dale Vliet. Vliet was student and teacher during his seven weeks in China, returning with both legalistic and humanistic insights into a fascinatingly complex society. In addition to his informal article for Sooner Magazine, Vliet has authored a 400-page text for a three-week winter intersession course on selected problems in Chinese law, emphasizing the effect on U.S.-Sino business dealings. The course drew a record intersession enrollment of 117 practicing attorneys, judges and MBA and law students from OU and Oklahoma City, Tulsa and Southern Methodist universities.

By R. DALE VLIET
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结业证书

“How would you like to come to Shanghai and study Chinese law at the East China School of Law and Politics?” For one who has spent more than 30 years working in the field of comparative law, that was an offer I couldn't refuse.

Arrangements to spend seven weeks in the People's Republic of China were made easily, but I felt that I must be prepared to talk to my hosts in their own language. I promptly enrolled in a class in Mandarin at OU, taught by Yu Fa-Chi, one of the truly great language instructors of my 55 years of studying languages. Despite Mr. Yu's assertion that Chinese is an easy language —

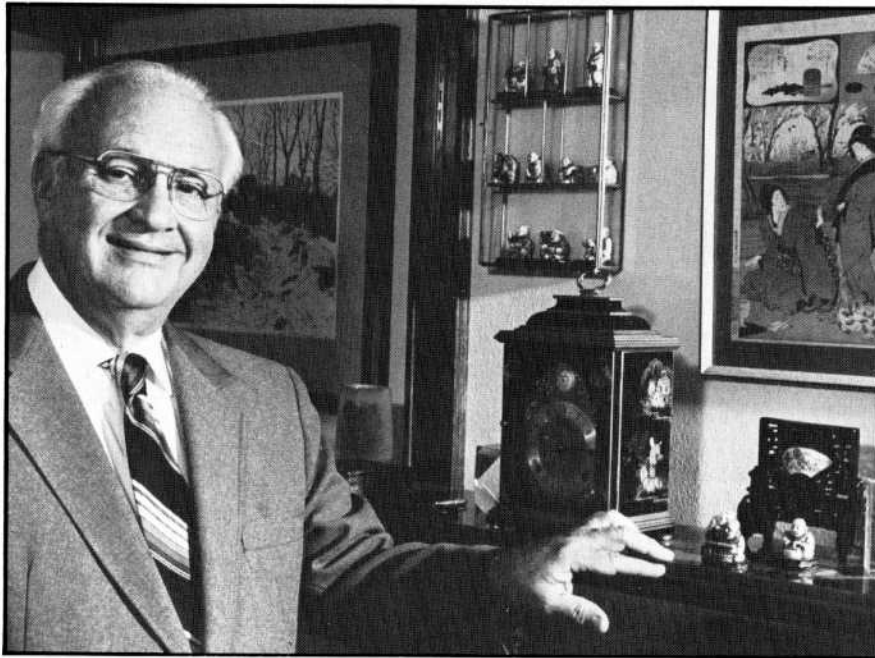
a lingual klutz I was. Two of them are considered among the United States' most distinguished Sino scholars and are known all over China. I was the oldest of the group and the only full-fledged law professor (some of the others taught part-time as adjunct professors). Neither one of these characteristics would cause anyone in the United States to turn his head, but in China things are different. A professor is at the very top of the social ladder in their “classless” society, and old people are genuinely revered and honored. Being both old and a professor, I had the best of two worlds, and I was taken care of so well that I secretly wished they would let go of me and let me fall down or get run

and millions of people you see every day.

None but the aged or the ill stays at home, for all who are able to work must do so to survive. So people are on the streets all hours of the day and night, on their ways to factory, shop, office, or school.

Of course, the vast majority of the Chinese people are peasants (not a word of derogation, as we so often think of it, but merely the term used to designate those who work on the farms, as the term “worker” is used to designate those who are not “peasants”). Private automobiles cannot be purchased by the workers or peasants, so in addition to using public transportation, the Chinese people ride bicycles, millions of them. Therefore, along with the people, one's strong impression is of *bicycles*, seas of bicycles, all of them with bells ringing constantly.

