

# HUMAN RIGHTS IN CHINA IN THE CONTEXT OF THE RULE OF LAW

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## HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED SEVENTH CONGRESS SECOND SESSION FEBRUARY 7, 2002

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# HUMAN RIGHTS IN CHINA IN THE CONTEXT OF THE RULE OF LAW

THURSDAY, FEBRUARY 7, 2002

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 2:45 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the Commission) presiding. Rep. Doug Bereuter (co-chairman of the Commission) also presided.

Also present: Senators Levin and Hagel; Representatives Kaptur, Pelosi, Levin, Davis, Dreier, Pitts, and Wolf; D. Cameron Findlay, U.S. Department of Labor; and Lorne Craner, U.S. Department of State.

## **OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Chairman BAUCUS. The hearing will come to order.

I am very honored and very pleased to have our first hearing today. It is, I think, going to make a difference—our commission. We are very enthused. We understand the challenges facing us, and we are anxious to meet these challenges. I thank all of you who are here participating with us. We are very, very grateful for your efforts.

I also thank my co-chair, Congressman Doug Bereuter, who has been working very closely with me and with many of you, and my fellow commissioners for their presence. I am heartened by the number who are here today. We have a lot of work ahead of us as we prepare our first annual report to the President and to the Congress this June.

Let me just give a few administrative announcements. Our next hearing will be on April 11 and we will discuss human rights and legal reform. Then we will hold a hearing on June 6 on commercial rule of law and WTO [World Trade Organization] implementation.

Later this month, we will begin a series of staff-led public issues roundtables. The first will be on the topic of reeducation through labor. The staff will also hold an open forum where anyone and everyone is welcome to present views on human rights and the rule of law.

I also want to particularly thank my good friend, Congressman Sandy Levin. Congressman Levin and others worked hard, including Congresswomen Pelosi and Kaptur, to put this Commission to-

gether in conjunction with the PNTR [Permanent Normal Trade Relations] debate.

I think it is going to serve us very well, and particularly will serve those in China who are suffering various indignations, incarcerations, and abuse of their human rights.

Let me start by explaining the role of this Commission, and the role I hope we will play in United States-China relations.

First, we in the United States cannot impose our will on China or on its 1.3 billion citizens. The decisions about what happens inside China can only be made by the Chinese people.

Second, China is an emerging regional and international power. Our national interest requires intensive engagement. We must look at China through the lens of reality.

China represents a significant challenge to the United States in many other areas, and it represents a significant opportunity in many areas. We need to look at the facts, analyze them objectively and dispassionately, and act in ways that support our National interest.

Third, there are significant human rights abuses in China. In some areas, the situation is worse today than in the past. In other areas, there have been improvements. We will recognize the latter and be critical of the former.

Fourth, there cannot be sustained protection of human rights without the rule of law. Many Members of Congress, as well as recent administrations, have been active in securing the release or reduction of sentences for individual prisoners of conscience in China. I expect that to continue, as it should.

However, this Commission will look at human rights within the context of the rule of law in China. We may address individual cases, but only when there is likely to be a broader, systemic, and structural impact in China.

The witnesses appearing today reflect that orientation: Human Rights Watch and Human Rights in China have done excellent work looking at the legal and political context in China within which human rights can be protected. Professors Feinerman and Alford have focused much of their work on the rule of law in legal reform in China.

The United States-China relationship today is different than a year ago. There has been a change in the bilateral relationship. Beijing is cooperating with us on the war against terrorism. China's rhetoric over Taiwan has ameliorated somewhat. China has joined the WTO.

But serious problems remain between us in a number of areas: Arms proliferation, human rights, and significant differences over Taiwan.

This Commission will concentrate on the human rights aspect of our relationship, with a focus on the rule of law in China. We will look closely at areas such as religious freedom, political prisoners, Tibet, ethnic minorities, labor rights, and the flow of information in China.

We will examine the developing role of NGOs [Non-governmental organizations] in China. We will look, especially, at developments in the rule of law. This includes legal reform in the civil, criminal,

and commercial areas, and the way in which these laws are or are not being implemented.

