

THE FINANCIAL CRISIS AND THE CHANGING ROLE OF WORKERS IN CHINA

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED ELEVENTH CONGRESS

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CONTENTS

	Page
Opening statement of Charlotte Oldham-Moore, Staff Director, Congressional-Executive Commission on China	1
Grob, Douglas, Cochairman's Senior Staff Member, Congressional-Executive Commission on China	1
Chang, Leslie T., author of "Factory Girls" (Spiegel & Grau, 2008); former China correspondent, The Wall Street Journal	3
Munro, Robin, Research Director, China Labour Bulletin	6
Ennis, Erin, Vice President, U.S.-China Business Council	9
Brown, Jr., Earl V., Labor and Employment Law Counsel and China Program Director, Solidarity Center, AFL-CIO	12

APPENDIX

PREPARED STATEMENT

Brown, Jr., Earl V	30
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FRIDAY, JUNE 19, 2009

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 10:01 a.m., in room B-318, Rayburn House Office Building, Charlotte Oldham-Moore, Staff Director, presiding.

Also present: Douglas Grob, Cochairman's Senior Staff Member, Anna Brettell, and Wenchi Yu Perkins.

OPENING STATEMENT OF CHARLOTTE OLDHAM-MOORE, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Ms. OLDHAM-MOORE. Good morning. My name is Charlotte Oldham-Moore and I'm Staff Director of the Congressional-Executive Commission on China. We've been holding most of our events on the Senate side lately, so it is kind of nice to be over in the House today.

I'm going to turn it over to Douglas Grob, my colleague, who will take it from here.

STATEMENT OF DOUGLAS GROB, COCHAIRMAN'S SENIOR STAFF MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Mr. GROB. Well, on behalf of Senator Byron Dorgan, Chairman of the Congressional-Executive Commission on China and Representative Sandy Levin, Cochairman of the Commission, I'd like to thank you very much for attending this morning's roundtable. This morning's roundtable topic is "The Financial Crisis and the Changing Role of Workers in China." My colleague and Staff Director of the Commission, Charlotte Oldham-Moore, will give brief introductions and then turn it over to our panelists, who will give brief oral remarks, and then we will, of course, turn the floor over to you in the audience for questions.

But, first, let me just give a brief overview of the questions that we're going to be looking at today. Our distinguished panel will discuss the impact of the current financial crisis not only on the rights of workers in China, but on the lives of workers in China. This presents a very good opportunity for us to examine the changing role that workers, including migrant workers, are playing in shaping the future of economic, legal, and political reform in China.

It is not uncommon these days to examine the financial crisis by focusing attention on the response of government and business to changing economic conditions. However, workers in China, over 170 million of whom are migrant workers, also have responded, and their response has been structured somewhat significantly by three major legislative developments that took effect in China last year: the Labor Contract Law, the Employment Promotion Law, and the Law on Labor Dispute Mediation and Arbitration, all of which became effective in 2008. These legislative developments, in part, were the product of ferment from below, and reflect growing contestation of labor rights in China. So today we ask whether the contestation of labor rights in China now creates some space for civil society, space for the realization of the aspirations of workers, in a manner somewhat different from the past. We ask whether, under current conditions, the role that workers, including migrant workers, play in shaping the future of economic, legal, and political reform in China is undergoing, or is likely to undergo, fundamental change.

The question is an important one because, as this Commission reported last year, workers in China still are not guaranteed, either in law or in practice, full worker rights in accordance with international standards. China's laws, regulations, and governing practices deny workers fundamental rights, including, but not limited to, the right to organize into independent unions. So, current developments prompt us to ask again, does this description still serve as an accurate description of conditions in China today, and if so, what are the prospects for change, if any, on the horizon? If not, in what ways does it not serve as an accurate description?

Now I'd like to turn the floor over to Charlotte Oldham-Moore to introduce our distinguished panelists.

MS. OLDHAM-MOORE. Hi. We have an exceptional group of people here today and will move quickly through the introductions so we can have as much time as possible for your questions after the panelists present.

Leslie T. Chang lived in China for a decade as a correspondent for *The Wall Street Journal*. Her book, "Factory Girls—From Village to City in a Changing China" was published last October by Spiegel & Grau, an imprint of Random House, and was named one of the Notable Books of the Year by the *New York Times*. She is a graduate of Harvard University and has worked as a journalist in the Czech Republic, Hong Kong, and Taiwan. She now lives in Colorado, so we're quite fortunate to have her here today.

Robin Munro is the research director for the *China Labour Bulletin*. He was recognized internationally for his groundbreaking book, "Dangerous Minds," which was a study of the political misuse of psychiatry in China. Dr. Munro has published numerous other books and articles on human rights and rule of law in China. From 1989 to 1998, he served as the principal China researcher for Human Rights Watch, and before that, a China researcher for Amnesty International in London. He is currently also a research associate at the Law Department of London University's School of Oriental and African Studies. He lives in Hong Kong, so we are very fortunate to have him today; we've got people from all points of the compass.

Erin Ennis is vice president of the U.S.-China Business Council [USCBC] and has served there since May 2005. In that position she directs USCBC's government affairs and advocacy work for member companies and overseas USCBC's business advisory services. Prior to joining USCBC, Ms. Ennis worked for Kissinger McLarty Associates, the Office of the U.S. Trade Representative, and former U.S. Senator John Breaux. She's a native of Louisiana and graduated from Mt. Holyoke and Catholic University.

Earl Brown, to my far right, is employment law counsel for the American Center for International Labor Solidarity and has represented trade unions and employees in U.S. labor law and civil litigation since 1976. He serves as general counsel to the International Brotherhood of Teamsters, and was previously associate general counsel to the United Mine Workers. Brown has also brought cases before international tribunals under international labor rights instruments such as the North American Free Trade Agreement [NAFTA]. He's a graduate of Yale and University of Virginia Law School.

It's a great pleasure to have all of you here with us today. I'm going to begin with Leslie. If you could please begin your opening statement, that would be great. Thank you.

STATEMENT OF LESLIE T. CHANG, AUTHOR OF "FACTORY GIRLS" (SPIEGEL & GRAU, 2008); FORMER CHINA CORRESPONDENT, THE WALL STREET JOURNAL

Ms. CHANG. Hi. Thank you very much for having me. I thought I would start off talking a bit about the research I've done for my book, "Factory Girls," and some of the discoveries I've made that have bearing on how migrants are responding to the economic slowdown.

I first visited Dongguan—which is in Guangdong Province—in early 2004 as a reporter for The Wall Street Journal. At that time, most of the major foreign papers had done articles, or whole series, about the situation of migrant workers. They generally tended to focus on the abuses and the violations of the system and some truly horrible experiences that workers had undergone.

I became curious about what migration might feel like from a migrant's own point of view, how it felt to come out as a teenager from a small village to the city, to learn how to make friends, to learn how to find a job, to date people from different provinces, to cope with their parents, kind of a more personal experience of migration than I felt had been covered to date. In terms of my approach, I tried to be as open-minded as possible, to not go in with any preconceptions and to just hang around and see what developed.

One thing I was very clear I did not want to do was to target newsmakers. When you're a reporter you often hear about a case of a terrible factory or some terrible things a migrant has gone through, either from the local Chinese press or from an activist or someone involved in that field, and then you go and find that person or that factory and you tell their story. What I wanted to do was just find ordinary people who were not headline makers, but might have interesting stories just the same.

Another thing I tried not to do was to ask too many questions, which might seem strange as a reporter, but I felt like often we bring our own ideas into what we think the migrants are thinking. For example, if you ask a migrant: Do you dislike the government? They might say, yes, I hate the government, the officials are awful. But if you spend time with a migrant and they almost never talk about the government, I think that says something very telling about what their priorities are.

So what I tried to do was just hang around and be with the migrants as they spent time with their friends or hosted a sister visiting for the weekend. I even went on a migrant blind date with 11 people, which I think says something about how hard it is to get a little privacy in China. I also followed what social scientists might call a longitudinal approach, which was to spend a long period of time observing changes in their lives before I wrote anything. In this case, I spent about two years following two young women.

My overall conclusion was that migrants were very misunderstood and they were often portrayed as pawns, or victims, or as sources of social unrest. I felt, in general, all of these things were not true.

I feel like the language that is used to describe migrants contributes to this misperception. For example, in the old days in China they referred to migrants as *mangliu*, which means “blind flow,” which tells you what the urban stereotype of migrants was, ignorant and aimless, and potentially dangerous. These days the phrase *liudong renkou*, which means “floating population,” as many of you know, and even the English phrase, “migrant,” I think still suggest a sense of aimlessness and wandering that I don’t think really reflects how the migrants see their own lives.

The migrants I knew were very resourceful and resilient and very focused on climbing up the ladder and improving their own lives. And while migration is definitely a major hardship for them—many of the migrants said to me, coming to the city is the hardest thing I’ve ever done—at the same time, they felt very proud of what they accomplished, and also saw migration as an opportunity to improve their lives.

Just quickly, I will talk about a few qualities of migrants that I thought were especially striking that has some bearing on how they’re coping with the current economic slowdown. One was just how mobile they were and how comfortable they were with this extreme mobility. Min, one of the two young women I write about in my book, held five jobs in two years. This was pretty standard.

It amazed me that she often quit a job for the flimsiest of reasons. One time she quit a job because she hated her boss. Another time she wanted to break up with her boyfriend who worked in a factory, but she didn’t know how to tell him so she just decided to leave and figured he would find out that way.

I think the point is that being laid off, being between jobs is something that migrants are very accustomed to. I mean, it’s not like they like it, but that everyone they know has gone through it. They have gone through it. Being temporarily laid off or finding another job that’s not that great and moving up again is part of their

experience. It's not so much associated with shame and fear as we might expect.

Another thing that struck me about the migrants was just how self-reliant they were. That kind of became a point of pride. You'd often meet people who said, I've done all this by myself, I never got help from my family or my friends. That's how they saw their life: I'm going to make it in the city, and it's up to me and no one is really going to help me. In the same way, I don't think they expect government help. I don't think they blame the government in general when things go wrong.

In this sense I feel that they're quite different from the earlier generation of workers at state-owned enterprises [SOEs] who definitely felt like they had a contract with the government. They would work for this enterprise for their whole life, and the enterprise, in return, would give them benefits. I think when this contract was broken, mostly during the 1990s, a lot of these workers were angry and felt very betrayed. But I feel like the migrants are quite different. They come from rural China. The government has never really given them anything. They don't have any expectations on that front.

Finally, another thing was just how apolitical the migrants were. I mentioned that in hanging out with these young women, that politics and government almost never came up. I think, in general, migrants are just very pragmatic and they don't really see the government as helping them, so they don't really want to spend much time thinking about it.

There is an incident in my book involving the young woman, Min, that I wrote about. We were having lunch with a couple of older people from her factory and talking about growing up under Mao in the 1970s and how hard it was. She turned to me and she said, "Who is Mao Zedong, now? I don't even know." And I said, "Hu Jintao." And she said, "Oh, I thought it was Jiang Zemin." I said, "No, he's already retired." She said, "Oh, I thought Jiang Zemin was dead." [Laughter].

