

TRANSCRIPT Episode 31 – Jianwei (Jerry) Fang

Jonathan: Today I'm joined by Jerry Fang, an attorney admitted in China and New York State. He is a China and U.S. litigation and compliance specialist, a PRC law expert in the U.S., and he has dealt with foreign proceedings and cross-border matters. He's a former Chinese judge and Big Law attorney. Now he is a partner at the Zhong Lun Law Firm, based in Shanghai.

I was in Shanghai just a week and a half ago, and you were in Beijing. So this is really our second conversation, but we haven't met in person yet. I'm looking forward to our conversation and to getting to know you better. And please come to Utah.

Jerry, you have a really interesting background. I'd love to hear more about that. I think you may be the first litigator I've met who started out as a transactional attorney. Often I hear about litigators who turn into transactional attorneys because they don't like litigation, but you went the other direction. So give us a little bit of your personal background. How did you end up in the law? Where did you grow up? What reasons did you have for choosing law? Then we can go into some of our questions.

Jerry: Definitely. It's a great honor to be on your show. I'm very glad to have met you over Zoom, and I know that you are truly an international lawyer who speaks Chinese. It's a great pleasure to be on your show and to be speaking for the second time.

I'll first briefly introduce myself. As you mentioned, I used to be a Chinese judge. I grew up in China and went to law school in Shanghai. I didn't expect that someday I would become an international lawyer. After spending three years at a Chinese court, I decided to go abroad. The U.S. was the first country I ever visited, and I fell in love with it. I liked the legal system and wanted to go to law school there. I was very lucky to be admitted to Columbia University, where I completed my LL.M. and J.D. in a total of three years. Thanks to the school and the professors, I received a full legal education in the U.S. at a top law school in New York.

My transition from transactional lawyer to litigator wasn't something I chose at first. When I graduated from the J.D. class in 2010, there were not many litigation positions for foreign students whose first language was not English. Every Chinese lawyer studying in U.S. law schools back then seemed to go into IPOs, M&A, and international deals involving China and the U.S. So I ended up working at Cleary Gottlieb as a corporate lawyer.

Luckily, the firm was very accommodating to young associates who wanted to try different things. At Cleary, I did a little bit of everything: corporate, regulatory, Dodd-Frank, private equity, financing, and some FCPA work. I tried a little bit of everything because I knew back

then that eventually I would most likely end up in China. I wanted to learn as much as possible and work with lawyers across different practice areas.

So I was a transactional lawyer. When the firm relocated me back to our Beijing office in 2012, I was still doing transactional work. Then things started to change because we saw more Chinese companies getting involved in litigation, white-collar matters, and government investigations. I was the only associate in the office who had prior litigation experience as a Chinese judge, so I quickly volunteered. I love litigation, and I have a passion for law. Gradually, I switched to half litigation and half transactional work.

A couple of years later, I joined Davis Polk in Hong Kong when they started building their Asia litigation practice. They hired a big team from Clifford Chance, and I was their first associate hire with a China background. So that's my story.

Jonathan: Wow. It's so fun to hear what you were up to because I was also in law school around the same time as you. I was in Washington, D.C., and graduated with the class of 2012, so a couple of years behind you. I'm impressed that you were able to get a job out of school because after the financial crisis in the U.S. kicked off in 2008, there was a ripple effect: no jobs, a lot of panic, and very few opportunities available. I always take my hat off to people who were able to find good legal jobs during that time. It certainly was difficult.

Jerry: I remember. I think the class of 2010 was not too bad. The class of 2011, I know a lot of friends who ended up working at smaller firms, but that may not be a bad thing for a career. People can choose different career paths. Some became public defenders, some went into academia, and a lot of people ended up doing judicial clerkships or internships.

Jonathan: Sure. Did you always want to be a lawyer? In the U.S., we go through our undergraduate path and then decide, "I want to go to law school." In China, I think it's something you choose earlier in your studies. When did you decide that law was the path you wanted to take?

Jerry: Law school in China is an undergraduate degree, so people choose to go to law school at a very young age, when they are 17 or 18. Most people probably have no idea what a legal career might mean.

