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PROMOTING RULE OF LAW IN CHINA

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED SEVENTH CONGRESS

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PROMOTING RULE OF LAW IN CHINA

FRIDAY, MAY 24, 2002

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 10:02 a.m., in room SD–215, Dirksen Senate Office Building, Mr. Ira Wolf (Staff Director of the Commission) presiding.

Also present: John Foarde, deputy staff director; Susan Weld, general counsel; Jennifer Goedke, Office of Representative Kaptur; Matt Tuchow, Office of Representative Levin; Arlan Fuller, Office of Representative Sherrod Brown; Holly Vineyard, Department of Commerce; Robert Shepard and Jorge Perez-Lopez, Department of Labor.

OPENING STATEMENT OF IRA WOLF, STAFF DIRECTOR OF THE COMMISSION

Mr. WOLF. I would like to welcome everyone to the fifth staff-led roundtable of the Congressional-Executive Commission on China. I am Ira Wolf, Staff Director. This is John Foarde, Deputy Staff Director. This is Susan Weld, who is the general counsel for the Commission, and we are surrounded by staff members of our commissioners who will participate in the question period.

Senator Baucus and Congressman Bereuter have instructed us to hold these roundtables to delve in depth on issues of concern to the Commission.

Let me just run through a few upcoming events. There will be a full Commission hearing on June 6, it will be on the WTO [World Trade Organization] entitled "Will China Keep Its Promises? Can It?" We also have additional roundtables on June 10 on Tibet and Uighur minorities, June 24 on restrictions on media freedom in China, and July 8 on village elections. You can check our Web site at *www.cecc.gov* for details.

Turning to today's roundtable, human rights cannot exist and be protected without an effective legal system, without accountability of government officials, and without transparency. But an effective legal system does not emerge in any country spontaneously. It requires commitment by leaders, by officials and by the citizens in that country.

Outsiders including governments and non-governmental institutions and organizations [NGOs] can help in training, in developing an awareness of the importance of the rule of law.

Today we have four individuals with us who themselves, as well as their institutions, have long experience in this type of work in

China. Robert Reinstein is Dean of Temple University Law School. Nancy Yuan directs the Asia Foundation in Washington, DC. Bob Kapp runs the U.S.-China Business Council, and William Sullivan comes from the Maxwell School at Syracuse University.

You will each have 10 minutes for your opening statements. Then we will turn to the staff for questions and discussion. We try not to engage in straight Q and A, but try to encourage discussion with us and among you four experts. So, we will start with Dean Reinstein.

STATEMENT OF ROBERT REINSTEIN, DEAN, TEMPLE UNIVERSITY SCHOOL OF LAW

Mr. REINSTEIN. Thanks, Ira. Thanks very much for the invitation. I will try to be brief. I am programmed to talk for 50 minutes in class, so I will try to summarize.

I thought I would spend this time just telling you what we have been doing in China and more specifically why we have been doing it. Really it has been at the request of a variety of Chinese educational and governmental institutions. We were originally approached in 1995 by the Ministry of Justice and a national law school, the China University of Political Science and Law. They wanted us to consider starting a Masters of Law Program in Beijing for Chinese lawyers to learn about American and international law along the lines of a program that we had already developed in Japan. They said they needed this because with the development of a market economy in China, they understood the need to develop a legal system. The route they wanted to take in developing a legal system was to educate a core of very highly trained lawyers and government officials who would learn about the American legal system and international law and other Western legal systems and adopt what they thought was appropriate, from that education, and use that to develop their legal system.

When we started to develop the program, we began to receive requests from the Supreme People's Court, and a number of government ministries to send students. We did start our first class in 1999 with 35 students, that class included 8 judges who had been sent by the Supreme Judicial Court, they had actually nominated 18, we only had scholarship funding for 8. There were six government officials from a variety of ministries. We also had three minority students, that is non-Han Chinese, one of whom was a Tibetan lawyer and two of whom were Muslim attorneys from western China. We admitted three law professors and the remainder were private lawyers.

The second class that entered in 2000 had a similar composition. We have now graduated both of those classes as of this month. All of our classes are taught in English and they are taught by U.S. and Western law professors. We use the case method. Originally the curriculum was very heavily business oriented, although even in the first classes we were teaching American constitutional law and professional responsibility.

We taught using the case method, both because that's an excellent way of teaching about legal reasoning but also because we thought it would be a great way to teach about how an independent judiciary operates, and the concepts of due process of law.

Our Chinese students actually were pretty startled when they started reading appellate decisions in which the government lost the cases, so they were getting that message.

Last year we broadened the curriculum to include courses that were less related to business and commerce. One was a course on labor and employment rights. The second was a course on criminal procedure and trial advocacy. The students asked us to teach trial advocacy. They wanted to learn how to try cases as American lawyers did. We put together a course in which we taught about American criminal procedure, especially the protections of the Bill of Rights, and we taught trial advocacy and the students did a mock trial. Each of the students did a mock trial, trying an American criminal case based on American legal principles. In several of those mock trials, by the way, the juries contained Chinese Government officials, the juries acquitted on reasonable doubt.

Another feature of the program is to teach legal research, especially legal research by computer. We're doing that, of course, so that the students can continue to access legal materials throughout their career and continue to learn about what's happening in the United States and in the West.

The expansion of the program occurred I think because of the success of the Masters Program. We started getting requests for more and more educational programs. The first request came from the Supreme Court, they wanted to educate more judges. They said that the judges who were graduating from the Program were becoming division chiefs in their respective divisions and we could only take a fairly small number of judges each year. They asked us to try to take more judges into the Masters Program and also construct more short-term training programs for additional judges.

We did secure additional funding and we formed a partnership with other institutions which I can maybe get to later. What we have right now happening is, right now there are 40 judges in Beijing from all over China, who are taking a 3-month course in legal English that are taught by faculty from Brigham Young University. When they complete that course, about 10 of them will be admitted into the Masters of Law Program and about 25 of them will go to New York this summer for a month-long training program that will be held at NYU's Institute for Judicial Administration. We expect to do this each year so that we can reach a larger number of judges in China.

Another request we got from the National People's Congress [NPC] and the Supreme Court was to form some working groups on some proposed laws and regulations. We are now working with the drafters of the new property rights law, in fact three of our professors are going over next week to work on that. There is a draft property rights law that is going to be introduced in the National People's Congress. They are asking for our advice, really based on how things work in the United States so that they can learn from that. One of our faculty members is working with the Supreme Court on a code of judicial ethics and we've also been asked to work on a draft of a tort law which is going to be developed next year in the National People's Congress.

We have academic exchanges and joint research projects. A number of our faculty have been lecturing especially in the National Ju-

dicial College. I'm scheduled to give a lecture on June 10 on judicial review.

The latest request we got was a couple of months ago from the State Prosecutor's office. They have asked us to construct an educational program for the prosecutors, which is just like the one we have for the judges. They want to send about 10 prosecutors each year into the Masters of Law Program and they also want to have an intensive education program for about 25 or 30 prosecutors each year along the same lines as for the judges where it is preceded by a legal English program, and then we would teach them how American prosecutors try cases and how the offices of American prosecutors operate. The subjects they want covered are due process, the rights of defendants in criminal cases, how to prevent abuses of power by the prosecutor's office, rules of evidence and how to use the prosecutor's office to deal with official corruption. We are hoping to be able to do that. We do not have funding for that project right now but I think it's an exceptional opportunity and that we should really try to take advantage of it.

Our present partners in this endeavor, in China our academic partner is Qinghua University, which has excellent facilities and a pretty internationalized faculty. The Supreme Court and the National Judicial College and the State Administration for Foreign Experts has been very helpful to us. Our partners here are New York University Law School and Brigham Young University.

The other project that we are doing, which Adelaide Ferguson just reminded me of, is that this summer we are having a group of scholars coming over from China doing some joint research and producing some papers on WTO and WTO implementation in China.

We have also benefited from financial support from a lot of sources. I think this has been a really nice example of a partnership between government, business, and academia. We have had corporate support from a number of American and Chinese companies and foundations and we have also benefited from a grant that we got from USAID. Thank you very much.

Mr. WOLF. Thank you very much. You have described a wide breadth of activities and programs—very impressive.

Nancy.

STATEMENT OF NANCY YUAN, DIRECTOR, ASIA FOUNDATION

Ms. YUAN. Thank you. Thank you for inviting me this morning. We're delighted to present the Asia Foundation's programs. As many of you know the Asia Foundation has been present in China with a program since 1979, so we will be celebrating an anniversary coming up soon.

Our law programs are conducted in the context of an overall program that focuses on governance, law and economic reform. We also have programs in United States-China bilateral relations as well as programs to support the NGO [non-governmental organization] sector and developing the role of women in society.

These programs are run from the Beijing office on the ground. Our staff travel quite extensively, our director for program development is in Hong Kong because he also runs our Taiwan program. So it's within this context that we have a program in China.

The area of legal development is of course not new for the Asia Foundation. For nearly 50 years we have been working in legal reform throughout the region and that includes both technical assistance programs, study programs to bring people to the United States as well as travel throughout the region to give them a sense of what kinds of law developments is occurring in different countries in Asia.

Our approach in China is basically the same as it is in other countries, to identify the interests that are on the ground, to try to look at opportunities where there is space for the kind of program that we would want to do. We are, in essence, a grantmaking organization.

Our programs have worked effectively both with the Chinese Government but also with the NGO sector and includes non-governmental organizations for instance, that run legal aid programs, university programs to provide training for faculty, work with the Supreme People's Court, and other provincial courts and such.

To give you some context for what the Asia Foundation deals with, when we conduct our programs on the ground. As an American organization, we have been one of few consistently working on legal reform for the last 20 years. The other organization, as you well know, is the Ford Foundation, and there have been exchanges and programs with universities that have been going on for quite some time. For instance, the Ford Foundation has a program called the CLEEC Program which brought law faculty and lawyers to the United States for a year of study. On the whole, the community of people who work in the law development field are, frankly, not American. The larger amount of resources and activities are conducted by the Europeans. The European Union has a very large program of training with the Supreme People's Court, it's probably about $15 million dollars a year. The Germans have a very large program of legal assistance, both in technical assistance as well as judicial training. The Canadians, the British, the Swedes, the Danes, the Irish, just about everybody else has fairly significant programs of assistance with resources behind it.

It's in that context that we participate in two donor roundtables: One on governance, one on law, about every 6 months, to go over the lay of the land, to talk a little bit about what it is everyone is doing. The Asia Foundation's assistance is, in comparison to those organizations, small. We need to look for a place that we feel we can both make a difference, do some good work to advance legal reform and protect rights of citizens in China, but also where we aren't swallowed up by some larger initiative where the funding base and the effort level is so high that we are a drop in the bucket.

Our law program at present focuses on 3 specific areas. The first area is in the area of administrative law, in an effort to help define government behavior, in terms of the arbitrary behavior of government officials under the law, as well as to protect the rights of citizens. It's under these laws, that as many of you have read, that citizens have actually sued the government and some cases they win. I'll talk a little bit about enforcement later, but it's under these administrative laws, that citizens are able to do this. In addi-

tion, it governs a variety of different activities that government officials undertake in their roles.

The Foundation has a project using American legal officials run by Professor Stanley Lubman, who is a well-known legal scholar and practitioner. He has assembled a group of administrative law specialists and China law specialists into an advisory group working with the Office of Legal Affairs, to draft an administrative procedures act, which China currently does not have, but also to look at other draft legislation in this field.

The other program that we are involved in related to administrative law is a WTO training project. The project brings together the top 40 officials from every province in China, including the autonomous region of Tibet and Inner Mongolia, to look at administrative law and the implications of WTO for administrative law. We held a large training session in Beijing in March, a 6-day training session. The next phase of the project will be to bring those same officials into the United States and then to gather in a number of months in Hong Kong to discuss what it is they have encountered problems with in terms of the administration of their particular programs in their provinces.

The second area that the Foundation works in is in legal aid. We have had a program at the National Legal Aid Center for a couple of years to fund the case-handling costs in some of China's poorest provinces. It's basically a matching program funded by the Star Foundation to provide case handling costs while the local government covers their operating costs in the handling of civil cases. We have found this to be a very useful activity because it gives the legal aid centers an opportunity to investigate cases, to gather evidence and information, and to enable them to pursue these cases.

The other area that we work in, in this particular field of legal aid is a special program that's funded by the Levi Strauss Foundation with migrant women workers in Guangdong Province to provide them with legal aid services as well as legal advice. They come as migrant workers to this area without any rights because they have left their home province. Oftentimes they are beholden to their employers for everything: their living, their healthcare benefits, their childcare benefits and any other benefits that they do or they don't have. So the program covers counseling for them through the Women's Federation.

The third area of programming that the Asia Foundation is involved in in the law is public legal education. This is done both through the legal aid centers, through a variety of NGO's, the program that we have for migrant women workers does a great deal in this area, but we have also funded the start up of some television programs. A program called "Let's Talk About China Today," which I talked about a little bit in my written statement, is a very popular program that's presented on CCTV, it's widely watched, it provides both case studies as well as gives legal advice on a variety of legal problems that citizens encounter on a regular basis. It has become very popular, it's been replicated throughout the country. I think for us it's hard to believe that anyone would watch a program like this where you learn about the problems of ordinary citizens dealing with the law, listen to legal experts sitting on a television show explaining the law as it is under the Chinese system

right now and actually listen to legal advice—it's not quite Perry Mason—but it's a start in promoting legal awareness in China.

While we feel that these programs are beneficial in and of themselves in protection of citizens rights, and to try to develop the legal culture, it is not without problems that we have programs in these areas. I think in the area of enforcement, I think, as you all know, the Chinese are not fully able to enforce laws they have on the books.

The second problem that our people who are on the ground identify most is the problem with public finance for the legal system. The salaries of judges are problems for legal officials at every level in being able to sustain reforms that are recommended by donors. Once donors are gone, whether or not public budgets will be made available, is a very big problem. We still believe it is useful to do these programs. They are advancing what we believe is a culture of the law. While there continue to be difficulties, we believe that U.S. Government and Americans in general should be involved in these activities. Thank you.

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

Mr. WOLF. Thanks very much. That is a very impressive set of programs over the last quarter of a century.

Bob Kapp, please.

STATEMENT OF ROBERT KAPP, PRESIDENT, U.S.-CHINA BUSINESS COUNCIL

Mr. KAPP. Thanks, Ira. John, could I ask you to send one copy of the "Springtime" piece back? I didn't keep one for myself. I'll probably refer to it as we go forward.

Let me first of all say thank you for letting me join you. We in the U.S.-China Business Council feel that this Commission is a very important thing, and we are pleased to see that in addition to full hearings, the staff is getting together in this informal setting, which I think is terrific. I have no written presentation, and I will keep my remarks very short in the hopes that we will have more time for dialog. At some point, I would appreciate being introduced to those members and staff who are here and as to whom they represent, it would be very helpful.

