

HUMAN RIGHTS AND THE RULE OF LAW IN CHINA

HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED ELEVENTH CONGRESS FIRST SESSION OCTOBER 7, 2009

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HUMAN RIGHTS AND THE RULE OF LAW IN CHINA

WEDNESDAY, OCTOBER 7, 2009

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:04 p.m., in room 628, Dirksen Senate Office Building, Senator Byron Dorgan (Chairman of the Commission) presiding.

Also present: Senator John Barrasso; Representatives Timothy J. Walz; Christopher H. Smith; Michael M. Honda; and David Wu.

OPENING STATEMENT OF HON. BYRON DORGAN, A U.S. SENATOR FROM NORTH DAKOTA; CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chairman DORGAN. We're going to call the hearing to order. This is a hearing of the Congressional-Executive Commission on China. The U.S. House is currently in the middle of a vote, but my colleagues from the House and Senate will join us.

The Commission voted today on the adoption of its 2009 report to be released next week. The Commission issues a report each year, as many of you know, to the Congress and to the President on the subject of human rights conditions and the development of the rule of law in China.

In connection with today's vote, the Commissioners asked a distinguished group of witnesses to join us today to assess China's efforts in the witnesses' areas of expertise, whether it is environmental protection, criminal defense, or civil rights. We will also hear the perspectives of the witnesses on how the United States might best engage and incorporate human rights and the rule of law issues into its overall agenda with China.

In its 2009 Annual Report, the Commission expresses deep concern about continued human rights abuses and stalled rule of law development. It notes with concern that some Chinese Government policies designed to address social unrest and to bolster the Party's authority are resulting in a period of declining human rights for Chinese citizens.

Serious abuses result in part from the absence of basic protections available to citizens through the legal system.

A stable China with a robust commitment to the rule of law and human rights is in the national interest of the United States, and also very much in the interest of the people of China.

In fact, I believe that advancing human rights concerns with China is more important now to the national interests of the

United States than ever before. The reporting of this Commission makes that crystal clear. Press censorship in China makes it possible for toxic food and public health crises to spread globally. Abuse of low-wage labor compromises goods that come to the United States, which have harmed American consumers, as well as an untold number of Chinese consumers, and these abuses are well-documented.

The harassment of whistleblowers and human rights lawyers and the suppression of criticism and dissent remove internal checks against environmental damage that not only hurts ordinary Chinese citizens, but has a global impact as well. The shuttering of law firms that are perceived as challenging the government removes important avenues for justice for the poor and the most vulnerable.

To maximize progress on food safety, product quality, even clean air, the Chinese Government must engage as allies environmental whistleblowers, a watchdog press, the NGOs, and human rights lawyers. They cannot continue to repress them as enemies of the state.

I want to briefly mention one human rights lawyer who has had the courage and the tenacity to take on politically sensitive cases, and then as a result, has been branded an "enemy of the state." I am talking about Gao Zhisheng, a pioneering Chinese human rights lawyer who went missing in February 2009. Gao represented some of China's most vulnerable people. They included exploited coal miners, underground Christians, and Falun Gong members. He believed in the power of the law. He sought to use the law to battle corruption, to expose police abuses, and to defend religious freedom.

I have written to the Chinese Government about Gao on a number of occasions and have met with his wife earlier this year here in Washington, DC. I understand that Mr. Kamm may have some information from the Chinese Embassy which it yesterday asked him to relay to me, and I look forward to hearing what you have to report, Mr. Kamm.

China has also taken many potentially positive steps in recent years that must be noted. The government has enshrined in its Constitution the state's responsibility to protect and promote human rights. China recently adopted new labor protections and relaxed restrictions on foreign journalists inside China. This year, the Chinese Government issued a national human rights action plan that uses the language of human rights to cast an ambitious program for promoting the rights of its citizens. The government now needs to translate words into action. It is one thing to write something down, another thing to represent it as having importance, yet it is quite another practice altogether to decide that you are going to abide by that which you have presented to the world.

Let there be no doubt, I have enormous respect for the country of China. I respect the progress that China has made by lifting many people out of poverty. I admire its rich and remarkable culture and its immensely talented people. But I firmly believe that its people ought to be able to be free to speak their minds and to practice their chosen faiths without fear. Too often that is not now the case in China.

So to help us better understand human rights conditions and the development of the rule of law in China, we are going to hear from four witnesses. John Kamm is founder and chairman of the Dui Hua Foundation. He started his own chemical company with offices in Hong Kong and China in 1979. He served as the Hong Kong representative of the National Council for U.S.-China Trade from 1976 to 1981. He was president of the American Chamber of Commerce in Hong Kong in 1990. He serves as a director of the National Committee on U.S.-China Relations. In 1999, he founded the Dui Hua Foundation. He also directs ongoing research for the Project in Human Rights Diplomacy at Stanford University's Institute for International Studies.

Mr. Kamm, we appreciate your being here today. You have a wealth of experience, and we are anxious to hear from you.

Elizabeth Economy is a C.V. Starr Senior Fellow and Director for Asia Studies at the Council on Foreign Relations. She has taught at Columbia University, Johns Hopkins University's Paul H. Nitze School of Advanced International Studies, and the University of Washington's Jackson School of International Studies, and now serves on the board of the China-U.S. Center for Sustainable Development. Dr. Economy's publications include "The River Runs Black: The Environmental Challenge to China's Future," "China Joins the World: Progress and Prospects," and "The Internalization of Environmental Protection."

Dr. Economy, we are pleased that you are here as well.

Donald Clarke is a Professor of Law at George Washington University Law School. He specializes in modern Chinese law, focusing particularly on corporate governance, Chinese legal institutions, and the legal issues presented by China's economic reforms. He has practiced law at the New York firm of Paul, Weiss, Rivken, Wharton & Garrison. He has lived for extended periods of time in China.

He is a member of the Academic Advisory Group to the U.S.-China Working Group of the U.S. Congress, and has served as a consultant to a number of organizations, including the Financial Sector Reform and Strengthening Initiative, which is called FIRST, the Asian Development Bank, and the Agency for International Development.

Mr. Clarke, we are pleased you are here.

Finally, Mr. Gardner Bovingdon, Assistant Professor at Indiana University in Bloomington. He has taught at Cornell, Yale, and Washington University in St. Louis. His research interests are politics in contemporary China, the history of modern China nationalism, and ethnic conflict. His book will be published by Columbia University in the spring of 2010, "Strangers In Their Own Land." We welcome all of the witnesses today.

Before I call on my colleagues, I want to take one moment to recognize another person in this room, and that is Mr. Fang. At the Commission's June 4 hearing, Mr. Fang Zheng, who recently arrived from China, was confined to a wheelchair. He lost both of his legs when he was run over by a tank in Tiananmen Square in 1989; an extraordinary, courageous citizen of China who, the last time he was with us, did not have legs. This evening at the Capitol, he will dance with his wife at a party in his honor. This is due to the generosity of a number of American good Samaritans who have

provided him with a new set of legs. We are so pleased you are here. Would you stand and be recognized? [Applause].

Mr. Fang, thank you very much. We use the word “courage” without always understanding exactly what it means, and the loss of your legs in 1989 in Tiananmen Square, exhibiting unbelievable courage in standing for the destiny of people being able to speak for themselves and act for themselves and choose their own destiny, that is courage. We appreciate your being here.

Let me call on my colleagues. Congressman Walz?

STATEMENT OF HON. TIMOTHY J. WALZ, A U.S. REPRESENTATIVE FROM MINNESOTA; MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative WALZ. Well, thank you, Chairman Dorgan, for your leadership.

Thank you to all of our panelists for being here. We truly appreciate this. The importance of getting together and the importance of this Commission I do not think can be over-stressed, and I, too, extend my welcome.

Fang Zheng, thank you for being here. When you were here in June, my only disappointment was that we did not have as many people here or as many cameras to tell the story, and to tell the story to our young people of what happened.

As we as a country develop our relationships with China, it is critically important that we develop them not just on the economic side of things, we develop them on the environmental side, on the moral side, the human rights side, and all of those together, trying to understand one another in a way that betters our societies for everyone.

Yesterday, I had a unique opportunity to spend a little over an hour with His Holiness the Dalai Lama, and spoke extensively with him. When I asked the question about this Commission and the work that we are doing in here and the report that we publish, I said, “Is this helpful for furthering democratic principles and human rights principles?” And he didn’t miss a beat and said: “Very helpful. Keep doing your work. Keep doing the work and keep publicizing it.” He said, “Not just for us, not just for Tibet, but for China, for the People’s Republic of China, to further their growth to bring them into the community of nations fully and for us to understand one another.”

So I am proud of the work we do in here. I think that the Chairman has summed it up. The group that met with the Dalai Lama is the China Working Group in the House, and their motto is, kind of, it is a group of people that aren’t panda-huggers or dragon-slayers, they’re folks that want to get this thing right in our relationship. I’m very proud of the work of this group of staying consistent with our principles on human rights, from trade, to the environment, to everything else.

So with that, Chairman, I thank you again and I yield back.

Chairman DORGAN. Thank you.

Congressman Smith?

STATEMENT OF HON. CHRISTOPHER H. SMITH, A U.S. REPRESENTATIVE FROM NEW JERSEY; RANKING MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative SMITH. Thank you very much, Mr. Chairman. I would ask that my full statement be made a part of the record, and I will be very brief.

Chairman DORGAN. Without objection.

Representative SMITH. Mr. Chairman, I am afraid that what we have seen in China is not the emergence of rule of law, but rule by law. All of China's developing legal structures, regulatory institutions, and bureaucratic agencies do not amount to real law, since the Communist Party and the government are not subject to them. These structures are tools the Party and the government use to more effectively control people, people who want to worship freely, found families, live as Tibetans or Uyghurs, access the global Internet, bargain collectively, or choose their own government.

Reviewing this Commission's report, I was struck by both of these things in respect to one of the Chinese Government's most neglected victims, women. With the coercive One-Child Policy, the Chinese Government itself intrudes in a deadly fashion into the private life of every Chinese woman, not numberless millions, but each woman with her own dignity, often distorted or destroyed by the government in ways we can hardly imagine.

Few in the West, I believe, understand what a massive and cruel system of social control the One-Child-Per-Couple Policy entails, a system marked by mandatory monitoring of women's reproductive cycles, mandatory contraceptions, mandatory birth permits, coercive fines for failure to comply, and in some cases, forced abortion and forced sterilization.

Women who bear a child without a birth permit can be fined up to 10 times their annual income, that is both husband and wife, and those who cannot pay the fine can be forcibly aborted or their homes smashed in. Group punishments are often used to socially ostracize women who manage to bear a child without a permit. Their colleagues and neighbors are denied birth permits as well. If a pregnant woman goes into hiding, her relatives are jailed.

In every country in the world the male suicide rate is higher than the female, except China, where the female suicide rate is three times higher than the male. The estimates are that there are some 500 women who commit suicide every day in the People's Republic of China. This is to say nothing of gendercide, sex-selection abortion, to the point that in some provinces, for every 100 boys today, only 71 girls are born. Here, too, we see the dangerous development of rule by law, the development of inflated structures which continually elaborate rules and regulations of repression, and even shamelessly posting them on the Internet.

Mr. Chairman, I do ask that the full statement be made a part of the record. I asked that already. Again, I want to thank you for having this hearing. I think it is very timely and important.

Chairman DORGAN. Thank you very much, Congressman Smith.

Mr. Kamm, thank you for being with us. You may proceed. Your entire statements will be made a part of the permanent record.

[The prepared statement of Representative Smith appears in the appendix.]

STATEMENT OF JOHN KAMM, FOUNDER AND CHAIRMAN, DUI HUA FOUNDATION

Mr. KAMM. Mr. Chairman and distinguished members of the Congressional-Executive Commission on China, it is good to be with you again.

In 2008, more than 1,600 people were arrested for endangering state security in China. That is more than double the number in 2007. Endangering state security is the most serious political crime in China, but it is by no means the only crime for which people are detained by China's political police. There are probably more people in China imprisoned today for political crimes since the protests of 1989, and in light of the disturbances that have rocked Xinjiang since July, the number of political prisoners is expected to rise again this year.

Despite a relentless search for the names of those imprisoned, we know relatively few of them. The Chinese Government rarely discloses this information. When they do, or when NGOs get a hold of their names through other means, these names find their way onto prisoner lists submitted to the Chinese Government during the human rights dialogues that the Chinese Government holds with foreign governments.

Prisoners who are on prisoner lists or whose names are raised in meetings with Chinese officials tend to be better treated and released from prison earlier than those whose names are not known and not raised. They must remain at the center of our human rights dialogue with China, another round of which is due to take place either before the end of the year or early next year.

It is vitally important that the State Department submit a detailed, focused list of cases of concern well in advance of the next round of the dialogue. We should use cases to illustrate systemic issues, like reeducation through labor. Interestingly, and for reasons that are not clear, the number of people serving sentences in these camps appears to have dropped over the last year.

Over the last 12 months, Dui Hua has obtained information from central and local governments on 60 individuals detained in political cases. In terms of the quantity and the quality of this information, it represents an improvement over previous years. Among other findings, Dui Hua estimates that there still are around 20 people in prison for what they did on June 4, 1989. We urge the Chinese Government to release them.

The effort to win the release of prisoners relies not just on the presentation of lists and the raising of names in meetings with Chinese officials. Over the last two years, Dui Hua has urged the Chinese Government to issue special pardons to long-serving prisoners—this is called for under China's Constitution—to mark either the Olympic Games or the 60th anniversary of the People's Republic of China.

Now, the Standing Committee did not issue a special pardon, but over the last few days we have learned of some relatively large-scale grants of clemency in the provinces to mark the 60th anniversary. It is not known at this point whether or not any political prisoners benefited from this clemency, but we have recently learned of several sentence reductions for political prisoners in August 2008 that were apparently linked to the Olympic Games.

In my testimony, I discussed the legal experts' dialogue between the United States and China. Three sessions of this dialogue were held between late 2003 and mid-2005, and they focused on sentence reduction and parole for prisoners convicted of counterrevolution and endangering state security. It appears that these talks have led to a relaxation of the strict controls over sentence reduction and parole for these prisoners, but they are still discriminated against. The issue should be taken up again when the legal experts' dialogue resumes.

Eliminating discrimination against political prisoners represents one of the best ways to increase the number of releases. Although China removed the crime of counterrevolution from the criminal law in 1997, there are still as many as 100 counterrevolutionaries still in prison. This contradicts Article 15 of the International Covenant on Civil and Political Rights [ICCPR]. Urging China's ratification of the ICCPR with as few reservations as possible should be a high priority of our human rights diplomacy with China. We should use our membership in the Human Rights Council to pursue this goal.

There have been a few positive steps in the direction of greater transparency. I have already mentioned the willingness of local authorities to provide information on prisoners. In some provinces, courts have begun releasing verdicts. Foreigners can attend trials in China, but rarely are allowed to do so.

The number of executions remains a state secret, but the recent admission that executed prisoners are the source of 65 percent of all organ transplants in China—and there were 10,000 transplants last year—is the first time that the Chinese Government has acknowledged that thousands of people are executed every year.

I am going to move to the end of my oral statement here. I would say that reducing the use of the death penalty in China should also be an important goal of our human rights policy.

I end my written statement by informing the Commission of recent developments in the area of juvenile justice. Building a comprehensive system of juvenile courts and ensuring protection of the rights of juveniles by passing a juvenile criminal procedure law are top priorities of China's legal reformers. Dui Hua hosted a delegation of senior judges to study the U.S. system, and we have been invited to send a return delegation to China next year. We can learn from each other in certain areas, and it is important to find areas where we can cooperate. If we do, I suspect talking about those areas where we do not agree will be easier.

I have enjoyed a close working relationship with this Commission since its establishment. I am very pleased that you invited me to testify again today. Thank you very much, and I look forward to your questions and comments.

Chairman DORGAN. Mr. Kamm, could you just mention once again the numbers on organ transplants? You talked about, 65 percent, or 10,000?

Mr. KAMM. Yes. On August 26, the Ministry of Health stated that prisoners contribute 65 percent of organs transplanted in China. There are 10,000 transplants a year. Now, a single prisoner, executed prisoner, might—and in fact often does—have more than one organ that is transplanted, so we cannot just use the 10,000

transplants and come up with 6,500 executions. We estimate that about 5,000 people will be executed in China this year. That marks a reduction; it is significant, but it is still 5,000.

Chairman DORGAN. All right. Well, thank you for the amplification.

Let me also say to you that you have been extraordinarily helpful to the Commission.

Elizabeth Economy is—I have already introduced you—the top expert in the United States on environmental protection and climate change policies in China, so we are really pleased that you’ve joined us. You may proceed.

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

STATEMENT OF ELIZABETH C. ECONOMY, C.V. STARR SENIOR FELLOW AND DIRECTOR FOR ASIA STUDIES, COUNCIL ON FOREIGN RELATIONS

Ms. ECONOMY. Thank you very much, Senator Dorgan and members of the Commission. It is a real pleasure to be here and have the opportunity to discuss human rights and the rule of law in the context of the environmental situation in China.

Let me just note the obvious, that China is facing an environmental crisis. Levels of air and water pollution, as well as land degradation, top world charts. Somewhat less obvious are the critical ways in which the environment affects human rights, the rule of law, and broader issues of governance, and the ways in which human rights and the rule of law affect the environment. So let me just tick off three of these.

First, environmental pollution and degradation are having a profound impact on the economic and public health well-being of the Chinese people. The Minister of Environment, Zhou Shengxian, has said that environmental degradation and pollution costs the Chinese economy about 10 percent of its GDP annually.

For farmers on the ground, this means that they don’t have clean water for their crops, or factory workers don’t have water to run their factories. Estimates are that by 2030 there will be between 20 and 30 million environmental refugees within the country of China, largely because of land degradation, so people are losing their land, their homes, oftentimes because of desertification.

The health of the Chinese people is very much at risk, and here the Ministry of Public Health has been very active recently in identifying the link between pollution and health. The Ministry of Water Resources says 700 million people drink contaminated water, water that has been contaminated with animal or human fecal matter, on a daily basis, and 190 million people drink water that is so polluted, that it is dangerous to their health.

Recently, again, a study was done by the Ministry of Public Health that said there has been a rise in cancer in urban areas and in rural areas since 2005 of 19 and 23 percent, respectively. This, they attribute largely to pollution.

Why the government cares about these issues is really not so much because of the environment or because of the health of the Chinese people, but because both of these issues contribute to social unrest. In 2006, again, the Ministry of Environment said there were 50,000 environmental protests in China in 2005. Some of

these are relatively small; a protest of 100 farmers blocking a road because the water is polluted and spoiling their crops; or it could be 30,000 people storming 12 chemical factories, as happened in Zhejiang Province, because they believed not only that the pollution from the factories was spoiling their crops but also a particularly high rate of spontaneous miscarriages was occurring among the young women in their villages. These protests often turned violent. Recently, there has also been a rise in urban environmental protests. I am happy to discuss that, if you are interested.

The one way in which the two are related really is at a very personal level for the Chinese people. More broadly, of course, poor human rights, rule of law, and governance impede effective environmental protection. There is a lack of transparency in China. It is very difficult to get accurate data.

We saw in advance of the Olympics that the city of Beijing was willing to simply move the air pollution monitoring equipment in order to get better readings and have more blue-sky days. This is a challenge when you're trying to implement effective policy; you do not have accurate data, you cannot make the right policy decisions. Of course, poor accountability and corruption is rampant. About half of the funds that are targeted for environmental protection end up in projects and other areas that are completely unrelated to the issue.

Finally, the topic here, rule of law. China's premier environmental lawyer, Wang Cangfa, has said about 10 percent of China's environmental regulations and laws are effectively enforced. As we look ahead toward the issue of global climate change, for example, this is a very important fact for us to bear in mind in terms of what kind of partner China will be, and what we are going to need to do to help China be a more responsible partner.