And then she just said, "These people are very far away from me," and I think that really captured how, generally, for the migrants the government is a very abstract thing.

I think when we talk about how Chinese workers are responding to the global economic crisis all these qualities come into play. Dongguan is definitely very hard hit; a lot of factories have closed or fired workers or cut their salaries. But I think workers are adjusting to hardship and making do with very little, as they always have.

My impression from talking to migrants who are still there, my friends there, is that some migrants have gone home and are holding on to odd jobs close to home until the climate improves. Some others went back for the lunar year and then came back out again to try their luck with new jobs. They definitely tell me they feel the difference on the streets. There are a lot more people wandering around looking for work, and there's a lot more petty crime and people try to stay home if they can.

The women I wrote about specifically are doing pretty well. Chunming, the older woman I wrote about, just took a job at a synthetic leather factory, which she feels is more stable, and she's

going to hang out there until things get better. Min, the other woman I wrote about, recently took a 15-percent pay cut from her factory, but also signed a two-year contract.

I think her general sense is that short-term there will be some pain, but long-term her prospects are still good. So, in general I feel that workers have played a huge role in China's economic reform and will continue to do so, but I don't see them playing an equivalent role on the political front at this point.

Thank you.

Ms. OLDHAM-MOORE. Thank you, Leslie.

Robin Munro.

**STATEMENT OF ROBIN MUNRO, RESEARCH DIRECTOR, CHINA
LABOUR BULLETIN**

Mr. MUNRO. Thanks, Charlotte. It's great to be here. Thank you all for coming, and thanks, Leslie. I actually totally agree with something that Leslie just said, or an idea she developed, about China's migrant workers—I think she said two things, really. One, is that they are very self-reliant, and another is that they don't blame the government for things that happen to them. I'd like to kind of try to develop some of the implications of those two observations, because I think they're very important.

I think it's so true that Chinese migrant workers have a very different life experience and background from traditional urban workers. The urban workers were employed by the state for decades, had jobs for life, and when they lost all that their reaction was one of dismay, obviously, but also of going to the government to seek help: you owe us, come and fix the problem. So they're in a sort of supplicant position.

But when migrant workers, as happens so much nowadays, of course, with the economic miracle which has been built on their toil and sweat, when they encounter abuses—such as not being paid, getting beaten by factory security staff, or laid off with no compensation—they don't go and blame the government. They know who the culprits are: it's the employers.

Now, there are very important implications here for a theme I want to develop, which is that China now has an emergent labor movement. It's not the same as 10 years ago, or even 5 years ago, when you just had isolated incidents of worker protests. Now workers—mostly migrant workers—are on strike in cities around the country on almost a daily basis. They're protesting, they're standing up for themselves. They're not passive, they're very assertive. But they don't couch their demands in a political way.

I think it's awfully important for the labor movement in China that this should be so, because the greatest fear of the Chinese authorities, I think, where workers' issues are concerned, is that if they're not terribly careful, an independent labor movement along the lines of Polish Solidarity will emerge. That fear, I think, has governed a lot of government policy in this whole area for decades now. It explains why worker activists were so ruthlessly persecuted for many years after the start of the reform and the opening period.

I think the key difference now is that when there are labor protests, they are not between the workers and the government. I

mean, in Poland, the economy was all state-owned, so when the Gdansk shipyard workers went on strike in 1980 under Lech Walesa, who were they targeting their demands and their complaints at? It was the government. So from the outset, the Polish labor movement took on a political cast. But that isn't the case in China, where worker protests are mainly happening in private enterprises, and it doesn't need to be. This is very important because when migrant workers have problems they blame the employer, who is a private actor. It's all happening inside the civil society sphere.

This means that the government, if it is enlightened, can stand above the labor relations fray and do what government should do, and what in our Western societies we're familiar with, which is to play a constructive facilitating role and provide the contesting parties—the workers and employers—with appropriate, effective channels for resolving their disputes, through arbitration committees, complaint mechanisms, and courts that are responsive to workers' demands and complaints. The government comes out looking good. It's not the bad guy.

So again, referring back to the two points Leslie mentioned: first, migrant workers are not passive, they're very self-reliant and self-assertive. Probably no official in the countryside has ever done anything for them, or their families, in their entire lives. More often, they're the target of depredations by corrupt local officials. That's been their experience with officialdom, so they stay away from it, and away from politics. And, second, unlike many former SOE workers, they don't blame the government for their workplace problems, they blame the real authors of their misfortune: the private employers.

These two factors give a strong basis for hope that the Chinese labor movement—which as I suggested is now emerging in a spontaneous, unorganized, uncoordinated way for sure, but it's nonetheless a de facto movement because it's so widespread—will develop in a healthy direction and one that's actually acceptable to, if not welcomed by, the government. It's something the authorities can maybe live with, and I think this perception is beginning to sift through at quite senior levels.

Next, Doug talked about the great progress that was made in the labor rights field in 2008, with the passage of three landmark labor laws in one year: the Labor Contract Law, the Employment Promotion Law, and the Law on Arbitration and Mediation of Labor Disputes, all of which did strengthen workers' rights. These laws weren't perfect, there's a lot still to be done, but they all raised the bar for protection of workers' rights. But what's crucial to note, in my view, is that these new laws were essentially a concession by the government, a positive response to the rising labor unrest and growing workers' voice in China today.

Also, last year we saw an astounding development, which was that official circles at quite senior levels, including within the All-China Federation of Trade Unions [ACFTU]—which of course is China's sole legally permitted union, but until now it has shown very few signs of life in terms of actually protecting workers' rights, especially migrant workers—the ACFTU came out openly in sev-

eral parts of the country saying, we want to try out real collective bargaining.

This has been a no-go area, collective bargaining in China, for decades because, as I was suggesting, of this nightmare scenario the government has of organized labor turning into a huge political threat that will destabilize everything à la Polish Solidarnosc. So for decades, the authorities have not been prepared to even countenance any kind of collective bargaining. But I think the situation now is, as I was suggesting, that senior levels are recognizing that the labor movement that's now emerging needn't be a political threat—if it's addressed intelligently and in the right kind of way.

Above all, I think the official government perception increasingly is that to resolve this growing tide of labor unrest—which itself is, of course, the result of several decades of neglect of social justice issues across the board, which has produced massive anger, resentment, and discontent at the grassroots—something fundamentally effective has to be done, because if it's not, by gosh, these social developments at the grassroots, if just left to fester, are one day going to become a major political challenge for the government.

I think probably the leadership has taken a look at Western Europe, North America, and other places where collective bargaining has been used for a long time. They found, you know what? It really does work. It reduces social tension, and it leads to constructive resolution of friction and conflict in the workplace, and society becomes more stable. These are the results of having free collective bargaining between workers and management as equal partners.

You get an outcome that is ideally a win-win situation: the employer gets something, and workers get part of what they want. Collective bargaining produces compromise. It defuses things. In this sense it can serve the government's goals, the most preeminent of which these days, of course, is keeping the ship of state and economy sailing smoothly and not being deflected or capsized, someday, by a huge wave of uncontrollable social protests or anger.

At China Labour Bulletin, which my colleague Han Dongfang founded 14 years ago, we've always tried to be forward-looking and optimistic. Mao liked to say he was a "revolutionary optimist"—*geming leguanzhuyizhe*—but of course we're not revolutionary. But we do believe that one must be optimistic where trying to promote a labor movement in China is concerned. I mean, it's a massive task, and there aren't going to be any shortcuts to it.

But I think there are good grounds for seeing the glass as half full in China, and even given this great setback of the financial crisis of the last nine months or so, I still think none of it is going to stop the impetus and dynamic of greater worker organization, looking for constructive solutions and, again, the migrant workers who keep on standing up for themselves. They're not going to lie down. I was going to cite some examples, but I'll leave those to the discussion. So, thank you. I'll leave it there.

Ms. OLDHAM-MOORE. Thank you. Thank you, Robin. We are very honored to have Erin Ennis with us today, and she will speak about the role of workers from the enterprise perspective.

**STATEMENT OF ERIN ENNIS, VICE PRESIDENT, U.S.-CHINA
BUSINESS COUNCIL**

Ms. ENNIS. Thanks, Charlotte.

I thought what I would do is start off with just a little perspective on who the U.S.-China Business Council is—so that you can understand the perspective that I'm bringing to this conversation.

I want to provide a little context of kind of why U.S. companies do business in China, since I think there is frequently very robust discussion in the United States about, why do companies do business in China, whether that's good or bad. Then finally, I'm going to come back and talk a little bit about the impact of the recession and how it has affected company operations and in terms of how that really affects how companies deal with their workers.

So at the outset, the U.S.-China Business Council is an association of over 200 U.S. companies that do business in China. We represent companies that are in pretty much every sector—so services, manufacturing, large and small companies, companies that do work in China, that export to China, and actually the majority of them now are companies that do business in China to access China's market.

As a consequence, that gives us a pretty broad scope of what companies are doing in China. In addition to that, the Council was founded in 1973, right after relations with China were normalized. We have had an office in China since 1979, which was the first time that a foreign office could open for an association like ours. We hope, as a consequence, our long history in China in dealing with the Chinese Government and trying to advocate open flows of trade between the two countries has given us some respectability on these issues and we've tried to approach them with a balance, recognizing that China doesn't do everything right, and frequently they do things wrong.

When those cases come up, we don't hesitate in speaking to China about where the problems are. I'll come back to that, actually, at the end when I talk a little bit about the Labor Contract Law's development. But at the same time we also feel the need to talk about where things are going right, and it is a balance between those two things.

So that's my overview, throwing in what my perspective is. In general, I would say that when approaching the issue of companies doing business in China, I like to use the question that probably many of you are familiar with that frequently comes up in political campaigns: are you better off now than you were four years ago? In this case, I think the question is, are Chinese workers better off with U.S. companies operating in China or were they better off before they entered? I would argue that, without a doubt, they're better off.

Our surveys of our companies show that they tend to pay higher wages, they provide better working conditions, they offer better benefits, and they generally set a higher standard that we all would hope would have a broader impact on China's society over time. And don't forget that these are the companies that are helping to contribute to the growth of China's economy that has lifted millions out of poverty, and at the same time has created more of a market there for exported U.S. goods.

One of the things that we've learned over our years of doing business and interacting with the Chinese Government is you can make more progress in persuading China by demonstrating to them that changes are in their interests, and that does a lot better job than trying to pound on the table and demand change from them. The alternative takes a lot longer, but we firmly believe that it can work.

So there's three points that I would like to make for you on companies' operations in China before I move to a little discussion of the recession. The first point is that U.S. companies are a positive force in China. They tend to bring their global employment practices and environmental health and safety standards, and in most cases these practices exceed what the local law is, and U.S. companies act as a model for other companies in that area.