Let me say as we start, that in reference to the work of the Asia Foundation, the new issue of our magazine, The China Business Review, has a useful article by Zhang Ye, who represents the Asia Foundation in Beijing, called "Hope for China's Migrant Women Workers," it elaborates on some of the things that Nancy was saying. This, I believe, is available by hyperlink at the China Business Review Web site which is *www.chinabusinessreview.com.,* and if it isn't you may contact me and we will make sure that additional copies of the article are made available.

[The information appears in the appendix.]

I really only have three things to say or four, and they relate principally to what I've brought over today. I really strongly commend to you this rather long but important paper, by Randy Peerenboom, of UCLA. It will be published in the Michigan International Law Journal this summer and then be part of a book, and I think this Commission will do well to acquire when it comes out in September.

Peerenboom is a well-known Chinese legal specialist and what he's done here is remind us that rule of law has many forms. He distinguishes between two major types of legal systems and then subdivides within them in fascinating ways that make it possible for us, I think, to discuss much more meaningfully, exactly what it we think we mean when we talk about the rule of law in China, or what it ought to be.

Everybody loves rule of law, we all love rule of law, business loves it, human rights loves it, everybody loves it. Most of us recognize that China is not the United States and it's not going to be the United States in our lifetimes, and that the meaning of the term "rule of law" in China will undoubtedly reflect the realities of the PRC [People's Republic of China]. So, reading this is very important and I urge it upon you very, very strongly.

I also brought some reprints—I only made six, but I know the Commission staff will have opportunity to redistribute them—of a very, very good summation of rule of law work being undertaken in China by many countries that came out in this marvelous publication, "The China Development Brief," which is published in Beijing by a gentleman by the name of Nick Young. It contains a marvelous whole long section on law- and education-related work.

I think defining terms is important. I'm not going to lecture you on how you define them, but I do think in this Commission, as in all commissions that set out on a legislatively-mandated path, a very serious definition of terms in order at the beginning, if your conclusions and recommendations later are going to have a strong meaning and strong effect, and that's why I brought those along.

Now just briefly on WTO and commercial law, since we can take this up in the discussion. This Council and I personally have never claimed that China's entry into the WTO or the passage of PNTR [permanent normal trade relations], which was the major political issue in the Congress 2 years ago, were themselves going to create a two-party system or let thousands of prisoners out of jail, or for that matter let anybody out of jail, or put anybody in jail. What we do believe, and what I believe very strongly personally, is that the decisions China has made ever since 1978, and especially with the accession to WTO, to commit itself to legally binding obligations that require fundamental transformations of the way in which the State operates within the economy and thus within in the society, make very positive auguries for the evolution of a more economically and socially diversified system in China, and with it the expansion of the realm of law—as the friends at the Development Research Center of the State Council have put it in a paper that they have written, "a society based on contracts."

The logic here is that China is obligated to behave according to a set of WTO mandated behaviors, which are essentially the behaviors of an international market economy, the domestic environment must, if it is to operate without sanction and if it is to operate to China's greatest benefit under WTO, continue to develop institutions and practices that are compatible with these larger international economic and commercial standards.

I think myself that there is over 20 or more years, a very substantial flow-on effect, if you want to call it that, from these legally

mandated aspects of China's international and domestic economic behavior. We can talk about it more later.

The third thing I want to do, if you'll pardon me for approaching the bench for a moment, your honor, is to show you some pictures from my recent trip to China, for a reason. Here are three pictures: One is a landscape, the next is a real state-owned enterprise [SOE] in model railroad form that sits on a table in the head office where you can take one picture of the whole thing. The third is a little village up in the mountains with a sign about paying taxes. I will now explain why I showed you these.

The first picture is a picture of the Jianmen Pass, which separates the province of Sichuan, with 130 million people, from the province of Sha'anxi to the north, Sha'anxi is the dry, arid home of Xian, the ancient Tang Dynasty capital, the gateway to Western China. In this picture of this rock face 2,000 feet high, you can actually see people walking along this little path, one person wide, cut into the rock cliff—and a Tang Dynasty poet wrote about this—about how difficult it was to get to Sichuan, more difficult than "going to heaven itself."

The reason I give you that picture is that it is sort of a stark reminder of the distance between the capital, if you will, and the remote provinces. It's a sort of a metaphor for the challenge that any regime, any government faces in China, in installing its word and enforcing its word throughout the society and throughout the land mass of China. We've talked about this; Nancy has talked about the difficulty of enforcement at that level. When you really get down to what it's like to try to create a modern legal system in the villages of remote provinces where it's a 4-hour walk to the nearest road, this photo is sort of a reminder.

The state-owned enterprise picture speaks for itself. That is a classic SOE. Just to look at it is a reminder perhaps, of days gone by in American East Coast and Midwestern cities, but it is again a reminder of the magnitude of the social transformations that China faces as it tries to turn these behemoths into market-oriented, profitmaking institutions, and as it tries to deal with the social impact of these transformations: The layoffs, the lack of social insurance, the abandonment of the model by which enterprises like that took care of the worker from literally cradle to grave, and his parents and his kids and his sisters and his cousins and his aunts. This photograph is a sort of metaphor, again, for the magnitude of the social transformations that the Chinese have embarked on.

The third picture is just an exhortation on the side of a building in a little village up in the mountains, again on a rural road, about the fact that to avoid or resist taxes is to violate the law, and to pay or cooperate in the tax process is *guangrong,* "brilliant and bright." It's an exhortation to ordinary rural people out in the middle of nowhere that paying their taxes is good and honorable, but not paying them is against the law. It reminds us that the task of exhortation, which Chinese Governments have always had—the moral exhortation to the masses from the moral center which is the role of the state in that society, not ours, but theirs—the task still goes on when it comes down even to things like getting ordinary people to pay their taxes out in rural settlements far from the national or provincial capital.

I thought those were important things to touch on as we think about what it means to create the rule of law in China.

The fourth thing—quickly before the yellow light goes on—to mention is the U.S.-China Legal Cooperation Fund. It's discussed in this piece I wrote for our magazine called "Springtime in the Pursuit of Justice." Members of the American business community that our Council embodies, have since 1998, on a voluntary basis, put money into a fund to provide financial support in small or moderate doses for programs of legal cooperation between Chinese and American partners across a wide range of legal subjects.

I want to give John Foarde, your deputy staff director, great credit for his work when he was with us, in making that fund come alive. It is an extraordinary thing. The money is small: $25,000 here, $10,000 there. The projects are great: we have 39 applications for the next round which is coming up next month. They range from legal dictionaries to WTO instruction, to women's legal rights, legal services for the poor, compatibility of Chinese labor law with international standards, all over the map. The thing which is most satisfying to me is to see tough American business people, whose bottom line concerns are primordial, saying "Absolutely, this is a great program," giving money across the range of projects and subject matters that we have undertaken. It is very small. We don't kid ourselves that this is going to change the world, but we think it's a useful step and we hope that it reflects well on the American business community. Thank you.

Mr. WOLF. Thanks, Bob.

Mr. KAPP. I do need those pictures back incidentally, I can make copies if you want, if they are to go in the record, I'll have copies made.

Mr. WOLF. You are to be congratulated for getting the Legal Cooperation Fund started and John Foarde for his effective work on it when he was at the Council.

Bill Sullivan, please.

STATEMENT OF WILLIAM SULLIVAN, DIRECTOR OF EXECUTIVE EDUCATION PROGRAMS, MAXWELL SCHOOL OF PUBLIC AFFAIRS, SYRACUSE UNIVERSITY

Mr. SULLIVAN. Thank you. I'll also try to be brief. I'm going to talk about the Maxwell School and our initiatives in China specific to administrative law and rule of law. This is all in connection with our broader set of initiatives—very specific to the field of public administration and its adoption within China. If I have an opportunity here later on, I would like to talk very briefly about the creation of the field of public administration in China because I think it creates another interesting new avenue for promoting at least more awareness of administrative law and procedure.

You will also note that some of my comments here will complement some of the thoughts and suggestions that Nancy made just a few minutes before me. I would also, before I say anything about what we are doing, I have to say a kind word about our sponsors. Two of them are at the table here today and I want to reiterate, and it's come up and it will probably come up again in our discussion, that our work—and ours is a very small initiative within China—would not be possible without the support of the

Asia Foundation as well as the U.S.-China Business Council. It's critical and very important money because one of our big objectives is to find resources on an annual basis to try to get our faculty and practitioners to China to work with colleagues there and I want to thank you on behalf of my associates at Syracuse University.

Maxwell's rule of law initiative began when one of our Chinese partners, the State Commission of Public Structure and Establishment Administration, asked if we would send experts to participate in an administrative law conference they were conducting in Mongolia. Since then the Maxwell School and the College of Law at Syracuse University have collaborated with Chinese legal scholars and professionals, judges and government officials in their effort to debate, develop, and draft administrative laws and procedures that will define the role and responsibility of government agencies and the civil service, a body of law that once adopted would be equivalent to the 1946 Administrative Procedures Act in the United States.

Our program is small and our objectives are very simple; to provide a forum for the open exchange of thinking, experience, and information between the United States and Chinese legal scholars and professionals, to develop training and teaching materials that will educate Chinese scholars and government officials about proposed changes in administrative law, to create opportunities for American legal scholars and professionals to learn from the Chinese experience, and to promote greater understanding in China of the American model of administrative law. One of the comments that Nancy made is critical here because everyone is coming in with their own model of administrative procedure and law and it's being composed usually with very generous support of the national government. [Laughter.]

Chinese partners, our partners over time have been some very important ones. First the China National School of Administration, which as you probably know is China's leading training institute for the training of senior government officials within China, established in 1993. We have been working with them since 1993 and a lot of our work and training materials are used by faculty there to inform government officials across the country about the rule of law.

Their administrative law research group, led by Professor Ying, China's leading administrative law scholar and a member of the National People's Congress, and we also work with the Legislative Committee of the National People's Congress.

Since 1996, we have been following a similar course of activity each year. Each year, our Chinese counterpart identifies what specific topics that they would like us to address that year. For example, we have looked at the judicial review process, the role that the State Governments in the United States play in administrative procedure, the public hearing process, administrative enforcement of rules and the Freedom of Information Act. They will run a workshop that will last for a week, then a delegation is selected from the participants, usually about five or six to come to the United States to meet with practitioners and experts here during the course of about 2 weeks. One of those participants in the delegation then stays at Syracuse University for a semester taking courses

and engaging in joint research with faculty. Over time this relationship has produced some books, articles, case studies, simulations and a lot of other materials that have been used to inform Chinese scholars and professionals.

I can talk about the people that have been involved both in China and the United States and I have lists of the participants here, and it's a very impressive one. Let me just talk about the lessons, what we've learned over time.

China's commitment to the adoption of a body of administrative law is currently strong and unwavering. In fact, the rapid development of the administrative law field is nothing short of remarkable. In 20 years, China has moved from an operational environment where only a vague notion of administrative law existed, to the steady development of law and regulations designed to control agency behavior and protect the rights of citizens. The adoption of the State Compensation Law, the Administrative Punishment Act, and directives on public hearings are recent examples of this activity.

According to Professor Ying, a draft comprehensive administrative procedures type body of law will be ready in late 2003 or early 2004 for review.

Second point, in spite of this dramatic reform effort, it will take years for the rule of law concept in governments to become standard operating procedure. Given the size and complexity of the Chinese system, the potential for resistance and civil unrest, we should have realistic expectations and maintain a long-term commitment to support ongoing reform.

Third, learning to utilize political opportunities to push for legal reform in various sectors is essential for successful implementation of new laws and regulation. An obvious example of what I mean is China's entry into WTO. Five years ago topics that would have been too politically sensitive to discuss, such as the open government and transparency issues, are now freely discussed, analyzed, and pursued.

Over the past 10 years, political efforts to curb corruption, reduce the size of government, build a merit based civil service, and to realign the role and responsibilities of different levels of government, have opened doors for change. Current political interest in environmental protection and in public finance have created additional avenues for legal and regulatory reform. The other example here is that 2 years ago, the State Council and State Education Commission authorized the creation of the field of public administration in China and the developmental creation of the professional degree in public administration. Twenty-four different universities across the country were selected to develop and run professional programs in public administration, and these will beginning this fall.

What's interesting about this is that a curriculum has been prescribed by the State Education Commission, that stipulates courses that you would all be very familiar with in a public administration program, and one of the critical components of this program is study of law and of rule of law. Thus creating another opportunity for people to be able to discuss this issue.

What's lacking here is what's lacking in most of these efforts, that there aren't enough text books, materials, information, and

the right way to teach these courses, and this is an issue that concerns us at the Maxwell School on a regular basis.

It will take the combined efforts of scholars and government officials to ensure the successful implementation of new administrative laws. In China, academics are routinely involved in the drafting of these laws. We would like to get back involved in this in this country too, but—[laughter]—but academic input is not enough. Scholars lack the practical experience and this deficiency often renders their vision of a new law as too idealistic and too complicated for implementation. Bureaucratic ignorance and resistance often affects implementation as well. Legal reform requires not just new laws, but the adoption of a culture of respect and adherence to the rule of law.

In our experience, we have found in our program that it is essential to bring practitioners, scholars, and legislative staff together and have workshops and discussion to develop relationships and common understanding. These relationships continue after our programs and promote more effective and realistic practice of law.

Finally, the need to develop a rule of law in China has become a Washington mantra, but while United States political interest and support exists, the financial resources needed to support American involvement is lacking. Finding resources to support ongoing projects is a constant struggle. This is why the involvement of the Asia Foundation, and the U.S.-China Legal Cooperation Fund, the Ford Foundation and American multinational corporations is so critical to the development of rule of law in China. In comparison, Europeans, Canadians, Japanese, and Australian Governments provide much more for similar projects. We lag far behind these other nations in what we can and should be doing. Thank you.

Mr. WOLF. Thanks very much, Bill. And thanks to all of you. We will post the formal written statements on our Web site next week, and we will post the whole transcript of today's session on our Web site in about 5 weeks.

I want to follow up on Nancy Yuan's comments about the large amount of money going to China from other countries and governments for rule of law programs and training. I'm trying to understand the implications of that for the United States. Maybe you can start out Nancy, and I would like to hear from all of you on the impact of this.

Ms. YUAN. Well I think it certainly gives people pause. I think that one of the things that we have seen in terms of how the United States is viewed, I don't think it's that the Chinese are not interested in the American experience and American technical assistance, they definitely are. I think however, for the European donors who are putting a lot of resources, running programs, have a lot of on-the-ground people who are actually in offices open and available to them, there is a certain amount of leverage that you get from that. You get access to seeing draft legislation because you are there on the ground. You are able to give the kinds of suggestions that you might want to give to the right people at the right level because you actually have some kind of investment in the process.

For Americans who, particularly those in government, who come and go—if you go on a study trip and there's a lot of celebration

and I don't even know what you want to call it—surrounding a trip and then you leave, then the Chinese are left with "Well they want to help us, they are really interested in what we are doing, they left us with these sort of guidelines of criticisms of what we're not doing, now what do we do?" I think that there's confusion on the part of the Chinese who are hearing that the United States is very much interested in helping with things like WTO compliance, very much interested in offering training programs and assistance and nothing is forthcoming. Whereas, I think for European donors who are on the ground and have people available who are actually visiting them on a regular basis asking them "What are you working on now?" and "How are you doing and is there something we can provide to you?" you get a lot of leverage from that.