There is a strange rule in China that if someone sees you approaching,



Vliet poses with mementos of his visit to the People's Republic of China.

and theoretically it is — I learned how to greet my Chinese friends with *Ni hao!* [You (are) fine!], the equivalent of our *How are you?*, and there my ability to speak Mandarin terminated. I studied intently for four more weeks after I got to China, but *Ni hao!* was about as far as I learned to go. It didn't matter. Everywhere I went in China, people spoke English, and they all wanted to practice and would not have allowed me to speak Chinese had I had the ability.

My fellow students in Chinese law included 21 lawyers or law students from all over the United States. Thirteen spoke from good to superlative Mandarin, which made me feel what

over. I am not accustomed to so much attention.

Completely apart from Chinese law and the law school, three things stand out in my mind about China. The first, and certainly the most dramatic impression I have is one of *people*, millions and millions of people, and when the day is over, you have a feeling that you have seen them all. China has a geographical area only a little larger than that of the United States, and of that only a little more than 10 percent is arable. Into that relatively small area, you can put the entire population of the United States and then add approximately one billion people. Those are the millions

**If someone sees you coming
and is hit by your vehicle,
he is responsible for not
avoiding the accident.**

either in a car or on a bicycle, and he is hit by your vehicle, he is responsible for his own injury because he saw you coming and did not avoid the accident. On the other hand if he did not see you, and you hit him, then you are responsible. So all cyclists ring their bells, and motorists honk their horns constantly so that others will see them coming, thereby transferring responsibility for any accidents from themselves. There are lots of accidents because people refuse to look in the direction from which the bell or horn sounds in order to prevent responsibility being transferred to themselves. It is better to be run over than to be found responsible. Trying to find a place to park your bicycle in any urban area in the People's Republic is like trying to find a parking place on the O.U. campus. They simply aren't there.

The next strong impression I have of China has to be the *lack of obvious*

poverty. Of course there is poverty in China, for except for a few well-placed governmental and party officials, everyone is poor. But one sees no signs of lack of food or clothing, no signs of the starvation which makes it so unbearable to visit many overpopulated areas of the world. Though their diet may not be one which they would choose if looking over a menu in a first-class restaurant, everyone seems to have enough food to survive and to do a day's work.

To me, this is most remarkable when one thinks of the first impression I just discussed, the tremendous population. Shanghai is reputed to be the largest city in the world, with a population in excess of 17 million people. Yet China, even with its strong family-planning program and mandatory birth-control procedures, adds another Shanghai to its population every year. Would you believe over 1,700 babies will be born while you are reading this little essay! Some way or another, those 17 million babies must be fed, clothed, housed and educated. Something about their system has to work, or there will be human misery heretofore unknown in the history of the world.

My third strong impression may really be just an extension of the first and second, that the part of China which I saw seemed to be *free of disease*. Of course, I do not mean to suggest that there is no illness. Anyone who has been there will tell you that China has more than its share of respiratory problems. Clean-air controls they do not have, and smoke stacks belch forth huge quantities of pollution into the air. Emission-control on cars and trucks they do not have, and the exhaust fumes blown into the air are almost staggering as you walk down the streets. The Chinese have a somewhat irritating habit of spitting with remarkable frequency, undoubtedly because of the extensive respiratory problems. With the heavy traffic caused by the tremendous population, germs from the spittal are ingested rapidly by others, and the cycle goes on.


Despite these respiratory problems, I am told by medical people who have studied world health records that China is remarkably free from epidemic-type disease. You see no

open wounds as you do in so many places in the world. The number of medical doctors is rising only slowly, but they have succeeded in training large numbers of aides and paramedics, so that medical attention is available to the masses. I did not visit a hospital, but I am told by Americans who have that the hospitals are well equipped.

Undoubtedly the medical service drops off in the rural areas, but my impression of the remarkably good health of the people was the same in the rural areas as in the urban areas, plus the fact that the respiratory problems did not seem as numerous on the communes. The large number of births each year increases the ob-

plenty of whereases, therefore and but, hardly an auspicious way to encourage the writing either of the Great American Novel or an essay of lasting intellectual merit. Lest the splendid lady blue-pencil what little I have had space to say, I must be on about our business.

For reasons not ever explained, we were housed and had our classes in the beautiful new high-rise dormitory of the Shanghai Conservatory of Music. This was a very happy selection, for we were surrounded by beautiful music, and the conservatory's very convenient location made our explorations of Shanghai much easier than if we have been on the campus of the East China

结业证书	
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The passport-style "diploma" from the East China School of Law and Politics.

stretical, gynecological and pediatric problems, and one wonders how they cope with such numbers. The use of the mid-wife is extensive, and family and friends do much of this type of care, leaving only the serious problems for medical personnel.

