



**REPORT OF THE MISSION TO CHINA OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK
DECEMBER 6 TO 17, 2009**

Council on International Affairs

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THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 WEST 44TH STREET, NEW YORK, NY 10036

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Preface

This Report is submitted to the Executive Committee of The Association of the Bar of the City of New York (“New York City Bar Association”), to the Association’s Council on International Affairs and to its committees on Asian Affairs and International Human Rights by members of a mission appointed by the Association to visit the People’s Republic of China (“China”) and Hong Kong S.A.R. in response to an invitation from the Beijing Lawyers Association to discuss matters of mutual concern to the two associations, including the training and independence of lawyers and the administration of justice.

The mission consisted of nine members: Jerome A. Cohen, a professor at New York University School of Law specializing in the Chinese legal system and a former Chair of the Association’s Asian Affairs Committee; John M. Walker, Jr., a Judge—and former Chief Judge—of the United States Court of Appeals for the Second Circuit, and the Federal Judicial Conference’s liaison to the Chinese judiciary; Sidney H. Stein, a Judge of the United States District Court for the Southern District of New York, and a former member of the Association’s International Human Rights Committee; Mark R. Shulman, Dean of Graduate Programs and International Affairs at Pace University School of Law and Chair of the Association’s Council on International Affairs; Sarah A.W. Fitts, Chair of the Association’s Asian Affairs Committee; R. Scott Greathead, former Chair of the Association’s Committee on International Human Rights and current member of the Asian Affairs Committee; Robert N. Hornick, an expert on Indonesian law and adjunct professor at the University of Arizona and Chair, Committee to Support Chinese Lawyers; Margaret K. Lewis, Associate Professor at Seton Hall University School of Law and a member of the Association’s Asian Affairs Committee; and Elisabeth Wickeri, Executive Director of the Leitner Center for International Law and Justice at Fordham Law School and a former member of the International Human Rights Committee.

We wish to acknowledge our great appreciation to Yu-Jie Chen, Guanghua Research Fellow at New York University School of Law’s U.S.-Asia Law Institute; Jeremy Daum, Research Fellow at New York University School of Law’s U.S.-Asia Law Institute; and Jennifer E. Pope, a student at Fordham Law School, for their invaluable assistance to the mission during its travels in China. We also wish to thank the Committee to Support Chinese Lawyers (<http://www.csclawyers.org>) and the undergraduate students of Princeton University’s Woodrow Wilson School of Public and International Affairs who formed the Policy Task Force on Promoting the Rule of Law in the People’s Republic of China, led by Professor Martin S. Flaherty of the Leitner Center for International Law and Justice at Fordham Law School, for furnishing briefing materials to the members of the mission. This mission would not have been possible without the generous financial support of The Sperry Fund, an anonymous donor, and the Leitner Center for International Law and Justice.

INTRODUCTION

In June 2009, the President of the New York City Bar Association received a communication from an official of the Beijing Lawyers Association (BLA) proposing a meeting of representatives of the two associations to discuss matters of mutual interest and concern, such as professional training and continuing legal education. That communication coincided with concern on the part of several committees of the Association at reports that growing numbers of Chinese lawyers representing clients and causes unpopular with the central or local governments have been subjected to various forms of intimidation and wrongful treatment, ranging from arrest and detention to losing their licenses to practice law. Such concerns have been central to the New York City Bar Association since its founding in 1870. Throughout its history, the Association has spoken out at the state and national levels for judicial independence, for the right (and duty) of lawyers to represent unpopular clients, for fundamental rights of due process, and for the principle that governmental officials must comply with the law in the same manner as other citizens. In recent years, the Association has supported these principles when the independence of fellow lawyers has been threatened not just in the United States but elsewhere in the world as well. This support reflects the international character of the Association's membership¹ and the recognition that systematic repression of lawyers or denial of fundamental rights in any society ultimately threatens lawyers and the rule of law everywhere.

It was decided that representatives of the Association should meet with representatives of the BLA with the goal of developing a relationship with it and possibly other municipal bar associations in China that would permit a candid discussion of matters of mutual concern affecting lawyers and the practice of law in both countries, including our concerns about the treatment of Chinese lawyers representing clients and causes unpopular with the government. To that end, several meetings took place in New York City between representatives of the Association and the BLA, culminating in November 2009 in a letter from Mr. Li Bingru (李冰如), the General Secretary of the BLA, inviting a delegation from the New York City Bar Association to visit Beijing during the week of December 7 to meet with the BLA. As articulated in Mr. Li's letter, the purpose of the visit was to "develop a robust relationship of mutual understanding and respect between municipal bar associations of our two great 'sister' cities," and "to begin a dialogue on matters reflecting the mutual interests of both our associations and the lawyers we represent." The Association enthusiastically accepted the invitation.