Mr. WOLF. Anyone else? I would like to get into the implications for U.S. national interests. On a recent trip to Beijing, some people told me of their concern that the United States legal methodology and standards were being adopted less than one would hope because of the imbalance in training and funding.

Mr. REINSTEIN. Yes, I think that's true. I would just mention the two ends. One is actually from the perspective of legal education. A lot of how our legal system develops derives from how we teach in law school. American legal education is very different than European legal education, very different than legal education in most of the rest of the world. We think that it's better, but it is certainly different.

The Chinese model of legal education now is heavily oriented toward the European model. Even in drafting legislation we are starting with European codes. Now, oddly enough—changes taking place in other countries—the Japanese have adopted wholesale, the European method of legal education. Now they don't think it works and they have started 20 law schools on the American model, which is a fascinating development but, in China where we could have more influence there, there is very heavy influence coming from the Europeans and their civil law system. I think it's plain both in terms of how they are teaching law in the law schools, and how that is then translated in the premises and what they are starting off with in new legislation.

Mr. WOLF. Bob, Bill.

Mr. KAPP. Ira, I would just say that you know, the impetus behind American activity in China since about 1835 has often been that "we've got to get in there because otherwise the other powers in the great power scramble are going to get there first." That is an easy way to make a compelling case in the United States and in some cases certainly from a commercial standpoint, American companies that are accustomed to working in an American legal environment would be delighted if the Chinese legal codes all looked just like they did in Cincinnati, but actually, for a commission like this the issue is, I think, where is Chinese society going? What role does the establishment of a stable, transparent, largely equitable legal system with integrity have in that process? I would say that, this is the interest of the United States. The interest of the United States is in China becoming a society that treats its citizens less arbitrarily and less capriciously and which operates according to certain global standards of behavior, many of them

rooted in law, but not necessarily in law as it is practiced in one country or another. So my feeling would be that of course we should be active, and certainly I can't imagine that more Chinese students do not come to American law schools than any other country's law schools, it's certainly the case in every other kind of advanced education.

I think we should welcome and increase as much as we can the exposure of our Chinese friends to the way our legal system works, but at the end of the day the goal here is not a kind of a missionary goal of having everyone believe like the missionaries. It's that China takes a path which creates a more equitable society and a more dependable society in which the role of a state, vis-a-vis the citizenry, is bounded in the ways that Bill and others have spoken today.

Mr. WOLF. Thank you. John Foarde.

Mr. SULLIVAN. I just want to say, I think the resources are critical but at the same time, I often have said to myself, "I'm glad we don't have government support," because it would affect the way we do business within China itself. There's less freedom in many respects when you do receive resources from the government. I have had some experience with government agencies that have worked with us. I do think on the other hand that there are programs—and I'm not suggesting that we get involved in a discussion about money—but there are programs like the Mansfield Fellows Program that would make connections as they do in Japan, between our best people in government to build connections with Chinese Government. In a small way I think the Mansfield Program has 20 people they work with on an annual basis. They spend a year or more in Japan developing relationships. Programs like that, that really connect people to people are really the most important.

Mr. WOLF. Thanks.

Mr. FOARDE. Thank you. A specific question for Bob Reinstein please. I was fascinated by your reference in your remarks to teaching legal research by computer and wondered what is your sense of how much PRC law, statute, court decisions, etc. is available online in China.

Mr. REINSTEIN. I think very little. They do not, in terms of judicial decisions, they don't have a reporting system there. So it's not just that it's not available online, but very few decisions are available in books. I think that it's different with statutes, and one of the major changes—I think Nancy was referring to this—one of the major changes that's taking place over the last 5 or 10 years in transparency has been the publication of statutes and regulations. That has not filtered down yet to the court system, although the judges are very interested in developing this.

Mr. FOARDE. This ties into my second set of questions, really to everyone. I'm interested in the whole question of how you get training and information on all these things we've been talking about, from the national level to the provincial level to the local level. I think those of us who worked on this in the context of business and commercial law and disputes, understand that at the local level is where the rubber meets the road. In all the other aspects that we are concerned about as well: In legal aid for the poor, in citizens being able to assert their rights against abusive state agency or

state actors, a wide variety of things, freedom of speech, freedom of assembly, freedom of religious practice, it's at the local level where these things need to be done. So my question to you all is, "Is there some way that the U.S. Government, through a program could be involved in helping to spread the level of training and the level of penetration of this information on legal reform and rule of law?"

Mr. SULLIVAN. Just from the government perspective—the government officials and bureaucrats in the country—there's a network that does exist that's helpful, I mentioned it, the China National School of Administration. They have relationships with provincial schools of administration in every one of the provinces, schools of social science and public administration that exist in municipalities, and there are also county schools of administration, they are all desperate for material and information and once these things come to the top obviously they just flow down naturally to these other institutions. There is a lot of interaction and exchange between all these groups. That's one way to get information out and I think that having relationships with these institutions to develop curriculum, new topics, new ideas is very critical.

Mr. KAPP. Could I add just a word on that, John?

Mr. FOARDE. Would you?

Mr. KAPP. One of the interesting things about the knowledge of law and of citizens prerogatives within the law seems to spread in China is in the media. In fact, I think it is interesting how many people watch television programs about law. We watch our Greta Van Susteren I suppose, and our "People's Court," so it's not entirely that one country is fascinated and the other isn't.

Mr. FOARDE. I know you are a Judge Judy fan. [Laughter.]

Mr. KAPP. Her cases are a little different, but one of the really interesting things is that there really is a clearly emergent pattern in Chinese reporting of official abuse. That's legitimate. You can't denounce the senior leaders of the Party, but you can take up the case of somebody who was injured on the job and was stiffed by the local party committee and who went to somebody else for redress and was stiffed by him or her. That whole process of exposing grievances—it's in a sense a very ancient Chinese process—exposing grievances of people against authorities is enshrined in lots of local press. If the United States Government said, "we would like to start funding journalism fellowships for Americans to go over and advise local newspapers about how to report better on the law," because at bottom, it is worth remembering that the question of whether or not the United States Government is a friendly government with regard to the basic institutions of the Chinese political system is in doubt in China. Therefore, every time the government puts its imprimatur on something, as Bill suggested, the question immediately arises as to whether this is part of an unfriendly act by American Government which, in fact, would like to see the Chinese system of government transformed or even demolished. I'm not suggesting that the U.S. Government wrap its mantle around exposé reporting by local journalists, but there is something to think about in that field because that kind of journalism does play a very real role.

Mr. WOLF. Thanks.

Mr. KAPP. Incidentally, I apologize and from now on I will talk less.

Mr. REINSTEIN. Could I say a word about this? When we talk about the rule of law, and Bob is correct, there's a lot of definitions, one of course is the definition antithetical to ours which is rule of law means that law is an instrument of rule. But when we talk about the rule of law we are talking about principles of transparency, we are talking about principles of how laws get enacted. Then we are also talking about enforcement problems, which Nancy referred to, that relates to the government officials, but ultimately, in any system of rule of law, it ultimately comes down to the courts. It always comes back to the courts. You cannot have a credible legal system unless you have judges who are well educated, honest, and independent. This is one of the reasons that, in our program, we have spent so much time trying to focus on the judges. This is I think, one of the greatest challenges that China has, both at the national level but especially at the provincial level.

Until very recently, judges did not have to be lawyers, they weren't lawyers. It was only a couple years ago that the National People's Congress required all new judges to be lawyers. Most of the judges in China have not been legally trained, and of course they see themselves as part of the government. If you ask American judges, "Are you government officials?" you get a strange answer. They say "No, we're not government officials." Even though they are paid by the government, they have offices that are paid for by the government, they have law clerks paid for by the government, but they see themselves as separate from the government. Their role is that the government is just another litigant in their courts. That, of course, is not the view in China. The view in China is that the judges are part of the government and a subordinate part of the government at that. Also the judges are not well paid, which of course is an invitation to corruption. So there is a massive problem that China has in reforming the judiciary and no one is better aware of this than the Supreme People's Court of China, which is one of the reasons I think they are asking for all of these educational programs, to help deal with this. This is a problem of an incredible magnitude both just in terms of numbers, where you have over 100,000 judges, and in terms of a difference in education and a whole difference in a way of thinking, if we really are going to have a real legal system in China.

Mr. WOLF. Thanks. We are making one change to the roundtables. Now that we actually have staff members on the Commission with real expertise in particular fields we will include our staff expert in the discussion. Susan Weld.

Ms. WELD. Thanks, Ira. It's great to hear all the testimony today. I've been looking at some of the rule of law programs now and over the course of my career for a long time and there are two issues which I have always thought were important. One boils down to the fact that your Maxwell School and Temple School of Law efforts are elite programs, training elite corps of officials to do certain rule of law functions. One issue is "intake," where do the people who come to be trained come from and how do they get there? And the other question is "after care." Sort of like a pregnancy program: When students get out of your programs, are they connected

and supported? This is important because they go out to work in society and very often the things they've learned in a brief period of their life may disappear. It would be great if there could be some fixed way of remaining in contact and maintaining all the progress that's made.

Mr. SULLIVAN. These individuals are selected by the Chinese and Professor Ying and his colleagues—we have talked to them about what works best—in a group as I mentioned, they like to get a mix of scholars, practitioners, officials, bill drafters, law drafters, and others that might be involved in the process. The individuals that they have selected over time have been very interested, competent, and appropriate for the exercise that we have. If there is also a specific interest in, say, administrative hearings of the judicial process that brings into the organization as well.

After they have participated in this program and they go back to their institutions, because we have made this contact and have this relationship with them if we can, and if they need support from us either through new materials and additional information, we give it to them. We either get it to them through Professor Ying or the central source and distribute it out or they can deal directly with us.

Mr. REINSTEIN. Our students are nominated by the courts and the agencies, and then we select from the pool that's being nominated. One of the criteria for admission is that they have very good English language ability; therefore they tend to be younger. Because the Chinese are making a very big investment in sending them to this program, both because they are bearing a portion of the expenses and because they are really giving up somebody's work for a year or 2 or 6 months or however long the program is—bcause these are relatively long programs they are picking people who they think are the up and coming stars.

We are going back next week to China, to talk to some of our graduates to see what they've been doing since graduation. As with the people involved in the Maxwell School, they are going back to their agencies. In fact, I think some of the agencies have made it a requirement for their attendance in the program that they come back to work for the courts and the agencies, because they did have a concern that the students would come into this program and get this masters degree and then go into private practice and make a fortune. So they did require them to come back and work as judges or government officials for a certain period of time. What we're going to do is we're going to be doing periodic interviews and staying in contact with the graduates of the program. We did get a report from the Supreme Court, I think I mentioned this, that they are taking the graduates of the masters program and making them division chiefs. We're hoping that—with the law professors we're teaching too—we're hoping that what we're teaching does have a sort of a ripple effect, that the people will learn from these programs and then use it to teach others.

Ms. WELD. Do I get a follow up?

Mr. WOLF. Sure.

Ms. WELD. I want to ask Nancy and Bob also, some of the work you're doing is the other half of the Temple and Maxwell story. You are training rule of law elites but some of what the Asia Founda-

tion and the Legal Cooperation Fund do is how to make sure that the rule of law structures actually reach the people at the bottom of society who need that kind of support. I'm wondering about some other areas I haven't heard of yet. One is the insurance area, pensions and health insurance. The question is whether there is any way in which we could do rule of law technical assistance to enable people who are laid off from these State owned enterprises and so on to get that kind of help. We in the United States have a lot of experience in that, could we do that kind of thing and Nancy any of your thought in this area, Bob also.

Ms. YUAN. Do you mean in terms of——

Ms. WELD. Helping both government agency and local legal aid sectors try to get that kind of assistance. Some of the state-owned enterprises offer these benefits and some benefits are offered to one kind of employee over others. In some cases, the benefit is not what it's said to be in the beginning. As we have seen in Daqing, there can be unrest over that kind of a question.

Ms. YUAN. I would have to think about how we would do that. It is true that we work in large part in our legal aid programs on the demand side. That people who, for whatever reason, have either been laid off of work, have been injured on the job, have not received whatever benefits they thought they were entitled to. The problem in some cases is that the judgment may be against someone who has no assets. Or the state-owned enterprise is not providing the services because they don't have the ability to do that. So I'm not sure what you mean by technical assistance in helping them to structure the benefit better, or——

Ms. WELD. I guess that was a double question. The technical assistance would be at the agency level to actually work out the insurance program and pension programs. There are pilots being drafted especially in the cities, Shanghai, Tianjin.

Ms. YUAN. In the rural areas I think it would be very, very difficult, because it is a resource question. It's the ability of those government officials to, if they were to say, "We have a plan for you," the state-owned enterprise would ask, "how much does it cost?" What would we have to do and how would we have to do it? It would be an ongoing process of discussion, and I'm not sure how a foreign organization necessarily could get in that mix without a lot of groundwork.

Just as a step forward, in terms of programs that we run on migrant women labor, they were 3 years in the planning before we were actually able to get government approvals, to get the Women's Federation to feel that this was a safe activity for them working with these ostensibly illegal workers in these factories. It does take a little time to get these things going, but we would certainly think about it.

Mr. WOLF. Thanks. Next is Holly Vineyard, who is from the Department of Commerce and works for Undersecretary Grant Aldonas.

Ms. VINEYARD. Thank you all for coming today—the day right before a long weekend and beautiful day at that. I really appreciated hearing your testimony.

I would like to follow up on Ira's question in which he asked you to look at the broad national interest. When you look at other na-

tions, especially the European donors' technical programs, do you ever find anything that might be at odds with our commercial interests? In particular, I have heard some concerns about their standards training programs, in particular?

Mr. KAPP. Holly, that question sort of logically falls to me, I suppose, because I work for a business organization, but I have to tell you I don't know. I could certainly talk with our people in Beijing and possibly even with certain staff members in Washington whom you and I both know, who are closer to the daily work of our companies in China than, in fact, I am and see whether we could get a bead on that, but I just don't have an answer. I'm sorry.

It's an interesting question—if one discovered, as one has discovered in the past with things like tied aid—that our trade competitors in the China market are really attempting to create institutional mechanisms within Chinese Government organizations and in their processes which by definition create non-tariff trade barriers, for example: No vehicles over 2,000 cc may be imported, while most American cars are over that limit and most cars from country *x* are under, if we were getting into that kind of thing, I think your question is very well taken. That would be a matter of real concern and would dictate that the Americans get in there with both feet just on a rather crass, don't-let-the-other-guy-get-the-better-of-us basis. I took Ira away from that a moment ago with my sort of broader point about this Commission and its interests in broad social evolution in China, but you represent the Commerce Department on this Commission and those are very tangible and real issues.

Ms. VINEYARD. Thank you. I am curious too, about how your organizations measure effectiveness in the training programs; if you have any metrics that you use, I would be interested in hearing about those.