So much for now of my impressions of China. There are many more, and each of my observations here screams out for modification, extension, qualification or the addition of a caveat. But we shall have to let it stand. The editor of this marvelous *Sooner Magazine* has given me a subject worthy of a book but space enough only for a short note, thereby depriving me of those lawyerly necessities of

School of Law and Politics. Our professors came to us. We were in class five hours a day, and the law school administration had organized an excellent curriculum for us. We had regular instruction in Mandarin from a professor who was every bit as good as my instructor at OU. How can it be that my two Mandarin instructors were the best language instructors I've ever had, one being from Taiwan and the other from the People's Republic?

This is not the forum for a learned discourse on Chinese law; therefore you will be spared. But there are some things about the subject which I think will make your reading of the

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daily newspapers a bit more helpful.

As a preface to my remarks, let me quote from Professor Earnest Gellhorn of the University of Virginia. "The American capitalist tradition and its system of law is premised on individual autonomy and grants paramount protection to personal, political, and procedural rights. This protection is largely contained within a written Constitution and is overseen by a staunchly independent judiciary. The Chinese tradition, by comparison, places its emphasis on communal values, subordinating civil liberties and civil rights to the community's need for social order and security. In the context of Chinese communism, this has meant that the judiciary is accountable to the National People's Congress, that public dissent is not long tolerated in fact, and that individual interests in such things as property receive, at best, limited legal recognition. These ideological contrasts play themselves out in the two countries' approaches to criminal justice, commercial law, dispute resolution, and taxation."

The Chinese today seek constantly to find the "truth based on reality." I would observe three realities. First, the Chinese legal system is controlled and dominated by the Chinese Communist Party in this totalitarian country, despite the fact that we found it difficult to get our professors even to admit that the Communist Party had anything to do with control of the government. They tried always to play down party influence. (Obviously, there was good political reason for doing so.) The party remains the sole authority in China. Adherence to the party is a prerequisite to legal training and to attaining any significant position. The party defines political and personal freedoms. Lawyers and judges are reminded constantly that the function of the legal system itself is "to serve the state." The party's interest in preserving its power and promoting Marxist ideology will, therefore, resolve all issues.

Second, the overwhelming poverty of China is exacerbated by the scarcity of natural resources and the harshness of the climate. Unskilled workers and peasants dominate the labor market and mere survival remains the people's primary concern.

Party bureaucracy is inefficient. China now is committed to development through the "four modernizations: agriculture, industry, national defense, and science and technology." Whether the total commitment of the Chinese leadership and the people can meet China's goal of becoming a competitive industrialized nation by the year 2000 is a question that dominates both China and those who watch China closely.

Third, the Cultural Revolution of 1966-1976 made a shambles of what there was of a Chinese legal system. Admittedly, formal law had never played a central role in Chinese history or culture; rather, the family and community have dominated Chinese society. But the restraints of these and the checks of the party and bureaucracy against arbitrary exercise of power were wiped away as the Cultural Revolution overran the gov-

While we studied criminal law, virtually nothing was said about the law of property, and they don't even have a civil code.

ernment and the people under the control of radical factions of the Red Guards and the de facto leadership of Mao's wife, Jiang Qing.

The purging of the party and bureaucracy had an effect on the legal system of a disaster equal to war. The courts ceased to function except as show pieces to make the arbitrary exercise of power look legitimate. The universities were closed and their libraries either destroyed or scattered. By the end of the Cultural Revolution the devastation of the Chinese legal system, its trained infrastructure, and the organized economy was nearly total. The total dimensions thereof are still unclear with estimates of deaths, maimings, and injuries from four to forty million and perhaps more.

The Chinese adopted (if that is the correct term — perhaps it would be better to say that the party, speaking through the People's Congress pro-

mulgated) in September 1982, a new Constitution, the fourth since the founding of the People's Republic. One paragraph in the preamble may have significance to the United States. "Taiwan is part of the sacred territory of the People's Republic of China. To accomplish the great task of reunifying the motherland is the sacred duty of the entire Chinese people, including our compatriots in Taiwan."