We do a survey of our companies every year, and one of the questions that we ask them is, are the wages that you pay below, at, or above what the prevailing wage is in the area, and do you bring your environmental health and safety standards to the practices. In last year's survey, 83 percent of our members reported that they paid above what the prevailing wage is, and an additional 15 percent said they paid the prevailing wage. In addition, 91 percent of them reported they bring their global environmental health and safety standards to their Chinese facilities.

Let me put that in a little context of what that means. By bringing their global practices it means that they are exceeding whatever the minimum requirements are that China's localities and government have in environmental standards. China has, no doubt, many substandard labor practices, but substandard employment and environmental health and safety practices typically occurred in local enterprises. Sometimes the enterprise is owned by foreign investors, but very rarely an enterprise is directly owned by U.S. companies.

We feel the results speak for themselves. A couple of years ago, Manpower did a survey of Chinese employees and asked them who they would prefer to work for, a wholly foreign-owned company or a domestic Chinese company, and 75 percent of them said they would prefer to work for a wholly foreign-owned enterprise rather than a joint venture between a foreign company and a Chinese company or a wholly owned Chinese company.

Second, the majority of U.S. companies are very sensitive to labor issues and they take steps to make sure that their suppliers meet Chinese law. Now, this hopefully should not surprise you: Most very large corporations have supplier auditing—very extensive—programs and when problems are found, they do their best to address them. They work to make sure that their suppliers come into compliance, and if those efforts aren't effective, then they end their relationship with that supplier.

Now, China has a lot of good laws on the books and I suspect that probably what you'll hear multiple times during today's discussion is the fact that enforcement is a problem. That is absolutely the case for many problems of non-compliance on supplier issues. Better enforcement ultimately is the best solution for all involved.

Company auditing can help toward that but it is not a complete solution. They can only be in so many places at so many times, and problems will continue to surface. When they do, they need to be addressed directly.

In that, non-governmental organizations [NGOs] have an important continuing role in improving working conditions in China. We all gain from a fact-based approach, and if factories are identified with problems and have failed to comply with the laws, then they need to be brought into compliance. Companies need to make sure that those problems don't happen again.

Finally, on just a general overview, I would note that we believe strongly that China's labor practices are better because of the presence and influence of U.S. companies, not worse. It is not perfect. There is a long way to go, but ultimately U.S. companies, especially those with good track records here in the United States and elsewhere around the world, are part of the solution in China rather than part of the problem.

Now, let me turn for a minute to some of the issues that the recession has brought up, and one in particular that you've heard mentioned several times already: the Labor Contract Law. This is something that I think has been—for those of us that deal with China's Government and the development of laws and regulations—probably one of the more heartening developments of laws. The Labor Contract Law was not fully transparent in how it was developed, unfortunately. Rather than publishing for comment various modifications, at least two of the drafts were given only to a handful of groups and companies and other interested parties for comment.

But what we saw as it developed were changes that reflected an interest in balancing the inputs that they actually got on that law. While we represent companies—we submitted comments three times on various drafts of the law—we didn't get everything we wanted. The labor unions, and the ACFTU in particular, didn't get everything that it wanted in that law. But what came out was a balanced law that we think provides a good context for how to move forward and ensures that Chinese workers are protected and that companies operating in China have a predictable enforcement in which to operate.

One interesting example of the proof of how the Labor Contract Law has worked, and it is an unfortunate example but one to keep in mind. The Labor Contract Law had very specific provisions of what had to be done if you had to reduce your workforce, if you had to downsize your factory or close a factory, for that matter.

What our companies have found when they've been in those circumstances is that it's actually provided a very convenient road map of how to have those discussions. There is a very specific set of criteria that had to be held with local governments about how this operation is going to be done, very open and frank discussions about the fact that no company wants to shut down factories. Obviously, everybody wants to continue to grow. It's been a very useful implementation.

And the final point that I would make is that the recession has moved us toward a better balance between how companies and workers work together. Many of you may have read that prior to

the recession there was a massive labor shortage—probably much of what Leslie was talking about in terms of employees working, moving to multiple jobs in very short periods of time was the fact that there was actually a labor shortage in China. It meant that workers could go to the highest bidder or find the best conditions that they wanted, and that was great for workers.

But the recession has meant, with fewer jobs, that companies and employees are engaging in very robust discussions of how to retain the best workers. How do you make a worker want to stay at your factory if it's a great worker and you know that you're going to need them as you continue to expand what your operations are? That is, I think, going to be an interesting development on how labor contracts continue to improve and how that labor market continues to develop.

I'll stop there.

Ms. OLDHAM-MOORE. Thank you. Thank you, Erin. Earl Brown, please.

STATEMENT OF EARL V. BROWN, JR., LABOR AND EMPLOYMENT LAW COUNSEL AND CHINA PROGRAM DIRECTOR, SOLIDARITY CENTER, AFL-CIO

Mr. BROWN. Thank you for having me speak to such a diverse group of very close and thoughtful China observers, and I hope to make a contribution if I can.

I work for the Solidarity Center, which is a labor and human rights non-governmental organization [NGO] of the AFL-CIO. We have worked in Asia since the 1970s with garment workers, tobacco workers, plantation workers, and a wide variety of industrial workers.

My history is as a labor lawyer in the United States for industrial unions and as a teacher of labor law. I'm going to try to bring a focused industrial relations perspective here, and I think that's very different, perhaps, than the ordinary human rights perspective that we've had thus far. I may be wrong, but I think it's a different focus. It's not an abandonment of any position, but it is a focus on the industrial relations problems at hand.

That is that China has the greatest and most rapidly assembled working class in the history of mankind; it is simply breathtaking. If you took a taxicab, like I did several years ago, around the industrial areas of Guangdong just to look at the factories, you would begin to appreciate the rapidity and scale of this industrialization process. The new factories didn't even have street numbers they were put up so fast. You'd have to have a cell phone to find out where they were because they had been built before the streets were named, and to see masses and masses of workers and contemplate something that has never happened so quickly, to my knowledge, in history.

It is also, I think, true that it's a rare industrial society—and I mean an industrial society, not a service worker society, a society with a huge mass of industrial workers—with a lot of grievances to sustain itself over a long period of time without some form of worker voice and representation at the plant level. There is no way that labor standards and norms, which are a part of human rights norms—if wages get too low people can't live, abusive labor condi-

tions are violations of people's human dignity—can be enforced by labor ministries, by professors, by sociologists, or any other group. They can only be enforced by an institution that acts as an agent of workers at the plant level, on the spot, where and when the violation is occurring.

Witness mine workers. Mine workers in China that are three miles underground in the mines at Liaoning Province where you travel one kilometer down and two kilometers out do not have access to any lawyer, academic, government official if there's an imminent danger. They have to have an institution and a right and a confidence in their right to remove themselves from the dangerous situation.

So I think that what I'm proposing is the need for industrial relations—the continuous negotiation of standards by representative institutions of the workers, and of the employers. There's a sequencing problem. There's an institution that calls itself a union but has no presence at the plant level, to speak of, in the private sector, this huge, massive private sector. The question is: what's going to happen with that institution that is not adapted to private sector labor relations?

Now, I don't think anyone knows exactly the ramifications of the downturn, but let me just talk today about some other segments of the working class in China. We are all familiar with the plight of migrant workers' environment and of other light industrial sector workers in export factories, but there are also a lot of skilled workers, a lot of high-tech workers, a lot of young urban workers entering the workforce, seeking jobs. There are taxicab drivers, there are pilots, there are dock workers. There are all kinds of other workers that are also involved in labor disputes as well. These workers are spontaneously using the new Chinese labor law to improve their situation and are seeking to bargain with employers.

We had a case of workers—I'm not going to describe them, but they have reached out on their own to the Danish union that represents the workers at the Danish employer's facility in Denmark. It's a very creative act of workers. They are seeking to assert standards. Unions that are responsive to their constituents are one important mechanism for enforcing standards, I think along with strict law enforcement that is going to be the future of industrial relations. But we don't yet know the full impact of the economic downturn.

One of the major factors we've talked about is the 2008 contract law. It has assigned many bargaining functions, many plant-level representation functions, to a union that is institutionally, as I said, absent and otherwise not equipped structurally.

It doesn't have employer-specific research—it doesn't have bargaining expertise, it doesn't have skill and grievance handling and mediation. It's a sign some of those function in a very skeletal, undeveloped form to this union. The question is, can the union step up to the plate? If not, what groups will emerge to take advantage of that space?

I just want to suggest that one of the functions, one of the great things the international labor movement can do better than any other group, is assist pro-worker voices in China, in the union, with

policymakers, in their legal aid societies, to begin this industrial relations function, to begin to work to help and partner with Chinese counterparts on bargaining skills and to begin to bargain so that you can have the bargaining. You might even have the bargaining before you have the perfect institution to do the bargaining. Imagine what would happen if you actually had the most minimalistic form of bargaining; for example: imagine miners were able to obtain a 0.5-percent wage increase throughout China, or one small sector of one industry in Guangdong Province was able to get some minimal wage increase. How many millions of workers would be directly affected and how many other workers would watch that bargaining and seek to replicate bargaining in their factory or sectors?

Under Article 41 of the 2008 Labor Contract Law there is bargaining going on now about layoffs. The union must get, now, notice of every layoff and has bargained for reduced salaries and furloughs versus unilateral mass layoffs. In the United States, employers can unilaterally discharge. In China, they have to negotiate in some manner. This is incipient negotiation, this is very inchoate, but it's the beginning of negotiation. I think this is where a focus on industrial relations and the skills of the international labor movement can actually contribute to improving industrial relations in China if done appropriately and with a sense of equality and mutual respect, and not for extraneous agendas.

Thank you.

[The prepared statement of Mr. Brown appears in the appendix.]

Ms. OLDHAM-MOORE. Thank you, Earl.

We have an extraordinary group of people with us today who have an immense wealth of experience. At this stage in the proceedings we will turn to the audience to pose questions. There will be an official transcript, that will be published on our Web site.

So when you stand and offer your question, please feel free to offer your professional identification and your name, of course. But if you don't want your name to be listed in the transcript that will later become a public document, just let us know.

So let's now turn to the audience. Our first question is from Anna Brettell.

Ms. BRETTELL. Hi. I'm Anna Brettell from the Congressional-Executive Commission on China. My question relates to strikes in China. I am just curious if strikes are still illegal in China and if there are these strikes, as Robin pointed out, on a daily basis, then what happens to the strikers? Are they treated differently now than they were maybe 10 years ago?

Ms. OLDHAM-MOORE. Who are you directing this to?

Ms. BRETTELL. It could really be directed to anyone who wishes to answer, but I'd like to hear from at least Robin and Earl.

Ms. OLDHAM-MOORE. Robin, then Earl.

Mr. MUNRO. The question was, how is the government dealing with striking workers?

Ms. BRETTELL. Basically, are strikes still illegal and what happens to the strikers? Are they treated differently now than they were 10 years ago? So, it's three parts.