The delegation visited China from December 6 through 17, 2009. During our visit we met and engaged in a fruitful and informative discussion of our concerns with the leaders of China's two largest municipal bar associations, the BLA and the Shanghai Bar Association ("SBA"). We also met in Beijing and Shanghai with several prominent private lawyers and law professors knowledgeable about the issues and circumstances affecting lawyers involved with sensitive cases. In Beijing and Shanghai, we met with several rights lawyers handling sensitive cases on behalf of a wide variety of clients. A number of these lawyers have had difficulty renewing their

¹ The New York City Bar Association has more than 23,000 members from the United States and 60 other countries, including China.

licenses to practice law. In Beijing, we also met and discussed our concerns with United States Ambassador Jon M. Huntsman and members of his staff. Two members of the delegation traveled to Hong Kong to meet with lawyers, judges, and members of Hong Kong's Legislative Council who are concerned about the situation of lawyers on the mainland and are involved with the Hong Kong-based China Human Rights Lawyers Concern Group.

We are very grateful to our colleagues from the Beijing Lawyers Association and the Shanghai Bar Association for their warm hospitality and the time they spent with our delegation discussing matters that concern us. We are very pleased that both associations have agreed to create committees to continue this discussion with us.

THE MISSION TO CHINA

I. Our Concerns

A. The Chinese Legal System

During the first decades following the founding of the People's Republic of China in 1949, politics dictated the substance, process, and operation of China's Soviet-style legal system; and during the Cultural Revolution (1966–1976) formal legal institutions including the "people's courts" largely ceased to operate. After Mao Zedong's death in 1976, China began dramatic political and economic reforms known as "Reform and Opening" ("*gaige kaifang*") that included the re-introduction of legal education and the re-establishment of a more institutionalized and codified system of law that, though it continued to be based on the principle of Chinese Communist Party (CPC) leadership (as reflected in the Preamble of the PRC Constitution), also allowed reformers to promote greater professional and institutional autonomy of the courts and judges as well as the legal profession.

Despite these reforms, the CPC continues to dominate China's legal apparatus, both officially and unofficially, substantially in accordance with the Leninist Soviet model. China's legal system operates on a four-tiered governmental structure with central, provincial, municipal and county levels. Each of these tiers exercises political, legislative, administrative, and judicial functions. Likewise, the Party has branches at all levels of state affairs and government agencies, and has a presence in many non-state institutions, including law firms and lawyers' associations. At the apex, the Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Its leading judges are appointed by the National People's Congress after CPC approval. The CPC also controls appointment of judges at other levels.

In 1996 and 1997, China reformed its Criminal Procedure Law and Criminal Law, first adopted in 1979, increasing the importance of defense lawyers, judges, and criminal procedure in the justice system. These laws, however, still fail to deal with many important issues and include problematic provisions that restrict the rights of lawyers to access detained clients and evidence against them. The Criminal Law includes broad and vague provisions related to state secrets, and

its notorious Article 306 reflects the extent to which lawyers are at risk of persecution.² It provides for special punishments for lawyers engaged in falsifying evidence. As discussed below, it has been improperly used by prosecutors to prosecute and detain vigorous defense lawyers.

B. Lawyers in China

In the more than thirty years since “Reform and Opening,” there has been significant progress towards implementing a formal rule of law in China, and the legal profession has grown substantially. In 1979, there were just 212 lawyers and 79 law offices in the entire country.³ Estimates now put the figure of practicing lawyers in China above 165,000, and the number of operating law firms at approximately 12,000. Major American law firms conduct business in China, and many have offices in Beijing, Shanghai and Hong Kong.

Most Chinese lawyers, like their counterparts elsewhere, are preoccupied with making a living as business counsel and mundane litigators. Only a small minority become involved with civil and political rights or even broader public interest cases. In this report our concern is with the plight of this minority.

If they represent clients discriminated against by the government, Chinese lawyers and legal advisors are themselves increasingly the targets of intimidation and abuse. The last three years have been especially difficult for them. China's most respected law professor, scholar and reformer, Jiang Ping (江平), recently told a gathering of Beijing lawyers who had convened in his honor that “we are in a period where the rule of law is in retreat”⁴ Many lawyers have been detained, beaten or otherwise harassed due to their involvement in high-profile or politically sensitive criminal, political, religious, property, and environmental cases. Some have lost their licenses to practice and even been convicted of crime because of their zeal in such cases.

