

**Prepared Statement of Elisabeth Wickeri, Executive Director and Adjunct Professor of Law, Leitner Center for International Law and Justice, Fordham Law School; Member, Committee to Support Chinese Lawyers**

**Congressional-Executive Commission on China Roundtable on "Current Conditions for Human Rights Defenders and Lawyers in China, and Implications for U.S. Policy"**

**June 23, 2011**

Mr. Chairman and members of the Commission, I am grateful for the opportunity to participate in today's roundtable, and for your leadership on the important topic of the situation of rights defenders in China today. I would like to thank you, your fellow commissioners, and the CECC staff for inviting me.

I am here today representing the Leitner Center for International Law and Justice at Fordham Law School, and specifically the Committee to Support Chinese Lawyers, an independent NGO based at the Center. The Committee is a group of independent lawyers from outside China whose mission is to support lawyers in China in their quest to uphold the rule of law there. The Committee seeks to strengthen the role of lawyers in China and to promote their independence through public education, research, advocacy, and trainings.

Today's roundtable is extremely timely and important because current conditions for rights defenders and human rights lawyers in China are in flux. Since February 2011, following online calls for a "Jasmine Revolution," rights defenders and lawyers have been increasingly detained, disappeared, abused, and subjected to a range of strict methods of surveillance and control, even after release. In my comments today, I would like in particular to highlight the especially pronounced chilling effect this suppression has caused. I will suggest that the individuals that have been most seriously impacted are still in need of public calls for support and attention to their cases, by government and other actors.

Concern for rights defenders and human rights lawyers in China is not something we come to anew today. On many occasions over the past several years, NGOs, professional associations, activists, and academics have had cause to voice their concerns about the difficult position for these actors in China. For example in the run-up to the Beijing Olympic Games, during important visits to Beijing by visiting dignitaries, on sensitive historical dates such as June Fourth, and even in the wake of the announcement that Liu Xiaobo would receive the Nobel Peace Prize, activists would be confined their homes, brought in for questioning, and barred from leaving the country, but these conditions were generally loosened following the completion of the "sensitive moment." Seasoned rights defenders and human rights lawyers, used to these modes of harassment, would generally return to their work upon release.

However, since February of this year, the situation has deteriorated significantly, in particular for human rights lawyers who have, among other things, taken on the most unpopular criminal defense cases.

The deterioration represents a marked shift in at least two ways. First, the breadth of the crackdown that lead to the detention and disappearance of so many individuals—at least thirty detentions, that many disappearances, and many more put under surveillance, in just a month—is much wider. Second, in the wake of the eventual releases of these individuals there is an eerie silence among lawyers and other defenders who would previously have remained vocal and outspoken in carrying out work that was admittedly unpopular with authorities. Even casual meetings over lunch or coffee have become difficult

to arrange, because of the fear of associating with others working in this field, especially, of course, with foreigners. The result of these two differences has been a substantial chilling effect and a decrease in the space and people willing and available to carry out human rights and legal advocacy in China.

The fact that lawyers and rights defenders have come out of detention less willing to return to work tells us something about their experiences before, during, and after detention. Many lawyers were simply disappeared as opposed to being formally detained; reports emerged about serious mistreatment, abuse, and torture while they were held; on release, people have had to sign statements admitting guilt or promising to behave. In the aftermath of their detention, they and family members have lived under very strict conditions, ranging from constant surveillance, to family members being arrested with their activist partners, to young children not being permitted to leave home to attend school.

As troubling as these stories are, it is the silence among formerly outspoken and energetic lawyers that is especially troubling to me and suggests that, in the immediate aftermath of this crackdown, legal advocacy and human rights work in China is stalled. It has become more difficult to find lawyers in sensitive cases, for example, in cases where lawyers themselves are accused of a crime. Shanghai-based lawyer Li Tiantian, who was disappeared on February 19 and reappeared on May 24, is one of the few individuals to speak out about her experience. On Twitter, she noted “the kind of fear that you can describe is small, while the kind of fear you can’t speak of is the greatest.”

Lawyers are important not because they are lawyers per se, but rather, because lawyers have a multiplier effect with respect to human rights promotion and protection: they play a fundamental role within the system, protecting the rights of other civic actors, vulnerable citizens, and activists. Their special role, however, also makes them the target of abuse. Well before February this year, human rights lawyers in China faced serious challenges to fulfilling their professional responsibilities through legal and procedural obstacles, intimidation and abuse, and extra-legal attacks. This treatment of lawyers gives us a vital window onto what is happening in China today.

The significance of the fear the Li Tiantian speaks of cannot be understated. The role of human rights lawyers does not rest only on whether their cases are successful. Indeed, successes may be few and far between. The importance, rather, is based on the possibility of their success when they are able to try.

What policy implications emerge from this? I have four preliminary thoughts:

- First, more voices—including those at the government level—are needed to call attention to the many individuals that have been targeted in this crackdown. Through this attention, they may be supported and provided some space to return to work. This includes public calls and sustained, private dialogue with Chinese actors, official and unofficial.
- Second, international standards promoting the rights and freedoms of lawyers should be promoted and used to demonstrate how lawyers’ rights are being curtailed. Specifically, the UN Basic Principles on the Role of Lawyers, which members of the U.N. General Assembly, including China, adopted without dissent, are useful and can support standards already in the Chinese Lawyers Law which, in article 37, protects a lawyer’s “right of the person,” and affirms that a lawyer should not be held legally liable for the opinions he or she presents on behalf of a client.
- Third, expanding opportunities for the trainings and exchanges of Chinese lawyers with colleagues abroad remain important and provide space for much needed dialogue, but must also include Chinese lawyers doing rights defense and other public interest work.
- Fourth, as Professor Jerry Cohen, a member and Senior Advisor to the Committee to Support Chinese Lawyers, has increasingly emphasized, there is a need for foreign lawyers—many of whom benefit from doing business in China—to stand up and speak out for their Chinese

colleagues. Bar Associations, including the International Bar Association and the New York City Bar Association have already done this. But our Committee believes that there is a professional responsibility for lawyers and law firms benefiting from their work in China to stand up and say something.

Finally I will end on what I hope are two positive notes. First, some well-connected lawyers and legal scholars, like Chen Youxi, have begun to express concern for their marginalized colleagues. These voices can only benefit from more support inside and outside China. And second, I was happy to read reports yesterday that artist Ai Weiwei had been released. Not a lawyer, but an advocate for change, it is worrying that he was detained for so long without information about his condition. However, perhaps his is a case that demonstrates how sustained media attention and public calls can have positive results.

Mr. Chairman, I'd like to thank you again for this opportunity to present a few thoughts. I am happy to answer any questions you or other commissioners may have.