Mr. MUNRO. Okay. As I mentioned in my talk earlier, I think the government's reaction, and local police authorities' reaction to incidents of labor unrest has changed significantly over the last, cer-

tainly, 20 years, and even within the last 5 years. In the old days, including the 1990s, any effort by workers to stage protests, to organize unofficial campaigns against bad conditions in a factory just triggered all of these paranoid reactions from the authorities, who would tend to label them as politically subversive elements, and they'd be arrested and sent to jail.

I'll give an example. In 1999, a labor lawyer in Baotou in Inner Mongolia, named Xu Jian—a man of the people, he worked for himself, a self-trained lawyer—was very committed to representing workers in court who were involved in labor disputes. He had a law office there, and because he was in contact with so-called “overseas hostile forces,” meaning foreign NGOs and the like, he was arrested and charged with “subverting state power,” the most serious charge in the Criminal Law, and was sentenced to four years in prison. He was brutally beaten, often starved, and made to serve his entire four-year sentence.

Now, that was 10 years ago. The same kind of thing was happening in the early 2000s. Overall, I think what's changed nowadays is that the sheer scale of worker activity has become so great—with workers carrying on strikes or mass protests almost every day in cities around the country—that it would be politically untenable for the government to continue to see all these incidents as politically motivated challenges against the government. It would be ludicrous. It's obvious they're not. Overall, the government realizes that these events are driven by real livelihood issues on the workers' part: they're under pressure, and in many cases their backs are against the wall, because their wages are so low and some of them haven't been paid for six months, for goodness sake. How can you live that way? So you protest. The government realizes this, and so it stops, by and large, arresting them.

So there's this recognition that worker protest is not inherently a political threat. At the same time, I think the authorities are very aware that if they're not very careful, if they overreact with police suppression to what are just livelihood-based issues, then they will make things much worse. So, there's also an anxiety on the government's part not to inflame an already volatile situation.

What we find nowadays, more often than not, is that if there's a big enough protest going on, local governments will probably intervene and try to negotiate a settlement that will probably benefit both sides in the end. And workers know this and they actively play this game, even though protests are banned, technically. This is the kind of dynamic we're increasingly seeing now. Again, it's quite hopeful, I think.

But of course, there are notable exceptions. I'm not trying to suggest that repression in China is really easing up fundamentally. Certainly, the more high-profile cases involving political dissent, overtly human rights-related law cases, and lawyers representing the victims, these are the kind of people who are still A-1 targets for repression and who often do still go to jail. So overall, it's a mixed picture.

Ms. OLDHAM-MOORE. Okay. Earl?

Mr. BROWN. Well, I think I agree with Robin. There is less of a—but I want to recount a discussion I had with a Chinese labor lawyer who was shocked to learn that comparatively under U.S. labor

law the right to strike is not a constitutional status and that in the United States, many strikers are arrested. He and I went through the history of it, and he said, “Oh, you mean when the strike becomes effective on the employer it becomes illegal?”

I said, that would be a fair, practical summary of the law of the United States, which also leaves people in the United States, as we speak right now with the few strikes we’re having, do get thrown into jail and do get put in jail for civil contempt for 18 months without a right to jury trial. So I think you have to have a comparative perspective on what happens.

I think there is an unholy alliance around the world between local government and local employers to use the criminal law to criminalize industrial disputes and to bring out the police to whack people on the head and get them back to work and suppress the dispute. I think that was the standard operating procedure in China. I think there has been a retreat from that.

But I think, as Robin says, off the stage in quiet places, strikers are getting thrown in the pokey and beaten up and hit and everything else. We have a partner right now that is under a lot of pressure strictly through the facts of both employer and local government. I think this is the bond between law enforcement, local government, and the local branch of the ACFTU. There can often be very detrimental alliances for workers.

However, the Party is realizing that with this scale of striking, you can’t use the billy club to solve it and has issued a directive to the Party officials, which I thought was great, saying get out from your desk and get out there from hiding behind the police and solve the problem. So, I think that’s a hopeful trend.

Ms. OLDHAM-MOORE. Okay. Thank you.

Robin? Twenty seconds, you said.

Mr. MUNRO. Yes. I’ll just quickly mention one item. China Labour Bulletin has a large project in China called the Labor Rights Litigation Project, through which we bring workers and lawyers together and provide pro bono assistance in the form of lawyers’ fees, so the workers can sue abusive employers.

Under that broad heading we also have the Criminal Defense Project, which is expressly designed so that we can provide defense lawyers to worker activists who get arrested in the line of union duty, or union-type duty. They are mostly workers who have organized protests, or people identified by the government as ring-leaders of disputes that have been met with repression. We are actively providing lawyers and legal assistance to a number of workers in that situation right now who are in detention.

Ms. OLDHAM-MOORE. Great. Thank you.

We have a lot of people who want to ask questions, so please direct your question to one person. The lady in the first row, please, and then Mary.

Ms. KWANG. Orinne Kwang, Center for Diplomacy and Democracy. I was wondering whether—one person? I’m going to say Leslie, because you’ve interviewed a lot of people. In the non-worker community, because when this migrant migration started, the urban dwellers always looked at them as trouble, or the crime rate goes up. So what is the situation now? If we have an opportunity to educate the non-worker community, especially those ones who

are influential, for example, bloggers, what kind of activity would you recommend to expose them or help them with their impression or support for the worker community? Thank you.

Ms. CHANG. Yes. I do find that it has improved over the years. I think the government is actually part of it, because in the 1990s you would often read stories in the paper, the government-influenced or controlled newspapers, noting that crime was high in the city in Shanghai or Beijing because of the migrant population.

But I think starting around 2002 or 2003, the government made a pretty concerted effort to acknowledge that migrants actually have made a huge contribution to the economic growth of the country and we should start protecting them more, and we started seeing laws coming out saying migrant children should be able to go to school in the city, and all sorts of things. Again, enforcement is the issue, but I think the general mindset has shifted.

In terms of average people in the cities, I feel like there is still a certain condescension and misunderstanding toward the migrants. For example, one of the two women I wrote about, Chunming, started off as an assembly line worker, and then over the years she became a salesperson and kind of a proto-middle-class type worker.

One time she was walking down the street with one of her friends who is a nurse, so in a similar class as Chunming but more educated, and they were passing a place where there were a lot of migrant workers who were eating snacks and singing karaoke. This nurse turned to me and said, "Oh, look at the poor migrant workers. Their lives are so terrible. You give them just a little snack and they're happy, because they're so desperate." I was standing next to Chunming and she didn't say anything, even though she should know better, coming from this world.

So I think there's this automatic kind of condescension and pity that urban people have for rural people and migrants and you see that a lot in the Chinese press as well. The articles tend to be, look at these poor migrants, we should help them. I think the instinct might be good, but the attitude is very disrespectful. In terms of what we can do, if you can reach bloggers and reporters and get them to try to spend a bit more time really understanding how migrants operate and what their lives are like, I think that would make a difference. I think the problem is, most people in urban China who have worked and clawed their way into comfortable positions do not like to spend a lot of time in local factory towns or in villages. I felt that even among a lot of scholars who were supposedly studying migrants, they really liked to spend most of their time in Beijing in nice offices and in academic departments.

Ms. OLDHAM-MOORE. Thank you.

Mary Gallagher, please?

Ms. GALLAGHER. I have two questions, but they're for two separate people.

I have a question, I think, for Leslie, first. I think there's sort of this juncture between some of the things that Leslie said and some of the things that Robin and Earl said, particularly in terms of this idea that there's an emerging labor movement that is heavily concentrated in the migrants.

So what I want to ask, and maybe if Leslie would answer it, or somebody else, is maybe what we need to do to figure this out, is there an emerging labor market or is, perhaps, migrants—apolitical and very self-reliant is to break migrants down more and to talk about what are the differences within the migrant population and where we might see variation.

I know your remarks focused on women. So is there a gender—what makes migrants—not necessarily—government—active. My own impression would be perhaps that it has to do with how long they stay in the city and how stable they might feel, and then that—interests in their political life, their social welfare, activate them.

So the second question is for Erin, and it's about the labor contract law debate and about the role of the foreign business associations. I think that was a really interesting debate and I think it was really, like you said, heartening in the sense that it was relatively transparent, relatively participatory.

I think the problem for foreign business associations is that you did the work for all employers in China, at least publicly, and in a sense we're blamed for that in the media. I'm wondering what your impression is in going forward. Does the U.S.-China Business Council want to continue to take that role very publicly, or in the next round where there's a law that you have a big stake in, will you also perhaps go through the back door like a lot of Chinese employers do?

Ms. OLDHAM-MOORE. Both of those questions get to get answered. Okay. Thank you. Leslie.

Ms. CHANG. Yes. I guess it sounds like there's a natural conflict between what I'm saying and what Robin was saying. I think my approach was just that—I felt people were maybe getting the wrong impression that every worker is on the edge of unrest and protest. Once something goes wrong, they're out on the street. I felt like, by focusing on a few so-called “ordinary” people who were not activists or organizers, that that would convey a very different impression.

But definitely, there are protests all the time in cities all over China. In fact, when I was in Dongguan I saw some small-scale protests on all sorts of issues. Again, as Robin was saying, there isn't one kind of over-arching political grievance, but it's more like, we didn't get paid, or they're favoring local people over migrants, all sorts of nitty-gritty issues.

In terms of how to identify the migrants who are moved to protest versus those less likely to do so, maybe others have done more studies on this. I do think that young women may be less likely to protest than, say, 45-year-old men, just because they feel like they're very vulnerable and therefore their focus is all the more on their own personal situation.

Ms. OLDHAM-MOORE. Erin, please.

Ms. ENNIS. Thanks for the question. I'll be honest with you, we are big fans of transparency. One of the things that makes it possible to do business is knowing what your operating environment is going to be like. The advantage to transparency and having more and more laws out for comment, is the goals that are set out. So while I think we probably did do a lot of work for others who might

have been potentially working to try to make it a less stringent law behind the scenes, our approach to it was, we have to represent the interests of U.S. companies. We try to do everything as close to the United States' legal standards as we possibly can because it's a predictable business environment that companies like.

The issue of transparency itself is one that we take seriously. For those of you who follow China a little more broadly, the end of 2007, I believe it was, beginning of 2008, China had put out several directives on mandating transparency from the central government, mandating that laws be put out for comment.

Then it was modified in 2008 as well to mandate for the state council that laws not only had to be put for comment on the central Web site, but they had to be out for 30 days so that you could actually comment on them. What had happened in the intervening years, is rules would be put out for comment for two weeks or so. If you're dealing with something as detailed as a patent law that's 300 pages, how do you ever come up with a full set of comments in that period of time?

The implementation of even a state council directive on this has been spotty. Some things have come out for comment, others have not. We comment on as many as we possibly can, if for no other reason than to encourage the government to continue to put these out for comment and to recognize that at the end what it's going to get is constructive input that is designed to enhance what they are trying to do—as in the case of the Labor Contract Law—rather than trying to stop them from putting out anything. So, we'll keep at it and there are others trying as well.