Mr. SULLIVAN. Well, we use the standard material evaluations that we conduct every time we run a training session. Because we maintain relationships over time, we are able to see if a program on judicial review, for example, had any sort of impact in the way the thinking or the drafting of a law has occurred and we are able to follow up on that. Generally, the evaluations have been favorable and supportive and we are seeing that our involvement has been able to create an environment where we can openly discuss these issues and has produced some outcomes in the way of interesting drafts of new laws being proposed.

Ms. YUAN. In terms of the legal aid programs, you look at the numbers of cases handled, what were the judgments on those cases. You look at what the follow up activity is, if you're working with a non-governmental organization that's delivering the services, did they deliver the services? What's their next step, what is the planning process in terms of continuing the program? We have a variety of ways to measure activities. At the end of every grant—we both do a mid-term evaluation and ending evaluation for the grant—and are basically hand in hand with the organization all the way through.

Mr. REINSTEIN. While we have the standard evaluations from the students, we also have some outside evaluations that take place from our sponsors. We are doing followup interviews now with our

graduates to see what effect the program had and what positions they are taking and what's happening. As with the experience with the Maxwell School, to the extent that we are discussing that we are asked to give advice or to have input on proposed legislation or regulations, it's pretty easy to determine whether any of that advice or input had an impact when you look at the final product.

Mr. KAPP. As you may know, the U.S.-China Legal Cooperation Fund is tiny. It is so tiny, in fact, that it has no paid staff at all. It's entirely volunteer. We decided at an early point that we had one financial challenge and one measurement challenge. We were uneasy about just sending dollar checks off to Chinese recipients and saying "Have a good day." We generally make the payment to the American partner organization in the bilateral cooperative effort, whether it be the American Bar Association or Asia Foundation or Maxwell or anybody else.

We have asked for and have received reports, at the conclusion of the activities for which our money was spent. Sometimes that money was on a conference; often that money is spent on something written, a study, a document and that represents if you will, 100 percent achievement. We get a copy of the paper. What we decided at an early point was that we simply didn't have the resources to do, with our grants also being as small as they are, was an extensive real foundation-style financial and performance audit afterward. Basically, the report that these projects send into us represents the completion of their requirement, if they don't do it they better never come near us again. But we do not have a way of saying how many people achieved legal justice at the legal aid office upriver as a result of the $5,000 or the $10,000 that we gave to this program in 1999.

Ms. VINEYARD. Thank you very much.

Mr. WOLF. Next is Jennifer Goedke who works for Congresswoman Marcy Kaptur.

Ms. GOEDKE. I would also like to thank each of you for coming in today. This has been very helpful.

We as a United States Government may not have a lot of power influencing the Chinese Government when it comes to rule of law, however we may have some influence over United States businesses and other NGO's who are active in China. I guess my question is for Mr. Kapp. How does your organization encourage your member companies to either implement internationally recognized labor and human rights law, or if not implement, how can they be more supportive of rule of law efforts within China? I know that during the PNTR discussion every business was ready to get in, and looking forward to having a billion more consumers for their products. As the companies move in, what are they doing to implement what we would consider American values or internationally recognized labor and human rights?

Mr. KAPP. Well, first of all, the "a billion customers" thing is a canard and American companies by and large do not subscribe to that. It's been around since the 19th century and there were times in the past when people said, "If every Chinese family used a knife and a fork our Sheffield Mills would produce knives and forks forever," but we're way beyond that now. American companies in China realize that this is a very difficult place to operate, that the

realization of economic benefit there is never easy and often slow in coming.

On the matter of implementing of values, this is a personal matter now—I'm not speaking for the companies—because you understand, Ms. Goedke, we don't speak for individual companies. We are an umbrella organization with a lot of company members, but they conduct their own affairs and I would never say "GE does this" or "GM does that." It seems to me the issue is living and acting in accordance with your values and I would suggest that most American companies in China have not acted differently in China than they would in other societies, including our own society as they go about their work. That's not to say that they do not find morally challenging situations in China. No one who goes to China can fail to be there for more than a week without recognizing that things do not run the way they do here and in some ways it can be very perplexing. I think Americans and the companies who go to China conduct themselves as they would elsewhere. That is certainly true with regard to human resource and management issues and I guess that's really all I can say on that.

What the Council can do—and in fact I've tried to move the Council a little more in this direction—because it doesn't always come naturally and easily to people who on a daily basis are selling, marketing, looking at the bottom line, reporting to the stock analysts and so forth—is to urge and encourage these companies, on a voluntary basis, to get involved in activities that do support these goals. I think the Fund, which I don't want to get too sanctimonious about, has given us a chance to put company money into something that I think is useful in this regard.

Even in the next to the last issue of the China Business Review, there's a lot of stuff on corporate responsibility: Examples of ways in which companies have done well and so forth. This is a chance to inform, through the Council, the business community on best practices, good examples and the like.

I do think it's important to start from the understanding that American companies, when they are in China, are American companies. They have their foibles—just look at what's happened in the United States in the last 6 and 8 and 10 months. The Chinese are intensely aware of some of the failings of our system of rule of law for example, that have come bursting to light in the last 8 months here in this country. But they do not get over to China and say, "Now we are in the heart of darkness. Now we can really give vent to all those disgusting practices that we would never dare to try in the United States.

Ms. GOEDKE. Thank you. My second question, since I have just a few minutes remaining is for Ms. Yuan. I was interested to hear about your program for migrant women workers. What are some of the legal challenges that are unique to women in China?

Ms. YUAN. Healthcare. For migrant women, they come basically from mostly poor areas to look for work. They have no status where they come to live, so they are basically beholden to the factory where they come to work. In their previous place of residence, usually they either have a job or no job, but their housing is taken care of, their health benefits are taken care of, their childcare—if they

have children—is taken care of. When they come to be workers in another place, they don't necessarily have those benefits.

There are all kinds of problems, there are access to healthcare problems. For instance, if women want to get divorced, there is no way that they can do that if they are in another location. If they have a dispute over property back in their home place with their family or if they have family problems of any kind that need to be adjudicated in some other way, other than through their family, they don't have any access to legal assistance. There are a wide variety of problems, domestic violence problems, abuse within the factories, factory conditions, there are many problems that afflict migrant workers, but women in particular.

Ms. GOEDKE. Thank you.

Mr. WOLF. I think that's an excellent question. Susan Weld is beginning to develop a roundtable for October that would deal with, political and economic empowerment of women, as well as another roundtable perhaps also in October, on health issues, which would include women as well as men and children, so we do hope to get into more depth on those issues.

Next we have, actually, two people here from the Department of Labor, but only one of them is going to be able to talk. Jorge Perez-Lopez and Bob Shepard represent our commissioner who is the Deputy Secretary of Labor, Cameron Findlay. Bob, please.

Mr. SHEPARD. Let me ask if any of you have done any work in the area of rural workers or if you know of programs that deal with peasants or farmers that are about three-quarters of the country.

Mr. Kapp showed a picture of a wall sign that exhorted farmers and rural people to pay their taxes. The basic economics in a lot of these rural areas are such that taxes are something like $300 per year in many places in areas where per capita income is $150 to $200 per year. Are you familiar with the legal programs or how the system in some of these places operates and whether anything is being done to address the problems of these people?

Mr. KAPP. I think now we are onto something really important and it relates to women moving to the urban coastal production facilities and everything else. China has a very significant social crisis in the agricultural sector, which of course is, as you say, most of every province.

I read, on the way out and on the way back, a book by a figure who used to be a very low-level party cadre in rural Hubei Province, about his experiences. He published it in Hong Kong, I actually pulled it down off the Internet. You're right, and I'm delighted to know that somebody at Labor is onto the massive dimensions of this. Crop prices drop—and they will drop more, I might say, as a result of this Farm Bill. The basic field crops grown by the peasants are now in adequate supply and the price is going down. The more it marketizes, the more the price goes down.

As the central government diminishes its oversized bureaucracies as a part of its reforms, it essentially throws more unfunded mandates—to use a 1990's term—down onto the local levels of society without paying for them. The cadres at the local levels hire more and more of their brothers and sisters and cousins into what is called "eating imperial grain", which is to say the government payroll, because it's better than growing crops all day long.

The personnel levels at the local level metastasize but there's no money. The lowest level officials have to send their tax revenues up through the system. Taxes therefore become so heavy that it doesn't even pay to farm anymore, you can't farm. You leave the land and head for Shenzhen, to try to get a job in a factory because the farm economy can't support you anymore.

In the meantime, with all due respect to Nancy, healthcare in rural China is essentially no longer available through the government. Part of the whole process of turning to the market economy and getting the government out of all these ancillary businesses that used to be the socialist, sort of all protective system, is that they disassembled their healthcare system. But what you're onto is a crisis at the bottom of rural society which leads to these migrations and to the creation of this labor force, and it's not going to go away soon. I think as to legal protections in that environment, this book was written by an admittedly disillusioned party secretary, but my hunch would be that it's a tough road to find a functioning legal system that is protective of individual rights in that environment.

Now, there are cases where justice is sought, not granted and the person goes to endless lengths to achieve redress. There are movies about this; you've seen the movie, "Qiu Ju Da Guanzi," for example. Here is a movie about a woman who seeks redress because someone beat up her husband and she goes up, and up and the whole movie is about this one woman seeking finally to get redress. There are lots of cases of that. The media play their role, but, as a systemic coverage of rural and peasant society, it's going to take a long time, and it's very difficult because in many cases the interests of entrenched local elites at the bottom are endangered by the notion of implanting this kind of justice system. That's really where the crisis of the old society is being played out. My own view on this is—and I know we are coming to the end—my own view on that is that it is in fact the only way this is ultimately going to be achieved over decades is going to be as the consciousness and the practices that link the upper levels of society, the central government, the new mentalities of the more sophisticated levels of society permeate downward and downward through the whole country. It's bigger than anything in this country that I think we've ever seen.

Mr. WOLF. Next is Arlan Fuller who works for Congressman Sherrod Brown. Congressman Brown is the newest member of the Commission, named 2 weeks ago.

Mr. FULLER. Actually, as Ira said, Congressman Brown is newly appointed to the Commission, this is my first opportunity to participate with the Commission. I have certainly found this discussion to be a great benefit and I look forward to working with all of you in the future.

My first question, Mr. Kapp, you had said that China is not the United States, and will not be the United States at least in our lifetime. Change is difficult for everybody. You've been working with legal reform in all of your programs. What areas of the law have you found the Chinese Government to be most receptive to and which areas do you find multiple roadblocks toward legal reform?

Mr. KAPP. Sir, you used my name because of something I said, but you also invited others to comment. I have talked so much, I wonder if I could invite others to pick up their end of it.

Mr. SULLIVAN. I would say that it's been my experience because we were working there, that trying to develop rules and regulations to govern what the government can do and not do, working toward this Administrative Procedures Act, which would be a great opportunity and a huge reform, and then using getting people to live by that within the government, there's a lot of receptiveness to do these activities and there is a recent history of a lot of reform having to do with administrative change. So I would say there's a great deal of openness here about having specific reforms being achieved and doing it well.

Mr. REINSTEIN. In the educational programs we have been running, there has not been any kind of resistance to any subject. They are interested in everything. In the earliest classes, we taught American Constitutional law, including freedom of speech, and it was not a problem. I was actually surprised at how interested they are in American criminal procedure, because there was a conventional wisdom that, this was an area that we might want to be careful about, but they were very interested in that. They were also very interested in labor and employment rights. I think there is a tremendous interest among the Chinese about learning a lot about other legal systems. As Bob Kapp says, how they develop their legal system is certainly not anything that anybody can predict, and it's not going to be a clone of ours or a clone of any other country's. It's going to be highly dependent on the political and cultural and social situation in the country. In terms of learning about how other countries, including the United States, have operated a legal system or what legal principles apply here, and how we protect rights in the United States, and how we have an independent judiciary, and how we actually control the government through the administrative law system, these are matters that the Chinese are very, very interested in.

Ms. YUAN. I think there's a great openness to learning about other systems and learning about the various aspects of law. It's a matter of what happens to it once it goes into this relatively non-transparent system of government. Sometimes it comes out as we might expect and sometimes it comes out in a different shape altogether. We've seen it happen frankly with the non-profit law—the new law governing non-governmental organizations. They had lots of technical assistance, they had lots of opportunities to learn about relatively good non-profit laws. In the drafts that we've seen come out, it's not necessarily as we would want to see it. That's just one example, but I think this holds true for criminal procedure law, it holds true for anything dealing with issues that the government may consider to be sensitive at any particular time.

On the other hand, I think some of these things are also demand driven. As we look at problems with labor in state-owned factories, as we look at problems that communities are having with local government officials, the Chinese realize that they need to do something about these problems. They don't want riots in the streets, and they don't want to have opportunities for citizens to gather where people have a grievance that other people can identify with.

So I think that as they go forward, particularly in things like labor laws, what we're looking at is enforcement, problems with enforcement. They have laws on the books, they're just not enforced, or they don't have adequate laws. It just depends on the circumstance and timing, and frankly, who's in charge of the effort to rewrite the law. Individuals are important. If you find reform-minded people they can often make things move in a way that you might not expect in the Chinese system.

Mr. WOLF. Thank you. Next is Matt Tuchow who is with Congressman Sander Levin.

Mr. TUCHOW. Thank you. I wanted to first of all ask a larger question which relates to the topic today of promoting rule of law in China. What do you see as the appropriate role of this Commission, Bob, you alluded at the beginning to that topic. I'm interested in specifically how this Commission can best serve its role to make specific recommendations to Congress and the executive branch regarding promoting rule of law, your thoughts on that.

Mr. KAPP. Well, let me offer just my personal experience. The Commission has a legal definition and you all I'm sure have read it. I would hope that in the area of law, the Commission would effect a sea change in the long inherited approach taken by the Congress in particular—less so by the executive branch—to China, and that is that the Chinese are so lacking in elemental virtues that the role of the Congress should be one to crusade against their iniquities.

I would recommend that this Commission help to lead the Congress in the direction of the most positive and active and committed engagement as possible by legislators of all views and parties with their Chinese counterparts on subjects of interest here and concern, including the iniquities of the justice system and the iniquities of the labor system and so forth.

The greatest thing this Commission could do, vis-a-vis the Congress, would be to get the Congress back on—back on is hardly the word—but onto a course of active and committed engagement with China on the issues that concern members and concern the Chinese. You've heard today from all of us that there are tons of things that the Chinese want to engage with the Americans on that are of concern to all of us in this room. So, Matt that's my point. I would urge you to go back to your members and say, "Call Congressman Don Manzullo on the phone and tell him you want to get involved with the Inter-Parliamentary Exchange with the National People's Congress on June 5 and 6 and to make a commitment to doing that on a longer-term basis." The NPC and the U.S. Congress come from such different starting points and have such different approaches and yet they both, in fact, are the lawmaking institutions of their respective countries. There's an enormous amount that can be done here, so I would hope that this Commission would play a very positive role, particularly vis-a-vis the Congress, in that regard.

Mr. TUCHOW. Other panelists?

