

HEARING OF THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Gagging the Lawyers: China's Crackdown on Human Rights Lawyers and Its Implications for U.S.-China Relations

Wednesday, June 28, 2017
Capitol Visitor Center
HVC-210
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INTRODUCTION

Mr. Chairman, Mr. Co-chairman, and distinguished Members of the Commission, I am privileged to be invited to participate in this hearing. I have a long-standing admiration for the work of the Commission.

In my opening remarks, I address the meaning and significance of China's unprecedented crackdown on lawyers almost two years after its onset in early July, 2015.

My comments are derived from the empirical research of my research team into criminal procedure law and criminal defense lawyers over the past twelve years. Our findings, published in our book, *Criminal Justice in China*, concludes that China's legal system and legal profession have come an enormous distance since enactment of the 1979 Criminal Procedure Law. Nevertheless, on a critical number of issues integral to the defense of basic legal freedoms, China has turned away from reform both in its law and its treatment of a key segment of the legal profession.

A sudden turning point occurred on 9 July 2015 when China launched a nationwide crackdown on activist lawyers.

The '709 crackdown,' as it has been colloquially labeled, has been unprecedented in scale and severity. Within days, hundreds of lawyers across China were detained, disappeared and interrogated. Lawyers have been intimidated, tortured, charged with serious crimes and sanctioned severely.

Why did this crackdown occur?

Research on activist lawyers reveals deep grievances held by hundreds of millions of Chinese who suffer from health-threatening pollution, from takings of their houses and land, from widening inequality, from religious controls and persecution, from discriminatory treatment of minorities, from inadequate protection of workers and women, and from exploitation and vulnerability of migrant laborers, among others.

The sheer quantity of disaffected and angry populations can fuel widespread unrest. Lawyers often become the help of last resort when every other channel has failed. Therefore, over the past several years the Chinese Communist Party has faced a double-threat to its survival: on the one hand, economic and social problems appear to be multiplying and intensifying; on the other hand, lawyers increasingly have been articulating and expressing those grievances through law in highly visible ways.

What precipitated the crackdown on lawyers on 9 July 2015?

1. Over the last several years, activist lawyers significantly increased in numbers. Hundreds of new activists, many of them young and well-educated, signaled their willingness to join the frontline.
2. Lawyers magnified their ability to mobilize. Since 2011 lawyers increasingly came together as large defense teams in difficult trials. Through social media, activist lawyers could create instant crowds to rush to a courthouse or defend a lawyer being harassed by police. Nationwide online networks could mobilize hundreds of lawyers for new cases or emergency situations.
3. The power of social media multiplied the impact of a new type of lawyer. So-called “die-hard” lawyers actively used social media and street theatre to activate supporters and expose problems in defending their clients. Some lawyers had accumulated thousands or even millions of followers on Weibo, China’s equivalent to Twitter.

Clearly, China’s leaders felt vulnerable to activist, die-hard and ordinary lawyers’ enhanced powers to mobilize publics.

What motivates these lawyers to exhibit such courage in the face of a regime that does not hesitate to use inhumane and even life-threatening measures against its opponents?

Our research reveals that courage for many lawyers arises from their own life experiences, such as harms to parents during the Cultural Revolution, participation in the 1989 Tiananmen student movement, or shocking experiences in their legal practice.

Many lawyers build their courageous representation upon legal ideals that underwrite a good political society. First, they insist on protection of basic legal freedoms, such as right to be represented by a lawyer, due process in trials, and fair adjudication. They insist upon freedoms of speech, association and religion. Second, they are committed to a vibrant civil society as it is expressed through voluntary associations and an open public sphere. Third, these activist

lawyers strongly oppose arbitrary executive power and call for checks and balances within the state.

Our research documents that many lawyers, notable and ordinary practitioners, draw their courage also from their Christian faith. Christians insist upon the values of equality, most importantly, that in the eyes of God and the eyes of the law, said one, “Chairman Mao is as equal as me.” They champion the Judeo-Christian emphasis on a political and legal order that delivers justice, often quoting, like Martin Luther King, the biblical prophets Amos and Micah. They believe in fairness—that justice should be available reliably and fairly to all, whether they are Han Chinese or Tibetan, Party members or Falun Gong members. Finally, they hold China’s law accountable to God’s law.

I consider it probable that Party leaders fear Christian lawyer-leaders who have strong relationships with Protestant churches across China and some who have significant international connections.

What does the lawyer crackdown tell the world about China’s future?

Viewing China through the lens of courageous lawyers reveals that legal change has turned toward repression, a repression which has taken deeply sobering turns since mid-2015.

Nonetheless, deep impetuses for change remain within China. Repressive actions may be self-subversive. Notable activists refuse to surrender easily or to go quietly. Their wives, their comrades, spring to their defense. Significant numbers of grassroots lawyers continue to harbor visions of alternative legal-political futures. An international community ratchets up its efforts at solidarity, pressure and support for defense of lawyers.

Where goes China may depend very considerably on where go its lawyers. Will it follow long peaceful paths of reform and the expansion of basic legal freedoms offered by the activist lawyers. Or will China lurch towards a violent explosive path that could lead to fearful unpredictable outcomes?

RECOMMENDATIONS

The U.S. Government and the international community of states, international organizations, and publics should stand in solidarity with China’s activist lawyers and hold China’s practices strictly accountable to *global* standards, most importantly those inscribed in UN conventions, principles and institutions. These are applicable to all persons, all places and all states without exception.

The U.S. Government should maintain its leadership position in the UN Human Rights Council and other authoritative international bodies so that China does not erode or dilute universal norms of law, lawyers, and rights.

The U.S. Government should use all means at its disposal, including joint statements with other states, bilateral dialogues, and monitoring by U.S. agencies to press China to adhere to global standards in its treatment of all its lawyers, most especially those swept up in the crackdown.

The current administration should strengthen the capacity of the U.S. Department of State and other executive agencies to monitor treatment of vulnerable populations in China and particularly lawyers who represent those populations.

U.S. Government agencies, including the CECC, should mobilize US firms operating in China to recognize the dangers their employees and partners face as China offers less and less protections to persons inside China who cross invisible lines being drawn and redrawn by China's security apparatus.

The U.S. should lead other states in the call for release of activists being punished for their rights defense work, and reject the criminalization of their legitimate exercise of rights protected by Chinese and international law.