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[Home > A Sporting Chance](#)Font Size: [+](#) [-](#) | [Print](#) | [Email](#)

## A Sporting Chance

The Recorder

**Commentary By Alan Ellis**

August 8, 2008

The Beijing Olympics have opened a window to China. Looking through that window, many Americans had hoped to find a China that reflected our own values, ideals, and way of life. What we find is a country in dynamic transition, shedding old views and adopting new ones almost in its headlong rush into 21st century capitalism.

As with any proud culture, the Chinese will adopt practices that are of value to them. They have not forgotten the strong-arm, humiliating tactics employed by the West leading to their defeat in the Opium Wars. The Chinese pay attention to what we do that works, but they'll apply that knowledge in their own way in their own time. Therefore, it's in our mutual interest to prove the value of those practices we wish to export, if we want China to join the world of free societies.

Unfurling 'Free Tibet' banners on the Golden Gate Bridge and blocking the Olympic Torch, while well intentioned, will not bring about desired change. Such actions rankle the Chinese and put them on the defensive.

My connection with China is as a Fulbright Senior Specialist teaching American criminal law and its constitutional protections to judges, law professors, attorneys and law students in China. I am joining a prominent law firm in China, have married a local, and made many friends there. I have learned that China is neither a philosophical nor a political monolith. The Chinese Communist Party views are as diverse as can be found in our House of Representatives. In fact, it's not a stretch to say there is a progressive wing of their party whose agenda resembles that of our own Democratic Party. We need to reach out, connect with and empower them.



A Chinese soldier guards an entrance to the Olympic Green.  
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Others who can be effective agents for change are the tens of thousands of Chinese students who study here in the United States. These students value American know-how and are eager to be educated in our universities. Currently, there are 67,000 Chinese nationals enrolled in American institutions of higher learning. The Chinese student enrollment in the United States is second only to that of those from India. Chinese student visas are granted at a rate of 88 percent.

Real change in China will come from the inside. When these students go back home to China — and most of them will return because they're very proud to be Chinese and China is where their economic future lies — they will bring their American experience back with them to effect change. I have often said, half-jokingly, that if we really wanted to speed up change in China, we should airdrop student visas all over the country.

More educational programs similar to the courses I've taught will also bring about change. It's interesting to note that at no time when I was teaching was I ever told what or what not to say. Chinese judges, attorneys, professors and students alike were fascinated when I talked about our landmark *Gideon v. Wainwright* Supreme Court decision, which mandated that all defendants accused of a crime, even those who cannot afford to pay, have the right to counsel. The concept of a guaranteed criminal defense lawyer is novel to the Chinese.

This point was made particularly persuasive when I couched it in terms of helping the poor (something the vast majority of Chinese support). I told them that out of our total population of over 300 million, we have a prison population of approximately 2 million who are largely indigent. Of those there are approximately 5 percent, or 100,000 people, who it is estimated are likely innocent, and that's within a criminal justice system that provides trained free attorneys. If we extrapolate those numbers using China's 1.3 billion population, the number of likely poor innocents who are incarcerated in the Chinese prison system is staggering.

The Chinese have come a long way, particularly if we remember that post-Cultural Revolution China is only about 30 years old and its modern legal system is only 25 years old. Because of China's 5,000-year-old culture and traditions, it's easy to view the country through the lens of history. But today, China has more in common with modern America than it does with its own feudal past.

China's modern cities, like the burgeoning metropolis of Shanghai, reflect an almost post-futuristic vision of American cities. Their willingness to embrace Western architecture and their desire to adapt the best of the West to improve their existing way of life offers an opportunity that, if approached in the right way, may reap rewards far beyond mutual economic benefit.

The country is opening up in new ways, as the transparency following the recent earthquake and their acceptance of Western legal educators like me attest. Let's use the Olympics and this renewed interest in China to further empower those in China who support political reform and want to work within their system to accomplish it. n

*Alan Ellis, a federal criminal defense lawyer based in Mill Valley and Shanghai, is a past president of the National Association of Criminal Defense Lawyers and was a Fulbright Senior Specialist in Shanghai in 2007.*