Mr. SULLIVAN. I think the role we play is just to gather the information. I think there's an interesting point that Bob made here. Everyone talks about the rule of law, but what does it really mean? It's broken down into a lot of pieces and subpieces that have to be

explored and fully understood by Members of Congress so that they know they have to speak in terms of specific areas of law that are being addressed through reform in China right now. I think more and more of this information is gathered and shared in a non-biased way one way or the other, and to be able to have some discussions about this is the most appropriate thing to do. You shouldn't be recommending increased amounts of foreign aid either, but you should be talking about ways you can bring people together as people. That's not an original thought certainly, but one that's very essential, particularly when you are dealing with China, because relationships and ties and activities develop from relationships with people. Practitioners with practitioners, Congressman with representatives of the People's Congress and on and on.

Mr. TUCHOW. Others?

Mr. REINSTEIN. In a lot of ways the rule of law is an American invention and it's one of our most powerful exports. It's had a tremendous influence all over the world. Since there does seem to be a mutuality of interest between China and the United States, on these issues, I don't really understand the down side of Congress pursuing a stronger policy of engagement in this area. I've had a lot of discussions with people who wonder whether what we're doing in China is good. I can't quite understand how it could be bad. I think if there is one area where the United States and China can work together well, it is on the development of a credible legal system in China and I think that is a prerequisite to all of the other goals to which Congress aspires.

Mr. TUCHOW. Nancy, did you have any comments?

Ms. YUAN. No.

Mr. WOLF. We will go through one more round of questions.

Bob Reinstein, corruption is endemic in China. The senior Chinese leadership recognizes it, but clearly doesn't know what to do about it. Do you have any insight in terms of your own teaching, visits, and discussions with your students and lawyers and others involved with Temple, as to their concerns about the danger and damage from corruption and what it's doing to undermine development of rule of law and progress in China?

Mr. REINSTEIN. It is clearly one of the biggest problems. I don't know, there have been some suggestions about this before. As Bob Kapp said, one of the interesting things that is developing in the Chinese media is this media offensive against corruption, which is an interesting sign, it's the Party using the media to try to mobilize a force against corruption. I really don't know how this problem is going to be overcome. It is a very serious problem. The fact that the Chinese understand it's a very serious problem is a very good sign, it's not something which there's any kind of State of denial going on. Maybe that's a good starting point, but I think probably the other panelists have better ideas than I do about this.

Mr. WOLF. John Foarde.

Mr. FOARDE. Bill Sullivan, in your presentation you mentioned that different donors are favoring or pushing different models of administrative law and procedure. In real short order, because we don't have time for the university lecture that we would like to have or that I would like to have, can you outline what the dif-

ferences are in general terms in the types of models that say the Europeans the Canadians, others maybe would like?

Mr. SULLIVAN. I think either Nancy or Bob could probably speak better to that than I could. I just want to say that a lot of this activity that different sponsoring nations and Bob would know about this too I'm sure that is usually directly related to a lot of the commercial interests within the country itself, so they are willing to promote and support reform of law, rule of law projects that are related not necessarily to trade, but just so that they can maintain relationship contacts in that country in a wide number of areas throughout the country.

Mr. FOARDE. The people that are going to be deciding things about things that are related to commercial interests, policies and issues?

Mr. SULLIVAN. It's that, and the Chinese as you know very, very well, are very adept at borrowing what they can from every Nation on earth, and still come up with something that has distinctly Chinese characteristics.

Mr. WOLF. Thank you. Susan.

Ms. WELD. I'm wondering if this is something maybe Nancy could answer. Does the TV programming that has to do with popular legal education have a rural focus, ever, or is it for urban kinds of questions?

Ms. YUAN. No, it's for all kinds of questions. In fact, sometimes the shows are call-in shows. There are radio shows and television call-in shows where you can ask a question.

Ms. WELD. And you can call back from rural areas where there is significant population?

Mr. KAPP. Ira was that short enough that I could add one incident on rural matters? The Internet is going to make a difference in this regard. I heard that from Sichuan local officials on a wide range of things having to do with rural awareness of what's going on outside the village.

Mr. WOLF. Holly.

Ms. VINEYARD. I have a question I would like to pose to whomever feels most comfortable answering it. What are the major constraints that you face in designing and implementing your technical assistance programs—other than funding—and absent these constraints, what would you really like to be doing?

Mr. SULLIVAN. Well obviously, the primary constraint in all of these programs is making sure the materials that you are using for these training programs are relevant and that it's meeting the mark, so to speak. We have over time, learned that what we propose in the way of a training program and the content of the material that arrives in Beijing, or wherever that might be in China to have the training program, very often we have to change everything completely based on discussions with people in the program, they want to learn something completely different. We have to be very, very flexible and be able to adapt the material to meet what the interest might be.

Mr. WOLF. Bob.

Mr. SHEPARD. Professor Sullivan and Mr. Kapp both noted that programs funded by the U.S. Government often are regarded with a certain amount of suspicion. We are in a situation that the De-

partments of State, Labor, and Commerce are called upon to conduct programs in the rule of law area, and I was wondering if you have some thoughts about how those programs could be best conducted to be as effective as they possibly could in light of your comments.

Mr. SULLIVAN. Suspicion is probably not the best word. What has to be ironed out more than anything else is the relationship between the Party, the university, the group, the non-profit that's going to be providing the work in China, and what the expectations are. Usually there is conflict about the agenda and what's expected on the other end, and there's a lot of involvement there and that at the front of this is really very, very critical to the ultimate success of the program. You are going to run into less suspicion on the part of the Chinese if you set out a good worthwhile activity that's well defined, that's clear and understood and has simple goals.

Mr. REINSTEIN. Well, we received the first Federal rule of law grant for China and this has not been a problem I think because we asked for funding based on what the Chinese were requesting and that's the funding we got, so there was a mutuality of interest and I don't think that our program is weaker, it's much stronger and we've actually been able to do what the Chinese wanted us to do.

Ms. YUAN. I don't necessarily think that that's a problem provided that you work through organizations that have the trust of whomever it is you want to work with. The Asia Foundation has been a federally-funded organization for a very long time and we have never had a problem.

Mr. KAPP. And I think there's a role for Federal programs in China. The Commerce Department is doing a great job on WTO training already and intellectual property and so forth.

I've been on three party digital video conference where people go into the Consulate General in Shanghai and the Embassy in Beijing and we work here in Washington and we've gotten into very blunt stuff.

I took a friend from a very, very well informed human rights community to one of these things down at the State Department studio and we had a great interesting evening. It's not that no one will touch the U.S. Government. It's the more nuanced thing that every panelist has spoken to here: What is the government's relationship to the program and what are the goals of each? And what is the subject matter? If the subject matter is abuse of power by Communist Party cadres, then it's going to be tough under any circumstances, but even tougher if it is funded by the U.S. Government.

Mr. WOLF. Arlan.

Mr. FULLER. During the PNTR debate there was some discussion over the Laogai prison system and last fall in the House International Relations Committee there was a hearing on the sale of organs taken from Chinese prisoners. In any of your programs, has there ever been the issue addressed of prisoner rights?

Mr. KAPP. I can't remember whether any of the programs that the Fund has put small amounts of money into has been that specific in its reach. I think probably not.

Mr. WOLF. Interesting question though. Matt.

Mr. REINSTEIN. One of our students is actually pretty high up in the prison system in China.

Mr. TUCHOW. One of the topics that's been alluded to by the panelists today has been the structural issue of the independence of the judiciary, and I think Bob, you referred to the point that judges are underpaid and that could lead to corruption etc., and so I'm wondering what sort of work either your program has done or other programs have done that are efforts to deal with bigger structural issues. You can train judges and they may be very good judges, but if they are beholden to others in the party or whatever, how effective is that in the long run? The question really is about what sort of programs exist now to look at this issue of judicial independence and where have the Chinese expressed an openness to dialog on these particular issues? I believe maybe even in administrative law there's an opportunity.

Mr. REINSTEIN. Well, you know we are teaching in our programs how an independent judiciary operates so the people taking these programs will be learning that. How and what they do with that information and how they solve the structural problems, one of which is how they pay the judges, another of which is how judges are viewed in the government hierarchy. Those changes are changes that the Chinese will have to make if they want to have an independent judiciary. I think they understand that in order to have an independent judiciary those changes are necessary.

Mr. TUCHOW. Isn't there something in the Administrative Code Article XX that requires an independent judiciary as part of the accession to WTO?

Mr. REINSTEIN. Yes.

Mr. TUCHOW. And is that being addressed?

Mr. REINSTEIN. Well I have a teenage son who would say: And your point is? [Laughter.]

Mr. TUCHOW. Is this being addressed in your training programs regarding WTO?

Mr. REINSTEIN. Yes it is. I think a large impetus we talk perhaps too much about WTO. The genesis of all this really started with the development of the market economy itself. Even without WTO, there are enormous forces operating on the Chinese to develop a credible legal system because they understand that you can't have a market economy without a credible legal system. WTO in a sense may be a symbol or a culmination or a codification of all of this but even without WTO, there are these forces and not just from foreign investors, but from the portion of the Chinese economy which is growing, which is what we would call the market sector. The State owned enterprises, as you know are a tremendous drag on the economy. The economic growth that is taking place is in the private sector or the market sector and a lot of Chinese who are operating their own companies are becoming the leading advocates for the development of a legal system, including having an independent judiciary.

Mr. WOLF. Given that the next Commission event is a full Commission hearing on WTO issues, Chinese Government compliance, and their capabilities to implement commitments this is a perfect point on which to end today's session. I want to thank all four of you for coming here, on the morn of a holiday weekend. This has

been very useful to us, and it has provided significant input into the report that the Commission will make to the President and to the Congress in October.

On behalf of Senator Baucus and Congressman Bereuter, and I assume, all of our respective bosses, I thank you very much for a very useful session. We could have gone on much longer but you have to stop sometime. Thanks.

[Whereupon at 12 p.m. the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF NANCY YUAN

MAY 24, 2002

Thank you for inviting me to represent The Asia Foundation at this Congressional-Executive Commission Roundtable on Rule of Law Programs in China. I have been intimately involved with the Foundation's China law programs, and have worked with and had exposure to China programs operated by other organizations for many years. In this regard, I am pleased to offer my perspective on the Foundation's legal reform programs in China, the expectations for and impact of such programs, and, most importantly, how these programs are making a difference in the development of a legal culture and legal practice in China.

The Asia Foundation has supported programs in China since 1979. The Foundation's efforts over the years have focused on governance, legal and economic reform, U.S. China relations, the development of the non-profit sector and the role of women in society. Programs have included U.S. study programs and exchanges in the Asia region, cooperative efforts to develop cross-straits relations, technical assistance, and support for public education on local governance reform and legal rights.

The area of legal development is not a new one for The Asia Foundation. Law reform and legal development have been a centerpiece of the Foundation's programming throughout the Asia region for nearly 50 years, and has been a major area of focus in our China program since 1979. Our approaches and grant-making techniques in China are consistent with those applied in other countries in Asia. We identify constituent interests, evaluate needs, and provide sequential grants, all of which are intended to strengthen legal reform and, in various ways, promote citizens' rights. We work with government institutions at the national and sub-national levels, and with citizens' groups and the nascent NGO sector. As a result of a long-term, consistent commitment to programs in China, the Foundation is able to work effectively with both Chinese government and nongovernmental entities to develop and implement programs throughout the country.

While support for rule of law programs in China is a relatively new field, it has become a crowded one. Even before the 1997 Presidential Summit, where former President Clinton and President Jiang Zemin agreed on an agenda for rule of law development in China, many bilateral and multilateral donors were supporting a wide range of legal reform initiatives. Ongoing, comprehensive legal assistance and cooperation programs are supported by Germany, Canadian CIDA, British DFID, the European Union, Asian Development Bank, World Bank totaling millions of dollars. These programs have included legal education, exchanges, judicial training and administration, technical assistance in specialized areas of the law, and technology and data base management of legal information. This flood of assistance to China is a clear acknowledgement of China's position in the world economy and the desire of donors to encourage China toward predictability and transparency, and, at the same time, address human rights concerns. To the extent that the U.S. has been consistently involved in supporting on-the- ground programs, these efforts have been largely conducted by the nongovernmental sector, primarily by The Asia Foundation, the Ford Foundation and a number of American universities which have provided opportunities for Chinese legal professionals to study in degree and non-degree programs in the United States. They are no where on the scale of assistance provided by European and other donors.

The Asia Foundation's law program focuses on three major areas. The first is the area of administrative law, where our programs are aimed at developing the mechanisms to restrain the arbitrary exercise of State power by regularizing the functions of government agencies at different levels, defining citizens' rights, providing redress for citizens who have been wronged by the actions of government, and punishing offending officials. These programs are designed and implemented in cooperation with the National Institute of Administration, which is China's only civil service training institution, Peking University Law School, and the China Administrative Legislation Research Group, a national network of legal scholars, jurists, and officials that support legal drafting and interpretation of law by the National People's Congress. This ongoing effort provides technical assistance to those drafting specific administrative rules and regulations to limit the discretion of the state, by clearly defining the boundaries of government authority. To the extent that we hear about cases in the press involving citizens suing government for vindication of their rights and compensation for loss (and many more cases we do not hear about), these

lawsuits are based precisely on these new rules and regulations. The Administrative Litigation Law and State Compensation Law, in particular, allow citizens to sue the state, albeit only for concrete acts of commission or omission by specific agencies or individuals.

Under this program of administrative law reform, the Foundation currently supports a program to help in the development of a draft Administrative Procedure Act, with planned submission to the National People's Congress by the end of 2003. This Act will mandate transparency, including prior notice, public hearings, consultations and require consistency in rulemaking across bodies of law and at different levels in China.

In cooperation with the Office of Legal Affairs of the State Council, we are providing training for national, provincial and municipal level officials in WTO compliance as it relates to administrative law. Specifically, this training covers the provisions related to uniformity in applying WTO rules and norms consistently across all of China; transparency in providing prior notification of new rules and changes in decisions, and points of contact for complaints; and independent impartial review of trade-related decisions at the national and sub-national level. This training targets the key Legal Affairs personnel in every province in China, including the autonomous region of Tibet, municipal personnel in the largest cities (Beijing, Shanghai, Tianjin, Chongqing), as well as national Legal Affairs staff.

A second area of emphasis for the Foundation is on legal aid, to provide legal protection of the rights and interests of citizens under civil law. This program focuses on China's national legal aid system, under which assistance is provided to legal aid centers in some of China's poorest areas, to ensure adequate legal representation for the indigent and disadvantaged. There are now government sponsored legal aid centers in every province in China, a wide range of legal services operations run by nongovernmental organizations, women's groups and universities, among others. These groups litigate, they counsel, mediate and educate. The Foundation provides support for the case handling of civil cases in five centers, under what the National Legal Aid Center refers to as "The Asia Foundation Model", where funding for case handling provided by the Foundation is matched by operational funding from the local government.

The Foundation also works in partnership with the private sector, for instance, in support of a program for migrant women workers in the Pearl River Delta region in southern Guangdong province. With funding from the Levi Strauss Foundation, this program provides services and training for migrant women workers, who make up 60 percent of the migrant worker population. The Foundation has been active in Guangdong over the past 3 years, working with the local labor union, the Women's Federation and university based research centers to provide counseling and legal services to migrant women workers.