In my case, I had a family member, a granduncle, who used to be a lawyer many decades ago. He later became a judge. I saw him as a lawyer, and I wanted to be a lawyer myself. When I was in law school, people asked me what I wanted to do because in China, judges, prosecutors, and lawyers have separate career paths. It's not like the revolving door in the U.S., where you work at the DOJ and then end up at a law firm. In China, people usually choose a career and stay with it.

I knew I wanted to be a lawyer, but I felt that if I wanted to be a lawyer, it would be better to have different experience, such as working at a court as a judge. That's why I took a job at the court. It was very competitive, of course. You need to take the exam to be admitted or offered a position at the court. But the idea of ultimately becoming a lawyer never died. After a few years, I quit the job at the court and went abroad to study.

Jonathan: What a great story. This relative of yours, your granduncle, approximately what year was he a judge? You said when the legal system was reinstated in China. I'm trying to put it into my Chinese history timeline.

Jerry: He was a lawyer when the lawyer system was reinstated. He was a college graduate from the 1930s and was the brother of my grandmother. He became a teacher for a while, and when China decided to reinstate the lawyer system, he became one of the lawyers in the legal office of the county. When I say "little county," that's by China standards.

Because he was two generations above me, we didn't spend a lot of time together. I knew some of his stories from my parents. He passed away shortly after I went to law school.

Jonathan: Interesting. Thanks for sharing that bit of your family history. I love these stories because I've been studying China for 25 years. My first trip to Hong Kong and China was in 2001. That really opened up my mind. I was there as a missionary for our church, The Church of Jesus Christ of Latter-day Saints. I was only 19 years old and hadn't really been a great student at that point. I'd floated through school and never really taken world events or history very seriously.

Being in Hong Kong and seeing this mix of East and West, and starting to piece together what Hong Kong is and what this big country, China, just to the north is, really started my journey into the idea that the world is so big and complex. I wanted to understand what happened before I arrived, and what factors change the way countries happen, boundaries change, and governments come to power. It was all so fascinating to me, and I haven't stopped since then.

Of course, China was my first international country, and I've spent 25 years working on my Chinese, though my Chinese still isn't as good as your English. It's still fun.

Jerry: You're just being modest.

Jonathan: No, I'm thinking of when this is reversed because you and I have talked about you doing your own podcast. When this is reversed and you're making me speak in Chinese, I will also be struggling to find words once in a while.

It's great. I love the idea that English is the universal language and the global language of business, but there's so much richness in everyone's language encoded into that language,

including all the cultural things embedded in it. I think Chinese is especially rich in that regard. I've really enjoyed the process of learning Chinese, reading the characters, and understanding the components of how they are put together, which teaches a lot about Chinese history.

Let's turn to the period in your life where you were a judge. You've been a judge in China and a practicing lawyer in the U.S. and China. How does your time on the bench influence the way you approach litigation strategy today?

Jerry: I would say the experience was probably the best investment of my three years. Working at the court gives you the perspective of judges, the judiciary, and how the government views particular issues and cases. Similarly, in the U.S., if a law school student wants to do litigation, my advice would be to work for a judge as a clerk.

In my case, I didn't have that opportunity in the U.S. because English was, and still is, my second language. I also did not have a U.S. green card or passport, so I would not have been paid if I had worked for a federal judge as a clerk. But I think people would agree that spending time with a judge and gaining experience in the court is substantially beneficial.

If you have a deep understanding of how the judiciary works, you can see the underlying rationales for why the court adopts certain policies versus others and how cases are decided. The experience was greatly helpful. My clients, especially multinational corporation clients, really appreciate that experience because they feel I can advise them the nitty-gritty of the law and how the law is practiced in China. I can help them solve a lot of real-time, challenging legal issues.

Jonathan: You and I deal a lot in cross-border issues, especially between China and the U.S. This trip back to China for me this month was my first time back since 2017, so it had been quite a long time. I've been to other Southeast Asian countries in between, but this was my first time back in China in quite a few years.

Jerry: You should come more often.

Jonathan: I will. I will definitely come more often, probably every year. You can expect me to show up in Shanghai every year now.