Sources vary on the frequency with which Article 306 of the Criminal Law is applied but its chilling effect is without question. One frequently cited estimate suggests that approximately 500 lawyers were detained between 1997 and 2002, and that through 2005 more than 100 lawyers were formally accused of violating Article 306 by allegedly fabricating evidence.⁵ In

² Article 306 provides that “If, in criminal proceedings, a defender or law agent destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or lures him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years. Where a witness’s testimony or other evidence provided, shown or quoted by a defender or legal agent is inconsistent with the facts but is not forged intentionally, it shall not be regarded as forgery of evidence.”

³ State Council of the People’s Republic of China News Office, *1998 Development on Human Rights in China* [1998年中国人权事业的进展], at http://news.xinhuanet.com/zhengfu/2002-11/15/content_631275.htm.

⁴ Speech by Jiang Ping, March 2, 2010, translation available at China Law Prof Blog, http://lawprofessors.typepad.com/china_law_prof_blog/2010/03/jiang-ping-chinas-rule-of-law-is-in-full-retreat.html.

⁵ Bill Savadove, *Justice Remains Shanghaied in City’s Law Courts; Intimidation and Physical Violence Against Lawyers Is on the Rise, and Getting a Fair Trial is Still Far from Guaranteed*, *South China Morning Post*, February 7, 2006.

over 90 percent of these cases formal charges were dropped,⁶ suggesting that the provision is improperly invoked or misused by officials attempting to silence defense lawyers. More recently, others have been detained or had their licenses to practice revoked on the basis of this provision, and it is widely acknowledged that the provision has been applied arbitrarily in high-profile cases where lawyers seek to provide a zealous defense.⁷ A prominent recent case in which Article 306 was applied is that of Lawyer Li Zhuang (李庄), who defended a high profile person in the campaign against the Chongqing mafia and was later charged with having persuaded his client to falsely claim torture at the hands of investigators. He was convicted and sentenced to imprisonment in a criminal process that left strong doubts as to its fairness and the foundation of the charges against him.

The Criminal Procedure Law also imposes limitations on lawyer-client meetings, access to evidence, and investigation of facts. These limitations are even stricter where the cases at issue implicate “state secrets” in some way.⁸ Where state secrets are involved, the Criminal Procedure Law requires detainees to obtain official approval before a lawyer can be appointed. In those cases, lawyers must obtain permission from the investigating organ—often the public security authorities—to meet with their clients. The law also allows investigating organs to appoint personnel to attend meetings between lawyers and their clients during the investigation stage, thereby limiting a lawyer's ability to communicate freely with his or her client. Moreover, during the investigation phase, the lawyer may not discuss the facts of the case with his client.

Other constraints exist. Access to case materials is often restricted; the procuratorate can decide what constitutes “major evidence” in a case, which determines what evidence the defense has access to before trial; and lawyers can only gather their own evidence where parties who have that evidence—including witnesses—agree to cooperate. The 2007 Law on Lawyers now provides additional protections for lawyers, including unmonitored access to their clients, but the conflict between this law and the Criminal Procedure Law has not been resolved. Moreover, lawyers seeking to invoke the new law have reported that detention centers largely disregard it. Details of the cases of eight lawyers who have been detained or whose work has otherwise been restricted in China are set forth in the Appendix to this report.

As a consequence of all this, there is growing concern over the fate of human rights and public interest lawyers in China's legal system. Moreover, all legal institutions continue to be marked by corruption and official impunity, with many lawyers reporting that they often need to bribe or bestow favors upon officials and judges simply to obtain procedural or administrative

⁶ Congressional-Executive Commission on China, “Chinese Article Claims That Research on the Difficulties Faced by Criminal Defense Lawyers Restricted After Revealing ‘Shocking’ Initial Results,” January 13, 2005, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=5472>.

⁷ See, e.g., *Lawyers Advocate for Abolishing Article 306 of the Criminal Law* [律师界吁撤刑辩「紧箍咒」], *Dagong Bao* [大公报], March 15, 2007.

⁸ The state secrets legal system is complex and opaque, sweeping a vast universe of information into its net. All Chinese citizens are obligated to protect state secrets, and individuals can be criminally charged for stealing, possessing, or leaking state secrets. Because almost anything can be classified as a state secret, or retroactively classified, individuals have been charged for “leaking” a broad range of information, including information that was published in newspapers. For more information on the State Secrets system, see, Human Rights in China, *State Secrets: China's Legal Labyrinth*, June 12, 2007, <http://hrichina.org/public/contents/41421>. See also Jerome A. Cohen and Jeremy Daum, *Secret Agenda*, South China Morning Post (Hong Kong), May 26, 2010.

cooperation, not to mention substantive decisions.

