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

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Mr. Chairman and distinguished Members of the Commission, I am privileged to be invited to participate in this roundtable and greatly appreciate the Commission's efforts to improve American understanding of China and the specific issues at hand.

The topic of today's roundtable—"Current Conditions for Rights Defenders and Lawyers in China, and Implications for US Policy"—is timely and complex. In my brief opening remarks, I have been asked to place the recent crackdown in the broader context of overall legal reform and rule of law developments in China, especially with respect to reform efforts in the criminal justice system. I will focus on the first part of today's topic, namely, addressing what are the current conditions, and then briefly suggest policy implications that flow there from.

The path of legal reform in China never did run smoothly, but I think it is fair to say that it is a particularly challenging time for legal reform. In part, this reflects an overarching political climate that emphasizes stability and is wary of anyone who is seen as rocking the boat.

A week from tomorrow, July 1, marks the 90th anniversary of the founding of the Chinese Communist Party. The Party has demonstrated impressive adaptability over its six decades of uninterrupted rule. Despite reports of some disagreements among the top leaders, the public face is one of orderly transition on a periodic basis, as seen in the handing of power from the third-generation leaders to fourth-generation leaders in the early 2000s and, as currently playing out, to the fifth-generation leaders. As the composition of the Politburo Standing Committee and other top positions are negotiated, it is not surprising that candidates for the next generation of leadership would take a risk-averse stance when it comes to advocating significant reforms, especially when those reforms could be unpopular with current leaders. Looking beyond the immediate term, the public accolades by current and rising members of the Party leadership for the harsh law-and-order tactics used by Bo Xilai, the Chongqing Party Secretary and rising star on the national scene, raise serious questions whether we can expect a more pro-reform climate after the leadership transition is complete.

Exacerbating the cautious climate is the leadership's awareness of popular unrest in the Middle East and concern that fermenting discontent at home could blossom into China's own Jasmine Revolution. It is difficult to quantify public discontent but, at a minimum, the rhetoric out of Beijing has moved beyond the ubiquitous slogan of "harmonious society" (*hexie shehui*) to emphasize "social management" (*shehui guanli*) and preserving stability. From a legal reform perspective, my concern is that the government fundamentally views lawyers as undermining stability rather than enhancing it. When I was in China last month, I was struck by a decrease in the level of candid conversations at various meetings on legal reforms as compared with even last year.

Turning particularly to how this climate impacts criminal justice reforms, there is no shortage of formal laws and regulations on the books in China. And, in fact, the past year has seen ostensibly promising

reforms. Along these lines, the Criminal Law was amended this spring to decrease the number of death-eligible crimes by thirteen, leaving a total of fifty-five death-eligible offenses. Reports that the number of death-eligible crimes decreased by 19.1 percent—a simple mathematical formula dividing thirteen offenses by the original sixty-eight offenses—sounds more dramatic than the expected percentage decrease in actual executions. In reality, the reforms will likely have a much smaller impact on the total number of executions because the death penalty was seldom imposed for those crimes anyway.

As further example of recent legal reforms, this past year the five government bodies that participate directly in the criminal justice system issued two sets of evidence rules that are notable for providing a mechanism to suppress illegally obtained evidence, most conspicuously coerced confessions. The announcement of these rules closely followed the disclosure of a wrongful conviction scandal involving a farmer named Zhao Zuohai. Zhao was convicted of murdering his neighbor, but he fortunately had his death sentence commuted to a long prison term. Ten years after his conviction, the alleged murder victim showed up very much alive. The media and Internet were soon aflame with reports that police tortured Zhao to extract his confession.

The problem is that lawyers who actually seek to implement these reforms are hitting serious political roadblocks. There have been but a few scattered reports of lawyers successfully using the new evidence rules to suppress illegally obtained evidence. Disturbingly, in July 2010, the lawyer for a defendant named Fan Qihang submitted evidence that Fan was tortured, including a secretly made video of a detained Fan showing scars on his wrists that he said resulted from the police shackling and suspending him during interrogations. Despite the recent implementation of the new rules that call for a hearing when there is evidence that the police obtained a confession through torture, the Supreme People's Court promptly upheld the sentence, and Fan was executed in September 2010.

In addition to the substantial challenges that lawyers face when trying to operationalize reforms and serve as effective advocates for their clients who are accused of crimes, lawyers are finding themselves in court as defendants. For example, the conviction in 2010 of lawyer Li Zhuang for encouraging people to give false testimony raised concerns that he was really being targeted for zealously defending unpopular clients. Considering such perils and the general lack of social prestige for defense work, it is a wonder that people pursue careers as criminal defense lawyers in China, especially outside of the relatively financially lucrative realm of white-collar crime.

In speaking about the role of lawyers, it bears emphasizing that the topic of today's roundtable is the current conditions of both lawyers *and* rights defenders. As a member of the legal profession, I hope that all lawyers seek to defend people's rights. In China, so-called "rights defenders" go beyond licensed lawyers: There is an additional population of non-lawyers who are nonetheless seeking to use the legal system to effectuate change in China, such as the blind activist Chen Guangcheng who taught himself enough law to assist villagers with their grievances against the government. Since completing a four-year sentence for damaging property and disturbing traffic, Chen and his family have been held under informal house arrest. Reports of government-sanctioned physical abuse underscore that the term "soft detention" (*ruan jin*) utterly fails to capture the harsh reality of Chen's post-prison life.

As another example of a non-lawyer citizen seeking to defend people's rights, Ai Weiwei, the renowned artist and outspoken government critic, was detained by authorities at the Beijing airport in April 2011 on suspicion of "economic crimes." Over a month later, the government clarified that Ai is being held for tax evasion and destruction of corporate financial documents. This is not a simple story of allegations of economic crimes. Rather, Ai's high profile and dogged efforts to expose government corruption, including seeking justice for parents who lost children in shoddily constructed schools during the 2008 Sichuan earthquake, make him a bigger threat than any mere tax evader.

Going forward, a key question is how can the PRC government manage expectations of the populace in the face of a graying population, growing environmental pressures, and other destabilizing effects. The incorrigible long-term optimist in me wants to believe that the government will eventually view lawyers as a positive force to help express citizens' grievances and effectively channel them through a formal process instead of leaving people to vent their frustrations in the streets. However, at present, the emphasis is on the rhetoric of the "rule of law" with a reluctance to allow people to actually make use of the laws in a meaningful way.

Finally, what are the implications of this challenging landscape for US policy? The official US-China Human Rights Dialogue and slightly less official Legal Experts Dialogue are valuable for maintaining high-level bilateral discussions, though I think we must keep our expectations very modest for these forums' ability to spur legal reform in China.

Although we also cannot expect instant gratification from more informal legal cooperation, I remain convinced that sustained interpersonal contacts will serve as a positive force for legal reform. For example, China's efforts to reduce wrongful convictions open up possibilities for collaboration on projects regarding techniques to improve evidence collection, including use of DNA evidence. Similarly, new rules in China requiring asset disclosures by government officials as a means of reducing corruption offers the possibility for a substantive discussion about the US government's experience with requiring disclosures as a prophylactic tool to prevent conflicts of interest. And, indeed, the new rules addressing the exclusion of illegally obtained evidence followed years of comparative legal research and many projects involving foreign assistance. The scope for substantial bilateral collaboration is, no doubt, limited at present. But there are shared avenues of interest that dovetail with the PRC government's stated areas of reforms and that can and should be explored.

Thank you for the opportunity to present a few thoughts. I look forward to our discussion with the Commission.