We will look at how the United States can pursue policies and programs that will increase the respect for law in China, and how we can strengthen those in China who are working to increase the transparency and objectivity of the legal system.

China is not a monolith. There are many inside the Chinese Government, the Chinese party, and state-owned enterprises who are working desperately to maintain the status quo. But there are also many in China who want to see genuine reform, both economic and political.

They recognize that, for China to become a great nation and fully join the international community, China will have to follow international standards in the human rights area.

They must meet the obligations the government has made in international covenants covering political, economic, social, cultural, and civil rights. They will have to honor those provisions in the Chinese constitution and in Chinese law that claim to protect the individual from abuse by the state.

As I said earlier, decisions about what happens inside China can only be made by the Chinese themselves. The question for this Commission, for the Congress, and the administration, is how can we best assist those who seek reform?

Incorporating China into the WTO is surely one way to begin down the road of significant commercial law reform. We will not shrink from pointing out the ways in which the Chinese system is falling short of meeting those standards.

But the major challenge for the Commission is, how can we contribute to an improvement in the human rights of Chinese citizens, and how can we influence the structural change necessary to improve how those citizens are treated?

In our hearings, we want to hear from groups and individuals who can add to our knowledge and understanding. We also want to hear from them about the ways that this Commission can help promote and support positive, constructive, and lasting change in China.

Let me address some remarks to the Chinese Government. When the House approved the PNTR legislation, the Chinese Government said that it was a wise decision. But their spokesman went on to say, "The Chinese side is seriously concerned and dissatisfied that the bill contains provisions that attempt to interfere in China's internal affairs, in various names like human rights, and harm the interest of China. The Chinese side has announced in explicit terms that it firmly opposes and cannot accept these provisions."

I have two comments about that statement. First, this Commission is an instrument of the U.S. Government. We will vigorously pursue our mandate to consider the issues of human rights and the rule of law in China. We do not seek to impose American standards on China, but there are numerous international covenants relating to human rights that China has entered.

The Chinese constitution and Chinese laws include many written guarantees for the citizens of China. For China to be a full and responsible member of the international community, and that includes the global trading system and the rule of law, that must be

honored. This is an issue of concern and interest to all nations interacting with China.

We will work with China when we can. We will acknowledge progress when we see it. We will criticize when there is no progress. I firmly believe that there are many in China who agree with this approach: Government officials, business people, and ordinary citizens.

Second, I urge the Chinese authorities to work with this Commission. I spent a decade fighting against conditions on our trading relationship with China. Along with others on this Commission, I fought hard for PNTR. I believed that engagement and deepening the relationship between our two nations was the best way to induce change in China and bring them fully into the community of nations. It is in China's long-term interest now to work closely with us.

Let me conclude with a few comments about the administration's human rights policy. President Bush met with Chinese President Jiang Zemin in Shanghai in October. The President discussed the importance of religious freedom. He made a strong statement that the war on terrorism should not be used to justify a crack-down on minority groups in China.

Under the leadership of Assistant Secretary of State Lorne Craner, a member of this Commission, the United States has re-engaged China in a bilateral human rights dialogue.

President Bush will visit Beijing February 21–22, and again meet with senior Chinese leaders. I urge him to ensure that human rights and the rule of law issue are among his top priorities in those discussions.

Let me now turn to my co-chairman, Congressman Bereuter, for his statement as we initiate the work of the Congressional-Executive Commission on China.

I also very much appreciate the deep involvement of other members of this Commission. After Congressman Bereuter makes his statement, I will introduce the witnesses. Frankly, I know a lot of the members of the Commission would like to make opening statements, but for us to get down to our work, I think it is better that we hear from our witnesses. That gives us more time to engage our panel, looking for a more constructive and efficient process.

So, Congressman Bereuter.

[The prepared statement of Senator Baucus appears in the appendix.]

Congressman BEREUTER. I yield.

**OPENING STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR  
FROM MICHIGAN**

Senator LEVIN. I have a statement that I will make a part of the record, Mr. Chairman. I just wanted to congratulate you and our vice chairman, and my brother, Sandy Levin, particularly, if I can single him out, for this very visionary approach to changing, hopefully, China's human rights record.

I have a statement, though, if it is all right, that can be made part of the record.