On the positive side, I think the environment is really at the forefront of governance reform. The first NGO in China that was formally registered in 1994 was an environmental NGO, Friends of Nature. There are now over 3,000 formally registered NGOs in China, and groups probably doubling that number operate unregistered. They do everything from environmental education to protesting dams, mobilizing large-scale Internet campaigns, and launching lawsuits against factories on behalf of pollution victims. It is a very exciting and dynamic part of China's civil society and of the environmental protection effort.

In addition, over the past two years, China has adopted a system of specialized courts for the environment, with trained judges and some trained lawyers, to focus solely on environmental issues. Currently China has 3 of these environmental courts, with hopes to expand to 12 courts. The problem these environmental courts face right now is that apparently they do not have enough cases to try, which is hard to believe, but that is what they are saying.

Still, it is important to bear in mind that environmental activists continue to get harassed and imprisoned. Tan Kai, Wu Lihong, Yu Xiaogang, and of course Dai Qing, are all very well-known activists who have faced house arrest, been imprisoned, or been harassed. There continues to be a very fine line, an often moving line, over what is acceptable in terms of pushing for change in China and

what is not. Again, I think the environment is very much at the forefront of this reform process.

So, finally, for the United States why does it matter to us, in addition to our desire to promote human rights and good governance globally? It matters because China is now the largest contributor of the greenhouse gas, carbon dioxide; it is the largest polluter of the Pacific; the largest importer of illegally logged timber in the world; and generally, as its multinationals are going abroad into Southeast Asia, Latin America, and Africa, they are exporting many of what we would consider to be worst environmental practices, thereby having a very profound impact on the global environmental landscape.

What can we do about it? We need to think very strategically about how we engage with China on this issue, and I think the environment is actually the perfect area to continue to promote rule of law and governance. This means thinking more broadly. We have many small-scale projects that deal with the rule of law and training of lawyers, led by groups such as the American Bar Association, the University of Vermont.

I think we need to work together to have an environmental summit to bring together all of these groups that are engaged in these efforts and figure out what the best practices are, what works, and what does not work. It also means taking advantage of interests in China. There are model environmental cities. There is a Green Companies initiative with some Chinese companies that want to do the right thing. We should not be banging our heads against those in China that are not interested, we should be partnering with those who are. They do exist, and I think we need to spend more time identifying the most proactive partners.

The last thing I would say is, I think there is a lot of interest in China now in the area of public health and good opportunities to work with China in this arena as well.

Thank you.

Chairman DORGAN. Thank you very much for your testimony.

Finally, we will hear from Donald Clarke, and then Gardner Bovingdon.

Mr. Clarke?

[The prepared statement of Ms. Economy appears in the appendix.]

**STATEMENT OF DONALD C. CLARKE, PROFESSOR OF LAW,
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL**

Mr. CLARKE. Thank you. Mr. Chairman, distinguished Commission members, ladies and gentlemen, I am going to talk a bit about lawyers and the state in China.

The relationship between lawyers and the state in China is quite complicated, but I think it is possible to reach a few big-picture conclusions, which I discuss in my testimony. The basic big-picture conclusion is that the environment for lawyers who get involved in cases or activities of any sensitivity—and it is important to remember this is not a large number—has, I think, distinctly worsened over the last several months.

Since spring of 2008—I date my testimony from then because there is a good report by Human Rights Watch which deals with

developments up to that time—the central and local governments have taken a number of steps to discourage lawyers from challenging the state in any significant way: formal and informal measures to prevent lawyers from effectively representing parties involved in sensitive incidents, and then the de-licensing of particularly troublesome lawyers and firms, sometimes through active disbarment and sometimes simply through failure to renew their licenses at an annual renewal process. I have some examples in my testimony.

One well-known example is that of the Yitong law firm, headed by activist lawyer Li Jinsong. They represented Hu Jia, the HIV/AIDS activist. They represented Cheng Guangcheng, the well-known blind “barefoot” lawyer. Yitong was also behind a move by some lawyers in the Beijing Lawyers Association to try to bring more democratic governance into that organization.

In response to their efforts in that respect, Yitong’s license was suspended for six months. Originally Li Jinsong, the head of the firm, thought that would cause the firm to close down, but in fact the six-month period expired last month and they seem to have reopened. So what their future is, it is hard to tell.

A very well-known example occurred in July: the closing of the Open Constitution Initiative run by Xu Zhiyong. Xu Zhiyong was then himself, at the end of July, detained and subsequently formally arrested on charges of tax evasion. He has been released pending trial. That case is still unfolding and is worth watching.

The Beijing Lawyers Association case is quite interesting, and I have appended to my testimony three appendices which show in English some of the documents involved in that case. A group of lawyers issued a call for direct election of leaders, as well as some other reforms that would have the effect, they said, of taking power away from a small group of rich lawyers.

The Beijing Lawyers Association’s leadership did not take this challenge lying down and issued really a rather nasty response, full of all kinds of very threatening language, with vocabulary straight from the Cultural Revolution, accusing them of “stirring up rumors,” of “rabble-rousing,” “inciting lawyers,” the old lines about “lawyers who don’t understand the true situation being misled,” and all that stuff. Lawyers were urged to maintain a correct political orientation and to resist the blandishments of this minority. The lawyers did not back down, but they lost. Again, the leading law firm behind this, Yitong, was suspended for six months.

Several well-known lawyers, again, were denied licensing when their annual inspection process came around. This includes lawyers such as Li Heping and Teng Biao.

Then also, several authorities, state and quasi-state authorities such as bar associations at the central and local level, have issued rules. Again, we see a lot of these just in the last couple of years, this year and 2008, essentially requiring lawyers to report to local authorities and take instructions from them when they are involved in handling sensitive cases, sensitive cases being defined often as any case involving 10 or more plaintiffs, obviously cases involving state security, and sometimes cases involving land takings.

One thing that is difficult to know is what does all this mean and why is the government engaging in this continual harassment of lawyers? Does it mean that in fact lawyers can serve some valuable purpose for their clients? Does this mean that if you get a good lawyer in court, that you might actually get off, and therefore this is why the government is standing in the way of lawyers?

I think that is probably not the explanation. I think the state's concern is less with what lawyers do in court than what they do out of it. A very persistent concern of these regulations we see is the concern about publicity and other out-of-court ways in which lawyers can promote the interests of themselves, their cause, and their clients. So the clamping down on lawyers doesn't necessarily mean they were being too effective as lawyers in courts, but I think it may mean they were being too effective as social activists who happened to be lawyers.

Now, I was also asked, just moving away from lawyers, to say a few words about the relationship between economic crime and state security, particularly with respect to the Rio Tinto case. As Commission members I am sure are aware, there has been quite a bit of concern in the international community about the detention, and subsequent formal arrest, of Stern Hu, formally a PRC citizen, a naturalized Australian citizen, and Rio Tinto employee. He was first charged with espionage and theft of state secrets. These charges were later downgraded to charges of commercial bribery and theft of trade secrets.

Then the question on everyone's mind is, does this mean it is personally unsafe to do business in China? I do not have a solid answer to this question, again, and that is partly because we do not know the merits of the underlying charges.

If Rio Tinto was a normal business, certainly it is always going to be engaged in trying to find out information related to its business. Maybe it did nothing that would be unlawful in any country, maybe it did something that would be unlawful in any country, and maybe it did something that may not be unlawful in most countries, but is unlawful in China. The Chinese authorities have not, to my knowledge, made the specific factual allegations behind the charges, so we do not know yet. Obviously if the case ends as obscurely as it began, then there will be good reason for concern.

But since I can't say much about the substance, I thought I might say a few words about the process. My conclusion here is that the case does not at this point indicate that conditions have deteriorated, although partly this is because there were already some problems beforehand.

There is a long history in post-Mao China of criminalization of commercial disputes. The Rio Tinto case is certainly not the first. It is not surprising to read reports in local newspapers about the Public Security Bureau helping out a local company by detaining a business rival. Usually the detained person is ethnically Chinese. They may or may not be a Chinese citizen.

I think they are particularly liable when they happen to have been former Chinese citizens. Detention of non-ethnic Chinese, in a kind of perverse reverse racism, seems to be rather rare, although not unheard of. What makes the Rio Tinto case unusual

then is not that a foreign businessman of Chinese ethnicity has been detained, but that the case has been so high-profile.

There are a couple of other rather odd features about the case maybe that are worth noting. First of all, bribery prosecutions in China tend normally to focus on the recipient of the bribe, not upon the alleged bribe-giver. Second, given that the target of the allegations is really Rio Tinto—in substance, it is being alleged that Rio Tinto, the company, is behind this—then why have only individuals been targeted and not the company itself?

I should note that the authorities seem to have been very careful to follow legal procedures. I checked the timeline of Stern Hu's detention against the consular treaty between the People's Republic of China and Australia and they seem to have given notification in accordance with the provisions of that agreement, although stretching them as long as they could, and I am not aware of any other procedural violations that have been claimed in matters such as giving notice of charges or providing access to counsel.

One thing we do not know—or at least I do not know, in any case—is whether there has been any division within the Chinese Government on this case. It is possible that the security services need to show that they are indispensable by making periodic high-profile arrests, and then of course once the action has been taken it is very difficult for the government to back down, even if other agencies think it was a bad idea.

Certainly it will be very difficult at this point for the government to say it was all a mistake, sorry about that, and drop the charges, but ultimately, unfortunately, not much can be said until the government presents its evidence publicly and we know the sentence imposed. Again, if we never see the evidence, which again may be possible, then it would be legitimate to draw unfavorable conclusions.

Thank you very much.

Chairman DORGAN. Mr. Clarke, thank you very much.

Finally, Mr. Gardner Bovingdon.

Mr. Bovingdon, you may proceed.

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

**STATEMENT OF GARDNER BOVINGDON, ASSISTANT
PROFESSOR, INDIANA UNIVERSITY, BLOOMINGTON**

Mr. BOVINGDON. Mr. Chairman and distinguished members of the Congressional-Executive Commission on China, thank you very much for the opportunity to come here and speak today and participate in this very important event.

I would like to begin by observing, as I do in my written testimony, that Beijing has long challenged the assertion that there are universal human rights. The mildest objection has been that different cultures define human values and rights differently and these differences need to be respected. This line was advanced in the 1993 Bangkok Declaration on Human Rights, to which Beijing was signatory.

Some critics have more sharply denounced Americans' criticisms of China's human rights record as interference in China's internal affairs. Chinese officials have long worried that foreign governments, including the U.S. Government, have invoked concern for

human rights in China as a cloak for attempts to bring about peaceful evolution, which is an older expression, or the newer color revolution, both euphemisms for regime change.

Similarly, officials have worried, since at least the mid-1990s, that behind criticisms of human rights abuses in Tibet and Xinjiang lie plots to separate these territories from China. We do well to acknowledge these concerns, and therefore must take pains to avoid even the appearance of raising the matter of human rights to serve other strategic aims.

When we speak of human rights we ought to focus, first and last, on “the conditions of human flourishing, on the dignity and the worth of the human person,” as the visionary Universal Declaration of Human Rights puts it, and not on scoring political points.

I begin my remarks with these general points about the issue of human rights in China, despite the fact that I intend to speak specifically about Xinjiang and the condition of Uyghurs, because I have long found it remarkable how closely political events—and we might say political problems, including human rights problems—in Xinjiang track those in the country as a whole.

To wit, despite the fact that Xinjiang is described officially as an autonomous region, its politics, its governance, and so forth very closely resemble those at the national level, leading one to ask quite seriously what degree of autonomy people in Xinjiang enjoy.

This summer, on July 5, there was a major political event in Xinjiang. We unfortunately do not know enough to say for certain how the events unfolded, and I say more about this in my written remarks. I think it’s safe to say at this point, though, that they began with a political protest, a peaceful protest, connected with the mishandling, or perhaps the squelching, of information about an event in Shaoguang in Guangdong Province in the previous month when a factory brawl resulted in the death of 2 Uyghurs and the injuries of at least 100 more.

At some point in the day, regular police and the People’s Armed Police intervened, and one of the major questions that remains is whether violence by protesters led to police intervention or whether, rather, police intervention provoked peaceful demonstrators into committing violence.

As one might expect, the Chinese Government has argued that the police intervened after the violence to suppress it, and much of the Chinese official case about what happened and how to handle what happened on that day has rested on that contention.

Outside observers—in particular, Uyghur organizations and human rights groups—have argued to the contrary, that the peaceful protests turned into a violent riot, or violent riots, only because of the police intervention. As I say, we do not have enough information about these events to decide one way or the other, and unfortunately I do not think we will anytime soon.

I raise this event, despite the fact that there’s a whole year of events in Xinjiang to be considered, because I think it sort of signally indicates some of the problems with human rights that we have to be concerned about in this region.

I would like to point out, first, that there are some small reasons to have hope about improvements in the human rights situation in the region, one example of which is the release of the Uyghur econ-

omist and Beijing professor, Ilham Tohti, who had been detained once previously in connection with his blog, and was detained again after the July 5 events on the suspicion, on the contention that he had helped organize the event.

We have been charged with talking about how the United States can hopefully engage. Mr. Kamm has already pointed out that the United States has helped the plight of political prisoners and detainees by making it known that it is concerned, and in this case it is widely thought that the Obama Administration's expression of concern led to Tohti's release.

Similarly, within only a few hours after the emergence of the events on July 5 this summer, Beijing made the happy decision to invite foreign reporters to Xinjiang to observe and inquire about what had taken place. I think this stands in marked and happy contrast to the media blackout that followed the Tibet protests of 2008. It is to be celebrated, and one can hope that Beijing will take this step in future episodes, should they have them.

On the other hand, there is plenty of discouraging news about the human rights situation in Xinjiang that we can glean from these events and their aftermath. First of all, within hours of receiving information that there were protests taking place in Urumqi, the government in Beijing decided to shut down Internet service, to curtail cell phone service, in particular, to close down the capacity to make international calls, and to close various text-messaging services.

The expressed reason was that the government was worried that various malign perpetrators were using these means to circulate information about what was going on and to drum up participation. I think we can easily imagine other purposes. One reason that I think we are entitled to imagine that other purposes include a desire not to have information about these events get out from the region to other parts of the country and abroad, is that in that service, at least at major news sites and government sites, continues to be closed down. I checked this morning and confirmed that various sites in Xinjiang remain closed, and it's hard to understand why they would remain closed all this time later if the principal or sole concern was to prevent further violence.

Next, we would want to observe the wide and rather indiscriminate use of detention and arrests in response to these political protests. Mr. Kamm has already spoken about political prisoners. Unfortunately, as he mentioned, a substantial proportion of political prisoners in recent years have been Uyghur.

Let me just hit some bullet points.

As Professor Clarke was mentioning moments ago, lawyers have received pressure when they consider taking on cases with human rights implications. This has unfortunately been the case in Xinjiang, where lawyers have been instructed to exercise extreme caution taking on cases, and to submit to supervision from digital organs, the very clear aim being to prevent them or to discourage them from engaging cases with human rights implications in the aftermath of these events.

I want to close, finally, by pointing out that there has always been a problem with how we understand human rights, a problem with policy implications. That is whether we think that they inhere

in individuals only or whether they also inhere in groups, because if they do inhere in groups then there are other issues we might want to raise, such as, for instance, those of political representation, how well and in what way Uyghurs' political aims are represented in government and party organs, also the matter of language use, about which I can say more in the question period, and then finally the broader issue of cultural integrity. Once again, I thank you for the opportunity to speak and I welcome your questions.

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

Chairman DORGAN. Mr. Bovington, thank you very much for your testimony.

Mr. Kamm, as you know, the Commission maintains a database of political prisoners. In fact, I didn't hold it up, but this is a printed copy of the Commission's database of political prisoners. It's pretty ominous when you think that each of these pages contains multiple names of prisoners, with dates. It is perhaps the best compilation in the world of this kind of information. It is very important to maintain.

These individuals have been imprisoned for exercising civil and political rights under China's Constitution and laws or under China's international human rights obligations.

You have provided information to us and been helpful to us with respect to this information. We have previously had discussions about Mr. Gao. Do you have any additional information about Mr. Gao?

Mr. KAMM. Yes, Mr. Chairman. Before I convey that information to you, I would like to acknowledge and recognize the efforts you have made on behalf of Mr. Gao and his family. If he survives this ordeal, it will be, in my opinion, no small measure due to your relentless efforts on his behalf. So, thank you for that.

You probably know, as other Commissioners know, that for almost 20 years now I have been engaged in a long-running conversation with the Chinese Government about their prisoners. I understand I am one of the few people that they regularly talk with about their prisoners and provide information on a regular basis. As I just mentioned in the testimony, we have received information on 60 different cases over the past year.

One of the channels for this information—just one of the channels—is the Chinese Embassy. Yesterday, at one of my regular meetings with the Embassy, I was provided with the following information on Gao Zhisheng. I understand this is the first time the Chinese Government has provided information on his current situation.

I was told that Mr. Gao was permitted to return to his home village in Shaanxi Province at the end of June to pay respects to his ancestors. As you may know, it is a traditional Chinese custom that, twice a year, you attend to the graves of your ancestors. So he was permitted to return to his home village at the end of June. The official went on to say that he has not been mistreated, he's fine, and that he is not subject to what was termed "compulsory" legal measures. I am just relaying what was said.

Now, apart from the Chinese Government, we do have one other bit of information about Mr. Gao, and it has been released by his

friend and lawyer Teng Biao on his blog, so it's in the public record, although not necessarily easily accessible. Mr. Teng has reported on his blog that, in July, Mr. Gao was allowed to make a phone call to a relative. So what we can, I think, reasonably conclude from this is that, as of 10 weeks ago, Mr. Gao was alive. That's the good news.

Unfortunately, we still do not know his whereabouts. There is still a great deal of concern for his well-being, obviously. Finally, we have no idea on what basis he is being held. We are basically being told that he is not being held by legal means, which leads one to a conclusion that however he is being held is not legal. So that's basically the information. It's the first information we've had in many months of trying.

I would just close very quickly by pointing out—and especially with Mr. Smith here I feel compelled to do so—Mr. Gao is by no means the only person who has been disappeared in China for a long period of time. This is the 12th anniversary of the disappearance of Bishop Su Zhimin. He has been disappeared for 12 years. He is the leader of the Catholic underground church in China. I certainly hope that this is not Mr. Gao's fate, and that with your efforts he will be free long before that.

Chairman DORGAN. Mr. Kamm, thank you very much for that answer. In some ways it is encouraging, because we don't know the whereabouts of Mr. Gao, we don't know what he is charged with. We do know that he was abducted from his home after his family escaped China. We do know that he has previously been incarcerated and tortured in China, and we also know that his behavior was the behavior of a lawyer who had a law office, doing professional work in support of people who needed the help of a lawyer, and for that he apparently has been once again incarcerated.

Our intent obviously is to shine a light into the darkest cells in China to provide some hope to those who have been held and detained, in many cases for many years, and in some cases tortured for believing in basic human rights for all citizens of China. So I appreciate your comments.

I would say to the Chinese Embassy here in the United States, the responses I have received from them about Mr. Gao are wholly unresponsive and unsatisfactory to me and to this Commission. We would hope that the Chinese Embassy and the Government of China would take seriously our concerns about Mr. Gao, and we hope for some additional information. But we thank you very much for providing the information you have provided to us today.

Ms. Economy, we hear a lot these days, especially in the context of the debate over climate change in this country, that we had better hurry because the Chinese are moving very quickly toward a green economy. They will become the leaders of green jobs in a green economy, and all the new technology and so on if we do not rush very quickly. In fact, it may be too late already. You have heard all the dialogue, and so on.