The Foundation also supports public legal education. In the program for migrant women workers, the Guangdong Women's Federation developed and last year, distributed 20,000 copies of Learn to Protect Yourself, a handbook covering women's basic legal rights. This handbook will be reprinted, in preparation for a distribution of 30,000 copies this year. The Federation also operates "street legal education fairs," provides consultation services, and supports a legal aid group serving the migrant women population.

Another example is a television program the Foundation helped fund, "Let's Talk About Law Today," which has become one of the most popular television shows in China. This program, which appears on CCTV, China's national television network, introduces the stories of ordinary people whose legal problems are explained, addressed, or resolved according to the law. In addition, analysis is provided by Chinese law experts to introduce the concepts of law and its application to the broader audience, and the program even offers legal advice. While "Law Today" is not the first television law show dealing with legal issues, its success has encouraged similar law programs and, at present, approximately 2,000 provincial and city level stations now feature law related programs.

New, large scale efforts are underway by the government to educate Chinese citizens about their legal rights, using school textbooks, media campaigns, and through the efforts of legal aid centers and nongovernmental organizations. One can argue that the Chinese government is merely protecting its own interests and stability in the country, by ensuring that citizens feel that their rights are being protected under the law. This works to stem a rising public anger against arbitrary behavior by local government officials, state-owned enterprises where safety precautions are not enforced, and even where public services are not responsibly delivered, such as in health or education. At the same time, increased awareness among Chinese citizens of their rights under the law is slowly building a sense of legal culture that had not existed previously in the society.

This is all in the context of a rapidly changing environment. As you have heard in past testimony before this Commission, at the end of the Cultural Revolution, there were fewer than 3,000 lawyers and a handful of law school programs. Today China has hundreds of law schools and over 125,000 lawyers. In addition, hundreds of laws and regulations have been promulgated, including the 1998 Law on Lawyers, which basically creates a legal profession in which lawyers are no longer considered civil servants, but professionals responsible to their clients, and in 2000, a law on legislation, which is the first law of its kind to define a legislative process.

We all recognize there is a long way to go and there are significant limitations for donors and others supporting legal reform efforts. Even with laws in place and even if plaintiffs are able to win judgments, these are ineffectively enforced. Lack of judicial enforcement is one of the most serious problems in commercial and other disputes as well. In addition, we are well aware of the limits to public legal education. Just informing the public about existing law is a start, but it is not enough to ensure enforcement. Finally, public finance is a serious problem for legal and judicial reform. Without a public revenue stream adequate to pay for the services to be provided, it is difficult to recommend reforms because it is difficult to guarantee that they will be sustained.

On the other hand, there is currently a momentum that is driven by a domestic demand, and there are opportunities to work with the Chinese government and with the nongovernmental sector to expand and strengthen that momentum by delivering programs that address real problems at both the grass roots and policy levels. The Asia Foundation believes that these programs will make a positive difference over time. In the case of legal aid, they already have.

As China proceeds further into the reform process, there is now the prospect for genuine progress and real cooperation, but only through consistent effort and realistic expectations. We believe that these programs will contribute over time to the protection of the rights of the individual Chinese citizen and, overall, to American interests in China.

TESTIMONY OF ROBERT J. REINSTEIN, DEAN, TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW BEFORE THE SENATE APPROPRIATIONS COMMITTEE, SUBCOMMITTEE ON FOREIGN OPERATIONS

MARCH 7, 2002

It is a great pleasure to have an opportunity to convey our sincere gratitude to you and the members of this Committee for your support for Temple Law School's rule of law programs in China. We are proud that our projects are contributing to the establishment of the rule of law in China, and we welcome this chance to brief you on what we have accomplished so far and what, with your continued help, we intend to do.

As you know, President Bush recently returned from a visit to China, where he spoke on the campus of our Chinese partner institution, Tsinghua University. Tsinghua University is the ideal partner as it is a forward looking university with a tradition of educating many of China's leaders, including Zhu Rongji, the current premier, and Hu Jiangto, the expected next President of China. Our other partners in this project are New York University, Brigham Young University, the State Agency for Foreign Experts Administration (SAFEA) of the PRC, and the Supreme Peoples Court and its National Judicial College. We were invited into China by the government because of Temple's history of educational involvement in China (Temple was the only American university to award an honorary degree to Deng Xiaoping during his 1979 state visit to the U.S.) and because the Chinese government was aware of and impressed by a similar innovative program that Temple has conducted in Japan since 1994. We know that a major factor in our success is the trusting working relationship we have developed with our Chinese partners.

The rule of law is necessary condition for a functioning democracy. Democracy and the protection of individual rights cannot be realized without a transparent, rules-based system that applies to all, including the government. The rule of law itself cannot operate without a judiciary that is well-educated in the law, honest and independent. Another prerequisite is legislators and regulators who are knowledgeable about how law operates in a democratic society with a market economy. All of these elements are essential to the protection of individual rights. When fulfilled in China, these requirements will hopefully result in a legal system suitable to the needs of the Chinese people and compatible with international legal norms and standards. The extent to which this occurs will be decided by the Chinese nation. We are proud to provide educational programs, advice and assistance toward these ends.

Temple's rule of law program in China started with a Masters of Law (LL.M.) program. This is the first foreign law degree-granting program in the history of China. Our students have included national and provincial level judges, ministry officials, legislative branch officials, law professors and minority students from Western China. The original curriculum focused primarily upon business subjects but also included courses in American constitutional law and professional responsibility. As importantly, by using the American case study method, the students, including of course the Chinese judges and ministry officials, were immersed in appellate decisions that inherently exposed them to fundamental concepts of due process and equal protection, including the resolution of disputes through an independent judiciary, the supremacy of law and the submission of contested governmental actions to enforceable judicial review. Today, the Masters of Law program also offers courses in labor and employment law, environmental law, trial advocacy and criminal procedure. As noted below, with the support of this Committee, we have expanded the LL.M. program and instituted additional short-term non-degree judicial training programs. We have also undertaken a host of supporting activities as requested by China's Supreme Judicial Court and the National Peoples Congress. All of these activities now accrue as integrated parts of Temple's Business and Comparative Law Center (BCLC) which are more fully described below.

With the development of a market economy and entry into the World Trade Organization, our Chinese partners fully understand the necessity of developing a credible legal system. Many new laws have been passed that could not have been imagined before, including, for example, a new contracts law. Our Chinese partners also appear committed to making major necessary reforms in the country's judicial system. Last year, the National Peoples Congress passed a law requiring all new judges to be legally-educated and members of the bar. The Supreme Peoples Court has issued new directives on the enforceability of arbitration awards and is creating a new economics court division. Currently, the Supreme Court is drafting a code of judicial ethics; and the National Peoples Congress is considering the enactment of a law governing real and personal property rights. At the request of our Chinese partners, we are honored to provide assistance on both of these projects.

THE BUSINESS AND COMPARATIVE LAW CENTER

The BCLC consists of several concurrent projects that share the goal of working cooperatively with key Chinese legal institutions to strengthen the rule of law in China. This includes degree and non-degree educational programs for Chinese judges and legal officials; collaborative consultation on specific law reform projects; and providing assistance to the Chinese government in meeting its membership obligations for membership in the World Trade Organization.

The BCLC also assists the Chinese government in developing transparent and well-considered laws. China is undergoing a major law reform effort as it becomes a member of the WTO, and we know that China is receptive to receiving input from experts from the U.S. and other nations in this process. Our work in China has provided us with crucial contacts in the Chinese legal agencies and a high degree of credibility .

I am pleased to report that all of these projects are proceeding on schedule and as we had hoped.

A. EDUCATION OF CHINESE JUDGES AND OTHER CHINESE OFFICIALS

Judicial Training Program

Our faculty and administration has developed a close working relationship with the Supreme Peoples Court and the National Judicial College.

Our judicial training programs take several forms:

Short Term Seminars
An intensive Legal English Training program in Spring, 2002
A month-long intensive judicial training program in the U.S. in July, 2002
LL.M degree programs at the Temple/Tsinghua Program and U.S. Law Schools

Brigham Young University is designing an intensive legal English program to train a pool of approximately 60 members of the Supreme Peoples Court selected by Temple from applicants proposed by the court. The goal is to bring the judges to a level of English language proficiency, which will allow them to use English language legal resources for study and to access these resources after they complete their training. From this pool of judges, Temple will select candidates to attend the summer judicial training program in New York as well as LL.M. degree candidates for Temple's Beijing and Philadelphia-based LL.M. programs. This course is on schedule to begin in late spring, 2002 and is projected to run until July 15, 2002.

N.Y.U.'s Institute of Judicial Training has been actively involved in setting up a four-week training program that is on schedule to begin on July 22, 2002.

Temple's LL.M. degree program in Beijing is currently training eight members of the Chinese judiciary and, as mentioned above, we are already involved in the planning for a legal English program which will provide us with a pool of qualified candidates for the Temple/Tsinghua LL.M. program in Beijing as well as Temple's LL.M. program in Philadelphia.

The Temple Masters of Law Program

Temple's 2-year LL.M. program in Beijing, which teaches U.S. and international law, began in 1999. The program currently has a class of 32 students, including eight judges, three Tibetan lawyers, four law professors and nine Chinese government officials, including the Division Chief of the NPC Legislative Affairs Commission, and staff attorneys from the China Regulatory Securities Commission, NPC Committee on Internal and Judicial Affairs and the Ministry of Foreign Trade and Economics.

Our curriculum includes courses on Constitutional law , Labor and Employment law, Criminal Procedure and Trial Advocacy, International Environmental law and Business and Commercial law.

Our Criminal Procedure and Trial Advocacy course was specially designed by Temple Professors Edward Ohlbaum, one of the leading experts in advocacy law in the U.S., and Associate Dean and Professor of Law JoAnne Epps, an expert in criminal law and procedure. Professors Epps and Ohlbaum, are in Beijing at this moment teaching this course to our Chinese students.

Professor Michael Wishnie of New York University Law School is teaching U.S. Labor and Employment law. This course is of great importance for a country such as China with a developing market economy.

All of our programs are taught in English because English is the international language of law, business and the Internet. We select students with sufficient English language ability and invest significant resources to bring their language ability to the level at which they can study directly from primary U.S. and international source materials. We believe that an important aspect of the program is not only to impart information about the current state of legal thinking on the international level, but also to provide as many influential legal professionals as possible with the capacity to continue to interact with the international legal community long after they have completed their formal training.

Our LL.M. students study in English and have access to a computer lab. They are required to do assignments using computers and legal research. We believe this is a crucial element of the program as it gives our graduates long-term access to international legal materials as they develop long after they graduate.

B. BUSINESS AND COMPARATIVE LAW FORUMS AND WORKING GROUPS

One of the major goals of the Business and Comparative Law Center is to create working groups consisting of American scholars, attorneys,judges and business people who will provide technical assistance on a mid-to-long term basis to Chinese legislators, regulators, scholars and judges as they develop China's legal infrastructure to accommodate China's emerging market economy. The working groups will concentrate on selected developing legal issues of particular importance to the reform of the Chinese legal system.

Temple has been meeting with Chinese academics, government officials and business people to ascertain the areas in which such working groups might be well received and fruitful and are quite pleased with our efforts and the results to date.

- Temple, Tsinghua and FADA Universities and the China Society of Comparative Law (CSCL) are jointly forming a Working/Study Group under the leadership of Professor Jiang Ping, FADA professor and Chair of CSCL, and the leading scholar of civil and commercial law in China. Professor Jiang has been designated the key drafter of the new Chinese property law by the National Peoples Congress. The most important goal of the group is to provide support through research, exchange of academic visits, seminars and counseling in the various areas of property law. We will also create a listserve so that the discussions can continue uninterrupted.

The first session of the working group will take place June 17–18, 2002, in Beijing.

- From July 8 to August 9, 2002, eight prominent Chinese WTO scholars will be in residence at Temple Law School where they will pursue research on WTO issues facing China. This working group, chaired by Temple Professor Jeffrey Dunoff, will include meetings with key American WTO scholars for discussion and professional exchanges that we expect to continue beyond these meetings.

• Professor Amelia Boss was invited to lecture at Tsinghua University on electronic commerce in November 2001, by Vice Dean Wang Zhemin. While in China, Professor Boss discussed the possible formation of a working group on the subject of electronic commerce.

• Professor Scott Burris visited Beijing in December 2001, with the purpose of discussing the creation of a working group on health law and policy. At present, Chinese legal scholarship has not progressed to the point where they have even begun to consider this topic despite its importance to an emerging market economy. Regulatory and legal structures in this area are absent or deficient. Professor Burris' visit resulted in two promising initiatives—a Health Law Working Group incorporating faculty at Tsinghua, Temple, the Union School of Public Health/Chinese Academy of Preventive Medicine and other institutions; and a plan to assist the Chinese Academy of Preventive Medicine in the development of a new institute on Health Law and Policy to be housed in the Chinese Centers for Disease Control and Prevention, a new governmental agency now being organized.

C. ASSISTING CHINESE GOVERNMENT AND LEGAL OFFICIALS WITH WTO COMPLIANCE

In addition to our overarching goal of fostering the rule of law in the PRC, an important goal of the BCLC is to assist the Chinese government with WTO compliance issues. We are pleased to report that we have already made a great deal of progress with respect to this goal. The projects listed below are in addition to the WTO working group described in the preceding section.

• On December 9–10, 2001, Professor Jeffrey Dunoff, an expert in WTO matters, presented a 2-day seminar on WTO compliance issues to 91 Chinese judges at the invitation of the National Judicial College of the Supreme People's Court in Beijing, China. The lectures were very well received, with the vast majority of the judges giving the presentation a grade of 90 percent or better.

• On December 1, 2001, Professor Dunoff gave a 2-hour lecture on WTO law to students and faculty at FADA.

• On December 12, 2001, Professor Dunoff gave a lecture to approximately 25 students and faculty at Tsinghua University School of Law on WTO entitled "Beyond Doha: The Future of the Trade Regime." He provided all attendees with copies of three law review articles he had written in the area.

• Professor Dunoff has been invited by Yuan Jie, the Division Chief of the National Peoples Congress Legislative Division to address the members of her department on WTO issues. Yuan Jie is currently a student in the Temple-FADA LL.M. degree program. Professor Dunoff has also been invited to return to the National Judicial College for additional lectures on WTO topics.

• Professor Zhang Mo, the director of the BCLC, has spearheaded the discussions with the Supreme Peoples' Court. In these discussions the Court has asked that Temple emphasize WTO issues in the judicial training programs it provides for the next 5 years.

The above described activities of Temple's BCLC are a modest but encouraging beginning. Much remains to be done. Programs like Temple's BCLC should be replicated throughout China. Additional programs aimed specifically at provincial level judges and regulators should be undertaken. Hopefully, a program to allow American JD students to study in China for a semester will also emerge. With the support of this Committee, these and other innovative rule of law programs can and will flourish in China.

Again, my profound thanks to the Committee for its support of what Temple is doing in China and for your understanding of its importance.

Respectfully submitted,

Robert J. Reinstein, Vice President and Dean, Temple University Beasley School of Law.

