

LAWYERS AND THE STATE IN CHINA: RECENT DEVELOPMENTS

Donald Clarke

Professor of Law, George Washington University School of Law

*Testimony Before the Congressional-Executive Commission on China
Washington, D.C.
October 7, 2009*

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, 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.

¹ For 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/y959lkf>); and Prof. Ethan Michelson (publications list at <http://tinyurl.com/ydyrcr qw>).

² By “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.

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/>.

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 re-opened on Sept. 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

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, Feb. 25, 2009, available at <http://tinyurl.com/ca7pkz>; “Killing One to Warn 100”: *The Shutdown 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 lilian gushu women gushou “zhengyi, aixin, liangzhi, fazhi”! — Yitong liushi 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), Sept. 14, 2009, <http://tinyurl.com/y9nnz9t>.

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

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

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), Aug. 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>.

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, Aug. 18, 2009, available at <http://tinyurl.com/yavwff8>.

¹² See Michael Wines, *Without Explanation, China Releases 3 Activists*, NEW YORK TIMES, Aug. 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.

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 cancelled the licenses of fifty-three 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 for de-licensing is evident from the fact that previous years have not, to my knowledge, seen such large-scale de-licensings.

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

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.

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

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”*, Nov. 25th, 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), Feb. 18, 2004, available at <http://www.ntda.gov.cn/wjzxqw/W2580001035.htm> (Chinese; URL does not function as of Oct. 5, 2009); <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=50420> (English translation).

- 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 multi-party litigation (cases with ten or more plaintiffs) was issued by the All-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

²⁴ Henan Judicial Department, *Guanyu jiaqiang dui lüshi banli zhongda, min'gan, quntixing anjian zhidaojian du 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).

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), Sept. 13, 2009, available at <http://tinyurl.com/yawfrm5>; China Human Rights Lawyers Concern Group, *Support Chinese Lawyers to Provide Voluntary Legal Aid to Victims of Contaminated Milk Powder*, Sept. 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), Oct. 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.

- 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 Chinese 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

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 (WOESER’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 tixing 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 Aug. 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 shehui zhuyi falü gongzuo zhe rensi, qianghua min’gan anjian he quntixing anjian bianbu daili 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), Aug. 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, *Letter from China: What Happened to Gao Zhisheng?*, THE NEW YORKER, April 3, 2009, available at <http://tinyurl.com/dmoecu>.

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, Dec.

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.

13, 2008, <http://tinyurl.com/54w82>.

³⁷ See ZHAO ZIYANG, PRISONER OF THE STATE 258 (2009).

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." But it is evident that in the 30 years 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 website, 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

³⁸ Source: http://www.chinafreepress.org/publish/case/Accord_With_the_Tide_of_History_Directly_Elect_Beijing_Bar_Association_Directors.shtml. As of Oct. 5, 2009, the URLs for the English translations of the documents in Appendices 1, 2, and 3 do not function.

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 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.

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](http://www.chinafreepress.org/publish/case/The%20Beijing%20Bar%20Association%20s%20Response%20to%20a%20Small%20Number%20of%20Lawyers%20and%20Their%20So-Called%20Call%20For%20Direct%20Elections%20to%20the%20Beijing%20Bar%20Association.shtml) (English).

Appendix 3

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

On Friday September 5, the Beijing Bar Association on its official website 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 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.

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).

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 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