As I understand your testimony, you are saying China has passed over 100 environmental laws, hundreds of regulations, but the challenge is implementing them. Then I would also say, in the context of your answering me, you know that President Hu, in a speech at the U.N. Climate Change Summit, stated that China will

“endeavor to cut carbon dioxide emissions per unit of GDP by a notable margin by 2020 from the 2005 level.”

So tell me, you are the expert in our country about these issues. Tell me what is happening in China. Are they taking a lead? Is this serious? Are they on the level? What is going on?

Ms. ECONOMY. Thank you very much for that excellent question. I think there are two things that are going on when we hear and read about China taking the lead in terms of transforming their country into a green economy, taking the lead globally. On the one hand there are many actors in the international community who like to encourage China by applauding them before they actually take action as a mechanism for encouraging them to then take the action. I think in many cases people get ahead of themselves.

The international reaction to President Hu’s speech is the perfect example of that because reducing carbon emissions per unit of GDP is really nothing more than what they already have outlined in their Five-Year Plan. It’s nothing new. People mistook it also for cutting carbon emissions rather than cutting the growth in carbon emissions, two very different things. So I think it is important to look very closely at what President Hu has promised, and then again at the reality of the situation.

I think the other thing that people often mistake is the fact that China is already a leader in manufacturing, for example, of photovoltaic cells. About 97 percent of the photovoltaic cells China produces is exported. So, yes, they are a leader in manufacturing. But they are not a leader in actual implementation. Furthermore, when you look at China’s implementation of environmental technologies writ large, putting aside what might be relevant to global climate change, there was a great MIT study that just came out last year on the implementation of China’s regulation in desulfurization technology for coal-fired powerplants. This technology limits SO₂ and acid rain. They found, in the 85 powerplants that they surveyed, virtually none of them actually used the scrubbers that were there because they lower the efficiency of the powerplant making it more expensive to operate.

Frankly speaking, we ought to be concerned about our competitiveness. We ought to be moving very quickly ahead on pursuing green technologies for our own economy, for our own jobs, for our own manufacturing center here in the United States. However, I do not think that we are going to be looking at China as a leader on the issue of global climate change anytime soon.

Chairman DORGAN. I had read that the Chinese emit twice the amount of CO₂ per ton of steel produced than the United States. Do you know whether that’s the case?

Ms. ECONOMY. I would guess—I haven’t heard that precise figure, but in general, Chinese industries use between four and seven times more energy than those in the United States and Japan, so that seems like a perfectly reasonable assumption to make, although that is an area that they are targeting very heavily and the Japanese are helping them a lot, with improving the energy efficiency in their steel industry.

Chairman DORGAN. Two other very brief questions and then I’m going to call on my colleagues and that will end my questioning.

The increase in arrests last year, 2008. Could at least a portion of that be attributed to the Olympics? Can anyone answer that?

Mr. KAMM. Certainly there were detentions and arrests around the time of the Olympics, but I really think last year the main reason was the disturbances in Tibet. A great many people were detained and formally arrested, charged, and tried. So you would see those in the 2008 numbers. And in Xinjiang. Very interestingly, in November, an official in Xinjiang gave some numbers for the number of people arrested in endangering state security cases in Xinjiang, and it was a very big number.

Chairman DORGAN. I thought I had heard that endangering state security was some of the general charges of people they rounded up during the Olympics because they didn't want them around when a bunch of visitors showed up.

Mr. KAMM. Yes. And petitioners as well. You see, what they've done—without going into a lot of detail—they've restricted the use of “endangering state security” to the most serious political crimes, but then you have the whole area of “disturbing the social order.” So, for instance, Falun Gong. Most Falun Gong practitioners are charged with disturbing the social order. In the old days before they took counterrevolution out of the criminal law, Falun Gong would have been considered a counterrevolutionary group.

Chairman DORGAN. All right.

And finally, Mr. Clarke, are those who are in law schools, do you think, in China and on the road to becoming lawyers, are they observant of what is happening to lawyers like Mr. Gao who have their law firms shut down and their licenses suspended and thrown in prison? Does that have a substantial chilling effect, despite what they're being taught in law school about guarantees for prisoners and so on? Tell me, what are the consequences of that with those that are being trained in the law?

Mr. CLARKE. I have to plead a little bit of ignorance on that. I don't have a really solid answer to that. My guess would be that there is a group of law students who are of course quite idealistic, as there are in any country. But I think it would be a mistake to think that the vast majority of law students are idealistic and are looking at this kind of thing, or even particularly worried about it. I think a lot of people's ambition is to try to have a good life for themselves and to get along.

If I could just supplement a bit what John just mentioned. One of the differences also between locking people up under the rubric of endangering state security and doing it under this general rubric of disrupting social order is that a completely different procedure applies. Endangering state security is a criminal charge. If the issue is people such as Falun Gong adherents, if you can say it's something like disturbing social order, then you get to use the extremely elastic and forgiving rules of reeducation through labor, which is an utterly different procedure and really has very little realistic chance of an appeal.

Chairman DORGAN. All right.

Congressman Walz?

Representative WALZ. Thank you, Mr. Chairman. Again, thank you all for your continued work. Just a couple of questions.

Mr. Kamm, we were talking on the prisoner list, and I appreciate your work on this. You mentioned in there how to get that more refined, focused, and better. Are we doing it right or is there something else you'd rather see? How do we make this list even better? In addition to trying to capture everyone, how do we make it better, in your mind?

Mr. KAMM. Well, again, I would look at systemic issues and then raise cases. Now, Congressman Smith just talked about forced abortions and sterilization. Where women are in prison or in RTL, reeducation through labor, for violating birth control policies we can explore a systemic issue by raising cases. There's an expression in Chinese, *yi an shuo fa*, which means speak about the law by referring to cases. I use it all the time when I speak to the Chinese. That's one example.

I just mentioned reeducation through labor. So when we talk about the systemic issue of reeducation through labor, we ask about a dozen or two dozen examples. So this is a way of tying cases to systemic issues. Often I and others are criticized as being focused on individual cases and not talking about systemic issues. One way to get around that is to use cases to illustrate systemic issues.

Another very good example is the death penalty, but in those cases, of course, I'm afraid it's usually too late to raise the prisoner's name. But last year there was an unusual case that enabled the outside world to actually have a look at how capital punishment is carried out in China, and last year we had one such case, a man who, for endangering state security, was executed.

He was the father-in-law of an American citizen and the daughters were EU citizens. It was quite a case. But because of his children's brave actions, we were actually able to track that case right through the process of the man's arrest, trial, appeal, review, and finally execution itself, and we learned a lot. So that is what I would do a little different than we're doing now.

The other thing, if I may, very quickly, more and more, Dua Hua's lists are focused on provinces, that is, we take a province and we build a list of 15 or 20 names in that province. That, too, is a good way to go forward. There is considerable differentiation in how prisoners are handled at the provincial level in China. The regulations on sentence reduction and parole differ from province to province, so again, what we've been doing is getting information from provinces. Over the last year, I think we received information from seven different provinces.

Representative WALZ. Well, I appreciate it.

Let me segue a little bit to you, Mr. Bovingdon, as a teacher and someone who did some work in genocide studies, your excellent preparatory set on human rights and this issue of group rights and teaching of the universal declaration, as we're required to do.

My question is just an observation from you of what you've seen. Being in Tibet and in Urumqi in the 1990s—I was in Urumqi six, seven years ago—how different is it today, in your opinion? What I saw was not just modernization. I saw the cultural shift, or the culturacide, if you may, in both places. Would you say that that's coming to a peak? Is that the realization of what's happening amongst Uyghurs and amongst the folks in Urumqi?

Mr. BOVINGDON. It's an excellent question. It's also hard for me to answer, and I'll explain why. First of all, I wasn't there when you were in the 1990s. I first went to Urumqi in 1994. I have never been to Tibet, although I have many colleagues who have.

I can certainly say that in the time that I was able to visit that region, I observed dramatic change. The most obvious, if one came in on a helicopter, for instance, would be the architectural change of the city. Enormous districts with old-style Uyghur buildings were simply razed to the ground and replaced with highrises and modern apartments, much more expensive than their predecessors. Old, small shops were replaced with large, modern-style shopping malls. I think the economic and cultural implications of these architectural changes are clear.

Another thing that many observers have pointed out is that the demographics of Xinjiang have changed dramatically. In 1949, about three-quarters of the population was people we now know as Uyghur, and today, officially they number about 43 percent, although the figure is probably lower than that. There are some reliable demographers who suggest that the Han population in Xinjiang is now over 50 percent. It is unambiguous, the Han population in Urumqi and other large cities is very substantial. Urumqi is over 75 percent Han at this point.

Representative WALZ. Yes.

Mr. BOVINGDON. So these are two of the most conspicuous changes one can see.

Representative WALZ. That pattern is very similar to what happened in Lhasa. Very similar. Okay.

A couple of questions, Dr. Economy. I appreciate your work on this, this issue of environmentalism and trying to bring China in, as I said, as we all try and work together. We have all seen the nightmares. I've been to the electronic dump sites in Guangdong Province. But we are culpable in that. Our culpability is very high in that, this issue of this interconnectedness as we deal with climate change, as we deal with ecosystem degradation.

I had the chance last night—I was speaking—it was Klaus Schwab and his folks from the World Economic Forum. Is that the right forum to get this done? Is that the right way to carrot and stick at the same time, as they're starting to bring in their 85 or so different issues, much of it focusing on climate as it comes together with economic development? Do you think that is a way to go to get this, other than you won't dump computers even though they're our computers and we don't want to dump them here, type of thing?

Ms. ECONOMY. Just to clarify, your question is whether the World Economic Forum and their effort—

Representative WALZ. Yes. Do you think that is the right forum to effect positive change, in your mind as you see this?

Ms. ECONOMY. Since I'm part of the China Council for the World Economic Forum.

Representative WALZ. Which I did not know, so it wasn't planned.

Ms. ECONOMY. So there you go. I would like to say yes, yes, indeed.

Representative WALZ. Okay.

Ms. ECONOMY. I think it's a good way to move forward. I think the challenge for the World Economic Forum, and in general, again, is in moving from what are really good discussions with really smart people to actually getting things done. The advantage of the World Economic Forum is that you not only have thinkers but you also have many companies involved, many great corporations.

Representative WALZ. Is it your experience the Chinese are less resistant when it comes from that forum?

Ms. ECONOMY. Certainly, because they are lauded at every turn. I was just in Dalian for the meeting of the World Economic Forum and it was really a grand celebration of China. So I think they are very warm and welcoming for the World Economic Forum and the way that the World Economic Forum couches its messages. Yes.

Representative WALZ. Well, I appreciate that.

I yield back, Mr. Chairman. Thank you.

Chairman DORGAN. Thank you very much.

Congressman Smith?

Representative SMITH. Thank you, Mr. Chairman.

Let me, first of all, Mr. Kamm, thank you for your tremendous, extraordinary work on behalf of prisoners. I think your answer to Mr. Walz was a very fine way of setting up how we ought to be talking about prisoners, and doing it thematically. You talked about a thousand prisoners, and you've gotten responses for about half of those, over half. That is a remarkable record. Congressman Wolf and I, actually right before the Olympics, brought the Commission's list of prisoners with us to China. We haven't gotten word back on a single prisoner and it is not for trying.

You mentioned Bishop Su of Hebei Province. I actually met with him in the early 1990s and he celebrated mass in a very small apartment, only to be recaptured, reincarcerated, re-, we think, tortured, because there were some sightings of him with puffed up cheeks and very significant harm having been done to him.

I raise Bishop Su's case every time I have a meeting with any Chinese leader and they either ignore it or say they'll get back and they never get back. So we don't know if he's dead or alive. But it's emblematic, I think, and symbolic, if you will, of just how much they have tried—they being the Beijing dictatorship—to crush religious belief outside of the patriot church, outside of the officially recognized churches.

This man was perhaps the kindest, gentlest man I have ever met. His eyes were crystal clear. He had no animosity whatsoever toward the Chinese. He had already spent decades in the prison camps, and he told me how he prayed for those who were following the dictates of the Scriptures, for those who maltreated him, and prayed for his people. It was moving. Yet, they severely mistreat this man. So, thank you for raising his name again at this hearing, and for the tremendous work you do on political prisoners.

You mentioned the signing of the International Covenant for Civil and Political Rights. It seems every time a Chinese leader makes his way to Washington, there's a new buzz about how, when they signed it, or they were going to sign it, then they signed it, and no ratification. We'll probably hear about a potential ratifica-

tion next time somebody comes to the United States. They seem to be gaming us, and we keep taking the bait.

I am worried—and if any of you would want to touch on this—has our super-reliance on the Chinese buying our debt either silenced or muted our voice on human rights? It seems to me that when Mrs. Clinton—and I say this with all due respect to the Secretary of State—en route to China, said we will not allow human rights to “interfere with global climate change,” which I am very concerned about, and other issues, the debt being another one, it is as if it was put, not in the back of the bus, but off of the bus. They take their cues, I think, from how we regard it. So, our reliance on debt, what is that doing to our dialogue in human rights?

Second, and Mr. Clarke, you might want to speak to this as well, or any of our distinguished panelists, I remember when Rebiya Kadeer first came out, and she, like Wei Jingsheng and others, couldn’t be more emphatic that forced abortion is one of the cruelest crimes against women imaginable, and both of those individuals were shocked that we never talked about it here, except in a very limited set of circumstances. It wasn’t like it was a mainstream human rights abuse. They thought that we all knew about it and were very well-versed in it, and so many Members of Congress, frankly, are not.

If a woman in China gets pregnant without having secured permission from the state and is ordered to abort her child against her will, does she have any legal remedies available to her, and have any of our U.S. lawyers or the dialogues, the programs we participate in, explored ways of legally assisting a woman who is in that situation, to say we’re here to be your advocate? The United Nations has dropped the ball.

All of the expert bodies have yet to take up, including the Human Rights Council, these crimes against women and against children. It seems to me that in our dialoguing with lawyers, we know about Chen Guangcheng and the price he’s paid, but it seems to me it would be a great place, an entry for saying, let’s take up these cases. If a woman is willing to stand up and say I want this child not to be killed, we should stand with her.

Then finally, on the whole issue of the prisoners you mentioned, Mr. Kamm, who were executed to get their organs, 65 percent of the organ transplants being derived from there, I had a hearing in May 1997 on the very issue. Harry Wu actually brought in a man who had documentation that was very significant that showed that prisoners were being shot, but not killed. Ambulances were waiting—and he had pictures of all of this and it seemed very credible—in order to take their organs.

The Chinese Government said it was a lie, it was misinformation. Now they’re willing to say at least 65 percent of those organ transplants are derived from prisoners. Why the change? Do they feel that the atmosphere has so changed and nobody cares? What would be your reason? I mean, that hearing to me—the man who gave the testimony, we did it behind a screen so there wouldn’t be retaliation. I mean, it was very cloak-and-daggerish, if you will, to protect his identity. Harry Wu, again, was the one who helped get him out. The Chinese Government said no way, and now they’re

admitting it. If you could give any thoughts on that. Did you want to touch on that?

Representative WALZ. If I may, this is an interesting point. When I was living in China in 1989, I had a friend who was a physician and was trying to secure permission. He asked if I would like to go to one of these executions. I'm not quite sure why he assumed that I would participate in that. But it was absolutely no secret whatsoever. At that time it was happening he was doing kidney transplants, and he thought nothing of it. This was a good man, but the system was so prevalent, as my colleague is saying, that it was common knowledge. So I'm very interested in this, too. What's changed in, now, something that all of us knew was there, and now they're willing to say, yes, it's happening?

Mr. KAMM. It's a fascinating development, and I wish I knew why. But it's quite a striking admission after years and years of denying it was going on. As I say, the number of executions is a closely guarded state secret, on a level with the number of nuclear warheads. It's a very serious top secret.

So when you make this kind of a statement, you are all but admitting that thousands of people are being executed every year, which is what the human rights groups have been saying for a long time. Why make this admission? I wish I could tell you. Why do they tell me about prisoners? I'm always asked about that. Why yesterday, finally, after eight months, do they reveal something of importance and interest? I really don't know. It's just, I guess, something I've been doing for so long, that that's what I do and they interact with me in that way.

If we can be hopeful, the greater the transparency, the faster that human rights reform will come. The Chinese philosopher Confucius, over 2,000 years ago, spoke about the need for transparency in government. It's a longstanding traditional Chinese virtue in the area of governance.

I hope we're going to see bigger steps in the direction of greater transparency. And if there is one thing we can do in our work with China, whether it's the human rights dialogue or the legal experts' dialogue, or any other dialogue, the number-one priority should be to promote transparency, because when the Chinese people themselves see things, they themselves will be tempted to move in the direction of reform. So, transparency, number one.

Chairman DORGAN. I want to allow Mr. Honda to ask a question as soon as you are done, Mr. Smith.

Representative SMITH. If you could, on the training up of lawyers to help women who would like to fight to preserve the life of the child within them.

Mr. CLARKE. Sure. I can say a few words about that. Forced abortions, technically under Chinese law, are not permitted. I mean, if it were forced, it would count as an assault under the Criminal Law of the People's Republic of China.

However, as a practical matter, there aren't really any legal remedies. So a court could not step in, a court would not step in in these cases, I think. This is precisely the sort of thing that got Cheng Guangcheng into trouble. Part of the reason is that local officials are graded very strictly on the number of extra-quota births in their district. Nobody wants to know why there were extra-quota

births. The point is, if there are any, that implicates what is called the “one-vote veto.” No matter what else they might have done in their district, if they have out-of-quota births, I believe that that prevents them from advancing further. But perhaps any of the other panel members who know the system for grading Chinese officials a little more intimately than I do can speak to that.

I do want to address your first question, even though I’m not an expert on international finance. For that question, do we in fact rely on China to buy our debt, I think you really need expert testimony. But here’s what I think an expert on international finance would say, since I’ve done some reading on this.

That is, of course you have to be nice to your banker, but only if two conditions apply, which are: (A) your banker has many choices about to whom to lend; and (B) you have no choices about from whom to borrow. I don’t think either of those conditions actually hold. China really doesn’t have a choice except to lend us this money. They will be able to choose not to buy U.S. debt at the same time they choose not to run a large bilateral trade surplus with the United States. So China really doesn’t have any choice. There’s no other place for those dollars to go.

Second, with the U.S. savings rate rising as it is, the deficit does not need to be funded by the Chinese, it can be funded domestically. So those are my very brief, inexpert answers. But I do not think that we in any sense need to be nice to China because otherwise they will stop buying our debt, because I don’t think they’re in a position to choose simply to say, we’re going to stop buying American debt.

Representative SMITH. Thank you.

Chairman DORGAN. Congressman Honda?

Representative HONDA. Thank you, Mr. Chairman. I appreciate the experts here.

Mr. Chairman, if I just may ask my questions. I have to go and defend my bill in five minutes. Then I’ll get my answer through the transcripts and I’ll chat with my colleagues also.

But a couple of questions, and they’re related. Yesterday I had an opportunity to chat with the Dalai Lama. I think in prior CECC meetings we spoke of Tibet, the Dalai Lama, and the PRC Government, and the friction that exists between the government and the movement that the Dalai Lama is the head of.

It seems to me that when I met with the embassy folks from the PRC, the final conclusion I came to was that they’re more afraid of the Dalai Lama’s area of religious influence that he has, which appears to be about a fifth of China’s land mass rather than just Tibet itself. I was wondering how one can be effective in promoting some access or some process of confidence building and trust building between the two parties. That’s my first question.

The other is, we’ve had pretty important recent opportunities to partner with the PRC on renewable energy technology where Commerce Secretary Locke and Energy Secretary Chu went to China and came back with a potential agreement, being able to establish a Memorandum of Understanding in developing technologies together, solving some of the thorny problems of global warming, but solving in a way where we will be working together with them, de-

veloping technologies and sharing the intellectual property rather than protecting and fighting with each other.