Chairman BAUCUS. Thank you, Senator, very much. We very much appreciate having both you and your brother as members.



[The prepared statement of Senator Levin appears in the appendix.]

**OPENING STATEMENT OF HON. DOUG BEREUTER, A U.S. REPRESENTATIVE FROM NEBRASKA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Representative BEREUTER. Chairman Baucus, Senator Hagel, Congressman Levin, fellow commissioners, distinguished panelists, ladies and gentlemen, I would like to introduce a few Executive Branch members who are here today: Cameron Findlay, the Deputy Secretary of Labor, and Lorne Craner, the Assistant Secretary of State for Democracy, Human Rights, and Labor.

I consider it a privilege to join you, Senator Baucus, in convening this first formal meeting of the Congressional-Executive Commission on the People's Republic of China.

I am particularly pleased to recognize the presence of my colleague and fellow commissioner, the distinguished gentleman from Michigan, Sandy Levin, who deserves great credit for being a leading intellectual godfather of this Commission who has worked tirelessly with me, Senator Baucus, and others to see it come into being.

I look forward to our continuing association as Commission members, all of us, in fostering the work of the Commission over the next years.

Senator Baucus has noted that the Commission was created by the China Relations Act of 2000 to create a forum for continuing Congressional involvement in monitoring China's human rights practices and the development of the rule of law.

The Commission's mandate reflects continuing concerns in both Houses of Congress and among members of both political parties, not only about the individual instances of human rights abuses in China, but also about the need for encouraging systemic changes in China to end such practices.

Undoubtedly, all on the Commission share the goal of encouraging positive changes in Chinese Government policy and practice that will help those who have been punished unjustly for seeking to exercise basic human rights, prevent future abuses, and bring China's human rights practices into conformity with international standards.

There are differences in the international community, and undoubtedly in Congress, as to the best methods for achieving this goal. But I believe there is a broad consensus in Congress and America on the importance of the goal itself.

In this context, I think that the Commission should concentrate primarily on systemic changes to China's human rights practices and legal regime and neither to concentrate, primarily at least, nor to duplicate primarily the important advocacy work on individual cases already being done by individual Members of Congress, human rights NGOs, and concerned members of the public.

Of course, the registry of victims of human rights abuses that our mandate requires will provide an important resource for such advocacy, so the Commission will have a crucial role to play in this work.

In my view, the human rights and rule of law parts of this Commission's mandate are intimately related. Virtually everyone in China, the United States, and elsewhere who is concerned with human rights practices in China believes that progress in legal reform will necessarily result in greater compliance with the basic human rights enshrined in such international covenants as the Universal Declaration of Human Rights.

Many also believe that such reforms will improve not only government transparency, but also the development of the essential institutions of democratic governance. The development of an open, transparent, and predictable legal system throughout China should also be beneficial over time in other ways, such as providing ordinary Chinese citizens with the legal means to check the arbitrary exercise of official power, as well as helping to ensure China's full implementation of its commitments under the World Trade Organization protocol of accession.

Before we hear from our outstanding panel, I would like to offer some thoughts on four aspects of our Commission's work that I think will be of continuing importance to us.

These aspects are: (1) the Commission as a forum, for a balanced, constructive focus on human rights issues in China; (2) the Commission as a catalyst for United States efforts to support the development of rule of law in China; (3) the Commission's development of a registry of victims of human rights abuses; and (4) the Commission as a resource for Senators, Members of the House, and their respective staffs, United States-China specialists, and the general public.

With respect to the Commission's mandate on human rights, I believe it will be vital for us to undertake a comprehensive, objective look at the current state of Chinese Government compliance or noncompliance with international human rights norms.

Following the sensible requirements of our legislative mandate, Commission staff should receive information and perspectives from human rights, labor, and religious freedom NGOs in the United States and elsewhere.

We should also build on the work of relevant United States Government agencies, including those who are represented by our five commissioners from the Executive Branch, and from sources in China, Hong Kong, and elsewhere.

This undertaking is a big job, but one made considerably easier by the importance of the work of many people in the U.S. Government, U.S. universities and think tanks, and U.S. and international human rights NGOs.

