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Thank you for inviting me to speak to you today. I would also like to thank the staff of the Commission, and in particular Keith and Carl – with whose work I am most familiar -- for the high-quality of their work to date.

Today's topic is very broad. I would like to address two specific aspects of "access to justice" in China: the growth of legal aid programs, and the role in rural areas of para-professional legal service workers, known as "Basic Level Legal Workers." I hope we will have time to discuss some of the related issues in the discussion period.

The growth of legal aid and continued emphasis on the work of Basic Level Legal Workers reflects a state policy of steering disputes into the courts. These developments also demonstrate both the significant progress over the past decade in making the courts more accessible, and also some of the continuing barriers to those seeking redress through law.

But the formal legal system is not the only -- or most effective -- route available to citizens seeking redress in China. Individuals also often pursue their claims via government departments, letters and visits offices, the media, or through the strategies that Professor O'Brien describes in his remarks. Indeed, one defining characteristic of the Chinese system is that individuals with grievances often pursue their claims in multiple forums concurrently. Thus the most effective lawyers are often those with the best contacts in the media, or who best understand the workings of various arms of the state.

I. Legal Aid

A decade ago China had a tiny number of legal aid institutions.[1] They were generally university-based and funded by western foundations. As recently as 1995 the Chinese term for "legal aid" was virtually unknown in the Chinese legal world, much less in broader society. Over the past decade, China has embraced legal aid to a dramatic degree. There were virtually no government-supported legal aid centers in 1994. By the end of 2002 China had more than 2,400 legal aid offices, the overwhelming majority of which were state-funded. The development of legal aid in China has occurred in parallel with the separation of lawyers from the state. Although lawyers remain subject to regulation by the Ministry of Justice -- including requirements that lawyers engage in mandatory pro bono work -- virtually all Chinese law firms are now financially independent from the state.

The number of cases legal aid centers handle has likewise risen considerably. Official statistics state that legal aid lawyers handled 180,000 cases in 2002, a 28 percent increase on the prior year. Close to two-thirds of all legal aid cases are civil cases, and approximately one-third are criminal cases. A very small percentage of cases are administrative cases.

A number of factors explain this rapid development. Expanding legal aid helps to push disputes into the formal legal system -- and thus keep them off the streets. Legal aid is also consistent with state policy of addressing income inequalities and assisting those who have been left behind by China's rapid development. Legal aid helps to constrain lawless behavior at the local level. And legal aid is perceived as an important aspect of a modern legal system -- something to which China aspires.

Most of the development of legal aid has been state-driven. Nevertheless, numerous quasi-independent legal aid centers have also emerged, mostly linked to universities or women's organizations. Indeed, although the statistics focus on the development of government legal aid centers, some of the most important developments are happening in this quasi-independent sector. A number of university-based centers are focusing on impact litigation, using cases -- frequently class actions -- to highlight structural

problems in the legal system. Often working with the media, the goal of these cases is to apply pressure for change within the system.

Despite the significant progress to date in establishing a legal aid system, substantial problems remain. Although state reports emphasize the number of legal aid centers, with the exception of one or two provinces this rhetorical commitment to legal aid has not been backed up with sufficient funding. There are significant regional variations in how legal aid programs are implemented. Some legal aid centers employ full-time lawyers, but many consist of reassigned justice bureau officials whose job it is to assign cases to local law firms. In other locales, establishment of a “legal aid center” or “legal aid station” consists of simply adding an additional sign to the local justice bureau’s door. In most areas, lawyers must handle a certain number of government-assigned legal aid cases a year, although in some locales law firms may opt-out of such requirements by paying a fee to the local legal aid office.

Local authorities also generally determine the cases that are deemed eligible for state-backed legal aid. As a result, certain classes of cases – in particular administrative suits against local authorities – may be explicitly or implicitly discouraged. Critics complain that legal aid centers overwhelming focus on “soft” or “easy cases,” those that do not bring litigants into conflict with local authorities or locally-powerful enterprises. Critics also note that the quality of representation is often low, with law firms either assigning their most junior lawyers to handle pro bono cases, or failing to devote sufficient resources to the cases they are assigned.

Some legal aid centers have focused on the rights of migrant workers. In other areas, however, legal aid offices have been reluctant to represent migrant workers, arguing that legal aid should be provided to local residents only, or that migrant workers are unable to prove that they qualify for legal aid. And in the criminal context, current laws mandate provision of lawyers to only a very small range of defendants -- foreigners, juveniles, the disabled, and those facing a possible death sentence. In other cases, the local legal aid center may provide a lawyer if the defendant is poor, but they have significant discretion over whether to do so. Many legal aid centers have been reluctant to focus their limited resources on criminal cases. The expansion of legal aid has also largely been concentrated in urban areas – most legal aid centers are in cities or major county towns – and in the wealthier eastern provinces. Legal aid has thus remained out of reach for many of those most in need.