Obviously, constitutional law was one of the subjects in our curriculum; it would be fun to take the constitution apart bit by bit, but that job is for another forum. Suffice to say, the Chinese leadership feels that the new constitution speaks more directly to the present problems and potentials of China than the former constitutions did, particularly those of 1975 and 1978 which came into being in the shadows of the politics of the Cultural Revolution.

Family law was another course in our curriculum, a highly important one for several reasons. The family, as I indicated before, has long been the most important institution in Chinese society, and the family law was one of the first major pieces of legislation to be adopted after the fall of the Gang of Four and apparent restoration of normalcy after the Cultural Revolution. It is a highly comprehensive statute, dealing with problems of marriage, divorce, custody, support of spouse, child and parent, as well as care for the aged. The statute is striking to an American, for it includes very specific provisions pertaining to planned parenthood, birth control, abortion, all directed — not too subtly — to the problem of population control with mandatory provisions that would make even a mild civil-rightist cringe.

Certainly it is significant that while we studied the tremendously detailed criminal law and the criminal procedure law, virtually nothing was said about the law of property. The Chinese do not even have a civil code, although they have long been in the process of drafting one. No doubt it is a difficult job, since the whole aura of what has been discussed in this paragraph points to the interests of the state and to the almost total lack of civil rights of any kind. Hence the criminal law is almost totally di-

rected to offenses against the state and state property with scarcely any mention of violations of any personal rights.

We made extensive study of commercial law, international business transactions, currency controls, business organizations and contracts. This had to be emphasized, for China is putting such emphasis on becoming by 2000 what I previously have referred to as a competitive industrialized nation. But their laws are such that they have driven almost all American businesses away — some two hundred American corporations terminated their negotiations with China last year because of the impossible legal climate there — but that is another story for another time and place.

I have only briefly hinted at the scope of our studies of Chinese law, but when I received my diploma acknowledging my course with the East China School of Law and Politics, I confess to a feeling of pride, for there are very few of them floating around the United States and none in Oklahoma. I also felt great pride in having been asked to teach American law in that school. I had some marvelous experiences in my classes with the East China School faculty members and graduate students (the undergraduate students were on summer vacation). They were sharp, alert and their English was excellent. I have been invited to return to teach there for a longer period, and it would be a wonderful experience. I also felt great pride in having been asked to present an extensive series of lectures on American law pertaining to international business transactions to the Shanghai Investment and Trust Company, an organization created by the People's Congress and made up of China's leading industrialists.

Preparations for these many lectures, the classes I taught at the law school and the classes I attended as a student kept me very busy. I usually was at my desk by five in the morning and still there after midnight. But it was one of the most rewarding experiences of a lifetime of rewarding experiences.

Now, the editor is about to ring the bell on me, but I must tell you one more story. (I shall not sleep tonight thinking about all of the stories that I have not told you.) I have spoken



Like any wise husband who has been abroad for seven weeks while his wife stays home, Vliet brought back appropriate gifts to his musician wife, Genevieve.

about the Chinese people as masses in a very impersonal manner. But I was blessed with highly personal contacts with many Chinese in a one-on-one relationship which I shall cherish for a lifetime, perhaps for an eternity. I shall not identify them for various reasons. Our professors at the law school were experts of the highest rank. Our school administrators, both at the law school and at the conservatory, were charming, wonderful people.

I had contact, close contact, with a number of students who made a place for themselves in my heart. All wanted to come to the United States to study. I wanted them all to come here to study, so our interests were mutual. I had the rare privilege of being invited into five Chinese homes. It is quite rare that a foreign visitor is entertained in the home in China, so I recognized my opportunity

as a demonstration of great honor and respect for which I am grateful.

I was honored one day by a private concert given for me by four male singers from the Shanghai Conservatory. Their program comprised a large collection of fine Italian operatic and oratorio arias, done in excellent *bel canto* singing. They sang some beautiful English art songs.

I have never been in a room with four superlative baritone voices at one time. I hope they knew that my applause was, in my heart, the roar of a cheering audience at the Metropolitan or Covent Garden.

To all my wonderful Chinese friends acquired openly and surreptitiously, I must say that I hope to see you some day in Oklahoma, but, failing that, I shall see you in China, for I have left a part of my heart there, and I must return to retrieve it before the sun sets. 