With this factual framework in place, we can then assess whether to recommend specific actions by Congress or the administration in our annual report. Of course, we cannot wait for all the facts to be before us. This is not an excuse for delay.

Second, I believe it is important that the Commission act as a catalyst for encouraging and supporting United States and multi-lateral efforts to build legal institutions in China.

I hope that the Chinese Government will accept and welcome United States initiatives to help train judges and lawyers, inculcate a culture of transparency in the legislative and regulatory processes, and to improve Chinese efforts to extend legal services to or-

dinary Chinese people, focusing particularly on the poor, women, and people in rural areas.

Since the Chinese leadership embarked on the reform and opening up policy of the 1970's, a number of Americans, among whom two of our panelists are the most distinguished, have participated in successful legal exchange and legal cooperation initiatives with their counterparts in China.

But the U.S. Government has never had its own directly funded program to complement these private efforts, and I believe the time has come for us to take a hard look at such a program.

The Commission should determine in which areas additional United States public investment in rule of law programs in China might add value to existing private efforts, or might permit new initiatives in areas previously untouched by United States efforts.

The overall goal, I think, should be to produce significant long-term results on the ground in China without wasteful duplication of previous or existing initiatives.

An understanding by the Commission, Congress, and our Government of the rule of law programs that other countries currently have in China will be an important part of this effort to avoid duplication and to maximize the effectiveness of United States rule of law programs.

Although many in the United States are interested in commercial rule of law programs, particularly as they relate to building the capacity of the WTO implementation and compliance, any U.S.-funded rule of law program should focus, I believe, more broadly on civil, criminal, and administrative law reform.

We should also welcome, encourage, and support initiatives to improve the transparency of the legislative and regulatory process in China.

Third, I believe that the establishment and maintenance of a useful, factually accurate, up-to-date registry of prisoners of conscience and other victims of human rights abuses will be a vital part of the Commission's work. Successful achievement of this task will be a complex and difficult undertaking, no doubt.

My hope is that, over time, this registry will be a useful resource for Members of Congress and staff, researchers, the press, and the general public.

Fortunately, individuals and organizations with experience in collecting, storing, and using such information have offered already to cooperate with the Commission. In addition, I think that recent advances in information technology will help Commission staff in meeting this important aspect of our mandate.

Fourth, and finally, as we progress in staffing the Commission and gathering information on the specific issues in the mandate, I hope the Commission would earn the confidence of Members of Congress and their staffs as a resource for timely, objective information about China, generally. Naturally, our focus and expertise will be principally with respect to the specific areas of human rights and the rule of law. But we expect to staff the Commission with qualified staff possessing broad experience in China.

I hope that the Commission could assist Members of Congress and staff who plan to travel to China to prepare for their visits,

particularly to become familiar with human rights and rule of law issues.

The registry should provide the type of information that would permit Members of Congress to raise and discuss the cases of specific individuals during official meetings in China.

Mr. Chairman, we have a distinguished panel this afternoon to share their views with us. I am honored to be with my colleagues on the Commission. I would like to express my appreciation for the appearance of our witnesses today. Each has dedicated a significant part of his professional life to one or more of the issues that are directly in our mandate. We know we will hear lively, informative, and thoughtful presentations.

Thank you, Mr. Chairman.

[The prepared statement of Representative Bereuter appears in the appendix.]

Chairman BAUCUS. Thank you very much, Congressman Bereuter.

Now, let us get to the heart of the matter. We have four very distinguished people here to get us started. Would you all four please come up to the table? I will introduce you, then we will get started.

First, Xiao Qiang, who is Executive Director of Human Rights in China. He is a physicist. He was working on a Ph.D. at Notre Dame at the time of Tiananmen. He immediately returned to China to bring contributions to victims' families, and he came back to the United States a couple of months later and began working as a full-time human rights activist. Last year, he won a MacArthur Foundation Genius Award.

Next, is Mike Jendrzeczyk, Washington Director of Human Rights Watch/Asia. Mike was a Congressional staffer and worked for Amnesty International, and joined Human Rights Watch in 1990. He is a very well-respected and responsible person.

Mr. JENDRZEJCZYK. I was not a member of a Congressional staff. I have to correct that for the record.

