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**Statement for Hearing:**

**"Examination into the Abuse and Extralegal Detention of Legal  
Advocate Chen Guangcheng and His Family"**

**November 1, 2011**

**WILL THE PERSECUTION OF CHEN GUANGCHENG BECOME A  
TURNING POINT IN THE STRUGGLE AGAINST LAWLESSNESS IN  
CHINA?**

Mr. Chairman, I am delighted that the Commission is holding this emergency hearing and welcome the opportunity to make brief introductory remarks about the plight of my dear friends, the blind layman-lawyer Chen Guangcheng and his wife Yuan Weijing. Their story may have significance for all of China's 1.3 billion people and surely deserves to be better known in their country as well as in the outside world.

In China, as in the United States, progress toward human rights and the rule of law sometimes results from individual—often tragic—events. Chen and his family have already endured years of persecution, harassment and violent abuse, and I hope concern for them will stimulate progress before tragedy occurs.

At the outset, let me dispose of three myths. One is that instances of persecution and abuse of lawyers and legal activists are rare in China and only occur when a few heroic dissidents openly invoke the law to confront injustice rather than resort to the more patient, less confrontational methods on which many other dissatisfied Chinese rely.

Yet we know that China's activist lawyers and non-professional advocates have long been under a widespread, systematic official assault, which intensified earlier this year and silenced many formerly outspoken voices. A large number of lawyers have been attacked for representing not only those clients who oppose government suppression of religion, speech and association but also those who seek to challenge arbitrary residential evictions, environmental pollution, food and drug contamination, official corruption, discrimination against the sick or disabled or, as in Chen's last efforts, forced abortion and sterilization.

Many public interest and criminal defense lawyers never consider themselves "human rights" lawyers until the local judicial bureau threatens to take away their license to practice law, the police detain them in jail or at home, the authorities "suggest" that they leave the country or officially-sponsored thugs kidnap and beat them. Both Shanghai lawyer Zheng Enchong, who has been illegally confined at home for the past five years since his completion of a three-year prison term, and Beijing advocate Ni Yulan, whose legs were irreparably broken during a previous detention and who is again being prosecuted, inadvertently became "rights advocates" when they came into conflict with the police while representing clients challenging the forced demolition of their homes.

I can tell you many such stories, and it should be remembered that Chinese and foreign observers only see those cases that slip through the Chinese government's elaborate censorship apparatus. As is the case with

Chen, authorities spare no expense or coercion to isolate some lawyers from contact with the outside world and to keep abuse of these lawyers and their clients from public view. A second myth is that Chen's punishment is merely another example of local government run amok, neither approved nor condoned by the central government and Communist Party leadership.

Many law enforcement abuses in China are indeed local in origin, and Chen's case started out that way. It soon came to the attention of the country's central leaders, however, as a result of the publicity he generated on the Internet and in foreign media. To make certain that the leaders knew about it, I published an essay in the *Far Eastern Economic Review* in November 2005, after the Linyi county authorities had begun their first illegal "home imprisonment" of Chen and his family, but before any formal criminal process was commenced. In it, I described the case and openly asked then Minister of Public Security Zhou Yongkang whether he would endorse the unlawful, uncivilized actions of the local police.

Subsequently, representatives of the Ministry reportedly met with local and provincial officials to discuss the situation, and soon afterward the local authorities launched a criminal prosecution against Chen, a more conventional type of repression. I am confident that Zhou Yongkang, now in an even more powerful position as both a member of the Politburo Standing Committee and head of the Party's Central Political-Legal Commission, has been aware of Chen's persecution for many years.

A third myth is that there must be some purported legal justification for the suffering that the Chen household has endured since his release from prison on September 9, 2010. Governments, even the Chinese government, normally like to maintain some veneer of plausible legitimacy for their misconduct, however thin it might be. The Chinese law enforcement agencies, in justifying many of their tactics, have taken advantage of every exception, ambiguity and gap in the current Criminal Procedure Law. Yet no such justification has come to my knowledge in this case, which seems to have exceeded the bounds of police ingenuity.