Do you see this process as a model where we can start to look at developing not only trust, but a better working relationship? Because I suspect that they also do not trust us in terms of some of the things that we criticize them for. We were the first to be polluters, and now they're catching up, for the very same reason: the thirst for energy. We have green technology. They need it, and we need to share that. The dynamics aren't simple, but I suspect that we're capable of solving it if we put our minds to it.

So I was hoping that maybe you might be able to comment on some ideas or thoughts that you may have had relative to this, building this mechanism with trust that will permeate in other areas of both societies. I'll read my answers in the transcripts. Thank you.

Mr. BOVINGDON. Representative Honda, thank you very much for those interesting questions. I will attempt to address the first one about Tibet. I'm afraid it's hard to be very optimistic that the United States might somehow encourage China to engage with the Dalai Lama and the Tibetan government-in-exile in a more extensive and positive way, for the following reason: though the Dalai Lama announced in Strasbourg in 1988 that he no longer advocated independence for Tibet, and he has for years called merely for full autonomy or a substantial degree of autonomy, Chinese Government officials, including, if I'm not mistaken, Li Zhaoxing, a few years ago, have continued to accuse him of being a separatist. In fact, they've said that there has never been a day when he hasn't been working to split Tibet from China.

Furthermore, while the Dalai Lama or his agents have met with various officials in the Chinese Government, neither the government nor any particular Chinese official has ever acknowledged that they were meeting with him as a representative of the government. They've always said that they were meeting with him as an individual or with his representatives, the very clear point being to prevent anyone from drawing the conclusion that Beijing recognizes him or the Tibetan government-in-exile as a legitimate political organization, as a legitimate interlocutor in a discourse that might take place about events inside Tibet.

I don't, to be honest, see any way of getting Beijing either to credit the Dalai Lama with walking back a great distance from his original political formulations before 1988, or getting Beijing to recognize that there is a legitimate conversation partner outside China to be speaking about events in Tibet.

One further point that I would make. Representative Honda, I think, accurately suggested that the Dalai Lama has very wide political influence. One thing that was conspicuous last year was that the March 2008 events were not confined to Tibet. They began there, but they spread to regions that a specialist on Tibet described as ethnographic Tibet, including parts of Sichuan and Hunan Provinces and Xinghai County.

This was, in fact, surprising to me and other observers who have long focused on the politics of non-Han areas, areas where non-Hans predominate, because it suggested on the one hand a level of political bravery in the face of almost certain retaliation, and on

the other hand, a wider catchment of political influence and concern about the fate of Tibetans than we might have anticipated before.

So to make one final point about the Dalai Lama, when he, as he often does, argues that he attempts to speak or he attempts to represent not only Tibetans in Tibet, but Tibetans in all of ethnographic Tibet, I think he makes an important point that should be recognized. Unfortunately, I think there is very little percentage, for reasons I've already mentioned, in trying to get Beijing to recognize that ethnographic Tibet is a meaningful political area as a whole. I'll stop my comments there.

Ms. ECONOMY. Very briefly, to Representative Honda's point about the potential for cooperation on renewable energies between the United States and China, and indeed not only the most recent venture with Secretary Locke and Secretary Chu establishing a \$15 million joint energy research center, but also the work that was done by Secretary Paulson previously within the Strategic Economic Dialogue to develop joint projects, such as electric cars.

They're all very important, and I hope that some of them actually move forward to fruition. I think there's a great challenge in establishing these joint projects and then actually seeing them come to be. I think it would be worthwhile to look already at what we have set in motion and see how it's progressing. I would make one further point; that \$15 million in an area that is going to need billions of dollars of technology investment is really a drop in the bucket. But, of course, any step forward is a step forward.

Just one small point on Representative Smith's point about the debt. I think Don is absolutely right in the technicalities of how the debt works and the Chinese don't have any other sort of option right now. That doesn't mean that the Chinese don't perceive it as a source of leverage.

In virtually every discussion that I have with Chinese officials these days, the first thing out of their mouth is, that "We are your banker, in essence, and the Chinese people are depending on you to secure our investment," and so on. So I think that there is something to it.

I would hazard a guess that it's not that the administration is trading the debt issue, per se, for human rights, but rather that they perceive a very broad range of issues on which we need to cooperate with China, from trade and IPR [intellectual property rights], to proliferation, North Korea, et cetera, and that human rights is one among these issues and that they don't want to grant it super status. But maybe the point is being missed that in many respects these issues of rule of law and human rights and good governance are fundamental to almost any of those issues and to our successful cooperation.

Chairman DORGAN. Mr. Wu, you are recognized for your questions.

STATEMENT OF HON. DAVID WU, A U.S. REPRESENTATIVE FROM OREGON; MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative WU. Thank you very much, Mr. Chairman.

I want to apologize to the panel. I am supposed to be in a markup, and theoretically I'm there right now. But Members of Congress being who they are, I think the chatting will continue for a while. I just want to make a couple of remarks, and perhaps to the extent necessary or appropriate, perhaps the panel wants to comment.

I want to recognize Mr. Kamm's longstanding good work with which I was familiar before I came to Congress. Professor Clarke has been helpful to my office in some of the work we've been trying to do to recognize the century mark for some of the law schools in China, which, over the long haul, hopefully will be very helpful to the development of the rule of law in a very large country. That is actually an idea which I carried away from the last Commission hearing.

But, first, one comment from decades ago. In the early 1980s, I went to China. I was with some relatives. One of them said, "I bet you had an easy time at the border this go-round." I said, "Well, what makes you say that? Because I did have a relatively light and easy time at the border." He said, "Well, the official situation between our governments is a little bit testy right now, so what our government does is it tells the border guards to be nice at a time when the official situation is a little bit tougher." I don't know if it's that formal, but at least that is the domestic Chinese perception of, if you will, the Ying and the Yang of this relationship.

Since, among other things, our head of state chose not to meet with the Dalai Lama this time, and perceives multiple interests on the plate. I think that the work of this Commission and the testimony from the panelists is especially important at a time like this to make sure that we reinforce that what I view as universal human values have a constancy of concern and are the bedrock of a stable relationship in the long term so that those issues never fall off the table.

As a second item that I just want to mention, I think I was the first person who handed a letter of condolence to the PRC Ambassador here in Washington about the Sichuan earthquakes. It was the morning that we heard about the earthquakes. I had a prior scheduled meeting with the Ambassador and I knew that it was a bad situation and I wanted to express my concern and condolences right away.

I am sincerely concerned about natural disasters that occur anywhere in the world, but there are some places where we feel a special connection. I was concerned then, and I'm concerned now. I am especially concerned that some of the folks who have asked for answers as to why school buildings seemed to have collapsed at a much higher rate than other public buildings, that some of these folks have been harassed and a couple of have been arrested and tried.

I am in the process of preparing a House resolution asking for a careful review of the cases of Mr. Huang Qi and Mr. Tan Zuoren to accord them the rights that they have under the applicable sections of the Chinese Constitution, because it appears that by advocating for the parents of kids who were killed in the earthquake, they have somehow been caught up in their government's web of concern about state secrets and subversion. At least to this observer, that seems to be a stretch and it seems to be not necessarily con-

sistent with the Constitution and statutes of the People's Republic of China. I would prefer not to put that kind of resolution in, but depending on what the PRC Government does between now and then, we will see.

I just wanted to make that brief statement because, quite frankly, I don't have enough of the context of this hearing to ask a sensible question. So I will turn it over to the panel and then come back to you, Mr. Chairman.

Representative WALZ [presiding]. Well, Mr. Smith, please go ahead if you have a followup.

Representative SMITH. Thank you very much, Mr. Chairman.

Let me just say, Dr. Economy, in response to your comment about the cluster of issues, and that human rights would be part of that cluster, I would just respectfully suggest, with one big, red flag, human rights then becomes an asterisk, maybe on page 8 of the dialogue, or whatever it might be. Our argument about linking human rights with MFN [most-favored-nation] and then PNTR [permanent normal trade relations] was that, where were the Chinese going to find a market to dump so many of their finished goods, except on U.S. soil? Otherwise, it's just not there. So we had real leverage and we just threw it away, right off, squandered it. And who got hurt—the dissidents and those striving for human rights.

I remember, Frank Wolf and I had a meeting with Li Peng in the early 1990s. We brought up human rights. We had prisoner lists, we raised all of the issues. We were surprised we got to see him, quite frankly. He was incensed that we brought up human rights, and we did it very respectfully and very diplomatically. He wouldn't even touch the list of prisoners, Mr. Kamm. Wouldn't even touch it. It's like, he moved away from it, and then he hearkened back to the Shanghai communique and said there's nothing about human rights in our relationship.

So my fear is that with Mrs. Clinton's statement earlier in the year—I mean, we had Chinese officials here the better part of a week, meeting with Tim Geithner. I'm sure human rights was nowhere to be found in that dialogue. President Obama will make his way to Beijing. He'll say "I agree to disagree," or "we agree to disagree," which means that, to every dissident, you're finished, you're toast. I'm very concerned.

Wei Jingsheng once said at a hearing that I chaired, when you are tough, predictable, and transparent—which is pretty much what he said, not verbatim—they beat us less in the prisons. When you kowtow, when you're groveling, they beat us more and they cause us to lose hope. I'm very fearful about where we are in terms of this dialogue. I would respectfully suggest that human rights be at the top. Contract law will follow. If you get that right you get transparency, you get everything else, but if you don't, you get a terrible distortion by a government and a lot of broken people.

So I hope we don't make this a cluster, because if it's part of that group of issues, the human rights activists lose and the people of China lose. The Uyghurs, the Tibetans, they all lose.

Representative WALZ. Well, thanks, Mr. Smith.

First of all, thank you all, to our panelists, for being here, for your scholarship, for your advocacy, and for helping us understand

this issue. I would like to point out and say a special thank-you to the staff of the Congressional-Executive Commission on China for the incredible scholarship, their integrity, in compiling the 2009 Annual Report. It will be up on the Internet next Tuesday, the 13th of October. We are very appreciative to all of them. They do incredible work. And to my fellow Commissioners, for showing a passion for getting this right, for showing a passion on human rights that all of us need to keep in mind, and I'm very appreciative of that.

So, thank you all for being here today. With that, this meeting is adjourned.

[Whereupon, at 3:45 p.m. the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENTS

Promise and Reality:
Dui Hua's Dialogue on Human Rights with the Chinese Government

Testimony to the Congressional Executive Commission on China

John Kamm
The Dui Hua Foundation
October 7, 2009

Chairman Dorgan, Cochairman Levin, distinguished Members of the Congressional Executive Commission on China,

I am honored to appear before this Commission to discuss recent developments in The Dui Hua Foundation's long-running dialogue on human rights with the Chinese government. This is my third appearance before the Commission.

I would like to update the Commission on developments in five areas in which Dui Hua is active: Information on prisoners detained in political cases; use of special pardons to release long-serving prisoners; sentence reduction and parole for prisoners serving sentences for the crime of endangering state security; the death penalty; and juvenile justice. In updating the Commission, I will also be making recommendations for approaches to further dialogue on human rights with the Chinese government.

Information on Political Prisoners

Since the visit by Secretary of State James Baker to Beijing in 1991, the United States has consistently urged the Chinese government to free individuals detained for the non-violent expression of their beliefs in US efforts to engage China in a dialogue on human rights. The United States has raised the cases of individuals detained in political cases by presenting lists of "cases of concern" through sessions of the human rights dialogue and in other forums. The practice of presenting prisoner lists characterizes not only the US-China dialogue on human rights, but also the human rights dialogues that China has with several other countries and groups of countries, including the European Union, Switzerland, Norway, Germany, the United Kingdom, Canada, and Australia. Prisoner lists have also been presented to senior Chinese officials by the United Nations High Commissioners for Human Rights, leaders of Western democracies, and members of Congress, including members of this Commission. In nearly 20 years of engaging the Chinese government in a dialogue on prisoners, Dui Hua and I have requested information on more than 1,000 prisoners. We have obtained written responses about over half of them.

Three years ago, a Chinese official told me that every year he has to look for information on more than 300 prisoners raised in the various human rights dialogues. Every time a name is raised, it increases the chance that the prisoner will benefit. Like in many countries, prison officials in China tend to treat prisoners who are known to the outside world better than those who are not known. For my testimony to this Commission in

September 2006, I examined what had happened to prisoners who were on Assistant Secretary of State Lorne Craner's 2001 list. Prisoners on that list enjoyed an early release rate triple that of prisoners in our database who weren't on the list. In addition to having helped many non-violent political prisoners regain their freedom, we have also learned a great deal about how China's justice system works in sensitive cases, knowledge that has informed our human rights dialogue with China. And we underscore our belief in the fundamental rights of individuals. You can't talk about human rights without talking about human beings, and we must never stop raising the names of those who are in prison for exercising their internationally recognized rights of speech and association.

I urge the continued use of prisoner lists—the more refined and focused, the better—in future sessions of the dialogue between the US State Department, under the direction of newly confirmed Assistant Secretary of State Michael Posner, and the Chinese government led by the director general of the Ministry of Foreign Affairs' Department of International Organizations and Conferences. And I hope this Commission will continue its own efforts to present requests for information on prisoners to Chinese officials who you meet.

In my last testimony, which I delivered just over three years ago, I recounted in detail the October 2005 decision of the Ministry of Justice to stop providing information on prisoners in response to my prisoner lists, which I had been submitting for 15 years. I continue to believe that the ministry's decision was a bad one, and represented a blow to the spirit of dialogue. I have made representations to Chinese officials on numerous occasions, but thus far direct communications with the Ministry of Justice remain suspended.

In late September of last year, the Ministry of Foreign Affairs advised that it was willing to try to supply Dui Hua with information on prisoners from various sources, and since then it has resumed doing so. At the same time, local governments, working through unofficial channels, have provided information on prisoners in a number of provinces and municipalities, including Beijing, Shanghai, Chongqing, Guangdong, Hunan, Shaanxi, and Sichuan. In all, Dui Hua has obtained information on 60 prisoners over the past 12 months through various channels, principally those at the local level. This compares favorably with the number of cases about which Dui Hua received information in 2005, the year of the Ministry of Justice's decision to stop responding to our prisoner lists, and the quality of most of the information we received represents an improvement on past years.

The responses to our lists reveal hitherto unknown sentence reductions and early releases for several long-serving prisoners. They also confirm that many prisoners have not benefited from clemency and continue to serve long terms for crimes like subversion and incitement to subversion. Dui Hua shares the information it receives from Chinese interlocutors with the State Department and this Commission by providing updated copies of our prison database each quarter. Dui Hua also publishes information in our quarterly newsletter and on our website, which unfortunately has been blocked in China for more than two years.

I view the willingness of the Chinese government to provide information on prisoners as an important test of transparency. Hopefully, the spirit of transparency which has characterized our interactions over the past 12 months will be in evidence as China carries out a series of human rights dialogues with key partners in the weeks ahead, including those with the EU and the United States. It is important for the United States and China to schedule their own human rights dialogue as soon as possible, hopefully before President Obama visits China in mid-November.

There is much room for improvement in making China's criminal justice system more transparent. Although some provinces have started to publish verdicts passed by local courts (Henan Province has been a leader in this effort), most courts still don't make their rulings public. And while most trials are supposed to be open to outside observers, including foreigners, gaining access to trials remains difficult in practice.

One of the focuses of our inquiries these past few years has been prisoners serving sentences for offenses committed in the spring 1989 protests that swept across China. The first time I intervened with the Chinese government on a prisoner was in May 1990, now nearly twenty years ago. The latest information I received on prisoners, early last month, concerned June Fourth prisoners. The wheel has come full circle.

A summary of the information we have received on 19 June Fourth prisoners over the past 12 months is appended to this testimony. Here are our key findings.

- 1) Altogether, Dui Hua believes that there are about 20 prisoners still serving sentences or otherwise detained at least in part because of the spring 1989 protests. This represents a decrease from our earlier estimates, the most recent being issued in May 2009.
- 2) As the countdown to the 20th anniversary of June 4th took place, local prison officials released or gave sentence reductions to people sentenced for a variety of crimes related to the disturbances. These individuals had been young workers and unemployed youth convicted of hooliganism, arson, counterrevolutionary assault, and counterrevolutionary sabotage. They had been sentenced in 1989 and 1990 to life in prison or death with two-year reprieve, later commuted to life in prison. (Crimes of hooliganism and counterrevolution were removed from China's criminal law in 1997, but prisoners serving sentences for these crimes were not released, in apparent contravention of Article 15 of the Covenant on Civil and Political Rights, which China has signed but has yet to ratify.) Responses to our inquiries have revealed the recent releases of two counterrevolutionaries and sentence reductions for two other counterrevolutionaries imprisoned in Beijing.
- 3) With the release of Liu Zhihua (刘智华), Dui Hua is not aware of any other prisoner still serving a sentence for hooliganism committed during the spring 1989 protests. At least two prisoners—**Jiang Yaqun (姜亚群)**^{*}, a 70-year-old

^{*} Names in bold denote prisoners who are currently incarcerated.

inmate possibly suffering from dementia, and **Zhu Gengsheng (朱更生)**, who was last seen in TV footage as a young man atop a burning tank waving a flag near Tiananmen Square—are serving sentences for counterrevolutionary crimes in Beijing.

- 4) Three of the remaining June Fourth prisoners known to Dui Hua have been diagnosed with psychological illnesses: **Miao Deshun (苗德顺)** and **Jiang Yaqun** in Beijing and **Yu Rong (余蓉)** in Shanghai.
- 5) With the exception of **Gu Xinghua (顾兴华)** in Guizhou and **Yu Rong** in Shanghai—individuals who are not, strictly speaking, in prison for offenses committed during the protests—all June Fourth prisoners about whom the Chinese government has provided information are incarcerated in Beijing. Dui Hua continues to seek information on pockets of prisoners in provinces in southwestern and southeastern China.

In recent months, countries that have submitted prisoner lists as part of their dialogues have not matched Dui Hua's success in obtaining information on prisoners. Of special interest to this Commission is the fate of the prisoner list handed over prior to the last session of the US-China human rights dialogue in May 2008. China's Ministry of Foreign Affairs provided responses to about 40 percent of the more than 130 names on the US list, and no information has been received since July 2008, although there is some evidence that the MFA may have in fact already prepared some of the information. The State Department should make another effort to receive responses to the names on this list prior to drafting and submitting a new list for the next session of the US-China human rights dialogue.

Use of Special Pardons to Free Prisoners

In 2008 and 2009, Dui Hua called on the Standing Committee of China's National People's Congress (NPC) to exercise its powers under articles 67 and 80 of China's constitution to issue special pardons of long-serving prisoners who had demonstrated good behavior and who no longer posed a threat to society. In 2008, we proposed that the Standing Committee of the NPC pass a special pardon to mark the Olympic Games. This year, we backed calls within China to declare a special pardon to commemorate the 60th anniversary of the founding of the People's Republic of China, noting that Chairman Mao himself had proposed a 10th anniversary special pardon in 1959 that resulted in the release of tens of thousands of counterrevolutionaries.

Whereas the proposal for an Olympic pardon attracted little support in China, the idea that China mark its 60th birthday with a special pardon proved to be appealing to large segments of Chinese society. The proposal was endorsed by noted legal scholars and even the country's top professor of criminology, as well as members of the Chinese People's Political Consultative Conference, who put forward resolutions at committee meetings, some of which saw spirited debate. Articles by noted journalists supporting the special pardon appeared in mainland Chinese and Hong Kong media.