Chairman BAUCUS. Oh. I am sorry. All right. We will get that correct.

Professor William Alford of Harvard Law School, Director of East Asian Legal Studies Program at Harvard. His expertise includes China, trade, technology transfer, IPR [Intellectual Property Rights], human rights, legal development, and legal history.

As well, Professor James Feinerman of Georgetown, who is Associate Dean and Director of Asian Law and Policy Studies at the Georgetown University Law Center. He has practiced law, and studied and taught law in China.

Let us begin with Xiao Qiang.

#### **STATEMENT OF XIAO QIANG, EXECUTIVE DIRECTOR, HUMAN RIGHTS IN CHINA**

Mr. XIAO. Thank you, Chairman Baucus and Congressman Bereuter, and distinguished members. It is a privilege to speak here.

Thank you for providing this public forum for independent Chinese NGOs on human rights issues in China.

I want to say, the Congressional Executive Commission can play a key role and ensure the human rights concerns on the table. I firmly believe that the Chinese and American people share impor-

tant values and aspirations of human dignity and freedom. Both nations are facing great challenges and responsibilities for promoting human rights, ensuring the domestic and global peace, and encouraging development.

For today's hearing, I would like to make four points about the human rights situation in China in the context of the rule of law.

The first point: There is a crucial distinction between rule of law and the rule by law, which is the Chinese leadership's slogan called "Yifa Zhiguo," meaning, ruling the country by law.

However, when there is no real democratic and representative legislative process and no judiciary independent from a party and a state, law often becomes a tool that suppresses, rather than protects, the fundamental rights of the Chinese people.

The most clear example, is in the Chinese criminal code there is endangering state security. But, too often, this law is often used to crack down on peaceful political activism, Falun Gong practitioners, labor organizers, as well as peaceful advocates for Tibet and Xinjiang self-determination.

I just want to mention one example. Political activists of the China Democracy Party have been given heavy sentences under the state security law, Xu Wenli, Qing Yongmin, and Wang Youcai, were sentenced to 13, 12, and 11 years, respectively in 1998.

My second point: There is institutionalized discrimination, a system called hukou system, against the rural residents, migrants, and ethnic minorities in China. Altogether, those three overlapping groups are the vast majority of the PRC's [People's Republic of China] population. There are about 800 million rural residents, somewhere between 40 million and 120 million migrants, and for ethnic minorities, there are about 106 million.

Under the hukou system, a system has been created that gives urban populations privileged access to education, housing, economic opportunities, and political participation. This hukou system does violate the rights of rural residents and migrants to equal enjoyment of the exercise of their human rights and fundamental freedoms.

My third point: There is a persistent gap between law on the books and the law in practice. That is, there is ineffective implementation and a lack of accountability.

Pardons of rights violations show impunity and lack of accountability, a principal cause of human rights abuses in China. Mechanisms to hold officials accountable are deficient or non-existent. Control of freedom of expression and association make it very difficult for the Chinese people to expose those abuses by officials or to achieve accountability.

The two most clear examples are in the criminal procedure law implementation and on the issue of accountability of the June 4 massacre in 1989.

On the criminal procedure law situation, Human Rights in China has published a report to point out the Chinese Communist Party's control of the judiciary, the pre-trial detention, use of illegal evidence, discriminatory application of the law, and, most importantly, those laws have been violated outright, without authors of violations suffering any consequences. After the Tiananmen mas-

sacre we know that, until now, the victims' voices are not being heard and the crime is not being investigated.

In sum, my last point is, there is an arbitrary nature to the system. What I want to say is, there has been a great deal of attention, domestically and internationally, to the professed effort toward legal reform in China.

However, the improvement of the legal system cannot ignore the conditions in the wide range of punishment institutions that operate outside of the legal system and in which large numbers of people are incarcerated.

By this, I particularly mean two systems. One, is custody and repatriation centers, which annually hold about 1.7 million people. They are called undesirables of all types, including women and children, detained without trial, occasionally for the period as long as a year or more.

Another system, is the reeducation through labor system. It is an administrative detention system. Public security personnel can sentence anybody up to 3 years, and there are about a quarter of a million of the Chinese people in this system every year.