SUBMISSION FOR THE RECORD

THE CHINA BUSINESS REVIEW 2002

HOPE FOR CHINA'S MIGRANT WOMEN WORKERS

Zhang Ye

Civil society groups are emerging to aid migrant women in southern China

More than 10 million migrant laborers work in Guangdong Province, according to China's 2000 national census, and the Guangdong Statistical Bureau estimates that more than 60 percent of these are women. Migrant workers tend to staff wholly foreign-owned enterprises, joint ventures, township and village enterprises, and private enterprises that produce toys, clothing, footwear, electronics, and other consumer goods. Female workers usually come to Guangdong from poorer provinces along the Yangzi River such as Hubei, Hunan, Jiangsu, Jiangxi, and Sichuan. They find jobs in Guangdong factories through labor bureaus, from relatives and friends, or by word of mouth.

Guangdong's economy has grown more than 14 percent per year on average during the past decade, and the province has accounted for about half of the country's total GDP growth. Guangdong alone generates more than 40 percent of China's foreign trade in terms of value. While both the central and local governments have recognized the indispensable contribution of migrant labor, so far government policy has provided migrant labor few protections.

Labor on the move

China's limited supply of arable land is unable to absorb the large supply of surplus labor in the

countryside (*see The CBR*, March-April 2002). At the same time, the cost of agricultural products has increased by 10 percent each year over the last decade, according to *China Development Review*, and most of China's agricultural products have already lost their comparative advantage in the international market. Farmers also often find it difficult to sell their products in domestic markets, in part because consumption patterns in China's prosperous cities are shifting away from grains and other basic foodstuffs and because the government has cut back the resources it devotes to agricultural development in recent years. Large numbers of farmers have thus left the land to find jobs in big cities such as Beijing and Shanghai, and the cities of the Pearl River delta in Guangdong.

The current residential permit (*hukou*) system prevents migrant laborers from staying in the big cities permanently, however. Without an urban *hukou*, farmers are technically not allowed to live and work in the cities and cannot benefit from the social safety net the Chinese government provides to urban citizens (*see Hukou Reform Targets Urban-Rural Divide*). From 1949 to the early 1980s, the *hukou* and work unit systems prevented labor mobility and the development of true labor markets. As a result, most of the rural population was tied to the land.

But with economic reforms came plentiful urban jobs--largely in construction, food services, and factories--that urban populations alone could not fill. Despite the *hukou* and work unit restrictions on mobility, large numbers of migrant laborers have flooded the big cities in the past 10 years. This wave of migration has broken the original rigid system in many ways. Local farmers are no longer tied tightly to their farmland. They can move to big cities whenever there are jobs and can usually manage to make some kind of living.

Though the central government has recognized urban economies' need for rural labor, it is still concerned about urban overpopulation, and thus far social policies and government practices have lagged behind social change. Each city still handles migrant labor at its own discretion. Policies vary according to local political, economic, and social circumstances. Often the rules and policies discriminate against migrant laborers. Official reports on migrant labor tend to emphasize the negative side, such as rising crime rates, environmental degradation, and difficulties implementing family planning and other policies. And urban residents and local city governments exclude migrant workers from urban political, cultural, educational, and social arenas so that they are essentially confined to isolated factory communities or industrial complexes.

Even in places like the Pearl River delta, where a larger labor force is needed and migrant laborers drive economic development, the system still fails to guarantee a migrant worker's quality of life and job security. In Shenzhen, where economic growth has been the most rapid and most sustained in China over the past 20 years, migrant laborers were responsible for as much as 70 percent of the growth of industrial output in the mid-1990s, according to Dr. Liu Kaiming, a research fellow at the Institute of Contemporary Observation in Shenzhen. Nonetheless, most local governments do not recognize the contribution of migrant labor to big city development and expansion.

Migrants suffer rights violations

Chinese laws and regulations recognize citizens' "equal rights in employment and selection of jobs," yet the rights and interests of migrant workers are often violated. More often than not migrant workers face significant problems in the workplace.

- Most of the laborers do not have contracts with their employers, and those that do have minimal power when negotiating working conditions and benefits and thus end up simply agreeing to the terms and conditions offered by the employers.

- Migrant laborers typically work long hours, averaging 11 to 12 hours per day. Many factories do not observe weekends, and workers work seven days a week, even though China's Labor Law guarantees workers 8-hour workdays, 40-hour workweeks, and at least one day off per week.

- Migrant wages are often well below the local legal minimum wage, and

Though statistics show that the migrant labor male-to-female ratio nationwide is

some factories force workers to pay fees the government intended factories to pay--such as job introduction fees and fees for permits that allow workers to stay temporarily in Guangdong--so that workers receive even less than their set wage.

2:1, in the Pearl River delta the ratio is reversed.

- The large majority of migrant laborers do not enjoy benefits such as medical insurance and social welfare services to which citizens with a local *hukou* are entitled.

- Supervisors often infringe upon migrant laborers' personal rights and dignity, and physical assault and personal humiliation are not uncommon.

- Workplace injuries are common, often because factories do not meet safety standards. Workers are often exposed to industrial hazards and pollution.

- Few of the nonstate-owned factories have organized labor unions, and thus workers lack an appropriate channel through which to voice their concerns. Even the factories that have a branch of the government-sanctioned national labor union (All-China Federation of Trade Unions [ACFTU]) do not always improve their working environments because, in many cases, these labor unions don't really represent the workers' interests.

Women overlooked

Chinese government development programs tend to overlook women's roles and rights, and existing policies do not favor women's employment and career development. Even compared with 10 years ago, Chinese women's social status has declined in many ways, found a 2001 survey by the All-China Women's Federation, a Chinese organization that has a close relationship with the government. For instance, the percentage of women in politics has fallen, and women's employment opportunities remain limited. Chinese rural women, who make up the bulk of women migrants, have been pushed to the bottom of the social hierarchy, suffering more than urban women in the process of modernization.

In addition, these women migrants face poorer working conditions than their male counterparts. Though statistics show that the migrant labor male-to-female ratio nationwide is 2:1, in the Pearl River delta the ratio is reversed. Job segregation in the delta pushes women into the unskilled, labor-intensive, and lower-paid apparel, footwear, and toy industries. The average monthly salary for a woman migrant worker in Guangdong is RMB300-RMB500 ($37-$62), according to a 2000 report by the Institute of Sociology of the Chinese Academy of Social Sciences. In contrast, male migrant workers generally earn RMB500 or more a month. Salary levels have stagnated since the early 1990s. Given inflation and increases in the cost of living, salaries have fallen in real terms.

China's Labor Law guarantees women workers maternity leave and protection for their reproductive health. Yet the country's vast pool of cheap labor makes it easy for employers to refuse to pay maternity leave or simply to fire women workers when they become pregnant. In many factories, the working conditions and environment are harmful to women's health, particularly in the footwear and garment factories. The chemical fumes, unbearable heat, and long hours of standing not only affect women's general physical health but are also detrimental to their reproductive health.

Migrant women workers tend to be naive and unassertive, leaving them more vulnerable to sexual harassment and personal abuse than local women. A few cases in which migrant women workers became mistresses of Hong Kong or Taiwan businessmen caused concern among local authorities, who sometimes identify migrant women as a threat to the stability of marriages and family. Government-sponsored "strike hard" campaigns launched in Guangdong often target these mistresses, many of whom are already marginalized migrant women.

Migrant women workers in the Pearl River delta also typically shoulder large family responsibilities. The money they remit home is often the main source of income and essential support for family

expenses such as housing, parent hospitalization, and sibling education or marriage.

Many of these migrant women, most of whom are aged 18-25, become trapped by circumstance. Because they are not official urban residents, they cannot stay in the big cities forever. But home may no longer have a place for them either--after living in the cities, many young women have trouble readjusting to rural conditions. The new and unstable position they find themselves in presents psychological issues and other dilemmas.

The government response

The central government has recognized the constraints of the original rural-urban dichotomy guaranteed by the *hukou* system, and various government agencies have suggested strategies for abolishing the system. Indeed, in some places, *hukou* reform has already begun.

But for now, in most places, local protectionism continues to resist fundamental changes in the system. Local governments prefer to use migrant workers as a reliable source of cheap labor, and rarely consider them when formulating urban plans or urban social welfare policies. And because the migrant population pays large fees every year to the local authorities to obtain the various permissions necessary for them to work and live temporarily in Guangdong, migrant workers are cash cows for local bureaucracies. In Shenzhen, for example, taxes levied on migrant laborers account for 70 percent of local government tax revenue, according to Liu Kaiming. Local governments therefore have significant incentives to maintain the status quo.

Local officials also tend to be ambivalent about the poor labor standards of foreign-invested companies. Because overseas investments provide the bulk of revenue for many local economies, local officials generally would rather protect the interests of the companies than the rights and interests of the migrant workers.

The Chinese media play an increasingly important role in raising awareness about the situation of migrant labor. Guangdong newspapers work closely with the women's federation, the labor union, and the local judiciary, and the media have exposed many major labor

Local officials and urban residents have formulated strong interest groups that oppose changes to the system. In Beijing, until 2000, more than 100 kinds of jobs were not open to migrant labor. Now, some low-paid jobs that many Beijing residents are unwilling to take, such as street sweeping or garbage collecting, are open to migrants. In Shenzhen, the most open city in China, only white-collar workers with higher education can obtain a local *hukou*. While changes in the *hukou* system are inevitable in the long run, the local governments that are the actual beneficiaries of the current system will resist fundamental change. Until such change occurs, migrant laborers' disadvantaged position will continue.

A few bright spots: Civil society

China is trying to move in the direction of the rule of law. As part of the central government's efforts to join the international system in the past 20 years, China has joined and ratified over 20 international treaties and agreements to guarantee and protect women's--and indeed all citizens'--basic rights. China has among the best legal protections of women's rights on the books, but weak enforcement has stymied improvements in the position of migrant women workers.

In the past 10 years, China's nongovernmental organizations (NGOs) have been playing an increasingly important role in the delivery of social services. Horizontal linkages among NGOs, as well as between NGOs and other sectors, in China and abroad have enhanced NGOs' advocacy capacity. In Guangdong, linkages among Chinese and foreign NGOs, multinational corporations, and scholars are quietly forming. Joint activities in this region include the provision of services and assistance to migrant labor.

accidents and serious legal cases involving migrant labor.

Several groups have begun to focus attention on and provide services to migrant women workers. The following are just a few examples.

● Over the past five years, teams of scholars from the Chinese Academy of Social Sciences, Qinghua Center for Contemporary China Studies, and Guangdong Women's Cadre Training School, among others, have conducted a series of studies about the disadvantaged position of migrant laborers. They have published their findings in a series of books and articles to push for policy change. They have also provided education and training in law, reproductive health, self-protection, and social skills for migrant women workers.

● Some traditional mass organizations, such as the ACFTU and the All-China Women's Federation, have shifted from a Communist Party-line-focused approach to a service-focused approach. With the support of foreign foundations and companies, they have turned their attention to the well-being of migrant women workers, addressing issues such as legal rights and health conditions.

● The Chinese media play an increasingly important role in raising awareness about the situation of migrant labor. Guangdong newspapers work closely with the women's federation, the labor union, and the local judiciary, and the media have exposed many major labor accidents and serious legal cases involving migrant labor. As a result, government agencies have forced some factories to improve their safety measures and have levied fines. And thanks to media-fueled social pressure, the victimized workers won their lawsuits and received compensation more easily than in cases where such attention was lacking. As labor issues become an important social topic, more factories are paying attention to labor standards and migrant women's working and living conditions.

● Some migrant workers in Guangdong have organized themselves into support groups, often based on their home provinces. Members of these groups provide each other with information and arrange lodging for new arrivals.

● Foreign NGOs and foundations are working with local NGOs to provide services and training for migrant workers, particularly female workers. For example, the Asia Foundation has been active in Guangdong since 1999 working with the local labor union, women's federation, and university-based research centers to provide counseling and services to tens of thousands of migrant women workers. Oxfam Hong Kong has provided women workers with a van not only for transportation but also for medical care and other social service activities. The Global Alliance for Workers and Communities has launched activities in factories where the majority of workers are women.

● Numerous multinational corporations that benefit from their own business and investment in the region have also begun to recognize the importance of addressing some of these issues. Some multinational corporations support intermediaries and NGOs in their work concerning labor standards, rights, and justice for women workers (*see Social Justice for Working Women in Guangdong*).

These various players are not only helping migrant workers solve legal issues, but are also creating pressure on society to improve the working and living conditions of migrant workers.

The development of civil society has created a new opportunity to enhance women's roles and rights. Both the state and the market have failed in the past to provide women with equal opportunities or necessary protections. Citizen participation can help supply these public goods and protect worker rights. As NGOs play an increasingly important role in China, they are becoming tangible providers of services for needy people. Gradually, they are coming to act as advocates for social change. This kind of bottom-up approach will encourage further opening and will gradually change Chinese society and, one hopes, improve the lot of all of China's migrant workers, both male and female.

Hukou Reform Targets Urban-Rural Divide

Recent reforms to China's household registration (*hukou*) system have begun to redress the historical bifurcation of Chinese society into urban and rural classes. Identification booklets, also called *hukou*, are issued to all Chinese and identify the carrier as a rural or non-rural resident. Each urban administrative entity (town, city, etc.) issues its own *hukou* and provides full access to social services such as education only to its own *hukou* holders.

The document and the symbol

More than just an identification document, the *hukou* symbolizes China's two-tiered society. China adapted its *hukou* system from other communist countries during the famines of the 1950s to distinguish farmers, who could grow food, from urbanites, who needed grain rations. During the 1960s and 1970s, the system hardened to the point that peasants could be arrested just for entering cities. In the 1980s and 1990s, most urban areas relaxed these barriers to travel, which, along with economic reforms, prompted an influx of rural migrants. Until recently, migrants have had to obtain temporary residence permits to remain in urban centers and have had to pay excessive fees for social services. Police can still summarily expel from cities any migrants without residence documents.

The reforms enable rural migrants with stable jobs and fixed residences to register for the first time as urban residents. In one sense, the reforms simply acknowledge the flow of rural migrants to cities in recent decades. In a deeper sense, liberalization of the *hukou* system will help to improve labor mobility and to accord some measure of equal treatment to rural inhabitants in the cities, who have traditionally been treated as second-class citizens.

The basic reforms

Hukou reforms differ from locality to locality but set roughly the same qualifications for entitlement to urban registration. Basically, a person and each of his or her immediate family members can obtain an urban *hukou* if he or she has a fixed residence and stable work in an urban area, usually defined as more than one year on the job. These two qualifications were laid out in Chinese Communist Party Central Committee Document No. 11 of November 2000, which outlined China's urbanization strategy for the Tenth Five-Year Plan (2001-05). Areas involved in *hukou* reform also offer urban registration to those who purchase a local commercial housing unit. Given the relatively high price of commercial housing in China, this provision aims to attract urban investment from outside entrepreneurs. Urban centers also often offer *hukou* to holders of graduate degrees to lure professionals from other areas.