Ms. OLDHAM-MOORE. Thank you, Erin.

Mr. Bork.

Mr. BORK. My name is Thomas Bork and I'm with America's Development Foundation. I have a question about the urbanization that's going on. China is going through a fast mobilization of the rural people into the urban centers, with creating new cities in several provinces. How is this going to impact migrant workers in Hebei, Liaoning, and also Hunan Provinces? They have some big projects being financed by the Asian Development Bank and things—so they're taking huge areas in a rural area, bringing people into the cities.

Ms. OLDHAM-MOORE. Okay.

Mr. BORK. It's like—for lack of water, a lot of the cities tripled in size over the last few years. How will this impact?

Ms. OLDHAM-MOORE. Okay. Who would like to take that?

Ms. ENNIS. I'll take a crack at it. I don't know that I can necessarily speak to how it affects migrant workers because I can only talk about companies. Just to put this in a little bit of perspective, China ranks its cities and they do it in tiers, a first-tier city—the ones that are on the Pacific Coast—and then on down as you go to the interior. They have had programs for the past few years trying to get companies to invest in third-tier cities, fourth-tier cities, fifth-tier cities.

You're getting further and further into the interior—we're still talking about cities with over a million people. We're not talking about small towns necessarily where companies are not going to be

able to find a workforce, but definitely difficulties up until recently in infrastructure problems in getting companies out there.

So I think the number one challenge from a company perspective is, while China is very interested in dealing with kind of developing more cities, creating more jobs, the further you get from an infrastructure system where a company can produce a product and distribute it within China itself, it becomes a little more difficult the further you get away from where the heart of that system is. Companies are going to be looking at, number one, ways they can get a product to market, and number two, if they have the workforce that's going to be able to get to where they are and to be able to function in a modern factory. So, just some considerations on the company perspective. I'm sure there are other comments on the migrant aspect.

Ms. OLDHAM-MOORE. Thank you, Erin.

Robin wants to comment, briefly.

Mr. MUNRO. Yes. A few thoughts on that interesting question. To the extent that the kinds of cities you're talking about are coming out of nowhere, which is basically the case, the population is all migrant workers, apart from the professionals who come there to provide high-level services. They're basically migrant worker towns—or as Erin says, cities, large ones. Dongguan is a great example of this, where Leslie spent so much of her research time with workers.

In these situations, the established discourse from previous decades on migrant workers becomes irrelevant. That discourse says that market workers are out-of-towners, that they have conflicts with the majority, the established urban population. That problem clearly doesn't exist, so there's kind of a fresh-start element here.

In fact, in many cities now, as part of the overall effort by the authorities to raise the profile and public image of migrant workers, the local government is promoting terms like “new urbanites”—*xin shimin*—as a new name for migrant workers, which is much more respectful, and also acknowledges that they're here to stay, they are a new immigrant population and therefore deserve some new rights. Names are very important, especially in China—Confucius and the “rectification of names,” et cetera.

So there are some positive things, but I think these new cities are also a huge challenge administratively and fiscally for the government, because the old arguments—they're out-of-towners and the city has to use its resources for the established population, and so forth—against providing migrant workers with full social welfare services, access to subsidized medical care in the cities, subsidized health and education for their children, are simply no longer valid.

But so far I think what we've seen is that, rather than the government saying, well, the whole population is made up of migrant workers, therefore we have to give them all the social services and welfare that urbanites in other cities enjoy—the example of Dongguan and other new cities shows that they just don't do that. It's a city of over 10 million, nearly all migrant workers, and they still have very little in the way of social services. So I think a real shift of vision is needed from the government on this issue urgently.

Ms. OLDHAM-MOORE. Thank you.

Yes, sir?

Mr. OSTWICK. Yes. I have a question actually for Mr. Brown. My name is Peter Ostwick. I'm an intern in Senator Sherrod Brown's office. I'd like to thank the panel for their work in China. I think you guys are doing a great job with your inspirational work.

Mr. Brown, how do you think—my Senator is from Ohio, and we're representing Ohio. How do you think that opening auto industries in China would benefit workers in Ohio?

Ms. OLDHAM-MOORE. That's a great question. This gentleman from Ohio asked, how does opening auto industries in China benefit Ohio constituents.

Mr. OSTWICK. Ohio, and auto industries in general.

Ms. OLDHAM-MOORE. Okay. Go for it. Are you running for Congress now? [Laughter].

Mr. BROWN. I am a great admirer of Senator Brown.

Ms. OLDHAM-MOORE. Yes. He's wonderful. He's a commissioner.

Mr. BROWN. I do not think that—one of the problems posed, and this is why I argue from an industrial relations perspective and I argue for bargaining and I argue for an actual labor movement approach to China, adapted to China's circumstances, is to stop the race to the bottom. I think we have in this country—since you asked the question, we have one of the few countries in the world without an industrial policy and we shift our manufacture overseas.

I don't think it helps American workers to take American work to China and produce it at a lower labor cost. I think it is the very definition of a race to the bottom. I think it is part of the reason that the world economy is unbalanced. I don't think we stop that alone with human rights interpositions from outside. I think we need an agency in China to improve wages, hours, and working conditions.

Everybody says, to that answer, well, call me in the next century. My answer to that is, if you had been in Shenzhen in 1980 and worked with the 30,000 fishermen in the fishing village there, and you went there now to see the fishermen—who knows, 10, 12, 13 million, you would have said that was not possible in 30 years. China has accelerated labor contract law and can be, as Robin has said, with appropriate investor relations focus, the beginning of the—race to the bottom.

If I could just say, one of the things—this is a somewhat complex question. That is that I'm not advocating that anyone give up their position or their trade remedies that American workers receive. I do think we have to be careful not to blame Chinese workers for this crisis. I think we have to make distinctions between, what is taking American jobs and what is opening up jobs that are for the Chinese market, which is a hugely developing market. There will probably be, no matter what anyone says, production in China to do that. But I think that American workers and Chinese workers have common problems and should work mutually to solve them for everyone.

Mr. OSTWICK. I'm going to refer to that other question of, what are Chinese workers doing from—people like yourself are focusing

on human rights in China, labor conditions, and that's wonderful. But what are the Chinese workers doing for us over here?

Mr. BROWN. What do you mean by—

Ms. OLDHAM-MOORE. His question was, what are Chinese workers doing for us here in the United States?

Mr. OSTWICK. Right.

Ms. OLDHAM-MOORE. That's a huge question. Would you like to take that, Robin? You're very smart.

Mr. MUNRO. Okay. Let me be provocative here.

Ms. OLDHAM-MOORE. Yes. You can say it and we'll throw tomatoes.

Mr. MUNRO. I think it's an unfair question, to be honest: what are Chinese workers doing for workers here in the West? Actually, they have quite enough problems of their own right now. I mean, it's notoriously difficult to get workers anywhere, even in developed countries, to cooperate in any kind of cross-border solidarity action. It very rarely happens. The American Center for International Labor Solidarity [ACILS], I'm sure, know this very well, working in the area of international labor solidarity. Workers have to deal with the situation and the problems in the place where they're living. Chinese workers are confronting not just their employers, but sometimes also the local government. It's asking too much of a labor movement, even in a highly developed country, to spend a lot of time worrying about workers in other countries, to be honest. I think that's the short answer, and particularly in China, where the labor movement is still so underdeveloped.

I'd also like to return briefly to an earlier point: I don't actually think there's any kind of conflict or contradiction between what Leslie was saying and what I'm saying. I'm not trying to argue, when I say there's an emerging labor movement in China, that workers are all on the move now and becoming ever more militant and challenging. But then, that's hardly the case in any country. Here in America, what is it: 14, 15 percent of the workforce is unionized? That's all? But no one would say that America doesn't have a labor movement. Indeed, it has a strong one—one that wants to be a lot stronger, but it's certainly there, no question.

What I'm saying is there are now significant numbers of workers in China who are fighting back and standing up for their rights all over the country. We're now able to say, whereas 10 or 15 years ago there was a dismal void where worker action and solidarity was concerned, that's no longer the case. There is something happening. It's definite and it's a reality. I also believe that political history tends to be made by minorities anyway.

If you have an entire workforce on the move and being militant, it probably means you have either fascism or revolutionary Communism. Those tend to be the only two forces that can achieve such a result, and I don't think anyone here wants that. So we're talking about a minority of workers in China, but a significant and important minority. That's what I mean by the emerging labor movement, and I would also characterize it as being at a "pre-union" stage of development.

Ms. OLDHAM-MOORE. Earl wants to make a quick comment, and then the young woman with the stripes is next.

Mr. BROWN. There are concrete examples of joint action between Chinese workers, Asian workers, and people in that labor market—

it's not just China—that I'm happy to talk to you about off the record.

Mr. OSTWICK. All right.

Ms. OLDHAM-MOORE. Earl and the gentleman from Ohio will have a tet-à-tet up here. Okay.

Ms. GUTHNER. Hi. I'm Carol Ann Guthner. I'm from the State Department. This is a question to Leslie. I was wondering what you think the implications are of the Chinese Government relaxing and changing the *hukou* system for workers you observed, and kind of all workers.

Ms. CHANG. Yes. I think it's different in different places, as with so many things in China. Where I reported in Dongguan, which, as Robin said, was almost all migrants and very few local residents, I didn't find the *hukou* to be much of an issue because almost everyone in the city is an outsider. I actually spent six months in Dongguan before I met my first local Dongguan person.

Ms. OLDHAM-MOORE. Leslie, may I interrupt?

Ms. CHANG. Yes?

Ms. OLDHAM-MOORE. Just define the term "*hukou*" for our non-China experts.

Ms. CHANG. Oh, I'm sorry. Yes. The *hukou* refers to the household registration system. When someone is born they're issued a document that identifies what place they're attached to based on, I think, where their mother lives. In the old days, this meant that even if a migrant went to a city, he or she would not have any benefits and would always be a second-class citizen and suffer a lot of discrimination.

But in a place like Dongguan, because there's no sense that there is that much of a local population, the *hukou* was not really an issue for migrants. They would come to the city, find a job at a factory, and then be paid their wages and just focus on personal issues. I did get to know some couples who had lived there much longer and eventually bought apartments. I knew one migrant couple who had lived in the city about 10 years and were able to buy a local apartment, and then also to buy a local *hukou* registration, so that when their daughter entered elementary school she would be able to be registered.

So I feel like in a place like Dongguan things sort of evolve as they go and people figure out solutions by the time they have to. In a place like Beijing or Shanghai where there's a very strong local population with a relatively small number of migrants, there might be more issues for migrants. They still feel very much discriminated against, can't get certain jobs, and their kids can't go to good schools. But I think, again, that is also changing. The government has policies in the smaller cities now that allow people to move there from the countryside and apply legally for local *hukou* registration. It seems that eventually these moves will get to the big cities as well.

