

COMMENTS BY DR. VERON HUNG

On Mr. Gong Xiaobing's Remarks
“ENHANCING THE POLITICAL ROLE OF CHINESE LAWYERS”

Carnegie Endowment for International Peace and the Asia Foundation
1779 Massachusetts Avenue, NW
Washington, DC
Thursday, June 2, 2005

Thank you very much, Mr. Gong, for giving us such an informative and insightful speech.

I would like to say a few words about the seven steps that you have suggested to help enhance the political role of lawyers.

These suggestions are very good. My recent article on legal reform in Shanghai also indicates that lawyers have played an important role in helping Shanghai's government develop a better political and legal system.

For example, Shanghai's legislation is widely considered to be of better quality. This is largely due to the city's structured legislative mechanism that involves a series of internal reviews and allows more participation from experts. Indeed, a Legal Affairs Commission (*fazhi gongzuo weiyuanhui*) was established in 1998 and has since been led by legal experts. The Commission is responsible for reviewing bills drafted by government departments. To further ensure the quality of legislation, the Legal Affairs Commission also organizes meetings to solicit opinions from different interested parties, including lawyers. Since 2000, Shanghai's legislature and government have identified the Shanghai Lawyers Association as a work unit that they must consult when any local regulations and rules are made.

I have a few questions about your suggestions:

1. You suggested: “China should build a system in which prosecutors and judges are selected from excellent lawyers who have compiled a rich record of litigation experience.”

➔ But will excellent and experienced lawyers be interested in becoming prosecutors or judges?

Several years ago, the Supreme People's Court launched a program to recruit distinguished professors and lawyers to be judges. The response has not been satisfactory. Many distinguished professors and lawyers are reluctant to join the bench because of important concerns: low salary, the loss of freedom, and other problems encountered by judges, such as interference.

2. You suggested, “China should amend and improve the Lawyers’ Law, the Criminal Law, as well as three major litigation laws (the Criminal Procedure Law, the Civil Procedure Law, and the Administrative Litigation Law) to fully protect the basic rights of lawyers.”

→ This is indeed very important. But how can we ensure that these revised laws will be faithfully implemented to really protect the basic rights of lawyers?

For example, many lawyers are actually keen on providing pro-bono work to help poor clients to handle administrative cases. But lawyers are reluctant to take up administrative cases because they fear retaliation from local governments and party organizations. They also fear that their license to practice law will not be renewed by judicial administration authorities.

Their fear is not groundless especially because the party seems to have tightened its control over lawyers. In December 2003, the Ministry of Justice decided to require law firms to establish party groups if the firms have party-member attorneys; the ministry explained that this mechanism would help reduce lawyers’ professional misconduct by “plac[ing] every party member under the management and supervision of party organs.” This move, however, seems to have made lawyers more concerned about handling sensitive cases, such as criminal and administrative cases. **Is it better for the party to let bar associations handle professional misconduct matters?**

3. You mentioned that “the design of a system that could fully enhance the political function of lawyers is a political choice that China must make to realize the rule of law.”

→ I agree with you. But, in your opinion, do Chinese leaders have the political will to make this choice? At our recent conference on legal reform in China which you attended, many Chinese law scholars from the U.S. and Beijing expressed their reservation. What do you think? Or, to put it in another way, do you think that most Chinese officials are, like you, open-minded? If not, are there other reasons to support our optimism about reforms in China?