Part of this is me trying to evaluate things as a transactional lawyer. I tell people there are still 1.4 billion people in China, and there are a lot of good people and hardworking people there. Government to government, there may be issues, and those issues may continue, but there's still a lot of business being done and a lot of business to be had.

Tell me what you're seeing on the ground in China in terms of business trends. What might be helpful for Western listeners who are looking at China and saying, "I don't know what I

should be doing right now or how I should be thinking about the U.S.-China relationship and how I should position my business for success in and around China”?

Jerry: As you mentioned, there may be government-to-government issues, but at least people-to-people, we have a lot to do. We have much to collaborate on and many win-win opportunities to create. The Chinese government also prefers to see more people-to-people communication between the U.S. and China. The Chinese government is supporting American students coming to China and is offering visa conveniences to many countries. Although Americans do not enjoy visa exemptions, there are ways to use a transit visa to spend two weeks in China without a visa.

I welcome American lawyers and American friends to come to China more often, to see it with their own eyes and understand that there are tremendous opportunities in China, with 1.4 billion people in one single market and one jurisdiction.

For instance, I’ve spoken with some American companies, and China is very important as a single market. You might say Europe is also large and important, but it has many jurisdictions and many languages.

Jonathan: So many jurisdictions and so many languages.

Jerry: Yes. For instance, you can have two people cover China for a legal team. For Europe, you may need at least five, eight, or ten people.

Jonathan: Even if they speak four languages each, you’re right.

Jerry: There are a lot of opportunities in China. A lot of American companies are repositioning or reevaluating their strategy, but the Chinese economy and its market are very resilient. We have been through some challenges, but overall, I think the future of the Chinese economy is very promising. That means a lot of opportunities for multinational corporations. For example, some American and European pharmaceutical companies are still investing a lot of money in China because it is going to be one of the largest markets.

Jonathan: Agreed. As I returned from China last week, I was talking with one of my colleagues who is an FDA attorney. I think he is the only FDA attorney in Utah. He joined us a year or so ago from a law firm in D.C., where most FDA lawyers in the U.S. are based. He’s the exception.

He and I were talking about mixing our practices together a little bit because he’s more on the regulatory side with the FDA. He has represented a lot of U.S.-based pharma companies and other food and drug companies. He said a lot of contract manufacturers in China do not have good U.S. legal representation. For instance, they’ll get hit with an FDA

notice letter, and rather than work through it, they will just shut down or have to pivot in a major way.

As far as he knows, within the small FDA lawyer community in the U.S., there really aren't many lawyers, or maybe any lawyers, focusing on helping Chinese contract manufacturers work through these issues with the FDA. I said, "That's perfect for me," because I'm always looking for the right angle with China. As you said, China is a massive market. The transactional work I've done usually centers around supply chains, contract manufacturing, and sometimes inbound work from the U.S. for companies that want to get a foothold in the market.

A lot of my work is with manufacturers, usually with companies on this side of the ocean. He and I are going to work on this for the next six months or so and try to write some articles and maybe do some webinars on helping Chinese manufacturers better understand the process when they're dealing with the U.S. FDA, and how to avoid problems. This is in your expertise as well. When companies get tangled in the regulatory environment, some just panic. If they don't have the right resources, they'll say, "This is the end," when in reality, you can get through those things. You just need to understand how the system works, have the right contacts, and know how to pivot and respond to regulators.

You have some really extensive and interesting experience in your litigation practice. Motorola comes to mind because I was reading up a little bit before our call today. Tell us a little bit about that. I think it will give our listeners good insight into how the Chinese legal system works. A lot of people ask me flat out, "Do laws even matter in China? Does the legal system really matter in China?" I think your experience with the Motorola case specifically shows that it does, and that the justice system really does work. Why don't you share some of the highlights from that?

Jerry: Before I get into the Motorola Solutions case, I totally echo what you mentioned. Chinese companies going to the U.S. really need capable local lawyers to help them. Similarly, for multinationals and American companies operating in China, it's very important to get really good lawyers in China. A lot of issues can be avoided or dealt with relatively easily.