In the end, the Standing Committee of the National People's Congress did not declare a special pardon to mark the 60th anniversary of the founding of the People's Republic of China. It appears, however, that some provinces did grant clemency to prisoners to mark the anniversary. One of China's largest provinces, Sichuan, granted sentence reductions and paroles to 1,300 prisoners on September 26. In Henan Province, courts approved 2,485 sentence reductions resulting in the release from prison of 1,166 inmates. In the Ningxia Hui Autonomous Region, 479 prisoners were given sentence reductions, 40 were granted parole, and 13 given medical parole on the eve of National Day.

No information is available on the breakdown of prisoners released by provincial courts to mark China's National Day. We don't know whether or not prisoners serving sentences for endangering state security were among those released, and probably won't know for several more months. It appears that some provinces granted clemency to mark the Beijing Olympic Games in 2008 but this was not known until several months after the Games concluded. Some of those granted sentence reductions were serving sentences for endangering state security (ESS) and "using a cult to undermine implementation of the law," a charge which is often applied to Falun Gong practitioners ("Reductions in Summer 2008 Show Signs of Clemency Around Olympics," *Dialogue* newsletter (Issue 35, Spring 2009, p. 6), The Dui Hua Foundation.)

Although it was not intended to benefit any specific group of prisoners, special pardons to mark the Olympics and the 60th anniversary would have almost certainly applied to the remaining June Fourth prisoners, as well as to the remaining hundred or so counterrevolutionary prisoners. As with our work on the June Fourth prisoners, Dui Hua has been pressing to find out the fates of counterrevolutionary prisoners who received life sentences in the 1980s. Based on information provided by local authorities, Dui Hua believes there are very few counterrevolutionaries from this period still in prison. One is **Jiang Cunde** (蒋存德), a labor activist and dissident who is serving a sentence for counterrevolution that is set to expire in 2024. Like several long-serving June Fourth prisoners, Jiang is suffering from mental illness.

The most prominent prisoners serving sentences for counterrevolution are **Jigme Gyatso** (晋美加措) in Tibet (his sentence for setting up a pro-independence party is due to expire on March 30, 2014, and his health is said to be poor) and **Hada** (哈达), a Mongolian nationalist who founded the Southern Mongolian Democracy Alliance (his 15-year sentence will expire on December 10, 2010). Jigme Gyatso had his sentence increased three years. Neither Jigme Gyatso nor Hada have received sentence reductions.

Sentence Reduction and Parole for Prisoners

It has long been known that prisoners serving sentences for endangering state security (ESS) and "using a cult to sabotage implementation of the law"—the most serious political crimes—are granted sentence reduction and parole at rates considerably lower than other prisoners. Based on our research, Dui Hua estimates that ESS and "cult" prisoners receive sentence reductions at a rate 50 percent lower than the rate enjoyed by

other prisoners, and in places like Tibet and Xinjiang, ESS prisoners almost never receive sentence reductions or parole. Even in some predominantly Han provinces, political prisoners are rarely granted clemency. According to the records of Chishan Prison in Hunan—that province’s principal prison for housing political prisoners—not a single counterrevolutionary or ESS prisoners was granted parole from 1996 to 2004, and very few were given sentence reductions (“Statistical Table of Sentence Reductions and Parole for Criminals in Chishan Prison from 1978-2004,” *Hunan Province Chishan Prison Records* (2005), published in *Reference Materials on China’s Criminal Justice System, Volume 2*, The Dui Hua Foundation).

A reason for the disparity between rates of sentence reduction and parole for prisoners convicted of ESS and “cult crimes” on the one hand and so-called “ordinary” prisoners on the other may be that, since ESS and “cult” prisoners are in prison for acting on their beliefs, they are less likely to demonstrate “genuine repentance and willingness to reform.” In other words, they are less likely than ordinary prisoners to think they did anything wrong and are therefore less likely to admit guilt, a prerequisite for receiving a sentence reduction. It should be noted that this is an untested assumption.

It has also been recognized that regulations on sentence reduction and parole might play a role in reducing the number of ESS and “cult” prisoners who are granted early release. In 1997, the SPC issued a notice requiring that sentence reduction and parole be “strictly handled” for prisoners serving sentences for ESS and certain other serious crimes, like leading a criminal gang. (Recidivists are also “strictly handled” when it comes to sentence reduction and parole.) “Strictly handled” is not defined in the notice, and it seems to have been left to provincial higher people’s courts to spell out what “strict handling” means in their respective jurisdictions.

In early 2003, Dui Hua asked the SPC to clarify whether counterrevolutionaries continued to be “strictly handled” after promulgation of the court’s notice on sentence reduction and parole issued in 1997. The 1997 notice makes no mention of counterrevolution among crimes that are to be strictly handled, but an earlier notice, issued in 1991—before the removal of counterrevolution from the criminal law—does. In its reply, the SPC took the position that counterrevolutionaries were viewed in the same manner as prisoners serving sentences for endangering state security. The reply further stated that the latter were dangerous criminals and that China, like many countries, makes sentence reduction and parole stricter for these prisoners than for prisoners considered less dangerous.

I conveyed this exchange to the State Department, and Assistant Secretary of State Lorne Craner suggested to his Chinese counterpart that a legal exchange take place on sentence reduction and parole in the two countries’ legal systems. This was the origin of the Legal Experts Dialogue. Three sessions of the dialogue were held between late 2003 and the summer of 2005. They were led on the US side by the Office of Legal Affairs of the State Department’s Bureau of Democracy, Human Rights and Labor. The Chinese side in the talks was led by a senior judge from the SPC.

Reporting on the talks, Assistant Secretary of State Michael Kozak testified to Congress in April of 2005 that the Chinese side had clarified that there is not a stricter standard for evaluating sentence reductions and parole for ESS prisoners (this testimony was also cited in the Commission's annual report for 2005). The Chinese government has never commented on the talks, nor has it provided documentation on this policy of "equal access" to the State Department. It has not advised the State Department whether or how the policy was conveyed to courts in the provinces, which are the organs that approve applications for sentence reduction and parole. Signs have now emerged, however, that provincial higher courts were in fact informed of the clarification made at the Legal Experts Dialogue. As a result, some provinces may have loosened controls over pardons and sentence reductions for ESS and "cult" prisoners.

Dui Hua has recently found three notices issued by higher people's courts that implement the provisions in the SPC's 1997 Notice. Two notices, those of Shanghai (issued in 2003) and Shandong (2005), were promulgated before the last session of the Legal Experts Dialogue. One notice, issued by Guangdong in late September 2005, came out after conclusion of the talks.

In the Shandong notice issued just before the conclusion of the dialogue, there is a blanket prohibition against granting parole to prisoners sentenced for ESS. The Shandong notice also states that sentence reductions for ESS prisoners should be a year shorter than reductions granted to ordinary prisoners, and the initial reduction to a fixed-term sentence should be delayed an additional year.

The Guangdong notice, which was issued just after the dialogue, is modestly more equitable. It allows for parole in exceptional circumstances, though such paroles are to be "strictly handled." And while it still mandates longer waits and shorter reductions for ESS prisoners, the disparity is only six months—half the duration laid out in the Shandong regulations.

We still know too little about local sentence reduction and parole policies to draw firm conclusions. The Guangdong notice indicates a loosening of strictures, which was possibly related to the talks between the United States and China. A rare parole of an ESS prisoner took place in Guangzhou in February 2008, that of the Hong Kong journalist Ching Cheong. Dui Hua has documented use of the Guangdong notice to grant a sentence to another Hong Kong resident, **Chan Yu-lam (陈瑜琳)** serving a long sentence for espionage ("Chan Yu-lam Sentence Reduction Sheds Light on How Prisoners Are Rewarded for Good Behavior," *Dui Hua Human Rights Journal*, August 6, 2009, The Dui Hua Foundation).

On September 11, 2009, Secretary of State Hillary Clinton announced that the two countries would resume their Legal Experts Dialogue, separate but related to the official human rights dialogue. Among the topics that the dialogue raises, Dui Hua hopes that the status of sentence reduction and parole for prisoners convicted of ESS and "cult" offenses will be taken up again. Although it appears controls have been loosened in some provinces, prisoners convicted of ESS and "cult" crimes likely still suffer discrimination

in the area of parole and sentence reduction. It is hoped that increased access to parole and sentence reduction for prisoners convicted of crimes like incitement to subversion and “splittism” will result in the early release of such prisoners. Promoting equal access to clemency for prisoners of conscience should remain a goal of our human rights policy in China.

Before leaving the topic of parole, I would like to mention the release of Jude Shao (邵裘德), a naturalized American citizen who was granted parole in July 2008. As in the United States, parole in China simply means that the prisoner continues to serve his or her sentence, but not in prison. A parolee in China must report on a regular basis to the public security bureau. This requirement has made it difficult for foreigners to receive parole. In the Jude Shao case, the Chinese authorities were convinced by the State Department to grant parole on the grounds that he could reside with family members in Shanghai. His release will hopefully serve as a model for the release of other American citizens incarcerated in China, the majority of whom are naturalized US citizens of Chinese descent.

Capital Punishment

As noted in this Commission’s previous annual reports, the return of the power of final review over death sentences to China’s Supreme People’s Court ranks among the most significant developments in the evolution of China’s criminal law in recent years. Although the return of review power, effective January 1, 2007, has contributed to a significant drop in the number of executions from highs witnessed in the late 1990s, problems with capital cases are legion, ranging from inadequate access to counsel, use of torture to extract confessions, and, in ESS cases like that of Wo Weihai (below), lack of access by the defendant and his or her legal representatives to evidence classified as state secrets. There have also been several high-profile executions of individuals sentenced to death for economic crimes. Thus far, the Chinese government has been unwilling to reduce the number of crimes that carry a death sentence, though it has advised the United Nations (during China’s Universal Periodic Review in February 2009) that it is willing to consider doing so.

One particular case in 2008, that of Wo Weihai, offered the world a rare glimpse into how capital punishment works in China and prompted renewed cause for concern. Wo was a businessman and scientist (and member of the small Daur minority) who was convicted of allegedly passing missile secrets and information about the health of a senior official to the Taiwanese government. However, his trial was closed, and the evidence against him was sealed as state secrets. Wo was the father of two Austrian citizens and the father-in-law of an American citizen, and after he was found guilty and sentenced to death, his children and his son-in-law fought hard to stop the execution. For the first time, China faced a concerted international campaign on the part of foreign governments and NGOs to halt an execution.

There are signs that there was internal debate in Beijing over whether to carry out the execution. Executions in China are, by regulation, supposed to take place within seven

days of the issuance of the SPC review, unless the sentence is overturned. Wo's execution took place at least ten days after the results of the review were issued. Moreover, Wo was executed after his family had been promised another visit with him. (At the first visit, Wo was apparently unaware that he faced imminent execution.) Ironically, the SPC issued an interpretation clarifying the procedure for stopping an execution four days before Wo's execution took place.

Wo was executed by gunshot, but China continues to move in the direction of lethal injection as the preferred means of execution. Today, more than a third of China's population resides in areas that use lethal injection. Chinese experts have variously asserted that China is moving to lethal injection in order to comport with international convention, or to avoid the transmission of blood-borne diseases by gunshot, which reportedly compelled some executioners to wear rubber outerwear for protection. In either case, recent state media coverage of the move to lethal injection offers a modicum of transparency, which is cause for some restrained optimism.

Optimism must be restrained because China still executes more people every year than the rest of the world combined, although the exact number of executions remains a closely guarded state secret. The curtain was raised somewhat when the Ministry of Health revealed on August 26, 2009, that prisoners make up 65 percent of the donors for the approximately 10,000 organ transplants carried out in China every year. Organs from a single prisoner can be used in more than one transplant, but the revelation marks the first time that the Chinese government has acknowledged, however tacitly, that thousands of people are executed every year. Dui Hua estimates that around 5,000 people will be executed in China in 2009. Ten years ago, the number of executions in the country far exceeded 10,000 a year, according to incomplete data and other information collected by Dui Hua. Senior judicial officials have indicated that the present number of executions is still too high, and that use of the death penalty will be further curtailed.

Juvenile Justice

China ratified the UN Convention on the Rights of the Child in 1992, and soon thereafter began to work on reforming its criminal justice system as it applies to juveniles. (The United States is one of only two countries in the United Nations that have not ratified the convention; the other is Somalia.) Reform of China's juvenile justice system was a priority in the SPC's five-year legal reform plan that ended in 2007. Chinese delegations were sent to a number of countries, including Australia, Canada, the United Kingdom, Switzerland, and Germany, to study how different countries handle juvenile crime in the criminal justice system.

In 2007, Dui Hua began discussing an exchange on juvenile justice with the SPC. In October 2008, with the support of the John D. and Catherine T. MacArthur Foundation, Dui Hua hosted a six-person delegation from the SPC to study the juvenile justice system in the United States. The delegation visited Chicago, Washington, DC, Maryland, and San Francisco. They sat in on court proceedings, visited detention centers and "diversion" facilities, and held discussions with some of America's leading experts in the field. The

State Department helped ensure the delegation's success, and the members were afforded the opportunity to discuss juvenile justice with Justice Anthony Kennedy, who wrote the decision in *Roper v. Simmons*, the 2005 Supreme Court case that found executing individuals for crimes committed before the age of 18 unconstitutional. (China has long prohibited the execution of people convicted of crimes committed before the age of 18.)

The delegation was rated a success by both Chinese and American participants, and a report on its findings has circulated widely in Chinese legal circles. The SPC has invited Dui Hua to organize a return delegation of American experts and practitioners to study China's current juvenile justice in May 2010.

Juvenile crime in China has doubled over the past five years. Juvenile offenders—often the children of migrant workers—are mostly tried by tribunals under adult courts, but China has recently begun to establish separate juvenile courts. The ultimate goal of the reform movement is to have all juvenile crime tried in juvenile courts according to a juvenile criminal procedure law. At present, no juvenile under the age of 14 can be incarcerated. Juveniles above this age can be detained in “work study camps,” facilities that bear striking resemblance to “reeducation-through-labor” camps in China and “boot camps” in the United States. Serious juvenile offenders aged 17 and below are incarcerated in juvenile prisons, from which they can be transferred to adult prisons to continue serving their sentences once they reach the age of 18. Chinese judges and legal scholars are interested in the rehabilitation of juvenile offenders through use of alternatives to detention, and the critical role played by the probation officer in the US system. Members of the October 2008 SPC delegation were also interested to learn about how the development of the adolescent brain determines adolescent behavior (though they initially expressed skepticism about the importance of brain development on behavior). In addition, the delegation was struck by the racial bias apparent in the US juvenile justice system.

I believe that juvenile justice is an area of human rights where the two countries can cooperate to their mutual benefit. We should identify other such areas and introduce them into our dialogues on human rights and legal reform. We could well find that working together in areas where the countries share common interests—and what is more basic to both societies than protecting the rights of juveniles—enables us to reach better understanding and positive results in areas where we don't see eye to eye.

This concludes my testimony to the Commission. Thank you again for inviting me to testify, and I look forward to your comments and questions.

Information on June Fourth Prisoners Obtained by Dui Hua
October 1, 2008 - September 30, 2009

In Prison

Jiang Yaqun (姜亚群): Born in 1939. Convicted of counterrevolutionary sabotage by the Beijing Municipality Higher People's Court and sentenced to death, suspended for two years, on July 17, 1990. Sentence has been reduced five times. He suffers from a mild psychiatric illness, and was transferred from Jinzhong Prison to Yanqing Prison, where there is a cellblock for "old, sick, weak and handicapped" prisoners, in September 1993. He is due for release on October 23, 2013.

Li Yujun (李玉君): Born in 1963. Convicted of arson by the Beijing Municipality Higher People's Court and sentenced to death, suspended for two years, on February 11, 1991. In 1993, his sentence was reduced to life imprisonment, and it was then reduced in 1996 to a fixed-term sentence of 20 years to run from November 11, 1996, to November 10, 2016. After five sentence reductions, he is due for release from Beijing Number Two Prison on November 10, 2014.

Miao Deshun (苗德顺): Born in 1964. Convicted of arson by the Beijing Municipality Higher People's Court and sentenced to death, suspended for two years, on October 26, 1989. In 1991, his sentence was reduced to life imprisonment. On October 17, 1997, he was placed in solitary confinement for intentionally wounding himself to cause disability. In 1998, his sentence was reduced to a fixed-term sentence of 20 years to run until September 15, 2018. Since then, there have been no sentence reductions. On April 1, 2003, he was transferred from Beijing Number Two Prison to Yanqing Prison in Beijing because of mental illness, and he is now in the cellblock for "old, sick, weak and handicapped" prisoners.

Yang Pu (杨璞): Born in 1964. Convicted of arson and by the Beijing Intermediate People's Court and sentenced to death, suspended for two years, on November 6, 1989. In 1992, his sentence was reduced to life imprisonment and in 1995 it was reduced to a fixed-term sentence of 19 years and six months to run from October 25, 1995, to April 24, 2015. After receiving four sentence reductions, he is due for release from Yanqing Prison in Beijing on October 24, 2011.

Zhu Gengsheng (朱更生): Born in 1966. Convicted of counterrevolutionary sabotage by the Beijing Municipality Higher People's Court and sentenced to death, suspended for two years, on January 17, 1992. In 1994, his sentence was reduced to life imprisonment, and in 1997 it was reduced to a fixed-term sentence of 19 years to run from January 20, 1997, to January 19, 2016. Following five sentence reductions, he is currently due for release from Beijing Number Two Prison on April 19, 2012. In 1999, he was given a demerit for unlawful possession of matches.

Released

Chang Jingqiang (常景强): Born in 1970. Convicted of counterrevolutionary assault by the Beijing Municipality Higher People's Court and sentenced to life imprisonment on September 19, 1990. Sentence reduced six times. Released from Beijing Number Two Prison on July 23, 2009.

Liu Zhihua (刘智华): Convicted of hooliganism by the Xiangtan Intermediate People's Court in October, 1989. His sentence was reduced by two years on December 1, 2008. He was released from Loudi Prison in Hunan Province on January 3, 2009.

Peng Jiamin (彭家民): Born in 1969. Convicted of sabotaging transport equipment/infrastructure by the Shanghai Intermediate Court on June 21, 1989. Following multiple sentence reductions, he was released from Baoshan prison in Shanghai on May 21, 2009.

Song Kai (宋凯): Convicted of counterrevolutionary assault by the Beijing Intermediate People's Court. In 1990, his sentence was reduced to life imprisonment. In 1993, his sentence was reduced to a fixed-term sentence of 17 years to run from April 26, 1993, to April 25, 2010. Following five sentence reductions, he was released from a Beijing prison on September 25, 2007.

Wang Jun (王军): Born in 1971. Convicted of robbery and arson by the Shaanxi High People's Court and sentenced to death with two year reprieve in October 1989. In 1991, his sentence was reduced to life imprisonment. Following multiple sentence reductions, he was released from Fuping Prison in Shaanxi Province on May 11, 2009.

Wang Yan (王斌): His sentence was reduced to a fixed-term sentence of 16 years in 1992, to run from November 9, 1992, to November 8, 2008. Following four sentence reductions, he was released from a Beijing prison on February 8, 2002.

Zhang You (张幽): Born on March 20, 1972, and a resident of Xincheng County in Hebei. Convicted of arson and hooliganism by the Chengdu Intermediate People's Court and sentenced to life in prison on July 1, 1989. In 1990, he was transferred from Chengdu Juvenile Detention Facility to Peng'an Prison. Following multiple sentence reductions, he was released on November 16, 2007.

Zhu Wenyi (朱文义): Born in 1961. Convicted of arson by the Beijing Intermediate People's Court and sentenced to death, suspended for two years, on October 26, 1989. In the early 1990s, his sentence was reduced to a fixed-term of 20 years. After five sentence reductions, he was paroled on January 25, 2005.

No Record Found

Chen Yong (陈勇): Reportedly convicted of counterrevolutionary assault by the Beijing Intermediate People's Court and sentenced to life imprisonment on December 8, 1989. No record of Chen Yong in the Beijing prison system was found.