Ms. OLDHAM-MOORE. Thank you, Leslie. I want to encourage the audience to visit our Web site. We have a lot on the household registration system and *hukou* reform. Wenchi Yu Perkins, of our staff, has done a great deal of work on that, and she's right there if you want to talk to her after the event.

Ms. SEGER. Hi. My name is Kayla Seger. I'm an intern for Senator Max Baucus. I had a question more about the Olympics and how that has impacted migrant workers. This is more directed toward Leslie. Sorry about all the migrant worker questions. But I just returned recently from China, and I lived in Beijing.

A lot of times, while they were preparing for the Olympics, they would absorb workers into the workforce who would do things like paint the sidewalks green to make it look like there was grass, plant trees for 100 meters on each side of Xingchao Mu, which is the big highway there, in order to kind of put out this impression that China was urbanizing and developing, but also becoming green.

So my question is more, how do these people who were absorbed into these roles, especially during the Olympics, how are they impacted by the recession, but more so, is the government helping them to get jobs now that the Olympics are over, and how is that carrying on long term—

Ms. OLDHAM-MOORE. That's a good question.

Ms. CHANG. Yes. Thanks for your question. I don't know specifically whether the government had any policies for this group of people. I would say, in general, the government isn't doing that much for these migrant workers. Again, I think the migrants just figure things out on their own. In terms of all the building that went on surrounding the Olympics, I think the migrants came and realized there was a huge opportunity, especially for the young men who work in the construction trades, and realized that we're going to have six months of really good work and then it's going to be finished.

So they know all these things. They know all the information they need to know about employment in terms of their own interests, and then when the time comes and the job is finished, then they might hear of another job in another place or hear of something else closer to home. So again, I just feel like they're very fluid and they just operate the way they always have, which is just to hear about work and pursue leads as they go.

Ms. OLDHAM-MOORE. Okay. Thank you. The last two questions: the gentleman there in the black shirt, and then Wenchi. Thank you.

Mr. OSH. My name is Tyler Osh. I'm here on behalf of the U.S.-Asia Institute. I have a question for Mr. Munro about the development of the rule of law in China.

It's been mentioned that labor rights legislation has been developing, but just because there's legislation, that doesn't mean it's actually going to be put to use. This is true for industrial societies, especially in the Korean labor movement. So I am just wondering, you mentioned the litigator program or project, right?

Mr. MUNRO. Yes.

Mr. OSH. And I'm just wondering, how much do workers understand their rights via this new legislation, and how do you create a space in which they can learn more about these rights so that they know they have the right to be—

Mr. MUNRO. Thanks. A very good question. Well, I think to begin with, the first part of the answer is that migrant workers in China increasingly do know that there are laws that protect them. Now,

I think most citizens, even in economically developed countries, including well-educated people, are not going to be experts in laws. They need a lawyer to explain the details to them.

But the awareness is sufficient if you know there are laws that protect you and you have a rough idea that employers should not be allowed to do X, Y, and Z to you. They shouldn't be allowed to withhold your wages indefinitely, or at all, and they also shouldn't be allowed to expose you to toxic chemicals, for example. They should give you a safe working environment. You should be entitled not to have to do forced, compulsory overtime to ludicrous levels such as 13-, 14-hour or even longer days. China's migrant workers know quite enough in this general area to know that they have rights. As you've suggested, the main problem with the new labor laws is there is no real will on the part of local authorities to enforce them, as Erin was saying. This is the big problem. There are lots of reasons why that is.

The central government, by the way, even following the impact of the economic crisis, which you would have expected perhaps to lead to a backtracking and soft-pedaling of these new laws, in the interest of keeping enterprises viable and avoiding anything that might make the economy even worse—they're not doing that.

The central government is sticking to the line that these are vital laws, they must be enforced. I think this reflects the leadership's keen awareness that unless they do something genuinely effective to halt the steady increase in labor protests, they're going to have a political problem, a stability problem in the country.

The central government, by and large, is committed to these laws. It is local governments that do not enforce them, and there are several reasons. One is that local authorities are afraid if they enforce the labor standards and law, they'll scare away investors. They'll go to the neighboring county or city—their competitors—and they don't want that. That's a big problem.

Another is that there's not enough labor inspectors. In fact there are pitifully few of them under the local labor agencies. It's just a massively under-funded, under-valued area of the administration in China. I think, Mary, you probably know this better than I do. In the whole of Shenzhen, where there are tens of thousands of factories, there's only a small handful of labor inspectors. How can they enforce the law?

Also, the inspectors are not paid enough, so they're vulnerable or susceptible to bribery by employers. They come in to inspect a factory and the owner will say, "By the way, there's a package there, feel free to take it away when you leave; no need to open it, you know what it is." All these things make enforcing the labor laws a big problem.

But what is crucial, though, is that even after the economic crisis began, workers themselves have not been scared off or discouraged from bringing labor dispute cases into the courts or to the labor arbitration committees—the administrative bodies that workers, by and large, have to go through first before they can sue, if suing is necessary.

The figures from the government show this. In 2008, after the Labor Contract Law was brought in, there was a 98 percent increase in registered labor disputes over the previous year. Of

course, the financial crisis only began last autumn, really. But hey, the latest figures show that for the first three months of this year, labor dispute cases have risen at a similar, or even higher rate than last year. So clearly workers are not being discouraged. They know their rights and they want to have them enforced.

What they don't have is proper legal advice and representation. The cost of hiring a lawyer usually outstrips what migrant workers can afford. Last year China Labour Bulletin adopted, through our Labor Rights Litigation Project, around 600 new labor dispute cases, and over half of them eventually had to go to the court litigation stage. In our experience, the average cost for a migrant worker to hire a lawyer—covering labor arbitration, first trial, and often also an appeal hearing—is about 5,000 yuan, which can be at least three months' total salary for many workers. An impossible amount. So they need access to legal aid, but it's just not available. There's huge overall demand from workers seeking redress and compensation from employers, but they mostly can't afford to make use of the available legal channels.

Ms. OLDHAM-MOORE. Thank you, Robin.

Very briefly, Erin. Then we'll go to Wenchi for the last question.

Ms. ENNIS. I just want to pick up on one quick point that Robin had made, and that was at the beginning of this year, as the recession was really starting to take place, we started hearing noises that some companies, and particularly some provincial governors, were potentially trying to go to Beijing to suspend implementation of a labor contract law. Our recommendation to the Chinese Government at the time was that that was the absolute wrong thing to do. The reason why you have a labor contract law is to guarantee that workers and companies have a predictable environment.

It shouldn't be based on what the economy is. And if you want to avoid something like what Earl has suggested, a race to the bottom, then you suspend your laws that protect workers and companies, so they know the playing field, at a time just because the economy isn't doing well. We've been very pleased that the law has not been suspended.

Ms. OLDHAM-MOORE. Thank you, Erin.

Wenchi Perkins, please.

Ms. PERKINS. I'm from the Congressional-Executive Commission on China. My question is for Leslie. I think we talked a lot about workers in factories. What about migrant workers working in informal economy such as nannies and the so-called *dagong mei*, there are more and more of them—what kind of protections are available for them? And I have another question for Erin. You've said a lot about American companies doing great things—raising the bar, higher standards. I wonder what American companies have been doing to help their counterparts, the Chinese companies, raise their bars or help them improve their policies to further the protection of workers. I think that Chinese workers have done a lot for us and the world, producing goods and supplying all kinds of materials.

Ms. OLDHAM-MOORE. Let me just say one thing. We're really over time now, so I know some of the panelists will stay after and talk to you if you have further questions.

Leslie, please address the informal economy.

Ms. CHANG. Yes. I didn't specifically focus on workers in these other industries that you're talking about. I think in general, most of these workers live in a gray economy in the sense that, as the other panelists mentioned, a lot of laws are being violated and things are being done under the table and they're being paid less and treated less well than the law requires. So I think in terms of their own experiences, they're just trying to cope in whatever ways they can to try to get the most out of their employer, or to find a better position if that doesn't work. But in terms of protections for women working as nannies, or hairdressers, or karaoke girls, I don't know specifically what's being done.

Ms. PERKINS. Thank you. Erin?

Ms. ENNIS. I'll be very quick and say that I don't know that necessarily the Chinese companies are going to be praising U.S. companies for what they do on this front, but what our companies are doing is requesting and advocating that laws be enforced across the board, regardless of whether you're a domestic company or a foreign company, and that's labor, environmental, health, everything.

And then also I think trying to drive home the point that the reason why there are labor, environmental, health, and safety standards isn't because the government wants to intrude upon what you're doing. It's because those things actually make you a better and more productive company.

It means that you have a product that is produced that does not have as many problems, and it means that your workers are actually able to work better because they're not being overworked in one period of time, with nothing to do later on. The reason for all of those protections actually is that it protects workers, but it also means that companies do better business. So hopefully, at least by example, we are bringing something to the table on that.

Mr. GROB. Well, I'd like to thank very much all of our panelists for this most illuminating discussion. Clearly, you've raised more questions than you've been able to answer, so that's a sign of a good program. I would urge you, please, all to stay on top of the postings on the CECC Web site: www.cecc.gov. We'll be following up on many of these issues.

Thank you all again. [Applause].

[Whereupon, at 11:35 a.m. the roundtable was adjourned.]

APPENDIX

PREPARED STATEMENT

PREPARED STATEMENT OF EARL V. BROWN, JR.

JUNE 19, 2009

INTRODUCTION

Thank you for inviting me to make this presentation.

My name is Earl Brown, and I am a U.S. practicing labor and employment lawyer. I have worked on Chinese and South-East Asian labor and employment law issues for the AFL-CIO's Solidarity Center for ten years. Prior to my work in Asia, I represented U.S. industrial unions and individual workers in all sorts of labor and employment law matters. I worked for such unions as the United Mine Workers and the Teamsters.

Because China is so vast and diverse, outsiders like me tend to look at China and see reflections of our own experience. The rapid pace of change—a phenomenal growth rate for the past ten years—and the diversity of and lack of transparency in China often defeat our earnest efforts at objectivity. What follows, therefore, is inevitably the perspective of one U.S. labor lawyer with practical legal experience advocating for industrial workers in both the United States and Asia. My views also derive from many years of work by colleagues in the American and international labor movements, and in the Solidarity Center, to promote autonomous trade unions and rule of law frameworks that protect workers' rights and interests in Asia. What follows is also accompanied by an awareness of the deterioration of worker rights enforcement in the West and that we are not always the model we would like to be, or represent ourselves to be.

I, along with many others, view China as the most significant experiment in industrial relations in the global economy. Along with issues of the environment, the "labor question" in China is a paramount one for China's own development, for labor movements around the world and for the shape of any global economic recovery. This question of worker voice and power in the Chinese economy encapsulates all the broader governance questions China must address to achieve sustainable and balanced growth. U.S. trade unions and worker rights advocates, as well as many employers and policy makers, are acutely aware that developing viable industrial relations arrangements in China is necessary to sustaining Chinese and global economic progress. It is recognized that China (and other countries) cannot continue to rely on business models that depend upon evasion of labor standards and norms, and that leave working citizens without channels to effectively redress basic workplace injustices or sufficient purchasing power to afford a decent life for themselves and their families.