C. Professional Associations

Lawyers' professional associations are not yet able to effectively advocate for their members. The primary professional association for lawyers is the government-controlled All-China Lawyers Association ("ACLA"). The ACLA Secretary-General is appointed by the Ministry of Justice. The ACLA ultimately controls municipal bar associations and exercises a tight rein on them. For example, some lawyers who signed a petition calling for open elections in the BLA in 2008 lost their jobs as a result of official pressure; and lawyers involved in sensitive cases face difficulty in renewing their licenses each year. Most recently, the licenses of two human rights lawyers whom the delegation met in 2009 were permanently revoked by the Beijing Judicial Bureau because of their defense of a Falun Gong practitioner in 2009.

An ACLA-issued "guiding opinion" requires lawyers taking on certain cases to report case details to administrative organs. The rules stipulate that lawyers taking on "collective" cases—*i.e.*, cases involving ten or more people—and "major sensitive cases" are required to immediately report to and accept the supervision and guidance of judicial administrative organs. The guiding opinion also warns lawyers not to encourage their clients to participate, or participate themselves, in petitions to government offices, and not to contact foreign organizations and media. Only "politically qualified lawyers" are allowed to deal with "collective, major sensitive cases," and before accepting those cases, they need the approval of at least three partners in their law firm.⁹

D. Current Situation

The revised 2007 Law on Lawyers went into effect on June 1, 2008. The new law strengthens some rights for lawyers, for example, to meet with their clients in private regardless of whether the case involves state secrets. However, as previously noted, the conflict between the new Law and the Criminal Procedure Law has not yet been resolved, and lawyers report that the provision restricting private lawyer-client meetings in the Criminal Procedure Law continues to be applied.

In 2008 and 2009, in the lead-up to the Beijing 2008 Olympic Games and several significant anniversaries—including the anniversaries of the founding of the People's Republic in 1949, the uprising in Tibet Autonomous Region followed by the flight into exile by the Dalai Lama in 1959, the start of economic reforms in 1979, and the crackdown near Tiananmen Square in 1989—the situation for lawyers became more difficult. Lawyers who sought to take on cases arising from protests in Tibet Autonomous Region and Xinjiang Uyghur Autonomous Region or the cases of parents who lost children in the 2008 Sichuan earthquake, or other high profile cases, had a difficult time renewing their licenses. At the time of our mission, at least ten lawyers still had not had their licenses renewed, apparently for reasons related to their work on sensitive

⁹ The All-China Lawyers Association's "Guiding Opinion on Lawyers Handling Collective Cases," approved by the Executive Council of the All-China Lawyers Association on March 20, 2006. Available at: <http://www.chineselawyer.com.cn/pages/2006-5-15/s34852.html>.

matters. Lawyer Jiang Tianyong (江天勇), moreover, had his license suspended soon after our visit.

This is a critical time for public interest lawyers in China, and they deserve our support and cooperation.

II. Our Meetings in China

A. Meetings with Bar Associations

Our meetings with the leaders of the Beijing Lawyers Association and the Shanghai Bar Association were cordial and productive.

Lawyers' Associations in China are officially characterized as civil society entities and they are legal persons under Chinese law. It should be noted that the Associations are hierarchically organized, such that the BLA and the SBA are automatically members of the ACLA, and that all Chinese lawyers are automatically members of their respective local Lawyers' Association. The Lawyers' Associations are under the dominant influence of the Party. Reportedly, important official positions within the Lawyers' Association are occupied by officials from the Ministry of Justice.

We met in Beijing with fifteen leading members of the BLA at its modern and impressive headquarters building in the Dongcheng District, and then over dinner at a nearby restaurant. The BLA was originally founded in the 1950s, but ceased operations soon thereafter. When it was re-established in 1979, there were fewer than 100 practicing lawyers in Beijing. The BLA now has 21,000 members. Members each pay an annual fee of 2,500 RMB (approximately US\$ 366).

While we were in Beijing, a prominent member of the Shanghai Bar, George Fu, invited us to travel to that city to meet with the Shanghai Bar Association ("SBA"). We met with ten leaders of the SBA at its well-appointed headquarters on three floors of a building at the Jun Yao International Plaza. The SBA was established in 1956, but ceased operation in 1959. It was re-established with the approval of the Shanghai Municipal government in 1980. At that time, there were in Shanghai only 418 practicing lawyers. The number of practicing lawyers in Shanghai grew to 2,027 in 1995, 9,144 in 2008, and totals approximately 10,000 at the present time.

In our meetings with both the BLA and the SBA, we expressed our concerns about the cases of detained lawyers, and other ways in which lawyers representing unpopular causes or clients have been harassed, intimidated or punished by the authorities, including the misuse of the law license renewal process and Article 306 of China's Criminal Procedure Law. Both associations agreed to designate committees to continue the discussion of these matters with the New York City Bar Association.