Despite these problems, the trend in recent years has been positive, reflecting both a genuine attempt to address grievances, and also a desire to increase the relevance of law for ordinary people. The most important consequence of the expansion of legal aid is something not measured in statistics: it is the rising expectation among Chinese people that law and the legal system can and should be used to address their grievances.

In addition, the continued growth of university-based and other legal aid organizations outside the direct oversight of the Ministry of Justice is of particular note given concerns that the Ministry of Justice would attempt to bring all legal aid organizations under its direct control. Instead, language in the 2002 Legal Aid Regulations provides that the state encourages and supports “social institutions” to provide legal aid.[2] Non-government legal aid organizations must operate with care, but they do appear to have widening space within which to operate.

II. Basic Level Legal Workers

Perhaps the biggest challenge facing those working to expand legal aid has been that, until very recently, legal aid centers have been overwhelming concentrated in cities. Although some legal aid centers in cities do represent the rural poor and migrant workers, the legal aid system has been inaccessible to many of those most in need.

Chinese officials responsible for legal aid have recognized this problem, and an increasing number of legal aid offices have opened at the county level. Officials also emphasize the need to develop legal aid in poorer interior provinces. Nevertheless, such offices often remain underfunded and understaffed, and sometimes still out of reach those most in need.

Yet China has a long-established system for providing legal services in rural areas. Beginning the late 1980s, China developed a network of para-professionals, known as Basic Level Legal Workers.[3] Most

Basic Level Legal Workers are not lawyers, but have received some legal training and are licensed by the provincial justice bureau, either through an exam or by meeting other requirements.

There are approximately 100,000 such workers in China today – only somewhat fewer than the 130,000 registered lawyers. They operate out of nearly 27,000 legal services offices – ten times the total number of legal aid offices. In contrast to workers at the state legal aid centers, Basic Level Legal Workers are not state workers: they earn an income based on the modest fees they charge for services. Nevertheless, they are often considered to be engaged in “legal aid” and work closely with local justice bureaus, assisting with mediation and legal education campaigns as well as providing legal advice and handling cases. Basic Level Legal Workers are permitted to represent parties in civil and administrative cases; they are not permitted to represent criminal defendants.

Basic Level Legal Workers have emerged as an important mechanism for facilitating claims by the rural poor. In many areas in China there are virtually no lawyers, and thus Basic Level Legal Workers play an important role in meeting the demand for legal services. Basic Level Legal Workers handle hundreds of thousands of civil cases a year. One recent report stated that the total number of litigation and non-litigation matters handled by Basic Level Legal Workers is 50% greater than the number handled by lawyers. Even if such statistics tell only part of the story, it is clear that such workers play a major role in many areas -- indeed, in some areas judges and litigants routinely refer to Basic Level Legal Workers as “lawyers.” In a system in which litigants are often distrustful of the courts, Basic Level Legal Workers also play important roles in explaining legal procedures and facilitating interaction between rural citizens and courts.

The status of Basic Level Legal Workers is in flux. Originally designed to address legal needs in rural areas, many Basic Level Legal Workers have moved into urban areas in order to earn higher incomes. Although Basic Level Legal Workers and their supporters contend that they help to meet a demand for low-cost legal services, lawyers are increasingly complaining of competition from their lower-cost counterparts. Many lawyers and justice bureau officials now argue that the basic level legal worker system should be abolished, or at the very least restricted to matters not involving litigation. They contend that such workers are often ill-trained and lack ethical standards. This may be so, but the same could be said of many lawyers. Some critics in China also point out that some of what Basic Level Legal Workers do is technically illegal under the 1996 Lawyers Law – which states that only lawyers may undertake representation in cases for profit.

Ministry of Justice officials have indicated that Basic Level Legal Workers will be gradually phased out in urban areas. In particular that such workers will not be permitted to engage in litigation. Basic level legal workers will, however, continue to serve in rural areas.

These moves are understandable, as is the desire of China’s lawyers to have a monopoly. The strong reaction of lawyers toward Basic Level Legal Workers represents a rare instance in which the Chinese bar has asserted its collective self-interest. Yet China may also be moving too quickly toward its goal of a legal model in which legal services are provided by lawyers alone, without sufficient consideration of the actual situation on the ground.