Because of cultural and language barriers, as well as management style, I see many U.S. companies fall into pitfalls that result in legal problems. Many of those issues could potentially be resolved with good judgment and good lawyers. Similarly, Chinese companies going to the U.S. need help from capable American lawyers. I would be very happy to work with you and bridge Chinese companies with American lawyers so we can work together. I'd also love to join your seminar.

Aside from litigation, I also do quite a bit of regulatory work. My approach is that litigation is not standalone. You really have to understand the business and the regulatory environment. I look at legal issues from a practical, real-world perspective, and that has been very helpful to my practice and to my clients.

In terms of the Motorola Solutions case, it is a showcase that even as foreign companies in China can still get wins in Chinese courts. Specifically, Motorola Solutions was suing very big Chinese companies. I won't mention the names. They had been in legal fights for eight or nine years by now. It was a fierce legal battle between two very big companies outside China and inside China.

We represented Motorola Solutions in around 10 legal proceedings in Chinese courts and venues. We won, I would say, most of them. In one case, we might have tied, but we won most of the cases for the American company in Chinese court. That is a showcase that if you get the right team and if you're on the right side, you can win in Chinese court.

I guess there is probably a misconception among many American or European companies that they will be treated badly. Any foreign company operating in China does have disadvantages because they usually know much less than their counterparts. But I personally think the Chinese judiciary and Chinese government are capable and have their own logic and reasoning. If you know how to deal with them and have really good local counsel to help, you can still get fairly satisfactory results.

Jonathan: That's so helpful. It's a great testimony to the concept that the Chinese legal system continues to mature, that there are responsible players there, and that you can be treated fairly in a Chinese court. It often comes down to your law and your facts, with special knowledge of how the system works. If we have to massage some feelings along the way or have the right conversations, it also helps to have local counsel there. I've seen some great results, even outside the litigation context, just by contacting the right lawyer in the right city to talk to the right person. It really does make a difference.

Jerry: The Chinese judiciary has really advanced in the past two decades. Most judges are very well educated, outstanding among their classes, and they receive very good training. Chinese judges can also be fairly international. For instance, in antitrust areas, Chinese judges look at cases in Europe and the U.S. They monitor very closely, and sometimes those cases in Europe or the U.S. might help them decide a case in China. Because I was inside the judiciary, I know how much progress they have made over the last two or three decades.

Jonathan: Great. In light of the geopolitical tensions between the U.S. and China, what do you see as opportunities and challenges for lawyers who are in the middle of U.S.-China matters?

Honestly, I'm worried a little bit, Jerry, because I think there are two things to worry about. One is that geopolitical tensions between the U.S. and China have resulted in fewer people from the U.S. studying Chinese and going to China. We also have fewer people from China studying English and coming to the United States. That creates a good market opportunity for those of us who have already done it, because there will be a bit of a vacuum. But it's also a problem because we don't necessarily have a rising generation or next generation of lawyers we can easily transfer some of this work to.

I'm very interested in hearing your thoughts. What are some of the opportunities? Do you think Chinese and English language skills are essential for cross-border matters? Or do you think that, with the way technology is, we can still sit at home and do business together? Chinese is a hard language to learn. English is a hard language to learn.

Jerry: First, on your point about fewer students going to study in the U.S. and China, I have the same concern as well. That's why I try to encourage more American students to come to China. I have also sponsored American law students to do 1L summer internships. I want to see more Americans coming to China.

Chinese people are still going to the U.S. You still see a lot of Chinese students in American law schools. I hope the exchange among students will pick up, and I have seen an uptick in the past couple of years, so that's a good sign. But we need more people like you coming to China, studying the Chinese language, and really understanding China.

As for challenges and opportunities for U.S.-China lawyers, as you mentioned, there are definitely great opportunities for lawyers like us who do China-U.S. work and speak both languages. I personally think that, despite of the geopolitical tension, the U.S. and China will have to work together on a lot of topics, including trade and other issues. There will continue to be business opportunities, which means legal opportunities for lawyers.

Because of geopolitical tension, a lot of legal matters are very complex and challenging. That means more good opportunities for lawyers, but for really good lawyers. You can't just be a regular lawyer. You really need to excel.

We also see a lot of disputes: commercial disputes, tariffs, IP, sanctions, export controls. Many of these disputes and issues will turn into more legal matters for lawyers. So I think the opportunities are very strong.