Hu Linyong (胡林勇, phonetic): Reportedly convicted of arson by the Shanghai Intermediate People's Court and sentenced to life imprisonment in 1989. No record of Hu Linyong was found in the Shanghai prison system.

Liu Gang (刘刚): Reportedly convicted of hooliganism by the Shaanxi Intermediate People's Court and sentenced to life imprisonment in September 1989. No records of Liu Gang in the Shaanxi prison system was found.

Liu Jian (刘健): Reportedly convicted of hooliganism by the Xiangtan Intermediate People's Court and sentenced to life imprisonment in July 1989. No records of Liu Jian in the Hunan prison system was found.

Luan Jikui (栾吉奎): Reportedly convicted of arson by the Beijing Intermediate People's Court and sentenced in 1989 or 1990 to death, suspended for two years. Sentence commuted to life imprisonment in 1991. No record of Luan Jikai in the Beijing prison system was found.

Sun Guanghu (孙广虎): Reportedly convicted of hooliganism by the Xi'an Intermediate People's Court and sentenced to life imprisonment in September 1989. No record of Sun Guanghu in the Shaanxi prison system was found.

PREPARED STATEMENT OF ELIZABETH ECONOMY

OCTOBER 7, 2009

Mr. Chairman and distinguished Members of the Commission, it is my pleasure to have the opportunity to discuss China's efforts in the realm of human rights, the rule of law and the environment and the prospects for U.S.-China cooperation on this critical issue.

INTRODUCTION

Over the past five to seven years, China's leaders have become increasingly concerned about the impact of the environment on the country's future. Twenty of the world's 30 most polluted cities are in China; over half of the country's population drinks contaminated water on a daily basis; and more than 25 percent of the land is severely degraded or desertified. As China's Minister of Environmental Protection Zhou Shengxian acknowledged in 2007, "Pollution problems have threatened public health and social stability and have become a bottleneck for sound socio-economic development."¹

Much of China's environmental challenge stems from the very rapid and unfettered growth of the past 30 years. The "growth at all costs" model of development has exerted a profoundly negative impact on the country's air, water and land quality and further transformed China into a major global polluter. The country now ranks as the world's chief contributor to global climate change, ozone depletion, the illegal timber trade, and pollution in the Pacific.

Yet the inability of China's leaders to turn this devastating environmental situation around—and the environment is frequently mentioned as a "top" priority by President Hu Jintao and Premier Wen Jiabao—has as much to do with failings in governance as with economic interests. China has passed well over 100 environ-

¹Jiangtao Shi, "Beijing gets flak for pollution of waterways," South China Morning Post (September 17, 2007).

mental laws and hundreds of regulations. The challenge rests in effectively implementing these laws and regulations, a process that is seriously impeded by a lack of transparency, rule of law and official accountability.

Whether China's leaders are able to incorporate better governance practices into their system matters enormously not only for the health and welfare of the Chinese people but also for the rest of the world. If China cannot enforce its current environmental laws and regulations, there is little reason to believe that it will be able to respond effectively to a challenge such as global climate change.

THE NATURE OF THE CHALLENGE

China's leaders are concerned about the country's environment above all because it is limiting opportunities for future economic growth, harming the health of the Chinese people, and has become one of the leading sources of social unrest throughout the country.

The economic challenges are most direct. Over the past several years, the Chinese media have reported on a number of environment-induced annual economic losses: desertification costs the Chinese economy about \$8 billion, in addition to water pollution costs of \$35.8 billion, air pollution costs of \$27 billion and weather disaster and acid rain costs of \$26.5 and \$13.3 billion respectively.² All told, the Ministry of Environmental Protection estimates that environmental pollution and degradation cost the Chinese economy the equivalent of 10 percent of GDP annually. Regionally, the impact is even more devastating. The prawn catch in the Bohai Sea, for example, has dropped by 90 percent over the past decade and a half as a result of pollution and overfishing. In Qinghai, over 2,000 lakes and rivers have simply dried up over the past two decades, contributing to significant lost opportunities for industrial growth.

These economic costs are compounded by a set of mounting public health problems. In a survey of 30 cities and 78 counties released in spring 2007, the Ministry of Health blamed worsening air and water pollution for dramatic increases in the incidence of cancer throughout the country: a 19 percent rise in urban areas and a 23 percent rise in rural areas since 2005.³ About 700 million people in China drink water that is contaminated with human or animal waste,⁴ and according to the Ministry of Water Resources, 190 million drink water that is so contaminated that it is dangerous to their health.

Taken together, these economic and health problems are at the root of the rapidly rising public discontent and unrest over the state of the environment. According to Minister Zhou, in 2005, the number of environmental protests topped 50,000.⁵ While some pollution-related protests are relatively small and peaceful, others become violent, even deadly, when demands for change are repeatedly ignored.

In August 2009, for example, several thousand villagers in Shaanxi Province stormed a lead and zinc smelting plant after hundreds of children living near the plant tested positive for excessive levels of lead in their blood.⁶ Of these, 154 were so sick that they had to be admitted to the hospital.⁷ The villagers had been complaining for three years about the plant, and although the local government has promised to relocate the affected families, villagers in the relocation sites have noted that their children are similarly afflicted with lead poisoning.⁸

Environmental protest has also been spurred by the Internet. In May 2009, in Shandong Province, a group of residents posted an online petition calling for an investigation of four cyclohexanone chemical plants. The petitioners believed that the factories, which had been in operation since a year earlier, were polluting the air and water and contributing to an unusually high number of thyroid cancer cases. The county government initially ignored the petition, arguing that the factories were not allowed to drain wastewater until they met provincial standards and had passed

²"Cost of Pollution in China: Economic Estimates of Physical Damages," The World Bank and China State Environmental Protection Administration (February 2007).

³"Health Expert Blames Pollution for China's Cancer Rise," Reuters (May 16, 2007).

⁴"Toxic Rivers and Thirsty Cities," China Environment Forum, Woodrow Wilson International Center for Scholars (May 2007): www.wilsoncenter.org/index.cfm?fuseaction=topics.item&news—id=224022&topic—id=1421.

⁵"Wen sets out strategy to tackle environmental protection," Xinhua News Agency (April 23, 2006).

⁶"Hundreds storm smelter over lead poisoning," Reuters (August 17, 2009).

⁷Kelly Chan, "Lead-poisoned villagers in Shaanxi fear new location unsafe," South China Morning Post (August 17, 2009). Lead poisoning can damage the nervous and reproductive systems. It also can cause anemia, affect a child's learning ability, and in the worst cases, lead to coma and death.

⁸Shi Jiangtao, "Order Restored after Factory Protest," South China Morning Post (August 18, 2009).

official water quality tests. Over the next month, the petition circulated on web portals such as Baidu and Tianya, collecting an estimated 1,400 signatures. In an open letter published on Internet forums, one resident even called for a broader “uprising” that might not be successful but would “mark the start of a revolution against a crude regime” and even called for the killing of the Communist Party chief and county director. The author later claimed that more than 5,000 people had signed up for the protest. On June 29, 2009, Premier Wen Jiabao ordered the Shandong officials to investigate the claims and respond to the public.⁹

In addition, the Internet and other forms of telecommunication such as texting have facilitated mobilized protest in urban areas, a phenomenon of only the past two years. There have been significant protests—with up to 10,000 people—in major cities such as Xiamen, Zhangzhou and Chengdu over the planned siting of various large-scale chemical and petrochemical plants. Here, too, violence has occurred in some cases. Notably, in a few of these instances of urban protest, public opposition has been strong enough to lead to a reversal in a government decision. The significance of the urban, middle class protest is that it erupts not “after the fact” in response to a devastating environment-induced economic or public health crisis, but rather in advance of something likely to cause significant public health damage. In a small, but potentially significant, way, therefore, urban protesters have influenced Chinese government policy.

REFORM IN ENVIRONMENTAL GOVERNANCE

There are a number of reasons for China’s worsening environmental situation and the related proliferating social and economic challenges: a continued priority on economic growth, the pricing of resources that doesn’t support conservation or efficiency, a dearth of political and economic incentives to do the right thing and, most critically, a lack of transparency, official accountability and the rule of law. There is no reliable mechanism for uncovering and dealing with environmental wrongdoing.

To begin with, accurate environmental data are often difficult to obtain. Sometimes it is a matter of capacity. Local environmental officials may simply not have the manpower, transportation or funds to monitor pollution levels at all the sites for which they are responsible. In addition, local officials are often reluctant to provide information that reflects poorly on their leadership, and there is no institutionalized check on the statistics that are provided. One significant central government campaign to evaluate local officials on their environmental performance—the Green GDP campaign—failed in large measure because the Ministry of Environmental Protection could not access the necessary environmental data from a number of recalcitrant provincial leaders. In a few places, such as Jiangsu Province, there are experiments underway with international partners to scorecard factories and make the information available publicly. However, ensuring the transparency element of the process has apparently been quite difficult.

Corruption is also a serious problem. Many local officials often ignore serious pollution problems out of self-interest. Sometimes they have a direct financial stake in factories or personal relationships with factory managers. In recent years, the media have uncovered cases in which local officials have put pressure on the courts, the press, or even hospitals to prevent pollution problems and disasters from coming to light. Moreover, local officials often divert environmental protection funds to other endeavors. A recent Ministry of Environmental Protection-supported study, for example, found that fully half of the environmental funds distributed from Beijing to local officials for environmental protection made its way to projects unrelated to the environment.

Recognizing the potential of local officials to subvert or ignore environmental laws and regulations, Beijing has opened the door to the media and non-governmental organizations (NGOs) to act as unofficial environmental watchdogs. China’s first environmental NGO, Friends of Nature, was established in 1994, and it was devoted to environmental education and biodiversity protection. Fifteen years later, China has over 3,000 environmental NGOs that play a role in virtually every aspect of environmental protection. Above all, they help bring transparency to the environmental situation on the ground. These groups help expose polluting factories to the central government, launch Internet campaigns to protest the proliferation of large-scale hydropower projects, sue for the rights of villagers poisoned by contaminated water or air, provide seed money to smaller, newer NGOs throughout the country, and go undercover to expose multinationals that ignore international environmental

⁹Al Guo, “Internet petition catches the eye of Premier Wen; Pollution investigation fast-tracked,” South China Morning Post (June 29, 2009).

standards. The media are an important ally in this fight: educating the public, shaming polluters, uncovering environmental abuse and highlighting environmental protection successes.

Environmental NGOs are also at the forefront of advancing the still nascent rule of law in China's political system. In 1998, Wang Canfa, a professor of law at the China University of Politics and Law, established the Center for Legal Assistance to Pollution Victims (CLAPV). The center trains lawyers to engage in enforcing environmental laws, educates judges on environmental issues, provides free legal advice to pollution victims through a telephone hotline, and litigates cases involving environmental law. Between 2001 and 2007, the center trained 262 lawyers, 189 judges and 21 environmental enforcement officials in environmental law.¹⁰

In addition, Wang has been advising the Chinese government on the establishment of a system of specialized environmental courts. Beginning in late 2007, the Supreme People's Court established a network of courts that are responsible only for cases regarding environmental protection and the enforcement of environmental regulations. These environmental protection courts seek to address the weak capacity of judges to solve environmental disputes due to lack of expertise and experience, eliminate the challenge faced by plaintiffs in bringing environmental lawsuits, and strengthen the enforcement of judgments against defendants who are influential in local economic matters. Thus far, these courts have been established in three provinces: Guizhou, Jiangsu and Yunnan. The courts have already heard a number of cases: the Kunming Court in Yunnan Province heard 12 environmental law violation cases during the first half of 2009, while the Guiyang court in Guizhou accepted 45 environmental cases (and ruled on 37 of them) in its first six months.¹¹ These environmental courts also have the authority to enforce the judgments they issue. More environmental courts are expected to open throughout China as the success of established courts becomes determined. The biggest problem currently confronting the courts is that they do not have enough cases to consider.

Despite the important role that environmental NGOs and the media have come to play in China's environmental protection effort, many Chinese leaders remain wary of the intentions of these non-governmental actors. Above all, China's leaders fear the potential that the environment might become a lightning rod for a broader push for political reform. They thus have put in place a Byzantine set of financial and political requirements to confine NGO activities within certain boundaries and to enable their close monitoring by authorities. Misjudging these boundaries can bring severe penalties. Wu Lihong worked for 16 years to address the pollution in Tai Lake, gathering evidence that forced almost 200 factories to close. In 2005, Beijing honored Wu as one of the country's top environmentalists, but in 2006, one of the local governments Wu had criticized, arrested and jailed him on dubious charges of blackmail and fraud. Yu Xiaogang, the 2006 winner of the Goldman Environmental Prize and 2009 winner of the Ramon Magsaysay Award, both for grassroots environmental activism, has been forbidden to travel abroad in retaliation for educating villagers about the potential downsides of a proposed dam relocation in Yunnan Province. A third environmental activist, Tan Kai, has been in jail since 2006. In 2005, Tan established the NGO Green Watch in his home province, Zhejiang, to monitor local officials' compliance with orders to shut down several polluting factories that had been the sites of serious protests.

IMPLICATIONS FOR THE UNITED STATES

For the United States, the capacity of China to meet its environmental challenges is only becoming more pressing. If China does not have transparency, accountability or the rule of law within its domestic environmental system, it cannot be relied upon to be a responsible partner to meet the challenge of a global issue such as climate change. It will not possess the capacity to enforce the regulations that will arise from domestic climate legislation nor the transparency to ensure accurate measurement of emissions and emissions reductions. Nor will China be able to devise and implement a system that will ensure that officials who attempt to subvert the legislation will be held accountable. This does not mean that the United States should not move forward to assist China in setting and meeting targets to reduce their greenhouse gas emissions. It does suggest, however, that building capacity

¹⁰Lindon Ellis, "Giving the Courts Green Teeth," China Environment Forum, Woodrow Wilson International Center for Scholars (October 22, 2008): <http://www.wilsoncenter.org/index.cfm?topic—id=1421&fuseaction=topics.event—summary&event—id=477342>.

¹¹Gao Jie, "Environmental Protection Courts: Incubator of Environmental Public Interest Litigation or Just A Decoration?" GreenLaw (October 5, 2008): <http://www.greenlaw.org.cn/enblog/?p=4>.

within China's system of environmental governance should be a top priority for bilateral cooperation.

There are small-scale efforts already underway within the United States to help China develop such capacity. Over the past two years, the U.S. government has provided \$5–\$10 million in Development Assistance for programs and activities in the PRC related to democracy, rule of law and the environment.¹² With support from the U.S. government, for example, the American Bar Association has supported both Wang Canfa's Center for Legal Assistance to Pollution Victims as well as various universities to train public interest lawyers to specialize on the environment and provide expertise to the new environmental courts. Vermont Law School similarly engages partners such as SunYat-sen University to help improve China's environmental policies, systems and laws. Climate change is also garnering growing interest as an area of cooperation. The state of California is already pushing forward on several fronts, including enhancing transparency in energy use in Jiangsu Province and fostering interagency cooperation at the local level to address climate change.¹³ Still, the majority of interest and attention in the United States and China is focused on the opportunity for technology cooperation and transfer. This technology will only be effective, however, if China has the appropriate political environment to support its use. To tackle an issue of the magnitude of climate change, will require far more of a concerted and coordinated international effort by the United States and its partners to bolster the rule of law, transparency and accountability within China.

PREPARED STATEMENT OF DONALD C. CLARKE

OCTOBER 7, 2009

LAWYERS AND THE STATE IN CHINA: RECENT DEVELOPMENTS

I. INTRODUCTION

The relationship between lawyers and the state in post-Mao China has been both fluid and complex.¹ No longer are lawyers considered to be simply “state legal workers” with quasi-official status. At the same time, the state considers them to be more than simply commercial suppliers of a service. It exercises tight control over lawyers' associations, and imposes special duties on lawyers to promote the state's interest even when it might be at the expense of their clients. As for lawyers themselves, some are not only content with the status quo but actively work to promote it and suppress challenges. Others engage in controversial or sensitive activity but stay carefully within the bounds of what is actually permitted; still others push the boundaries a bit further to what is formally permitted but may not be regularly permitted in practice. And a very few consciously go beyond even that limit and openly challenge the state.

The response of the state to perceived challenges from lawyers has also varied across time and space. Central and local government actions are not always coordinated and may indeed be contradictory, as may actions from different agencies within the same level of government. Policy may at one time be relatively relaxed and another time quite tight.

Despite this complexity, it is possible to reach certain big-picture conclusions, and one of them is that the environment for lawyers who get involved in cases or activities of any sensitivity² has worsened in the last several months. In April 2008,

¹²Thomas Lum, “U.S.-Funded Assistance Programs in China,” Congressional Research Service (January 28, 2008).

¹³“Local-to-Local Energy Linkages: California and Alberta in China,” Event Summary, China Environment Forum, Woodrow Wilson International Center for Scholars (May 20, 2008).

¹For excellent English-language scholarship in this area, see, *inter alia*, the work of Prof. William P. Alford (publications list at <http://tinyurl.com/ybg6824>); Prof. Hualing Fu (several publications posted at <http://www.ssrn.com>); Prof. Sida Liu (publications list at <http://tinyurl.com/y959lhf>); and Prof. Ethan Michelson (publications list at <http://tinyurl.com/ydyqrqw>).

²By “sensitive” I mean two things. First, I mean cases or activities relating to subjects that are well known to be matters of government concern—for example, Falun Gong, Tibet, unapproved political parties, land takings, and environmental protests. But I also use “sensitive” to indicate cases that might be quite ordinary in their subject matter but have been made sensitive by the involvement for any reason of influential people—for example, an ordinary-looking commercial dispute where one side is a company that is owned by a relative of a top leader or is a major contributor to the local economy.

Human Rights Watch issued a report on the status of lawyers in China;³ this testimony aims largely to provide an update on developments since that time.

II. RECENT DEVELOPMENTS

Since spring 2008, the central and local governments have taken a number of steps to discourage lawyers from challenging the state in any significant way.⁴ Most prominent among these steps have been (1) formal and informal measures to prevent lawyers from effectively representing parties involved in sensitive incidents such as mass unrest or mass torts, and (2) the delicensing of particularly troublesome lawyers and firms, sometimes through an active delicensing process and sometimes through failure to allow the lawyers to pass the annual re-licensing process. I discuss some particular examples below.

A. Suspension of the Yitong Law Firm

Yitong is a Beijing law firm headed by activist lawyer Li Jinsong. It has been at the center of several high-profile cases, representing Hu Jia, the HIV/AIDS activist, and Chen Guangcheng, the blind “barefoot lawyer”⁵ who exposed forced abortions in his native Shandong province. Several Yitong lawyers were behind an unsanctioned challenge to the leadership of the Beijing Lawyers Association (discussed below).

On March 17, 2009, the Haidian District Judicial Bureau in Beijing issued a final decision ordering the closing of Yitong for six months on what were widely considered to be weak charges.⁶ Despite predictions by Li Jinsong that the firm might not survive, it reopened on September 14, 2009.⁷ Although the firm has re-opened, it lost a large number of its lawyers and its ability to function has certainly been greatly impaired. Moreover, the lesson that troublemaking will be punished cannot have been lost on other activist (or would-be activist) lawyers. While some will undoubtedly continue to do what they have always done, there are others at the margin for whom the punishment of Yitong would be (as intended) of decisive discouraging effect.