Given the vast scale of those human rights violations in the context of rule of law, Human Rights in China would like to particularly make the following recommendations to the Commission.

First, is we urge the Commission to put a high priority on the Chinese political prisoners of conscience and, for President Bush's upcoming visit to China, to urge the significant release of those political prisoners.

The second point, is to monitor the protection of freedom of expression and information in China. We urge the Commission to pay particular attention to the increasingly restrictive internet regulations and surveillance by Chinese authorities, especially as these regulations interface with China's WTO accession obligations.

Finally, we urge the Commission to monitor and report benchmarks of human rights compliance and rule of law developments over the next 7 years leading up to the Beijing Olympics, 2008.

Thank you, Mr. Chairman.

Chairman BAUCUS. Thank you very much. I particularly like your listing your four points. It makes it easier to understand.

Mr. Jendrzejczyk.

[The prepared statement of Mr. Xiao appears in the appendix.]

**STATEMENT OF MIKE JENDRZEJCZYK, WASHINGTON  
DIRECTOR, HUMAN RIGHTS WATCH/ASIA**

Mr. JENDRZEJCZYK. Thank you, Senator Baucus.

I want to thank you all for inviting Human Rights Watch to testify at this first hearing of this important commission, exactly 2 weeks before President Bush is due to visit Beijing on his first official visit to China's capital.

I would like to use my oral remarks to very briefly summarize some very specific recommendations we would like to make, both for the work of the Commission and for United States policy toward China, generally.

I realize that, as the Chair and the co-chair of the Commission have just explained, that the mandate of the Commission is ex-

tremely wide and very heavily based and rooted in international standards.

But I do think, to have maximum impact, especially this first year of the Commission's operation, it is important to strategically focus the Commission's efforts.

I would suggest three areas to focus on. First, the release of political and religious prisoners. I think this is crucial and must be fundamental to the Commission's work.

Second, encouraging greater cooperation by China with the U.N. human rights mechanisms, that is, the working groups, rapporteurs, and others.

Finally, to encourage increased access to China by independent U.N. and other human rights monitors. I do agree with my colleague Xiao Qiang that there are other issues that should be on your agenda: For example, free expression on the internet. I would suggest this be the subject of a hearing, in fact, sometime this year.

And, yes, definitely, how to use the Olympics in the year 2008 in a creative way to press for constructive human rights improvements.

I also encourage you to release the report, Mr. Bereuter, that you mentioned, as soon as possible, even spelling out, just in a skeletal way, the Commission's main concerns and some initial policy recommendations. We realize the report was initially due last October and for various reasons was delayed. But I think, given all of the issues on the agenda this year, it is most important to get that report out as quickly as possible.

Finally, a recommendation that a number of NGOs have made in previous correspondence with the Commission. I think it is important to get at least one professional research staff posted in the American embassy in Beijing. This is something we have discussed informally with the current ambassador, Clark Randt. I think it is very important to have someone there on the ground in China that can assist in the information gathering and research of the professional staff based here in Washington.

Returning to President Bush's trip in a couple of weeks' time, I think this is a very important opportunity, not only to cement greater improvements in United States-China relations, but more importantly, to communicate to the Chinese Government the singular importance of human rights in the United States-China relationship.

The fact that an important Tibetan prisoner, Ngawang Choepel, who was serving an 18-year prison sentence for espionage, was just released recently, I think demonstrates that China recognizes it is in their interests to make at least some limited steps for improvements in human rights, recognizing that Ngawang Choepel's case was not only on the Bush and Clinton administrations' agenda, but was the subject of intense lobbying and other kinds of activity by Members of Congress. This is, I think, an important role for the Commission, to engage in both public and private diplomacy on cases such as this.

I would urge some Commission members—and I recognize travel opportunities are limited, the ability to leave Washington for a long trip to Asia is limited—to offer to travel with the President to Beijing. I think this is such an important opportunity, one, to engage

in your own bilateral discussions with key ministries; two, to explain the work of the Commission to the Chinese leadership; and three, perhaps to begin discussions with the National People's Congress [NPC] on possible exchanges and discussions, especially on rule of law concerns, between Members of Congress, this Commission, and members of the NPC.