Chen was not sentenced to a deprivation of political rights that would extend beyond his prison sentence and might be proffered, though wrongly, in support of his home imprisonment. There is no indication that he has been subjected to the notorious "residential surveillance," a severe house arrest measure that might be expanded in the forthcoming revision of the Criminal Procedure Law, and even that criminal sanction would have expired after six months. Undoubtedly, the violent abuse of Chen and his wife by officials and their hired thugs cannot find any justification in Chinese law.

When, at an October 28 Beijing press conference, a foreign reporter asked deputy director Li Fei of the Legal Affairs Commission of the National People's Congress Standing Committee to state the legal basis for Chen's home imprisonment, he declined to answer. He merely offered the unpersuasive generality that "in our country the freedom of a citizen is adequately protected, and the use of any compulsory measures is based on law." Apparently, the Chinese government did not want its people to hear even this empty assertion of its lawful conduct, as the question and its answer were eliminated from both the transcript and the video broadcast of the press conference. Ironically, the purpose of the press conference was to celebrate the issuance of a government White Paper entitled "A Socialist System of Laws with Chinese Characteristics", which lauded and documented China's development of "a comparatively complete legal system to protect and ensure human rights." The reporter's question rained on this parade.

Chen Guangcheng never saw himself as a "troublemaker" bent on damaging social stability and harmony. Indeed, he wanted to improve stability and harmony by using legal institutions to process social grievances in an orderly way as prescribed by law. His only mistake was to accept the law as it was written, as a true believer in the power and promise of China's legal reforms. One day, when he was especially frustrated by the county court's refusal to accept the lawsuits he brought on behalf of

impoverished pro bono "clients", he asked me: "What do the authorities want me to do? Lead a protest in the streets? I don't want to do that." Yet, in a cruel twist, he was ultimately convicted on bogus charges of interfering with traffic and supposedly damaging public property.

What is the motivation for Chen's persecution? Of course, it reflects the vengeful embarrassment of local officials at having their illegal attempts to comply with the strict demands of the one child policy exposed to the central government and the world. Yet Chen's persecution must also be seen as part of a broader, national strategy where the Party seeks to have its cake and eat it too.

On the one hand, it strives to attain legitimacy at home and "soft power" abroad by constructing and promoting a "socialist legal system" that protects citizens' rights and creates restraints on law enforcement's powers to punish. On the other hand, it makes certain that those rights and restraints are never fully realized by crushing the lawyers and law advocates who are the only group capable of converting those paper promises into "living law".

If this group, including "barefoot lawyers" like Chen, can be effectively squelched, the Party's image of social stability and harmony can prevail, at least for now. In the long run, however, many who share Chen's frustration with the courts, but who lack his faith in the law, will truly take their grievances to the streets. This is likely to produce more instability and conflict for a country that is already plagued by an estimated 180,000 riots and public protests per year.

Can anything be done to free Chen and other rule of law advocates from their nightmare of intimidation? As the recent release of artist Ai Weiwei demonstrates, it is possible that a combination of domestic and foreign pressures can improve the situation, especially after the Party installs a new generation of leaders one year from now. In the interim, enhanced publicity is indispensable. Today's Commission hearing and dozens like it in democratic countries can inspire the expression of much greater foreign concern by international organizations, governments, NGOs, scholars, bar associations and ordinary people. Certainly, the official human rights dialogues and more informal exchanges that the United States and other democratic countries maintain with China should deal with individual cases of abuse as well as legislative improvements.

Nevertheless, greater transparency in China remains the key. Even many Chinese specialists in criminal justice continue to claim—six years after Chen became well-known overseas—that they have never heard of him. This is why the efforts of Chinese activists to employ the Internet and social media to expose this case to the people are so crucial, and this is why the government refuses to permit access to and communication with Chen, at great cost to its reputation. There is a chance that Chen's cause could become a monumental and significant struggle for freedom and justice in China.

Mr. Chairman, many thanks for your patient attention. I have appended to this introductory statement a number of short essays that I have published about the Chen case. I also suggest that the forthcoming report of the New York-based Committee to Support Chinese Lawyers entitled "Legal Advocacy and the 2011 Crackdown in China: Adversity, Repression and Resilience" be included in the record.

I very much look forward to the remarks of my colleagues on the panel and to the questions and comments of the Commission.