Both the BLA and the SBA had their own list of concerns to discuss. Topics covered with the BLA included duties to clients; managing conflicts of interest and legal ethics; opportunities

for training members of the BLA in New York, including young lawyers and U.S. LL.M. degree candidates, as well as mid-career and senior lawyers looking refresh their skills and perspectives; and opportunities for U.S. lawyers, judges or educators to teach or train in Beijing. It was agreed that appropriate committees of the two associations would continue their discussion legal ethics issues and creating opportunities for continuing legal education for BLA members involving New York and U.S. practice issues. The BLA delegation expressed interest in obtaining a copy of the New York Lawyer's Code of Professional Responsibility, and we agreed to undertake translating it into Chinese.

In our meeting with the SBA a principal issue of concern to the SBA representatives was legal ethics, specifically how to formulate codes of professional responsibility for lawyers and judicial conduct, and systems for enforcing them. This has become a major issue for the SBA because 60% of its lawyers are under 40 years of age, and the subject is not part of the legal curriculum in China. We discussed at length the New York Lawyer's Code of Professional Responsibility and the culture and the Disciplinary Committees that enforce it. It was agreed that the SBA and the Association would continue the discussion through appropriate committees of each association.

B. Meetings with Legal Experts, Public Interest Lawyers, Defense Lawyers and Rights Lawyers

In Beijing and Shanghai we also met with legal experts, public interest lawyers, defense lawyers and rights lawyers to discuss the risks and mistreatment experienced by lawyers representing unpopular causes and clients.

We met with Mo Shaoping (莫少平), one of China's leading advocates and criminal defense lawyers, Shang Baojun (尚宝军) of Mo Shaoping Law Firm, and other members of the Law Firm. We discussed the challenges and risks for lawyers involved in sensitive criminal defense cases. One of the sensitive cases being handled by a lawyer associated with the Mo Shaoping Law Firm is the defense of Chinese literary critic and scholar Liu Xiaobo (刘晓波), who was charged in 2008 with "inciting subversion of state power" for his role as an author of "Charter 08,"¹⁰ a document calling for democratic reforms and greater freedoms in China. At the time of Liu's arrest, more than 300 scholars and writers had signed "Charter 08," which was scheduled for release on the 60th anniversary of the Universal Declaration of Human Rights. Following the arrest, the document was signed by more than 10,000 Chinese citizens.

Mo Shaoping himself was initially asked to take on the defense of Liu Xiaobo, but the authorities barred this, asserting that he was disqualified since he was one of the signers of "Charter 08." Liu Xiaobo's defense was undertaken by Mo Shaoping's associate, Shang Baojun. On December 23, 2009 Liu Xiaobo was convicted following a 3-hour trial, and on Christmas Day was sentenced to 11 years in prison by the Beijing Municipal No. 1 Intermediate People's Court.

¹⁰ The text and a list of the initial 303 original signers of Charter 08 can be found at: http://www.hrichina.org/public/contents/press?revision_id=89851&item_id=85717.

The difficulties faced by criminal defense lawyers in politically sensitive cases were vividly illustrated on page 1 of the December 24, 2009 edition of *The New York Times*, which carried a photograph of Beijing Security Bureau agents physically manhandling a grimacing Shang Baojun, with whom we had met just two weeks earlier, to prevent him from talking to reporters who had gathered outside the courthouse on the day of the trial.

We met with several lawyers of the Tong Lihua Public Interest Law Firm, which employs more than 70 lawyers in offices in Beijing and 16 other provinces litigating claims on behalf of children and migrant workers. The firm represents individual clients with specific claims as well as impact litigation, such as child labor, sexual abuse and juvenile delinquency cases. It takes on approximately one thousand cases per year in Beijing on behalf of migrant workers, chiefly cases regarding workplace injury and nonpayment of salary. It also trains and deploys “barefoot lawyers,” people without formal legal education who are not licensed to practice, to work outside Beijing with migrant workers. The Tong Lihua Firm derives considerable support from the ACLA. It maintains good relations with the government, and avoids taking on “sensitive” cases in favor of other matters its lawyers believe will advance the development of the rule of law in China. The firm relies mostly on foreign donors to support its work.

We met with Tian Wenchang (田文昌), a distinguished former law professor who has become a leading “white collar crime” defense lawyer as well as a highly respected leader of the ACLA’s criminal justice committee. Tian is an expert on Article 306, about which he has written extensively. He is critical of how prosecutors have used Article 306. He believes that the risk of prosecution under Article 306 has created a chilling effect on criminal defense lawyers that diminishes the quality of justice system. Tian is concerned that the Chinese public holds lawyers in low esteem, particularly when they are defending individuals the public perceives as “bad”, such as accused gangsters and corrupt officials. He notes that the ACLA works to ensure the integrity of the judicial and administrative processes, but that its capacity to foster change is limited by the political leadership and by unofficial relationships (known as *guanxi* in Chinese).