THE CURRENT CRISIS

The impact of the current global economic crisis on China's workers is not yet clear. There is little reliable data that would allow us to tell the story. By the time this current crisis manifested itself in China in 2009, China had already survived wrenching changes as it opened to the global economy and privatized much of its industrial economy. Millions of older state enterprise workers were laid off in the 1990s and first decade of this century, just as millions of younger peasant workers were drawn to the new private sector. In three short decades, China created a huge new private sector employing millions of workers. As the state owned enterprises shed workers and the new private sector industrial geared up, so did labor strife. In the industrial North East, laid off state workers demonstrated for subsidies to survive in old age. In the new industrial zones throughout China, factory and construction workers hit the streets and ringed government offices to get back wages from employers. The dislocations occasioned by this new economic crisis may appear to many in China as yet more of the same—wrenching and continuous changes that can be survived. Many Chinese view these dislocations against a backdrop of astounding economic growth and modernization.

China's new private sector working class contains millions of young peasant workers migrating from rural areas to regimented work in the factories of China's export zones. This new class also includes millions of young skilled, hi-tech and service workers. As this century dawned, China's younger workers from both rural and urban settings began to harbor increasingly distinct notions of their rights as individuals and wage earners and became correspondingly assertive of those rights. Contestation for those rights at all levels—on the streets, in courts and in inter-

actions with often militaristic supervisors—increased, as did rights awareness campaigns by lawyers, women’s groups, legal aid societies and NGOs.

Young rural women, often only teenagers, waved labor regulations that had been faxed to them by legal aid or worker rights groups in the faces of supervisors demanding the full legal measure of wages. Desperate workers often hit the streets, tying up traffic. Sometimes, workers followed abusive supervisors to their homes and exacted private vengeance. Young workers began to quit employers that offended them, or failed to accommodate their needs for scheduling or promotions. Younger workers began to “shop” for employers. Higher skilled and semi-professional workers also sought to bargain with employers and even, in the case of airline pilots, struck. As did dock workers and taxi drivers. The range of labor disputes expanded beyond recovering wages due but not paid, expanding to demands for improvements in wages, hours, working conditions and status and treatment. The intense level of labor strife in China required some responses by employers and government.

To make the issue more pressing, campaigns by consumer, human rights and trade union groups in global export markets amplified and fueled labor controversy inside China. All this labor strife became a staple of both the Chinese and international media. In response, a significant number of employers in China, both foreign and domestic, and international brands, began programs of social work, relief and compliance with Chinese law.

Yet, in all this furious activity, the entity charged with labor rights enforcement and giving voice to workers’ demands and interests, the All China Federation of Trade Unions (ACFTU), seemed largely silent and absent in the lives of workers. Although politically influential at the top, the ACFTU has not represented or defended workers in their actual struggles with employers. At least in other industrializing countries, large-scale industrialization and the accompanying concentration of masses of industrial workers with grievances has pushed workers into trade unions. Programs of social work and legal compliance alone were not enough to meet the level of controversy generated by unremediated industrial grievances. In those situations, employers and government were compelled to recognize and bargain with autonomous worker voice expressed in trade unions. There is little reason to think that industrial China will prove to be an exception to the growth of worker voice and the emergence of bargaining.

By the time the 2009 economic crisis became manifest, China had already launched a series of controversial labor law reforms that strengthened the hands of ordinary workers vis-à-vis employers. Those labor law reforms, enacted in 2008, did not go so far as to create a legal and industrial relations framework compliant with international labor law. Nonetheless, the 2008 reforms do lay the basis for enforcing some fundamental labor standards and have therefore evoked passionate employer opposition in a labor relations culture that already overwhelmingly favors the employer and is rife with employers who make labor law avoidance central to their business operation.

In the 2008 labor law reforms, China sought to define the private sector “employment” relationship—what is an employer and what is an employee and what are their inescapable obligations and rights. This is the fundamental question in labor law, as most obligations and rights—ranging from the “employee’s” duty to safeguard the employer’s intellectual property interests to the “employer’s” duty to honor labor agreements when corporations are transferred—hinge on the definitions of these two words. The centrality of these definitions is confirmed by the great efforts expended by employers to structure industrial relations so that employers are not “the employers” but rather “contractors” or “purchasers” of naked assets and employees are not “employees” but “independent contractors,” “subcontractors,” “interns,” “temps” or other legal creatures with lesser rights in the workplace.

The linchpin of the 2008 reforms is the Employee Contract Law. That law was drafted to remedy specific socially disruptive labor abuses such as wide-spread wage arrearages, manipulations of corporate forms to shed labor law obligations for wages and benefits, and devices to classify workers as temporary or contract workers in order to avoid affording them the full legal protections due employees. The Contract Law lays down, for the first time, basic, universal norms: all workers, be they peasant workers, “temps,” contract workers, apprentices or probationary employees, regardless of geographical location or industrial sector, are entitled to certain protec-

tions and possessed of certain rights. Thus, the Contract Law protects most private sector workers.¹

The Contract Law also expresses an unambiguous command to judges, arbitrators, mediators and bureaucrats to resolutely enforce the employers' obligation to pay legal and contractually established wages in full and on time. This law further reflects a defined national policy favoring job security by erecting protections against arbitrary dismissal, by promoting long-term employment arrangements and by requiring due notice of and consultation about layoffs (retrenchments). The Law creates a clear right to severance pay for most workers with any seniority. The remaining 2008 legislative enactments seek to channel labor disputes into credible and efficient avenues for dispute resolution—against the backdrop of a judicial and administrative system that is a work in progress. Taken together, these reforms also define and expand the ACFU's role in representing workers in interactions with employers over a broad range of issues.

Some employers in China, in the region and in the West have made alarmist forecasts about the economic impact of these laws on business. At the same time, other employers and their lawyers have begun to stress the need for strict adherence to Peoples' Republic of China (PRC) labor laws and regulations, and forthrightly eschewed industrial relations policies founded on strategies of law avoidance and impunity.

Whether this policy of strict adherence to legal norms succeeds in fostering compliance on a significant scale remains to be seen. Will a sufficiently large group of employers implement the advice of their lawyers or will they continue to be tempted by strategies of avoiding labor law obligations? The devolution of labor law obligations through chains of contracting remains a significant obstacle to compliance as well.

Despite these questions, a significant group of employers and employer-side labor lawyers have recognized what many Chinese policy makers and worker rights advocates also understand: that labor law violations cannot continue as the order of the day. Many foreign investors and brands could not sustain the level of controversy sparked by production and business models premised on evasion of fundamental labor standards and norms. These forces, against the backdrop of labor strife, combined to propel the legal reforms described above that stiffened basic labor rights, charged the union with discrete and important functions in protecting workers rights and interests and provided avenues for redress of industrial grievances. Authoritative voices in the Western and Chinese employer bar, the set of lawyers advising employers operating in China, have now firmly counseled strict compliance with Chinese labor law as essential to sound business operation.

Predictably, the 2009 crisis has prompted some employers and policy makers to call for suspension or outright repeal of the prior year's reforms. Just as the initiation of labor law reforms in 2008 sparked a broad and open debate in China, and followed years of contention about the role of workers in China's new society, the 2009 economic crisis has set a new stage for rehearsals of the "labor question." The signs appear to augur for a "Singapore" solution. During downturns in Singapore, there is a public ritual of sacrifice—ministers, among the most highly paid in the world, cut their salaries, managers do also, and government directed union announces corresponding cuts and reductions in hours. Even furloughs. The objective is to freeze or roll back wages while preserving jobs until the crisis passes. The Chinese often cite this Singapore model and there seems to be a temporizing truce now in China that entails avoiding mass layoffs in favor of wage and hour reductions and preservation of jobs, but no outright repeal of the 2008 reforms. However, it is clear that the economic crisis had caused export and related employers to shed millions of jobs by early 2009.

Lawyers representing multi-national employers in China report that this picture is varied and localized—in some regions with more active official union presence or in sectors where employers seek to avoid employee turnover, these "Singapore" bargains are negotiated with the tools provided the union by the 2008 laws. Workers are furloughed or work light hours rather than being laid off. In other areas, local employers and their allies in the official union ignore the 2008 laws. Some local officials have gone a long way in assuring employers and investors that laws, criminal or civil, should not trouble them. For example, lawyers working with Chinese counterparts on securities and corporate regulations report that Chinese regulators have assured certain investors that they need not be concerned about enforcement actions or prosecutions in any area of regulation ranging from the environment to securities law, and of course, including labor.

¹I am putting aside the application of this law to public employees and state-owned enterprise employees.

There is also the question of the millions of peasant workers who went home last January during the Chinese New Year holiday and have stayed home. Will the countryside absorb them? Will these be the only peasant workers in world history to return to the farm and stay there while young? And what about the millions of young Chinese graduates leaving school this year for this job market? They are smart, educated and have marked ambitions about how to live their lives. Will they access jobs and salaries commensurate with their expectations? These questions, however, should not cause an underestimation of the demonstrated capacity to endure massive economic dislocation in China, or of the agility of the governing party. China in the past thirty years has faced and survived massive economic upheavals.

To my mind, the current crisis presents a more intense version of the long standing internal debate about industrial relations and the power of workers in China. While there are voices calling for repeal of the 2008 reforms, there are other voices inside China that recognize that workers need rights, voice and enhanced worker purchasing power if socially sustainable development is to occur. That these voices inside exist is demonstrated by the 2008 reforms, and the enhanced space for worker rights and collective bargaining opened by those reforms. The question for us is how to engage those Chinese actors inside China calling for worker rights in a spirit of equality, deference to their agency and with mutual respect.

A FOCUS ON INTERNAL CHINESE PRIVATE SECTOR INDUSTRIAL RELATIONS AND WORKER RIGHTS FRAMEWORKS

Ascertaining how China will deal with the current crisis and its impact on workers requires an assessment of the state of worker rights enforcement and the capacity of China's own institutions to provide worker voice. China's industrial development has progressed to the stage where private-sector industrial relations expertise is required.

Given the level of labor strife in China, even the Chinese government recognizes that there is a need for private sector institutions to express worker power in the market economy so that peaceful and credible solutions can be negotiated directly by workers and employers rather than on the streets. This means that external worker and human rights advocacy and other external programs should now be supplemented by focused and practical industrial relations capacity building in the private sector. Part of this focus should be on how the ACFTU can adapt to the demands of representing workers vis-à-vis employers in the private sector.

This industrial relations phase of China's development is a stage beyond discrete and localized legal aid experiments, the often sporadic support for labor rights NGOs, concocting better human resource systems or dissemination of media reports about labor abuses. Rather, China must now seriously contemplate industrial relations: the continuous negotiation of industrial and labor grievances in the private sector through autonomous and durable Chinese institutions capable of representing workers and employers in a balanced fashion.² The current crisis just makes this long-time need more acute, and this is no time for going backwards. Otherwise, a period of aggravated disruption and strife may be the result of a retreat as workers seek redress.