Since mid-2001, China has expanded the geographic scope of its *hukou* system reforms, as prescribed by Central Committee Document No. 11. During 2001, about 600,000 rural residents acquired urban *hukou*, according to China's State Commission on Restructuring the Economy (SCORE). State Council Circular No. 6 of March 2001 mandated that all small cities (those with populations of less than 100,000) should grant *hukou* to residents with fixed jobs and homes beginning October 1, 2001. The reforms now encompass all towns and small cities in Anhui, Guangdong, Hebei, Jiangsu, Shandong, Sichuan, and Zhejiang provinces.

Reforms also extend to several large cities, including Beijing, Chongqing, and Shanghai; Hefei, Anhui; Jinan, Shandong; Ningbo, Zhejiang; and Shijiazhuang, Hebei. Guangdong has reportedly eliminated the urban-rural distinction altogether and no longer stamps *hukou* as "urban" or "rural." Nevertheless, rural residents still try to obtain a Guangzhou *hukou* to access the city's social services.

A SCORE official recently told the China Economic Times that problems relating to unemployment, the social safety net, and pollution precluded most large cities from trying *hukou* reforms. The several large cities that had initiated reforms, he said, had done so because of their ability to absorb significant numbers of outsiders.

These cities have placed significant limits on eligibility for urban registration, however. Outsiders who qualify for Beijing's *hukou*, for example, include only educated professionals, commercial

home buyers, and entrepreneurs with firms employing more than 100 people. Other large cities limit urban registration to qualified residents in designated counties and towns lying within their administrative boundaries. (In China, a large city--defined as having more than a million people--can have administrative authority over outlying counties and small cities, though they might be separately chartered urban entities.) A rural migrant, in other words, still cannot acquire a *hukou* to live in a big city proper--only a *hukou* to live in urban areas situated along the city's periphery. The exception is Shijiazhuang, which has offered an urban *hukou* to any resident with a fixed home and job since August 2001. Some economists note, though, that most rural migrants would be unable to afford the cost of living in big cities even if allowed to settle there.

Accepting reality

The geographic expansion of *hukou* reform is a bow to necessity, given the flow of rural inhabitants to urban areas in recent decades. *China Information Daily* reported last November that, from 1982 to 2000, more than 200 million rural Chinese moved to urban areas--more than half in the 1995-2000 period alone--attracted by jobs in the manufacturing and service sectors. Of the total flow during the last 20 years, roughly 100 million lacked legal status in the form of temporary residence permits or urban *hukou*. *China Information Daily* predicted that 180 million rural Chinese would move to urban areas by 2010, as *hukou* reform makes internal migration easier.

It's all about education

Why would rural migrants with stable work and a fixed dwelling in an urban area feel the need to change *hukou*? The main reason is their children's education, according to a Chinese labor economist who has studied *hukou* reform in Fenghua, a small city within the jurisdiction of Ningbo. According to the economist, Fenghua's rural *hukou* holders must pay RMB3,500 ($437) for their children's yearly primary school tuition, inclusive of various book fees. For urban *hukou* holders, primary school costs only RMB1,200 ($150) per child per year. This disparity is typical of most urban centers. Moreover, discriminatory education policies make it more difficult for rural *hukou* holders than urban *hukou* holders to enter universities. An urban *hukou* could thus mean the difference between a lifetime of manual labor and a high-paying, white-collar career for one's children.

Reforms in Jinan

Jinan, Shandong's provincial seat, is one of the few large Chinese cities that have undertaken *hukou* reforms. Greater Jinan encompasses four outlying counties and one small city, home to 3.3 million rural *hukou* holders, or 58 percent of greater Jinan's 5.6 million residents. Since 1997, residents with a college degree or above, as well as investors and buyers of commercial housing, have been able to obtain urban *hukou*. In August 2001, the Jinan city government also began to allow rural *hukou* holders in the outlying small city and counties to acquire an urban *hukou* at no charge. To register as urbanites, applicants need a fixed residence and stable work, corroborated by an employer's contract. City officials say that roughly 40,000 rural residents in the designated areas have switched to an urban *hukou* since August.

The recent reforms have had a minimal impact on Jinan society, according to the Public Security Bureau (PSB), which, as in most Chinese cities, oversees household registration. The reason, the PSB said, was that those who have changed *hukou* had lived in the city long before the reforms were announced. Jinan has not experienced an influx of migrants since August. The requirement that migrants have steady work before changing *hukou* also precluded the possibility of new urban *hukou* holders competing with Jinan's unemployed for jobs. By the same token, PSB officials said, Jinan would wait three to five years before allowing rural *hukou* holders in the city proper to obtain an urban *hukou*, to guard against potential problems with vagrancy and environmental damage.

Is *hukou* reform too slow?

The principal obstacle to more extensive *hukou* reforms is the fear among city leaders that urban

social welfare systems cannot support large inflows of rural migrants, according to one economist. He argued that this fear was unfounded, citing the numerous public assets that cities could use to generate the proceeds necessary to ensure social welfare coverage for expanded city populations. The economist explained, for example, that city governments owned all land within their jurisdiction and could easily sell this asset piecemeal and tax real estate transactions to raise funds. Another untapped source of social welfare funds is the farmland that peasants leave behind when they move to urban areas. To protect themselves against unemployment or other urban hardships, migrants should be allowed to obtain "back-up" funds by selling or mortgaging their land.

The significance of *hukou* reform

A lack of labor mobility has long been an odd feature of the Chinese economy. Close to 25 million urban workers have been laid off since 1997, and economists estimate that China's excess rural labor force is 150 to 200 million. One obvious solution to these problems would be to encourage laid-off and surplus workers to move to eastern provinces that offer manufacturing and service sector jobs. While the *hukou* system has not stopped the flow of rural workers to urban centers, it has impeded their integration into those areas and their access to the most prized jobs. *Hukou* reforms, therefore, should allocate labor more rationally by making it easier for workers to settle in areas where their labor is needed most. Moreover, because the *hukou* system perpetuates China's longstanding urban-rural divide, these reforms are an unprecedented step toward dismantling a social structure that, according to some economists and policymakers, denies "national treatment" to rural inhabitants.

--Joe Young

Joe Young is a foreign service officer in the Economic Section of the US Embassy in Beijing.

Social Justice for Working Women in Guangdong

Multinational companies that manufacture or have their goods manufactured in China have come under scrutiny in recent years for the working conditions at their facilities. A few companies, such as leading apparel marketer Levi Strauss & Co. (LS&CO), have launched a range of measures that attempt to improve the conditions in their suppliers' factories and help local communities. LS&CO, with 2001 sales of $4.3 billion in more than 100 countries, has roughly 16,700 employees worldwide. The company has a strong business presence in the Asia-Pacific region, including a manufacturing presence in Hong Kong and China (primarily Guangdong) through contractors. The company estimates that 28,000 employees work in its contracting facilities in China; about 80 percent are women. (This figure does not include licensee and affiliate production.)

LS&CO routinely audits all of its contractors for compliance with *Global Sourcing and Operating Guidelines*, a code of conduct that directs business practices such as fair employment, worker health and safety, and environmental standards. This code, based in part on international standards developed by the International Labor Organization, has led the way in improving working conditions in apparel factories throughout the world. If LS&CO determines that a business partner is not complying with these guidelines, the company requires the partner to correct the problem within a specified time period. If a contractor fails to comply, LS&CO will terminate the business relationship.

The company also seeks input and recommendations from nongovernmental organizations (NGOs) to improve its internal monitoring process. LS&CO actively participates in the Fair Labor Association (a collaborative effort among the business, NGO, and university communities aimed at protecting workers' rights and improving independent monitoring systems) and the Ethical Trading Initiative.

Supporting NGO initiatives

LS&CO goes beyond the factories to help support local communities through the Levi Strauss Foundation. In Asia, LS&CO and the Levi Strauss Foundation give more than $2 million annually to local communities, of which around $400,000 annually has been committed to China (including Hong Kong) for the past three years. Since 1999, the company has extended its grantmaking activities to benefit the communities in China from which it sources, with significant grants to NGOs for projects in the Pearl River delta region.

The foundation's main initiative in China so far is a $300,000 Asia Foundation project to help migrant women factory workers in Guangdong through legal rights, health, and education programs. Known as the *Social Justice for Working Women Program*, this project offers much-needed services to women workers of southern Guangdong through Women Workers' Legal Aid Centers, Women Workers' Mobile Health Services, and Women Workers' Education and Counseling Centers.

According to the Asia Foundation, the popularity of the program has encouraged local government service providers to offer these support services on a regular basis, whereas they had just offered emergency assistance in the past. The foundation notes that local governments "have since endorsed" minimum labor rights standards for migrant workers.

The need for services

The Asia Foundation identified the above services, in consultation with the Guangdong Women's Federation, the Guangdong Labor Union, and the Qinghua University Research Center on Contemporary China (which collaborates with the Guangdong Women's Cadre Training School), as the most effective ways to address the current needs of women workers in Guangdong. Because the average education level of women migrant workers is junior middle school--some have only completed primary school, and fewer have finished senior middle school--very few of these women have much knowledge of the legal and health issues that concern them.

Moreover, the Guangdong Labor Union's health checkups have shown that health problems are common among women workers, who, along with gender-specific complaints, also suffer from respiratory diseases and high blood pressure. In some factories, working conditions harm workers' health. For instance, in footwear factories, workers may be exposed to poisons in the glue used for shoe making; in welding and metallurgical factories, workers may be exposed to dust and poisons in the paint. Workers in garment and toy factories can suffer exposure to dust and excessive heat and noise, and workers in wooden handicraft factories are sometimes exposed to dust, heat, and toxic paint.

● Women Workers' Legal Aid Centers

One of the most important services of the Women Workers' Legal Aid Centers is the legal counseling the Guangdong Women's Federation provides to migrant women workers. Migrant workers have little, if any, knowledge of their rights as workers, as women, and as members of Chinese society. With the aid of lawyers from the women's federation, migrant women and other workers are able to obtain better access to justice in cases ranging from physical abuse, factory injuries, and divorce to labor and property disputes.

In 2001 alone, the Guangdong Women's Federation handled more than 50 legal cases on behalf of migrant women in roughly 10 cities across the province. According to the Asia Foundation, the cases involved compensation for workplace injuries, nonpayment of wages, bigamy, and divorce. Most of the federation's clients won their cases.

Last year, the federation distributed more than 21,000 copies of *Learn to Protect Yourself*, a handbook covering basic legal rights, to migrant workers and drafted a report on the eligibility of citizens for legal aid support services. To raise awareness of the importance of legal aid, as well as garner public support, the women's federation published 15 articles on the program's activities and

legal cases in local newspapers in 2000. The news column "Self-Protection of Migrant Women Workers"--started by the project and published in the *Yang Cheng Evening News*--has become very popular among migrant women, many of whom send their own articles for publication in the column.

The women's federation also operates four telephone hotlines, which handled more than 7,000 inquiries in 2001. Most of the questions dealt with legal issues such as labor disputes, labor contracts, and divorce. More hotlines may be set up in the future, depending on funding and human resources.

● Women Workers' Mobile Health Services

Under the Women Workers' Mobile Health Services program, a team of health professionals travels throughout southern Guangdong offering free medical advice, health education, and physical checkups to women factory and other workers. Before the program was set up, the Women's Department of the Guangdong Labor Union analyzed factory conditions and their relation to women workers' health and hygiene. The findings suggested a need for "onsite health and hygiene education, counseling, and checkup services for at-risk female factory workers." The absence of preventive health education and the limited access to basic healthcare for women workers is a significant problem in the province.

These mobile health services, which benefited more than 5,000 migrant and other workers in 2001, travel to 12 factories every month. In addition, women's health fairs took place last year in township and municipal facilities in eight localities. HIV/AIDS awareness has been introduced into some of the educational materials and services, along with breast cancer protection and infectious illness prevention information. Women who are found to have health problems are introduced to hospitals for treatment.

Follow-up efforts by the labor union's women's department have shown that, after receiving these materials and services, women workers are more aware of how to protect their health and are more willing to join the labor union-initiated health insurance program, which covers much of the cost of their medical care. According to the Asia Foundation, the project has included several presentations for more than 100,000 women workers, safety courses for women union members (not exclusively for migrant women), and consultations on regulations specific to women workers.

● Women Workers' Education and Counseling Centers

The Guangdong Provincial Women Officials' Training Center oversees four Women Workers' Education and Counseling Centers, which provide education and counseling programs for women workers. These programs cover self-esteem, legal rights and protection, healthcare, gender relations, HIV/AIDS awareness, personal hygiene, and interpersonal skills in the workplace. The center developed new materials to educate women workers in these areas and distributed them to more than 5,000 women workers. In 2001, the centers provided psychological counseling to about 250 women. The most common complaints are adjustment to new working and living environments, interpersonal relationships, labor disputes, and reproductive health. The centers were first established in Zhongshan and Dongguan in 2000 and will be expanded to Panyu District of Guangzhou and Nanhai District of Foshan in 2002.

The project also held the first-ever Conference on Guangdong Provincial Social Policies and Services for Migrant Workers, which was cosponsored by the provincial government and attended by representatives from local governments, domestic and foreign-invested firms, and NGOs. After the conference, some local government agencies improved their policies and practices concerning migrant workers. For instance, the local authorities now handle migrant workers' complaints about delays in salary payments more effectively.

Difficulties and encouragement

The project has run into difficulties, largely from the women migrants' employers, even though most training and counseling sessions are held on Sunday, a day off for most workers. These companies

complain that some of the lectures are too sensitive or provocative and are reluctant to let the project team come into the factories. The project staff must often spend months explaining the project and its purpose to the employers to persuade them that the project will benefit their workers without having a negative effect on their business. Even so, only a limited number of factories--usually those with better conditions--have agreed to let the project team into the factories for lectures.

Getting local government officials' cooperation has also been difficult. It often takes months to get local officials to agree to let the project go ahead, because they are concerned that some of the lectures and counseling may upset the investors that generate most of the local economy's revenue. Local officials are willing to cooperate only once they are convinced that the program will benefit both sides.

Despite such difficulties, testimony from the women migrants themselves seems to indicate that the project is having the desired effect. Interviews conducted with women who have attended project training courses since 2000 clearly indicate that the women find them useful.

One 24-year-old migrant woman from Sichuan was excited to learn more about reproductive health, according to Asia Foundation follow-up interviews. She and her friends had heard stories about women who had become pregnant or contracted sexually transmitted diseases but had never been told exactly how to prevent pregnancy or such diseases. After participating in the program, she said, she feels she knows how to protect herself and whom to ask for help if she were to find herself in such a situation.

A 28-year-old woman from Hunan echoed those sentiments and added that she now has more self-confidence and knows what to do if she experiences health problems or if her rights are infringed. Indeed, the interviews indicate that women particularly value information on sexual and reproductive health. Perhaps even more important is the sense of self-empowerment they seem to have gained. Many of the interviewees note that, after participating in some of the project's training sessions, they have the confidence to stand up for their rights for the first time in their lives.

--Virginia A. Hulme

Virginia A. Hulme is associate editor of *The CBR*.

Zhang Ye
is China country director at The Asia Foundation, Beijing.
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