China has rapidly and impressively expanded legal training and the size of the bar, but the per capita number of lawyers is modest by international standards, in particular in rural areas, and the quality of training varies. Moreover, there are strong arguments that lawyers, the overwhelming majority of whom are based in urban areas, may not be best-positioned to assist in dispute resolution in rural areas. Some in China appear committed to moving toward a U.S. model of a large bar with strict limits on the unauthorized practice of law; experience to date suggests this model may be inappropriate. Basic Level Legal Workers have an important role to play in continuing to meet the demand for legal services in rural areas.

Another indication of the strong demand for legal services in rural areas is the rising number of “barefoot lawyers.” In contrast to Basic Level Legal Workers and lawyers, “barefoot lawyers” generally are self-trained and not licensed. These individuals assist fellow villagers in navigating the formal legal system, from writing legal documents to assisting them in court. Officially barefoot lawyers are not permitted to charge fees for their services, although whether they do so difficult for the authorities to determine. The

proliferation of barefoot lawyers in recent years is a testament both to their own ingenuity, and to the success of state legal education campaigns. Such campaigns have raised knowledge of law and legal procedures, and also expectations of the system's role in protecting the rights of individuals. The demand for lawyers, Basic Level Legal Workers, and barefoot lawyers – and the fact that many Basic Level Legal Workers are able to make a living while also meeting the legal needs of the rural poor – highlights the importance of market forces in bringing a widening range of disputes into the courts. China will not be able to meet the demand for legal services by those unable to afford lawyers through legal aid alone. China permits contingency fees and class actions, and such mechanisms are already leading to a widening array of cases being brought in the courts.[4] The expansion of these and other incentives to lawyers to represent the disadvantaged will be as important as the development of legal aid.

III. Conclusion

As I indicated at the beginning of these remarks, the developments I have described cannot be understood in isolation, in particular because litigants themselves often pursue multiple avenues of redress. In addition, in the past two years authorities have begun to reemphasize the importance of mediation, which has in recent years declined in importance when compared to litigation. This recent focus on mediation is apparently designed to reduce both the number of cases that are litigated and the number of complaints brought to letters and visits offices. Authorities appear concerned both with the rising tide of popular complaints brought to such offices, and also with the ability of the courts to handle a rapidly growing volume of cases.

The growth of legal aid and continuation of the Basic Level Legal Worker system are playing important roles in making justice more accessible in China. But the ability of individuals to obtain redress will continue to depend as much on the evolution of the courts, the media, and government more generally as it does on the availability of legal representation. The media, in particular, have in recent years emerged as one of the most influential actors in the Chinese legal system.[5]

For those of us in this country with an interest in China's legal development, these developments have a number of implications:

First, such developments highlight the need for a much greater understanding – both in China and in the U.S. – of developments in rural areas. Many legal reform projects, and the work of most academics in both China and the west, focus on developments in major urban areas. We need a far better understanding of developments in rural areas if we are to play constructive roles in assisting access to justice in such areas.

Second, this is an area in which very modest financial support can have a major effect. The most successful legal aid centers in China – the Women's Rights Center at Beijing University, the Environmental Law Clinic at China University of Law and Politics, and the legal aid center at Wuhan University – have all succeeded with financial support that is modest when compared to overall international spending on legal reform in China. A small amount of money can go along way in assisting legal aid centers, in particular during their start-up periods.

Third, these developments show the importance of the continued strengthening of the public interest bar in China. In particular, we in the U.S. should be doing much more to facilitate the training of public interest lawyers from China. At the same time, however, we should remember, and remind our Chinese colleagues, that lawyers may not be the only solution to the growing demand for legal services.

Fourth, we should be encouraging our colleagues in China to look to a range of domestic and foreign precedents for legal reform – not just those from the U.S., or even only from western countries.

Fifth, and finally, in assessing developments in China we should not underestimate the power of small changes. The single greatest effect of increased attention to legal aid, and to law and justice more generally, is likely to be the growing expectation among ordinary Chinese that the legal system should protect their interests.

[1] For a discussion of the development of legal aid in China, see Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEXAS INT'L L.J. 211 (1999).

[2] An English translation of the regulations is available on the CECC website. See <http://www.cecc.gov/pages/selectLaws/ResidencySocWelfare/regsLegalAid.php?PHPSESSID=eb323d5ddd91cc28bec6c381c0bc320f>.

[3] For additional discussion of the role of Basic Level Legal Workers, see Benjamin L. Liebman, *Lawyers, Legal Aid, and Legitimacy in China*, in RAISING THE BAR (Alford & Miyazawa eds., 2004).

[4] See generally Benjamin L. Liebman, Note, *Class Action Litigation in China*, 111 HARV. L. REV. 1523 (1998).

[5] See Benjamin L. Liebman, *Watchdogs or Demagogues? The Media in the Chinese Legal System* (forthcoming COLUMBIA L. REV. Jan. 2005).