We do have reservoirs of unique expertise in the U.S. labor movement and industrial relations institutions in the unionized sector that can be of significant utility in today's China. In the pre-New Deal United States, we experienced labor strife and violence as intense as any in present day China. A long debate over the role of workers, their unions and the state in our society resulted in a framework for negotiation of labor disputes and the creation of an industrial relations system that held sway for a long period.³

This system created a rich experience in plant, enterprise and sectoral dispute resolution that, despite limitations, enhanced the wages and purchasing power of industrial workers and was consistently capable of solving industrial problems peacefully. While we surely cannot plant the American flag in Chinese industrial relations, and should therefore never want to, this history has left us with expertise and skills which can be of use to Chinese worker rights actors in the current debate over the role of workers and the union in China in this crisis and thereafter.

²In this respect, I do not mean to advocate for the notion sometimes ascribed to U.S. industrial relations proponents that labor relations must be conflictual and wholly severed from the state. The state is always central to this bargaining, because without legal pressure and appropriate state policy, employers will not bargain with workers.

³William E. Forbath, *Law and the Shaping of the American Labor Movement*, Harvard University Press, 1989, p. 10–36.

Unions and Labor and Social Bargaining

China's work force is not monochromatic. It includes millions of "unskilled" industrial workers; many are internal migrants of marginal legal status and limited access to schools, health care and housing. It also includes millions of high-tech workers and knowledge workers, service employees, workers in supply chains for foreign brands, and state enterprise workers and civil servants. Labor relations at U.S., Australian and E.U. companies are distinctly different from labor relations in Japanese companies, which in turn are different from labor relations in overseas Chinese and Korean companies. Many Chinese workers are under the age of 30, and have distinctive attitudes toward work and their rights at work and in society.

Each of these segments confronts different problems; in the private sector, however, too many workers do not have an accessible union to represent them. China has a web of official union institutions that parallel the state structure. The official union, ACFU has not yet attained a wide presence in the private sector.

However, the 2008 law reforms afford this union a huge role in labor relations. Not only does the union have an important advisory and gatekeeper role in formulating labor law and regulations, it also has an invigorated mandate to collectively bargain for workers, including migrant workers. Curiously, the 2008 labor law reforms cover most workers within the boundaries of formal employment. This is in contrast to a global tendency to create exceptions to laws governing formal employment of such sweep that they undermine labor law and support the creation of a precarious and vulnerable work force without rights and collective voice. The ACFU is now specifically charged with insuring the rights of all workers covered by the law. But the law has not created an institutional stage for this larger, encompassing role. China is also staging Hamlet without the Prince of Denmark, because it has not yet developed the necessary autonomous worker institutions at the grass roots to implement collective bargaining.

At the same time, China has experienced a significant growth of worker advocacy institutions and voices outside the union, in NGO worker centers, in GONGOs,⁴ in legal aid societies, in universities and in government regulatory agencies. These articulate voices for worker rights often provide a welcome contrast to quiescence in the official union, and may spur to the union to assume a more active role in worker representation and labor rights enforcement. Assuming a more active representational role in labor relations, however, will cause the official union to change profoundly. At a minimum, it will need to establish a grass roots presence; it must consult with and secure the allegiance of members; it must have a research department and it must organize employers under agreements in relevant labor markets, sometimes from the bottom up rather than from the top down.

The importance of this new role for the union in this downturn is clear. The union has invoked Article 41 of the 2008 Employee Contract Law to require prior notice to it by the employer of all layoffs without exception. The union is further using the extensive notice and consultation provisions of Article 41 (governing mass layoffs of 20 employees or over) to forestall and to initiate bargaining over layoffs in this downturn.

Article 41 requires extensive consultation with the union and workers prior to any "mass lay-off," and protects certain older and ill employees from layoff altogether. Via this Article, the union in some places is forcing employers to bargain toward a Singapore solution—reduced hours and/ or furloughs instead of unilateral mass dismissals. Although this economic environment has forced many a Hobson's choice, the law here does force the employer to bargain with the union and workers before initiating terminations. The employer cannot act unilaterally. Bargaining and labor negotiation is thus occurring prior to the creation of viable local unions and other similar industrial relations institutions. We cannot foreclose the possibility that the law will force the union into a more active representational role.

Our labor movement can assist in enhancing the capacity of interested officers and staff of the ACFU union and other worker rights advocacy groups to begin to step into the industrial relations roles assigned unions and workers by the 2008 laws:

- We can provide expertise on structuring unions internally to equip them for the functions of organizing, bargaining, and rights advocacy;
- We can provide expertise and collaboration on occupational health and safety (OSH) technical issues, and on establishing worker capacity to enforce fundamental occupational health and safety norms via worker committees;

⁴Governmentally authorized, funded and supervised "NGOs."

- We can share models on how to represent public sector employees;
- We can help enhance the capacity of activists to provide legal and other assistance to injured workers and their families, and the families of deceased workers;
- We can provide expertise on researching labor markets and employers;
- We can provide training in bargaining;
- We can provide training in organizing;
- We can provide models for broad rights advocacy;
- We have expertise in the distinct field of representing high-skilled technical workers and younger workers in service industries and working as contractors.

Labor movements in the United States and elsewhere are uniquely equipped to provide such assistance as they possess the specific and time tested bargaining and organizing expertise that academics, development firms and NGOs often lack. Mobilizing this experience during this crisis to assist internal actors advocating for worker rights in the Peoples' Republic of China will enable us to participate in addressing, in a targeted way, the universal problems of the global economy—lack of stable employment, competition based on labor law avoidance and lack of worker voice and purchasing power—as well as assist our Chinese counterparts in addressing those very problems in China.

China also needs a labor movement that is also capable of acting outside the formal employment relationship to advocate for and to represent marginalized informal sector workers. The U.S. labor movement has made some strides in giving voice to informal and marginalized wage earners by establishing worker centers and networks of advocates and service providers that operate outside traditional craft and other formal union categories. Interaction between U.S. and Chinese advocates for marginalized workers would be helpful to both sides. In this respect, the Solidarity Center has brought Chinese union lawyers and labor rights activists to U.S. worker rights centers and initiated a dialogue which we hope will continue on how to provide voice to and enforce law on behalf of marginalized workers.

We should understand that E.U. and Japanese models of industrial relations are also relevant, and that we are not internal actors in China. Nonetheless, Chinese discourse about industrial relations has reached the stage where concrete private sector trade union expertise and skills are needed to assist in building capacity in Chinese labor institutions of all kinds—in the formal union, in worker centers, NGOs, and in legal aid institutions. This crisis has established that economics premised on the race to the bottom—on relentlessly depressing labor costs and living standards—is not sustainable. One answer to this imbalanced global economy is an invigorated Chinese labor movement. We should seek a role in reversing the race to the bottom with the aid of invigorated labor movements in China, both for the sake of U.S. workers and Chinese workers. This necessarily entails working appropriately with counterparts in China.

LABOR, LAWYERS AND THE RULE OF LAW, EVEN IN CRISIS TIMES

The labor issue in China is also at the heart of a broad debate about human rights and the rule of law. Until 2008, many employers in China simply discounted labor law compliance. Other employers under imperatives to comply strictly with PRC law, such as foreign employers with their own legal requirements to comply with Chinese law, or those subject to consumer pressure, were constantly undermined competitively by employers who violated Chinese labor norms. This fueled a larger problem: a culture of impunity with regards to compliance with the law. While aspects of labor and employment law, such as the technicalities regarding workers' compensation and work place health and safety may seem arcane, they are critical in China, where industrial death, disease and injury remain at high levels. Unregulated labor competition means that workers are maimed and slaughtered to save on labor costs. Insuring that effective OSH and worker compensation laws and regulations are in place and enforced is central to a rule of law culture in China as elsewhere.

U.S. union lawyers and activists can assist Chinese counterparts in union, NGO and legal aid society staffs with concrete and particular practice-based advice on infusing rule of law norms into workers' compensation structures, into regulation of work hazards in dangerous industries such as mining, and into providing for social security and protection within the framework of a private economy.

Further, U.S. union lawyers and their colleagues can engage in a continuous dialogue on Chinese labor law compliance with U.S. and other international lawyers who represent multinationals in China. The Solidarity Center has initiated just such a dialogue through participation in relevant ABA committees and finds that foreign lawyers representing employers in China have openly committed to advising

compliance with PRC labor law and regulations. This is a major step—in which responsible employers and responsible employer counsel play an indispensable role—toward pushing back the culture of noncompliance and impunity in labor law. Foreign employers have thus often become a force for labor law compliance. Of course, there are many countervailing examples of foreign employers violating basic labor norms.

As noted above, younger and more highly skilled workers in China seem to part of the growth of regional “civil” rights movement among younger workers in East and South East Asia. This movement arises from expectations about autonomy and individual choice that are becoming widespread among all younger workers, and among more skilled workers like IT workers and airline pilots. Many elements of the 2008 labor law reforms address the needs of young and more skilled workers, and they have been used by those workers, both spontaneously and with assistance of union and legal aid staff. Union lawyers and staff in the U.S. movement have attained considerable expertise in representing and reaching out to such workers and can be of assistance.

There is a widely acknowledged problem in China with enforcement of judgments. In this respect, U.S. trade union lawyers can assist Chinese counterparts on the staff of unions, legal aid societies and NGOs to enforce wage and worker compensation judgments. In enforcing judgments, workers’ lawyers may find allies in the business community who also encounter this very problem.

The need to include the labor movement in the core of rule of law dialogue has become even more acute given the massive increases in international and internal migration of workers in the past decade. These migrant peasant-workers are invariably legally disenfranchised and cut off from the most basic rule of law institutions. The international labor movement and its allies realize that the rule of law cannot co-exist with huge populations of marginalized and abused migrant workers cut off from justice institutions and any means of redressing fundamental deprivations of human and worker rights. The U.S. and international trade union movements can play, by virtue of their institutional networks, a broad role in providing forums and assistance to Chinese worker rights advocates regarding enforcement of rights across national boundaries, against foreign employers, or in enforcing the rights of the ever increasing number of Chinese guest workers abroad. No other institution can match the capacity of the international labor movement to reach across the globe and down into societies through affiliates.

CONCLUSION

We should assist Chinese worker rights advocates in unions, law faculties, NGOs and legal aid societies to take up the invitation presented by 2008 labor law reforms to implement the mandate for collective bargaining. In doing so we will be contributing in a modest way to solutions for Chinese workers and workers everywhere in this global crisis sparked by a race to the bottom that has gone too low.

Our assistance should be delivered with deference to the agency of our Chinese colleagues, and with complete awareness that only the Chinese will determine the contours of their labor relations system. Since this global crisis has exposed “Western” and Asian workers, and workers everywhere, to the dire effects of the unregulated race to the bottom, we can contribute to overcoming the crisis by technical assistance in the area of industrial relations and collective bargaining.