We also met with several less well-known “rights defense” (“*weiquan*”) lawyers in Beijing and Shanghai who represent human rights advocates, house church activists, LGBT rights and HIV/AIDS activists, Falun Gong members and similar activist clients. These lawyers were frank in discussing the risks they face and the wrongful treatment they experience from the organized bar and authorities because of the clients and causes they represent. A number of these lawyers report they are regularly subject to surveillance by the Public Security Bureau. Several of these lawyers have had difficulty obtaining the annual renewal of their law licenses by the BLA or the SBA. The Beijing rights lawyers with whom we met reported that at least eight of their number has not had their licenses renewed by the BLA, because, they believe, of the nature of the cases they have undertaken.

C. Other Meetings

In Beijing we had a 90-minute meeting with the U.S. Ambassador to the People’s Republic of China, Jon Huntsman, and his staff, to brief them on our concerns and the object of our mission. Ambassador Huntsman was knowledgeable about the cases of imprisoned lawyers and of the rights lawyers who have had their law licenses suspended, and expressed support for

the goals of our mission. We were extremely gratified to learn that a few days after we met with Ambassador Huntsman, he met publicly with several of the Beijing rights lawyers who have been unable to renew their law licenses.

Two members of the mission, Elisabeth Wickeri and Scott Greathead, also went on to Hong Kong, where they met with prominent barristers and Legislative Counsel members Albert Ho and Emily Lau and the other principals of the Hong Kong-based China Human Rights Lawyers Concern Group, which assists and supports “rights defense” and other lawyers working on the mainland who are having difficulty because of the clients and causes they represent.

III. Future Steps

Many informed observers of China agree that this is a critical moment in China’s history as its government evolves from its revolutionary Communist origins to one embracing the political and legal reforms necessary for promoting a more representative, equitable and transparent order. The central government’s perceived need to control the pace and effects of this process is apparent in a variety of areas. It is particularly evident in the manner the government has sought to restrict the independence with which the growing numbers of lawyers pursue their professional responsibilities.

On the one hand, the government recognizes the important roles that lawyers play in China’s continued ascent as a dominant force in the global economy. On the other hand, as Chinese lawyers increase in number, so too do the number of lawyers who rightly pursue their mission as advocates of the rule of law and of the fundamental rights of Chinese citizens. As we have observed, carrying out this mission often places lawyers in opposition to government interests—a position that Chinese lawyers take with increasing peril.

We believe we have a duty to stand with our colleagues in China who have been subjected to criminal prosecution, risked losing their licenses to practice or punished in other ways simply for carrying out their professional responsibilities to represent clients and causes unpopular with the government independently and zealously. Accordingly, we recommend that the New York City Bar Association continue the dialogue we have commenced with our colleagues of the BLA and the SBA concerning the independence of lawyers and the cases of lawyers who have been jailed or otherwise punished for these reasons.

To that end we recommend that the Association’s Executive Committee authorize the Chair of the Council on International Affairs, in consultation with the Chairs of the Committee on International Human Rights and the Committee on Asian Affairs, to establish special joint committees to continue the dialogues we began with the BLA and the SBA on the independence of lawyers and the cases of wrongfully treated Chinese lawyers—as well as for organizing work related to the other professional training and responsibility issues discussed above.

We do not ignore the fact that some of our colleagues in the BLA and the SBA fear that to participate in a dialogue on the independence of lawyers will itself expose themselves to the

very risks of government retribution we are discussing. Nor do we diminish the importance of the dialogue on the other matters that concern the leaders of the BLA and SBA, which we also wish to continue as an element of the relationship we hope to build with our colleagues in Beijing and Shanghai. On the contrary, we believe that a continuing dialogue on the need to assure the independence of lawyers in China and the cases of our wrongfully treated colleagues is essential to building the robust relationship of mutual understanding and respect that is the common goal of all our associations.

Respectfully submitted,

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May 28, 2010

APPENDIX

Individual Cases of Lawyers under Threat in China

The following case materials were prepared for this Report by the Committee to Support Chinese Lawyers (“CSCL”), a New York-based committee of lawyers outside China who support lawyers in China in their quest to strengthen the rule of law—a quest to which the Chinese Government itself has said it is committed. More information about the CSCL and the cases below is posted on its website at <http://www.csclawyers.org>. The Delegation met with a number of the lawyers whose cases are detailed below.