B. Closing of the Open Constitution Initiative

The Open Constitution Initiative (“OCI”) was an organization headed by Xu Zhiyong, a legal scholar who teaches at Beijing Posts and Telecommunications University and is an elected delegate to the Haidian People’s Congress. The OCI had been prominent in many issues related to the rule of law in China, from issuing a report criticizing government policy in Tibet to providing assistance to the families of babies poisoned in the melamine-tainted milk scandal. In July 2009, OCI was charged with tax evasion and ordered to pay 1.43 million yuan, a huge amount relative to the scale of the charged offense.⁸ The organization’s offices were raided by officials of the Beijing Bureau of Civil Affairs, who confiscated substantial amounts of property. OCI was then declared “illegal” and its web site shut down.⁹

³ Human Rights Watch, “Walking on Thin Ice”: Control, Intimidation and Harassment of Lawyers in China (April 2008), available at <http://www.hrw.org/reports/2008/china0408/>.

⁴ It is important to note that the number of such lawyers is small, both in absolute terms and relative to the size of the profession. The political activism of lawyers as a profession in China is utterly different from that of lawyers in, say, Pakistan.

⁵ “Barefoot lawyers” are persons—typically in the countryside—not licensed as lawyers who have developed a certain expertise in legal matters and assist their neighbors and others in asserting legal claims. See Melinda Liu & Lijia MacLeod, Barefoot Lawyers, Newsweek, Mar. 4, 2002, available at <http://www.newsweek.com/id/75076>.

⁶ See Peter Ford, China Cracks Down on Human Rights Lawyers, Christian Science Monitor, February 25, 2009, available at <http://tinyurl.com/ca7pkz>; “Killing One to Warn 100”: The Shut-down of the Yitong Law Firm, China Rights Forum, No. 1, 2009, at 22, available at <http://tinyurl.com/yan85an>.

⁷ See Li Jinsong, *Zong you yizhong liliang qushi women gushou “zhengyi, aixin, liangzhi, fazhi!”*—Yitong lüshi shiwusuo huifu zhiye zhi ri zhi haineiwai pengyou (There Is Always a Force Pushing Us to Maintain “Justice, Love, Conscience, and Rule of Law!”—To Domestic and Foreign Friends on the Occasion of the Yitong Law Firm’s Resumption of Business), September 14, 2009, <http://tinyurl.com/y9nnz9t>.

⁸ OCI was charged with owing 187,424 yuan (approx. \$27,500) in back taxes—an amount disputed by OCI—and fined 1,242,100 yuan (approx. \$182,200), the highest possible amount. See Jiang Xueqing, Baby Milk Powder Victims Lose Legal Proxy, Global Times (China), August 11, 2009, available at <http://tinyurl.com/ye6s9pt>.

⁹ See Edward Wong, China Shuts Down Office of Volunteer Lawyers, New York Times, July 17, 2009, available at <http://tinyurl.com/y97leo4>.

On July 29, 2009, Xu Zhiyong himself was detained and subsequently arrested¹⁰ on charges of tax evasion.¹¹ He was released pending trial on August 23;¹² the case is still unfolding.

C. Raiding of Yirenping

On July 29, 2009, the Beijing offices of the Yirenping Center, an NGO specializing in public health education, aid to patients, and the elimination of discrimination, were raided by officials from the Beijing Public Security Bureau and state publishing authorities on the grounds that Yirenping was engaging in unauthorized publishing activities by having a newsletter. Yirenping's head, Lu Jun, was ordered to present himself for further investigation.¹³

D. Tempest in the Beijing Lawyers Association

Lawyers associations in China are typical Leninist "mass organizations": vehicles more for top-down control than for bottom-up articulation and representation of interests. In this way, they resemble labor unions, the Women's Federation at various levels, and the official churches. In September 2008, some lawyers in Beijing issued a call for the direct election of leaders of the Beijing Lawyers Association ("BLA") as well as other reforms that would have the effect, they said, of taking power from the small group of rich lawyers currently in control.¹⁴

The BLA leadership did not take this challenge lying down. It issued a rather nasty response¹⁵ full of the kind of politically threatening language one rarely sees any more: it speaks of "linking up" (a pejorative word evocative of Red Guards running rampant), working "under the signboard" of democracy, "stirring up rumors" and "rabble-rousing," "inciting" lawyers "who don't understand the true situation," etc. The response warns darkly that using text messages and e-mail to engage in this kind of activity is illegal, although the laws being violated are not mentioned. Lawyers are urged to maintain a correct political orientation and to resist the blandishments of this "minority."

The lawyers who issued the statement did not back down, and issued a firm response of their own,¹⁶ maintaining their right to a say in the running the BLA. In the end, however, their defiance proved fruitless. The law firm most prominently associated with the challenge, Yitong Law Firm, was closed for six months by the authorities, and several of the lawyers involved lost their licenses to practice law (see below).

E. Denial of Re-Licensing to Lawyers

China's lawyers are subject to an annual re-licensing procedure. Instead of taking active steps to de-license a lawyer deemed troublesome, the authorities can simply refuse to re-license when the time comes. On July 9, the Beijing Judicial Bureau, the body in charge of licensing lawyers in Beijing, announced on its web site that it had canceled the licenses of 53 lawyers, including prominent lawyer Jiang Tianyong, for failing to register as members of the Beijing Lawyers Association.¹⁷ Another group of lawyers not on the list were simply refused a renewal of their licenses on the grounds that they had "failed their assessments"; these lawyers included well-known lawyers such as Li Heping.¹⁸ Another activist lawyer, Teng Biao, was refused a license renewal when his employer, the China University of Politics and Law, refused to support his application.¹⁹ The pretextual nature of the grounds

¹⁰ "Arrest" (*daibu*) is a formal stage in Chinese criminal procedure; it means more than simply subject to coercive detention by the authorities.

¹¹ See Michael Wines, Chinese Public Interest Lawyer Charged Amid Crackdown, New York Times, August 18, 2009, available at <http://tinyurl.com/yavwff8>.

¹² See Michael Wines, Without Explanation, China Releases 3 Activists, New York Times, August 23, 2009, available at <http://tinyurl.com/yacl6ff>.

¹³ Human Rights in China, Raid of Public Interest Group Reveals Degree of Information Control, July 29, 2009, <http://tinyurl.com/y8an8n7> (press release); Kathrin Hille, Chinese Authorities Detain Civil Rights Activist, Financial Times, July 30, 2009, available at <http://tinyurl.com/y93jz6o>.

¹⁴ The text of their open letter is attached as Appendix 1.

¹⁵ The text of the response is attached as Appendix 2.

¹⁶ The text of the response is attached as Appendix 3.

¹⁷ See Beijing Judicial Bureau, *Beijing shi sifa ju guanyu zhuxiao Zhang Qingtai deng 53-ming lüshi de lüshi zhiye zhengshu de jue ding* (Decision of the Beijing Judicial Bureau on the Cancellation of the License to Practice of Zhang Qingtai and 52 Other Lawyers), July 9, 2009, <http://tinyurl.com/yc7nxx5>.

¹⁸ See Amnesty International, Human Rights Lawyers Disbarred in China, July 15, 2009, <http://tinyurl.com/yaq3o97> (press release).

¹⁹ Chinese lawyers must generally work through an employing body such as a law firm or, in the case of academics working as part-time lawyers, their university. The support of the employer is therefore required.

for de-licensing is evident from the fact that previous years have not, to my knowledge, seen such large-scale de-licensing.

F. Interference With Attorney-Client Relations

On several occasions, state and quasi-state authorities (for example, bar associations) have issued rules or engaged in practices that have the intention and effect of preventing lawyers from offering effective representation to clients. One of the most well-known of these was issued to lawyers charged with defending those involved in the 1989 protests. It instructed them to “do a good job of ideological work on the defendant and his family members, encouraging them to admit the crime and submit to the law.”²⁰ Another document issued at about the same time made clear the state’s view of the role of lawyers:

Defense is not a matter of victory or defeat, and the legal advisor is not competing with the procuratorial and court personnel to see who comes out on top; it is a propaganda effort, directed at the citizens, to condemn vice and praise justice.²¹

This view has not significantly changed over time. The state continues to engage in intensive efforts to stay informed of and direct the work of lawyers in cases it deems sensitive, and to simply block the efforts of lawyers to represent clients even when it is unwilling to issue formal rules to that effect. I provide an incomplete list of such efforts below, with some historical background but a focus on more recent efforts.

- In 1999, the Beijing Judicial Bureau issued a document establishing a “leading group” within the Bureau to deal with “major and important cases.” Certain cases were to be reported to the leading group by lawyers—for example, all instances of collective litigation or litigation involving state organs or leaders above the prefectural level. And certain cases not only were to be reported, but required approval from the leading group before lawyers could accept them—for example, all cases involving state security or foreigners.²² The document specifically stated that “[t]he lawyer handling the case should prepare his tactics according to the decision made by the leading group after the discussion.”
- In 2004, the Nantong Municipal Judicial Bureau issued a document intended to “strengthen the work of guidance over lawyers handling important cases. This document required lawyers to report to the government when handling cases of various kinds, including any lawsuits involving ten or more plaintiffs and any proposed not-guilty plea in criminal proceedings.”²³
- In 2006, the Henan provincial authorities issued a document imposing more supervisory controls on lawyers handling “important, sensitive, and mass cases.”²⁴
- In 2006, the Shenyang municipal authorities issued a regulation requiring lawyers to report to, and seek instructions from, the relevant municipal authorities before undertaking “important,” “difficult,” or “sensitive” cases.²⁵
- In 2006, a similar regulation with nationwide effect and specifically covering multiparty litigation (cases with 10 or more plaintiffs) was issued by the All-

²⁰ All-China Lawyers Association, Circular on “The Defense Work of Lawyers in the Current Trials of Cases Related to the Turmoil and Counterrevolutionary Rebellion,” November 25, 1989, reprinted and translated in *Human Rights in China, Going Through the Motions: The Role of Defense Counsel in the Trials of the 1989 Protestors* 7, 8 (March 1993).

²¹ Shanghai Municipal Lawyers Association Research Department, Shanghai Concentrates on Doing a Good Job of Criminal Defense Work in “Turmoil-Related Cases” (Outline of Report), n.d., reprinted and translated in *Human Rights in China*, supra note 20, at 16, 19.

²² Beijing Judicial Bureau, *Guanyu Beijing Shi lüshi shiwusuo chengban zhongda falü shiwu qingshi baogao de zhidu* (On the System of Asking for Instructions and Reporting When Law Firms Handle Major Legal Matters), issued Jan. 14, 1999.

²³ Nantong Judicial Bureau, *Guanyu jinyibu jiaqiang dui lüshi banli zhongda anjian zhidao gongzuo de yijian* (Opinion on Further Strengthening the Work of Guidance over Lawyers in Their Handling of Major Cases), February 18, 2004, available at <http://www.ntda.gov.cn/wjzxqg/W2580001035.htm> (Chinese; URL does not function as of October 5, 2009); <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=50420> (English translation).

²⁴ Henan Judicial Department, *Guanyu jiaqiang dui lüshi banli zhongda, min’gan, quntixing anjian zhidao jiandu de yijian* (Opinion on Strengthening Guidance and Supervision over Lawyers in Their Handling of Major, Sensitive, or Mass Cases), Mar. 28, 2006, available at <http://tinyurl.com/ycba85y>.

²⁵ See *Shenyang Shi lüshi chengban zhongda yinan min’gan anjian qingshi baogao de ruogan yijian* (Several Opinions on Reporting and Requesting Instructions When Shenyang Lawyers Handle Important, Difficult, or Sensitive Cases), April 2006, cited in *Shenyang lüshi chengban min’gan anjian xu qingshi* (Shenyang Lawyers Must Seek Instructions When Handling Sensitive Cases), <http://www.legalinfo.gov.cn/moj/lsgzgzds/2006-04/20/content-303794.htm> (Chinese Ministry of Justice official web site).

China Lawyers Association (“ACLA”), a government-controlled body that, together with the national Ministry of Justice and its local-government counterparts, is in charge of lawyers in China. The regulation, entitled “Guidance Opinion on the Undertaking by Lawyers of Mass Cases,” requires lawyers to report to local authorities and “accept supervision and guidance.”²⁶

- In 2006, lawyers were specifically forbidden to represent clients seeking compensation for injuries in a chemical plant explosion.²⁷
- In 2008, several dozen lawyers volunteered to represent plaintiffs in the Sanlu scandal, in which four babies died and some 53,000 suffered kidney damage as a result of melamine-tainted milk.²⁸ It is reported, however, that lawyers were warned by the central government not to take such cases.²⁹
- In 2009, attorney Li Dunyong was forbidden by court officials in Qinghai province from representing Tibetan filmmaker Dhondup Wangchen, and attorney Li Fangping was prevented from representing two Tibetan monks in Gansu province.³⁰
- In 2009, several lawyers were threatened with disbarment for offering to represent Tibetan defendants in Lhasa riot cases, and those who persisted were simply refused permission by the authorities on the grounds that the defendants “already had lawyers.”³¹
- In 2008 and 2009, several local governments have issued regulations requiring lawyers to notify authorities and accept guidance when handling certain types of cases deemed sensitive or otherwise important. I have found regulations from the cities of Yulin³² and Taizhou³³ and from the county of Zhenning.³⁴

G. Continued Disappearance of Gao Zhisheng

Finally, the continued disappearance of attorney Gao Zhisheng deserves a paragraph of its own. Gao was taken into custody in February 2009, presumably by state security agents.³⁵ There has been no acknowledgment since that time by any Chi-

²⁶ See generally Human Rights Watch, “A Great Danger for Lawyers”: New Regulatory Curbs on Lawyers Representing Protestors (December 2006). This report contains a translation of the ACLA document.

²⁷ See Zheng Yi, “*Lüshi bu de jieru*” *dui shei you li* (To Whose Benefit Is It that “Lawyers May Not Get Involved?”), sina.com.cn, <http://news.sina.com.cn/o/2006-08-24/02269830142s.shtml> (reprinted from Jiangnan Shibao (Jiangnan Times)). I have not seen the original document containing this prohibition, if one exists.

²⁸ See Xu Kai, *Zhiyuan lüshi tuan wei “shenjieshi ying’er” suopei “zhizhao”* (Volunteer Lawyers Group Offers Services in Seeking Compensation for “Kidney Stone Babies”), *Caijing* (Finance and Economy), September 13, 2009, available at <http://tinyurl.com/yawfirm5>; China Human Rights Lawyers Concern Group, Support Chinese Lawyers to Provide Voluntary Legal Aid to Victims of Contaminated Milk Powder, September 25, 2008, <http://www.chrlcg-hk.org/?p=322>.

²⁹ See *Dunai suopei falü yuanzhu shouzu* (Legal Aid in Poisoned Milk Compensation Cases Encounters Obstacles), *Da Gong Bao* (Hong Kong), October 5, 2008, available at <http://tinyurl.com/yejem46>. It should be noted that the *Da Gong Bao* is normally extremely supportive of the Chinese government.

³⁰ See Radio Free Asia, Beijing Blocks Tibet Lawyers, July 20, 2009, <http://tinyurl.com/y8hy8dw>.

³¹ See Nirmala Carvalho, “*Mei yong*” *lüshi bei gan; lama bei pan wuqi tuxing* (“Useless” Lawyers Driven Away; Lamas Sentenced to Life Imprisonment), *Asianews.it*, July 21, 2009, <http://tinyurl.com/yce2757>; see also Kanbujian de Xizang (Woesser’s Blog) (Invisible Tibet), June 8, 2009, <http://tinyurl.com/yay6tan>.

³² Yulin City Judicial Bureau, *Yulin Shi sifa ju guanyu lüshi zai banli min’gan anjian he quntixing anjian zhong tuixing shiyong chengnuoshu de tongzhi* (Notice of the Yulin City Judicial Bureau on Promoting the Use of Written Undertakings When Lawyers Handle Sensitive and Mass Cases), July 7, 2009, available at <http://www.yulin.gov.cn/info/94599> (requiring lawyers to obtain written promises from clients not to engage in petitioning to higher authorities, and stating that “interfering with the normal work of state organs” shall mean the automatic dissolution of the lawyer-client relationship).

³³ Taizhou City Judicial Bureau, *Guanyu guanche sheng ting “Guanyu jiaqiang dui lüshi banli min’ganxing, quntixing anjian zhidao jiandu gongzuo de tongzhi” de yijian* (Opinion on Implementation of the Provincial [Judicial] Department’s “Notice on Strengthening the Work of Guidance and Supervision Over Lawyers in Their Handling of Sensitive and Mass Cases”), issued August 25, 2008, available at <http://tinyurl.com/y9khndt>. This document implements a regulation applicable to all of Jiangsu Province.

³⁴ Zhenning County Judicial Bureau, *Shenhua Zhongguo tese shehuizhuyi falü gongzuoze rensi, qianhua min’gan anjian he quntixing anjian bianhu dali zhidao guanli* (Deepen the Consciousness of Socialist Legal Workers with Chinese Characteristics, Strengthen Guidance and Administration Over Defense and Representation in Sensitive and Mass Cases), August 17, 2009, available at <http://sfj.anshun.gov.cn/xq-znx/gzdt/display.asp?id=104> (requiring lawyers to “keep the big picture in mind” and to “guarantee stability.”)

³⁵ Because Gao was under constant surveillance by state security, it is not plausible to suppose that his disappearance occurred without their knowledge and cooperation. See Evan Osnos,

nese governmental authorities that he is in custody, despite various requirements in Chinese law that notice be given to family members and charges brought within a specified time.³⁶ The length of time of this unacknowledged detention is extremely unusual—to the best of my knowledge, virtually unprecedented. I know of no way in which it can be justified even under the elastic and forgiving provisions of Chinese law regarding police detention powers.

III. CONCLUSIONS

It might be thought that the continuing harassment of lawyers, and particularly the efforts to prevent lawyers from representing certain disfavored clients, is actually encouraging evidence that they can be effective in court. Why bother stopping lawyers from doing their job if the system already prevents them from doing it effectively? There is a certain degree of truth in this perspective. Although it is inconceivable that courts could make judgments contrary to those desired by political authorities in any case the latter deemed important, a skilled and zealous lawyer can nevertheless make the job much more difficult, and what the state finds difficult to do, it may do less of in the future.

On the other hand, the state's main concern is perhaps less with what activist lawyers do in court than with what they do out of it. A persistent theme of the various regulations on the reporting of sensitive cases discussed above is a concern about publicity and other out-of-court ways in which lawyers may promote the interests of their clients or their own causes. This concern dovetails perfectly with what activist lawyers themselves say about their approach: that the key is not winning in court, but in using the court action, regardless of outcome, to bring about broader social changes.

Thus, clamping down on lawyers does not necessarily mean that they were being too effective as lawyers in courts, which would imply that courts had some substantial degree of independence; it may mean simply that they are being too troublesome, relative to what the state is willing to permit at the time of the clampdown, as social activists who happen to be lawyers. And indeed, the clampdown on lawyers has been accompanied by a clampdown on activist NGOs and individuals more generally.

Some observers have suggested that the clampdown was related to the 60th-anniversary celebrations on October 1, and that once they were past, the government would relax. I believe that the restrictive measures I have listed here have a history that is impossible to explain solely by reference to the 60th-anniversary celebrations, and that they are part of a more general tightening of political control over courts and all those involved with them. Now that October 1 is behind us, time will tell which interpretation is correct.

Finally, let us not forget that it is possible, and perhaps even likely, that in this as in other matters there are divisions within the leadership. There is clearly a good argument to be made that allowing more space to lawyers representing the disadvantaged enhances social stability instead of endangering it by bringing grievances into the system. With the benefit of hindsight, Zhao Ziyang in his memoirs recognized the social value of groups and individuals truly independent of the state.³⁷ Perhaps other leaders during their terms of office will be forced to the same conclusion.

APPENDIX 1

*Accord With the Tide of History, Directly Elect Beijing Bar Association Directors—An Appeal to All Beijing Lawyers, Beijing's Justice Bureau, and the Beijing Bar Association*³⁸

According to the constitution, attorney law, and regulations governing the registration and management of social organizations, lawyers have the right to free association and therefore Beijing's Bar Association should be composed of the capital's lawyers "voluntarily organizing and carrying out the common wishes of its members through this non-profit social organization."³⁹ But it is evident that in the 30 years

Letter from China: What Happened to Gao Zhisheng?, The New Yorker, April 3, 2009, available at <http://tinyurl.com/dmoeuq>.