On the other hand, the challenges are real. Nowadays, you need to be very careful because many laws make doing business with each other much more difficult and challenging. They also make some of our work much more challenging, for instance in data transfer, data privacy, sensitive sectors, and other areas. Companies doing business between the two countries sometimes find themselves in a dilemma, and there is no quick and easy fix. That's the reality. We should work more diligently and more innovatively to resolve legal issues according to the law. Chinese lawyers and American lawyers need to work together to resolve many challenging issues.

Jonathan: I've been very impressed with the quality of lawyers I've met in and around China. Maybe I'm biased because I spend a lot of time with lawyers, but I really do enjoy the perspective lawyers gain by being in high-stress, high-confrontation, high-stakes environments. We understand that at the end of the day, we still have to get business done. We still have to help our clients get from where they are to the next step, whatever that means for them.

I think lawyers tend to be very pragmatic, especially those of us in the transactional space or in the regulatory space, where the goal is to keep moving forward. We're not having a fight just to have a fight. The goal is to get to the next step of what needs to be done.

I have just a couple of questions left for you. You've had a really interesting career path from judge, to international law firm associate, to now partner in a leading Chinese law firm. What are the things you have seen in your own life and skills? What have you done to succeed along the way? You've put yourself in very different, extremely stressful, and extremely new environments. I think this idea of resiliency, and how you manage to keep going every step of the way, is valuable. I'd love to hear your perspective on what helped you succeed.

Jerry: Because the world is quickly evolving and the law is evolving, we see more and more regulations impacting our work on cross-border legal issues. First of all, you have to be willing to learn. There is no point where you can say, "I'm a fairly established lawyer, so I don't need to learn new things." You always need to learn new laws and new subjects. You always need to learn your clients' business models and the issues they are facing.

Second, you need to be open-minded. That also means you are willing to learn and willing to collaborate with other lawyers and other professionals. Often, we have very complex matters and need professionals from different disciplines. So we need to remain open.

We also need to remain passionate about the law and the legal practice. I think we are very lucky because we help clients on a daily basis. While we, as individual lawyers, might not be able to impact geopolitical relations or tensions between the two countries, and we

might not be able to impact policies overnight, what we do every day helps business continue. We help clients resolve their issues, continue to engage with each other, support global trade and commerce, keep people employed, keep the lights on, and pay taxes in the U.S. and China. All of these are great in my mind.

I also think we are very lucky because, while there are many differences and conflicts—people call them financial wars, tech wars, trade wars, and so on—I personally prefer disputes and differences to be resolved through law, either in court or through other legal tools. That is much better than non-legal tools, whether political, diplomatic, or even military conflict.

What we are doing really helps put the world together when there is so much chaos. We are putting people together. I remember some very established lawyers saying that if we have differences, let's put forward the evidence and apply the law, then see which side is right or wrong. Oftentimes, it is not just black and white. As you mentioned at the beginning, we live in a complex world, especially at a time when technology and AI are moving so fast. There is a lot of uncertainty in the future. I think we, as lawyers, can play a big role. For Americans especially, I think the rule of law is so important at this time, and I think the rule of law will eventually sustain and prevail.

Jonathan: Great perspective, Jerry. Thank you. I have one last question for you that I didn't prep you for. You have been on this track as a lawyer for decades now. If you were not a lawyer today, and if you didn't have to worry about money, how would you spend your time?

Jerry: First of all, for the questions you raised earlier, I didn't really have time to prepare. A lot of it was just a spontaneous response.

If I were not a lawyer and could do whatever I wanted, maybe I would want to train lawyers. Not as an academic professor, but as someone who teaches lawyers how to be lawyers. I want to help people just as I want to help my clients. If I can help future lawyers grow their careers, that would be a huge privilege.

Jonathan: Great. Thank you, Jerry, for your time today. I really look forward to getting to know you even more, collaborating, and hearing what's going on in China. I certainly plan to visit you. I expect to come back probably in Q1 next year, so I'm really looking forward to it. And certainly come to Salt Lake City as often as you like. It would be great to host you here.

Jerry: Great.