- **Chen Guangcheng (陈光诚)**

Blind since childhood, Chen Guangcheng is a self-taught (or “barefoot”) lawyer.¹¹ Chen has been a rural rights activist since the late 1990s in Shandong Province, when he fought against the “two-fields system,” an illegal form of economic exploitation used by local officials. Chen also provided legal advice to disabled people about how to protect their rights, including suing the Beijing metro system. In his most famous case, Chen filed a class-action lawsuit against the city of Linyi over an official policy of forced abortions and sterilizations. Chen is currently serving a four year and three month prison term for “intentional damage of property” and “organizing a mob to block traffic.”¹² These charges related to protests that occurred after Chen’s detention by Chinese authorities in September 2005. It is widely agreed that Chen’s detention and conviction were used as a means of silencing his work. A number of procedural irregularities also occurred during his trial, during with several of his lawyers were attacked by unidentified assailants, and prevented from appearing in court. Since his conviction, Chen has been abused in prison and is reportedly in poor health. Chen’s family is also barred from visiting him in prison, and was not informed when he was transferred to another prison. Chen’s wife remains under tight surveillance at the couple’s home in Yinan County, Shandong Province.¹³ Reports continue to surface of harassment of Chen’s lawyers.

- **Gao Zhisheng (高智晟)**

Gao Zhisheng was recognized by the Chinese Ministry of Justice as one of the country’s ten best lawyers in 2001. After undertaking a number of controversial cases defending people persecuted for upholding their religious beliefs,¹⁴ however, he was convicted of “inciting subversion of state power” and was sentenced to 3 years’ imprisonment (with a 5-year suspension) and a 1-year deprivation of political rights on December 22, 2006. His license to practice was also revoked. Because the sentence was suspended, however, Gao was released from detention on a form of

¹¹ Details from correspondence with lawyers, law professors and activists, and Human Rights in China, *Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China*, February 2008.

¹² British Broadcasting Corporation, *China abortion activist sentenced*, Aug. 24, 2006, available at <http://news.bbc.co.uk/2/hi/asia-pacific/5281440.stm>.

¹³ Radio Free Asia, *Dissidents named for Peace Prize*, Feb. 5, 2010, available at <http://www.rfa.org/english/news/china/dissidents-02052010123907.html>.

¹⁴ Details from Human Rights in China, *Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China*, February 2008.

parole. In the next year, he remained politically outspoken, issuing an open letter to the U.S. Congress condemning the Chinese government for using the Olympic Games as a means of worsening human rights issues in China. On September 22, 2007, Gao was taken from his home by police, and held in detention for two months. In an account of that detention released in 2009, Gao detailed the torture he was subjected to including beatings with electrified batons, burning his eyes with cigarettes, and other abuses amounting to torture and cruel, inhuman, and degrading treatment. He also stated that he was threatened with punishment of death if he released the details of his mistreatment. Gao was released and lived with his family under constant police surveillance. In early February 2009, Gao was again taken away from his home in Shaanxi by public security officers. He was held in secret with no information about his whereabouts for more than a year, the authorities and government refusing to comment on his whereabouts or acknowledge whether he was still alive. On March 18, 2010, Gao Zhisheng resurfaced, telling reporters that he would no longer undertake human rights activism.¹⁵ According to reports, Mr. Gao spent April 15, 2010, with his father-in-law in Urumqi in western China, and after boarding a flight home on April 20, 2010, he has not been heard from or seen. Rights groups fear he has been disappeared once more.

- **Li Fangping (李方平)**

Li Fangping, a lawyer with Ruifeng Law Firm in Beijing, is a well known defense attorney who has represented many human rights activists and has often spoken out against corruption and environmental abuse in China.¹⁶ He was involved in the defense of Chen Guangcheng and of Hu Jia (胡佳), among others.¹⁷ As a result of his criticism of the Chinese government, representation of political dissidents, and unwillingness to bend to political pressure, Li Fangping has been severely beaten, had his legal license temporarily suspended, and has been denied the ability to meet with his clients. He still actively practices law and encourages individuals to seek relief from the Chinese courts, even in politically sensitive matters.

- **Li Heping (李和平)**

Li Heping, a Beijing-based rights-defense lawyer,¹⁸ was kidnapped, hooded, beaten, and tortured with electric rods by a group of unidentified men on September 29, 2007, the weekend before National Day celebrations in China. Li was held in a basement outside Beijing until early September 30, when he was left in the woods outside the city. As he was beaten, Li was told to leave Beijing with his family or face the consequences. When he returned home, Li discovered that his license to practice law and other personal belongings were missing. His computer had also been completely erased. Li remains in Beijing with his family where he continues to practice law. His license to practice was renewed in November 2009 after months

¹⁵ N.Y. Times, *Crusading Chinese Lawyer Gives Up Activism*, April 7, 2010, available at <http://www.nytimes.com/aponline/2010/04/07/world/AP-AS-China-Missing-Lawyer.html?partner=rssnyt&emc=rss>

¹⁶ See Andrew Jacobs, *Too Old and Frail to Re-Educate? Not In China*, N.Y. TIMES, Aug. 20, 2008 (available at <http://www.nytimes.com/2008/08/21/sports/olympics/21protest.html>).