³⁶ For a summary of various coercive measures available to government authorities and the timelines applicable to each, see Donald Clarke, Legal Analysis of Liu Xiaobo's Detention, Chinese Law Prof Blog, December 13, 2008, <http://tinyurl.com/54w82>.

³⁷ See Zhao Ziyang, Prisoner of the State 258 (2009).

³⁸ Source: <http://www.chinafreepress.org/publish/case/Accord-With-the-Tide-of-History-Directly-Elect-Beijing-Bar-Association-Directors.shtml>. As of October 5, 2009, the URLs for the English translations of the documents in Appendices 1, 2, and 3 do not function.

the Beijing Bar Association has been in existence, it has not accorded with these legal guidelines in its establishment or its activities, especially in safeguarding lawyers legal rights and protecting lawyers rights and interests. The majority of lawyers complain about this state of affairs, but feel powerless to change it because the bar association did not come into being via the voting of its members. This situation must be changed.

1. The qualifications of the present directors of the Beijing Bar Association is below that required by law and the Beijing Bar Association has no legal regulations and procedures for electing directors.

Regulations are the constitution of social organizations. According to the laws and regulations governing social organizations, the Beijing Bar Association's rules and election procedures should be determined by member voting, with either a 2/3 majority of more than 1/2 required for a motion to pass. But according to the web site, the present Bar Association accords with regulations promulgated in 1982 and formalized in 1990, but they have never been voted on by the Bar's members, never mind passed by a majority vote, and have never been publicized. For these reasons these rules and regulations should have no legal effect.

The president, director, and supervisory board of the Beijing Bar Association have not been popularly elected by the Bar's members, and therefore should not have legal standing. According to an investigation, more than 90 percent of Beijing lawyers have never participated in any election activity of the Bar Association, and have never been informed of any voting activities. At present the president, director, and supervisory board are chosen among partners of major law firms with large incomes. It can be said that the present Beijing Bar Association is a kind of "Rich Man's Club," helping these fat cats expand their influence and attract new clients.

We earnestly appeal that when the new session of the Beijing Bar Association convenes, a truly democratic election of directors should take place. The chief principles should be: 1. All the members of the Bar should elect by a majority vote the president, directors, and supervisory board of the Bar; 2. The Bar's rules and regulations should be passed by a 2/3 majority vote of its members; 3. Elect a leadership that truly represents the interests of the members of the Bar; 4. Annual fees should be agreed on by a 2/3 majority vote (and the current fees should be reduced by more than 50 percent).

In order to promote the democratic administration of the Beijing Bar Association, we as a group of Beijing lawyers have organized ourselves and over the course of two months of efforts have drafted the "Beijing Bar Association Election Procedures (Draft Proposal)."

Democracy is not a far off ideal. Please submit your suggestions for amending this draft proposal and then vote on it and this sacred ideal can be realized!

Contact person: Cheng Hai 13601062745 (chh075@yahoo.com.cn)

August 26, 2008.

APPENDIX 2

*The Beijing Bar Association's Response to a Small Number of Lawyers and Their So-Called "Call For Direct Elections to the Beijing Bar Association"*³⁹

To: All Beijing Lawyers, All Beijing Law Offices

Recently a small number of lawyers jointly issued a petition and posted it on the Internet entitled "Accord With the Tide of History, Directly Elect the Beijing Bar Association—Announcement To All Beijing Lawyers, Beijing Justice Bureau, and the Beijing Bar Association." The announcement purported to promote the cause of democracy, and questioned the legality of the standing of the Beijing Bar Association. Soon after, some Beijing lawyers began receiving text messages from these lawyers, baiting them by calling for reduced Bar Association membership fees, a restructuring of the tax system, and stirring up lawyers with calls for so-called "Direct Elections to the Beijing Bar Association."

The Beijing Bar Association hereby seriously states: We are a legally constituted social organization, an autonomous professional organization representing the interests of all Beijing lawyers, and manages in compliance with the "Lawyer's Law" and "Regulations Regarding the All-China Bar Association." The Beijing Bar Association through its president and secretariat letterbox, director reception day, representative draft resolution system etc. solicits the opinions and suggestions of its members

³⁹ Source: <http://www.bmla.org.cn/bjlawyers2/news/show—content.jsp?infoID=IC02000024280> (Chinese); <http://www.chinafreepress.org/publish/case/The—Beijing—Bar—Association—s—Response—to—a—Small—Number—of—Lawyers—and—Their—So-Called—Call—For—Direct—Elections—to—the—Beijing—Bar—Association.shtml> (English).

and accords with the rules of its profession in democratic decisionmaking, democratic management and democratic supervision. Any individual who uses text messages, the web or other media to privately promote and disseminate the concept of direct elections, express controversial opinions, thereby spreading rumors within the Beijing Bar Association, confuse and poison people's minds, and convince people of circumstances that do not exist regarding the so-called "Call For Direct Elections For the Beijing Bar Association" is illegal. They are using the opportunity of the end of the tenure of the present Bar Association administration to manipulate the enthusiasm of some lawyers to participate in the management process, using the banner of "Democratic Bar Association Management," is a vain attempt to evade the supervision of the Justice Bureau and the Bar Association's professional management.

Beijing's lawyers must maintain calm heads and see the real nature of this effort on the part of a small number of lawyers to "Promote Direct Elections to the Beijing Bar Association" and support the Beijing Bar Association's correct political stance and social efforts and resist the improper expression of this small number of lawyers and not be deceived by them.

This year the Beijing Bar Association is changing leaders, to ensure the smooth transition, the election work has already been prepared. The Beijing Bar Association is doing everything in its power solicit the opinions of the majority of lawyers and ceaselessly perfect its work and promote the healthy development of the Beijing legal profession.

APPENDIX 3

*Our Response to the Beijing Bar Association's "Serious Statement"*⁴⁰

On Friday September 5, the Beijing Bar Association on its official web site published "The Beijing Bar Association's Serious Statement in Response to a Small Number of Lawyers' Call for So-Called 'Direct Elections to the Beijing Bar Association.'" The statement said: "Recently a small number of lawyers jointly issued a petition and posted it on the Internet entitled "Accord With the Tide of History, Directly Elect the Beijing Bar Association—Announcement To All Beijing Lawyers, Beijing Justice Bureau, and the Beijing Bar Association." The announcement purported to promote the cause of democracy, and questioned the legality of the standing of the Beijing Bar Association. Soon after, some Beijing lawyers began receiving text messages from these lawyers, baiting them by calling for reduced Bar Association membership fees, a restructuring of the tax system, and stirring up lawyers with calls for so-called "Direct Elections to the Beijing Bar Association." Any individual who uses text messages, the web or other media to privately promote and disseminate the concept of direct elections, express controversial opinions, thereby spreading rumors within the Beijing Bar Association, confuse and poison people's minds, and convince people of circumstances that do not exist regarding the so-called "Call For Direct Elections For the Beijing Bar Association" is illegal. They are using the opportunity of the end of the tenure of the present Bar Association administration to manipulate the enthusiasm of some lawyers to participate in the management process, using the banner of "Democratic Bar Association Management," is a vain attempt to evade the supervision of the Justice Bureau and the Bar Association's professional management."

We are the lawyers who jointly issued the statement: "Accord With the Tide of History, Directly Elect the Beijing Bar Association—Announcement To All Beijing Lawyers, Beijing Justice Bureau, and the Beijing Bar Association." In addition to issuing this statement, we used text messages, posted letters and other means to call on all Beijing lawyers to demand their rights and actively participate in the upcoming election for representatives to the Beijing Bar Association. Our objective is clear, to mobilize the mass of Beijing lawyers to assert their legal rights, and prevent the Beijing Bar Association from being controlled and turning into a special interest clique. We want to elect representatives who will defend the real interests and legal rights of the majority of Beijing's lawyers. The Lawyer's Law clearly states that the Bar Association is an autonomous social organization and its representatives are chosen by election and of course it must submit to the supervision of its members. The Bar Association represents all lawyers. As members we feel an obligation to concern ourselves with the outcome of this leadership transition and actively participate in the election. All of our actions and speech have been aimed at

⁴⁰ Source: <http://www.gongmeng.cn/sub-r.php?zyj-id=1920> (Chinese); <http://www.chinafreepress.org/publish/case/Our-Response-to-the-Beijing-Bar-Association-s-Serious-Statement.shtml> (Chinese).

promoting the Bar Association's democratic election and democratic supervision. We are doing what members of the Bar Association should do. Our actions are both legal and proper.

But we greatly regret that the Beijing Bar Association considers itself an entity independent of its lawyer constituency and has completely inverted the master and servant relationship. It not only did not support the active participation of some of its lawyer members in its election process, but on the contrary wrote such a threatening and alarming statement in response to this effort. It characterized our completely reasonable call for a reduction of membership fees as "incitement speech." It called our appeal for all lawyer members to participate in the direct election of the Bar Association board and presidency as "the pretense of promoting democratic elections." It described our networking via cell phones, the Internet and other legal media to generate support and seek candidates as "illicit coordinating." It describes the participating, supporting, and appealing actions of more and more lawyers as "not understanding the true circumstances" and being "misled." And it says that lawyers taking the initiative as constituents and legally exercising their right to free speech and criticizing their insufficient supervision in the past and calling for democratic elections as "illegal." And it portrays a group of lawyers actively promoting the democratic self-government activity of citizens as "comprehensively violating the present Bar Association management system, the justice system, and the political system." We are deeply sorry and regretful that at this time in the 21st century that our country is trying to carry out the socialist democratic rule of law, the Beijing Bar Association would issue such a strong Cultural Revolution-like statement.

Orderly participation by citizens in promoting progress of the democratic rule of law, pursuing people being the master of their own affairs, is our country's people and the ruling party's objective of struggle. As lawyers actively promoting the democratic election of the representatives of our professional organization, its democratic policymaking and democratic supervision completely accords with the tide of history, and contrary to opposing the political system as the Beijing Bar Association alleges, it actively accords with and puts into practice the political system. This autumn the Beijing Bar Association will have its regularly scheduled leadership change. We call on all Beijing lawyers to exercise their legal rights and demand to participate in the democratic election of new Bar Association representatives. We also hope that the Beijing Bar Association, as an autonomous organization of lawyers, accords with the law and carries out our called-for direct election of its representatives, reduces the membership fee and reflects on its work and welcomes the participation, democratic election, policymaking, and supervision of its lawyer constituents.

Finally, in view of the Bar Association's "Serious Statement" slandering our legal action, we urgently call on the Bar Association to publicize who participated in the drafting and disseminating of this "Serious Statement" and that they issue a public apology. We will also continue to look into the legal liability of those who participated in this tortuous action.

As Beijing Bar Association members, we have the right to reiterate:

1. The forthcoming leadership transition of the Beijing Bar Association should be the result of a direct democratic election. This process should be guided, supervised and carried out according to law by the municipal justice bureau and all lawyer members of the Beijing Bar Association should participate.

2. The direct election of the Beijing Bar Association's president and board of directors should begin from this leadership transition.

3. To ensure the protection of the legal rights of Beijing's lawyers to select the Bar Association's representatives, and to promote effective supervision of the Bar Association's work, our draft copy of the "Beijing Bar Association's Election Regulations" (name can be changed) should be put to a vote and passed if 1/2 the Bar Association membership approves.

4. Draft the Beijing Bar Association's written regulations and submit it to the membership's review and evaluation.

5. Bar Association membership fees should be reasonably readjusted, with at minimum a 50 percent decrease implemented.

6. Immediately audit and publicize the Bar Association's past years' revenue and expenditures, and publicize the decisionmaking process and revenue and expenditures of the Bar Association's office building.

7. Immediately remove the discriminatory "W" ("waidi") mark on the professional work cards of lawyers from outside Beijing, and issue an apology to these lawyers. Beijing lawyers participating in the "Accord With the Tide of History, Directly Elect the Beijing Bar Association—Announcement To All Beijing Lawyers, Beijing Justice Bureau, and the Beijing Bar Association" campaign.

Saturday September 6, 2008.

PREPARED STATEMENT OF GARDNER BOVINGDON

OCTOBER 7, 2009

HUMAN RIGHTS AND CHINA

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, is widely cited as an articulation of human rights acknowledged around the world, since so many governments were signatory. It identifies among those rights freedom of speech, assembly, and association, as well as freedom of religious belief and practice. It also articulates a right to “seek, receive, and impart information and ideas through any media and regardless of frontiers.” <http://www.un.org/en/documents/udhr/#atop>

Beijing has long challenged the assertion that there are universal human rights. The mildest objection has been that different cultures define human values, and rights, differently, and that these differences must be respected. This line was advanced in the 1993 Bangkok Declaration on human rights, to which Beijing was signatory. Some critics have more sharply denounced Americans’ criticisms of China’s human rights record as interference in China’s “internal affairs.” Chinese officials have long worried that foreign governments, including the United States Government, have invoked concern for human rights in China as a cloak for attempts to bring about “peaceful evolution” or, more recently, a “Color Revolution,” both euphemisms for regime change. Similarly, officials have worried since at least the mid-1990s that behind criticisms of human rights abuses in Tibet and Xinjiang lie plots to separate those territories from China.

We do well to acknowledge these concerns, and therefore must take pains to avoid even the appearance of raising the matter of human rights to serve other, strategic aims. When we speak of human rights we ought to focus, first and last, on the conditions of human flourishing—on the “dignity and worth of the human person,” as the visionary UDHR puts it—and not on scoring political points.

That said, the argument that the human rights identified in the UDHR do not apply to China or require modification because they are incompatible with Chinese culture is unpersuasive, for at least two reasons. First, the PRC Constitution announces in Article 35 that Chinese citizens “enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.” Article 36 adds that citizens have “freedom of religious belief,” and Article 41 recognizes the right to “criticize and make suggestions to any state organ or functionary.” Second, hundreds of thousands of Chinese citizens, if not many times that number, have sought to exercise the very freedoms codified in the Constitution in 1982. They have published wall posters, handwritten manifestoes, journals, and books; they have spoken out in public; they have joined political and religious organizations; and they have demonstrated and marched peacefully, to express political or religious views. Put simply, Chinese citizens have shown that they consider these to be rights by exercising them.

WHAT HAPPENED IN URUMCHI ON JULY 5, 2009?

Did the events of July 5 begin with an attempt by Uyghurs to exercise such rights peacefully? It would appear so, but our information about the course of events on that day is still meager. There is evidence that the day began with a peaceful protest against the government’s handling of a factory brawl in Shaoguan, Guangdong, the night of June 25 and 26, in which two Uyghurs were killed and more than one hundred injured. There is also abundant evidence of violence against property and people on that day. A number of questions remain:

- Who organized the protest? Chinese authorities blame Rabiya Qadir (Rebiya Kadeer) and others abroad. She denies the charge. It has been reported that students in Urumchi circulated comments on the Internet about the handling of the Shaoguan incident and proposing a demonstration. It also appears that the government, knowing of these comments, detained students on the morning of July 5 to prevent them from participating in the demonstration. Whether or not figures outside Xinjiang played some role in organizing the protest, there is strong evidence that locals inside Xinjiang did have a role. Moreover, the large number of participants in the protest suggests that we must look locally for its sources. In plain terms, no amount of orchestration from outside Xinjiang could have produced a protest or riot of this scale in the absence of large numbers of people willing to participate.
- Did police respond to violence, or did police action incite demonstrators to violence? There is insufficient information to answer this question now. Chinese sources argue the former, Uyghur organizations abroad the latter. The heavy

politicization of the events and their aftermath make it unlikely that reliable, unbiased information will emerge soon.

- What were the sources, and aims, of the protest? Again, it is impossible to answer this question definitively. The Shaoguan incident was clearly a spark, but Uyghurs have raised many other grievances in prior years, and there is considerable evidence of widespread Uyghur dissatisfaction with Xinjiang's governance.¹ In blaming the July 5 events on outside instigators and local manipulators, and in claiming that most participants were "members of the masses who did not understand the real situation"—a standard rhetorical figure—the Chinese government has sought to direct attention away from Uyghur grievances and the question of how they might legitimately be expressed. The government has justified its very strong police and judicial response by characterizing the July 5 events as "terrorist" and an episode of "beating, smashing, and looting." It is safe to say, however, that the police response, the official characterization of the episode, and the judicial handling of accused participants are likely to have a chilling effect on those considering protest or public dissent in the future.

HUMAN RIGHTS IN XINJIANG

The evidence on human rights in Xinjiang over the last year is mixed, and there is some justification for cautious optimism. On the whole, however, the human rights situation in Xinjiang in 2008–9 appears no better than, and indeed in some regards worse than, in years prior.

One bright spot was government decisions to free individuals detained for questioning on what appear to have been political grounds. The most prominent example was the outspoken Uyghur economist Ilham Tohti, arrested several times in connection with his blog "Uighur Online," and arrested once again after the July 5 riots. He was released August 23.

Another bright spot was the decision to invite a group of foreign reporters to Urumchi to inspect the aftermath of the July 5 riots firsthand. This was a marked departure from the media blackout Beijing imposed in the wake of the March 2008 protests in Tibet.

On the other hand, various aspects of the official response to the July 5 events are worrying. Within a day the government had shut down Internet service, cut off various text messaging services, and curtailed cell phone service. Officials announced soon after the July 5 events that they had shut down the Internet to "to quench the riot quickly and prevent violence from spreading to other places." A check of major government and news web sites in Xinjiang this morning confirmed that they are still inaccessible more than 3 months later. It should be noted that whatever the intention, shutting down modes of electronic communication abrogates the stipulation in the UDHR that all have a right to "seek, receive, and impart information and ideas through any media and regardless of frontiers."

Second, there is evidence that officials used a very free hand in detaining individuals in connection with the events. Human rights organizations have argued that the Chinese government "criminalizes" the public expression of political dissent in Xinjiang, and the handling of the July 5 protesters unfortunately confirms that suspicion—as did, unhappily, the detention of large numbers of Uyghurs in the runup to the 2008 Summer Olympics.²

Third, the government has sought to discourage lawyers and law firms from handling the cases of individuals accused of participating in the July 5 events. It has also announced the intention to select and prepare the lawyers who will try the cases, with the worrying implication that the lawyers chosen will lack experience with criminal cases and will have received prior instructions on how cases ought to be decided.³ Furthermore, in very publicly characterizing the July 5 events as a "riot," and in attributing its organization and aims to "separatists" and "terrorists,"

¹ Bovingdon, Gardner. 2002. "The Not-So-Silent Majority: Uyghur Resistance to Han Rule in Xinjiang." *Modern China* 28 (1):39–78. Bovingdon, Gardner. 2004. "Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent." *Policy Studies* (11):1–64. Bovingdon, Gardner. Forthcoming 2010. *The Uyghurs: Strangers in Their Own Land*. New York: Columbia University Press.

² Becquelin, Nicolas. 2004. "Criminalizing Ethnicity: Political Repression in Xinjiang." *China Rights Forum* (1):39–46.

³ <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=128444>. While it may seem an odd choice to cite CECC materials in testimony before the CECC, I have done so only after confirming the sources they cite and determining to my satisfaction that the summaries and arguments are sound and comprehensive.

the government has dramatically compromised the likelihood that the accused will enjoy a presumption of innocence and receive fair trials.

Over the last year, officials have also placed further restrictions on Uyghur religious belief and practice, more closely regulating—and possibly purging the ranks of—female clerics and further discouraging religiosity among minors.⁴



⁴ <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125102> and <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125058>. Please see the previous footnote for a justification of these citations.