¹⁷ See Mark Lee & Sanchez Wang, *China Anti-Porn Software Censors More Than Sex (Update2)*, BLOOMBERG, June 12, 2009 (available at <http://www.bloomberg.com/apps/news?pid=20601087&sid=a1yOb0DiH7Sc>).

¹⁸ Details from Human Rights in China, *Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China*, February 2008.

of waiting.

- **Tang Jitian (唐吉田) and Liu Wei (刘巍)**

On April 12, 2010, rights defense lawyers Tang Jitian and Liu Wei received a notice from the Beijing Municipal Justice Bureau informing them that an administrative punishment to permanently revoke their legal practice licenses, on the grounds that they had “disturbed the order of the court” while defending a Falun Gong practitioner, was being imposed on them. A hearing on April 22, 2010, ended with no result, but on May 7, both lawyers were informed by phone that their licenses had been permanently revoked. The lawyers charge that the presiding judge disrupted court proceedings by allowing an unidentified observer to videotape the proceeding in violation of court rules, and by refusing to allow them to present their defense. Liu and Tang have filed a criminal complaint against the head of the Bureau’s Lawyers’ Management Department, claiming that Department head abused her power and criminally attacked them in retaliation for their activism on behalf of lawyers and in upholding the rule of law since 2008.¹⁹

- **Teng Biao (滕彪)**

Dr. Teng Biao is a lecturer at the Law School of the China University of Political Science and Law.²⁰ He practiced law with the Beijing Huayi Law firm prior to the Chinese government’s revocation of his law license in June 2008.²¹ Teng Biao has participated in several controversial cases, including the defense of lawyer Chen Guangcheng (in 2005), the Sun Zhigang (孙志刚) case (in 2003), and cases defending AIDS activists, rural peasants, people protesting government land seizures, and Falun Gong practitioners.²² Teng was also an outspoken defender of activist Hu Jia (in 2008)²³ following his arrest. Teng is often harassed in the course of his work: during the defense of Falun Gong petitioner Wang Bo (王博), court police officers forcibly removed him from the courtroom. During Chen Guangcheng’s trial in 2006, several police officers pushed him to the ground inside the courtroom and took away his mobile phone. The most serious incident was when state security police abducted him from in front of his home, detaining him for two nights. During his detention, he was threatened with criminal charges, but was ultimately released. Teng Biao’s Google email address has also been hacked multiple times.

- **Zheng Enchong (郑恩宠)**

Zheng Enchong, a lawyer from Shanghai,²⁴ served a three-year jail sentence for “leaking state secrets abroad” after he contacted an overseas human rights group about property disputes.

¹⁹ Human Rights in China, *Beijing Judicial Bureau Revokes Licenses of Two Rights Defense Lawyers*, May 7, 2010.

²⁰ See The National Endowment for Democracy, *2008 Democracy Award Honorees – Biographies*, available at <http://www.ned.org/events/demaward/demaward2008-bios.html>.

²¹ *See id.*

²² See Teng Biao & Hu Jia, *The Real China and the Olympics*, 2007, available at http://www.hrw.org/sites/default/files/related_material/teng_biao080220.pdf

²³ *See id.*

²⁴ Details from Human Rights in China, *Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China*, February 2008.

Zheng had been advising Shanghai residents on eviction disputes with the government. Released in June 2006, Zheng continues to be harassed and monitored by the police. He no longer has a license to practice law, but continues to be outspoken on the cases he was involved in. He has been harassed, detained, summoned for investigations and interrogated on multiple occasions in retaliation for his activities and views. For example, after an interview regarding the corruption case of Shanghai tycoon Zhou Zhenyi (周正毅), Zheng Enchong was summoned to the police station on several occasions and beaten by police officers. After calling for investigations of properties owned by senior officials, Zheng was also repeatedly summoned for investigation and harassed. In June 2009, Zheng was detained for over 9 hours by police officers from the Shanghai Zhabei District Public Security Bureau. He was interrogated, beaten repeatedly, and “violently searched, stripped and forced to stand naked.”²⁵

²⁵ China Human Rights Lawyers Concern Group, *Strongly Condemn Shanghai Public Security Officers’ Unlawful Violent Detention of Lawyer Zheng Enchong*, available at <http://www.chrlcg-hk.org/?p=436>.