So, I would urge you strongly to change your calendar, adjust your schedules if at all possible, but try to get at least two or three members of this Commission to travel with the President in a couple of weeks.

In the interim, I think it is important for the Commission as a whole, or perhaps individual members, to address in correspondence and in other ways your specific concerns about human rights, both to the White House and to the Chinese leadership.

We know—and I mentioned Ngawang Choepel just as one example—that the active interest of Members of Congress greatly increases the leverage of the State Department and our embassy on the ground. I would encourage you to use the President's trip as an opportunity to do so.

Second, a very important policy discussion, which I have discussed with Secretary Craner and I know is under discussion here in Washington, and will be under discussion in the coming weeks, is what to do about this year's meeting of the U.N. Human Rights Commission in Geneva. It convenes on March 18.

The United States does not have a seat this year, but that does not prevent the United States from actively suggesting, promoting, and lobbying for a resolution on China.

I think it is crucial, in fact, to remain active in holding China accountable in this highest U.N. body charged with monitoring the compliance and the human rights record of all members of the international community.

Again, I would urge the Commission, first, to encourage the Executive Branch to begin to find such a sponsor on the Commission this year, and second, if a resolution is introduced, for individual Members of Congress to become actively engaged in lobbying other countries to support this resolution.

My last recommendation has to do with labor rights. This often, unfortunately, falls to the bottom of the agenda and I do not think it gets the kind of attention that it merits.

Given China's membership in the WTO, the increasing economic dislocation that the further closing of state-run enterprises will inevitably entail, there is growing concern about unrest in China, rural and urban unrest, which has already begun to escalate.

The Chinese Labor Minister was here in March 1999, and offered an invitation to the United States Labor Secretary to visit China to talk about social safety net programs, pension schemes, job retraining programs. But such a visit would also provide an opportunity to address core labor standards, International Labor Organization [ILO] standards, especially key standards such as the right of free association.

I would encourage the Commission to become active in this area by encouraging the current United States Labor Secretary, Elaine Chao, to try to visit China this year. Believe it or not, this would be the first visit ever to China by an American Labor Secretary.



Second, to encourage China to invite the ILO to send a direct contact mission, as they have offered, to look specifically at the issues of the rights of free association and ways of amending Chinese labor law and practices to bring them into conformity with ILO standards.

Thank you.

[The prepared statement of Mr. Jendrzeyczyk appears in the appendix.]

Chairman BAUCUS. Thank you very much. That was very helpful. I particularly urge members of this Commission to look at the suggestion to join the President on his trip to China.

All of us have been to China many times and in various capacities. I know that the one time I accompanied President Clinton, I learned a lot. It was very, very helpful. I particularly appreciate that, and your other recommendations.

I must leave now. There is a vote. But I will come back. Chairman Bereuter will continue. However, I have to give my apology to Mr. Xiao. Unfortunately, your little sign up there says Mr. Qiang, it does not say Mr. Xiao, and I very much apologize.

Mr. XIAO. I am used to that.

Chairman BAUCUS. I am sure you are.

Representative BEREUTER [presiding]. Professor Feinerman, we would like to hear from you. Professor Feinerman is from Georgetown University Law Center. You may proceed as you wish.

**STATEMENT OF JAMES V. FEINERMAN, JAMES M. MORITA  
PROFESSOR OF ASIAN LEGAL STUDIES; ASSOCIATE DEAN,  
INTERNATIONAL AND GRADUATE PROGRAMS; DIRECTOR,  
ASIAN LAW AND POLICY STUDIES, GEORGETOWN UNIVERSITY  
LAW CENTER**

Mr. FEINERMAN. Thank you, Mr. Chairman. I want to thank you and members of the Commission for holding these timely hearings and for providing an opportunity to present our views to you and share the information that we have gathered in our respective professional capacities.

I would also like to say that I am summarizing remarks that I have made in a longer written statement, as have the other witnesses.

I was asked to particularly address some rule of law-related issues that deal with China's accession recently to the WTO. I will try to focus on that.

But, in considering that situation, I want to start by saying that with respect to the rule of law, at least up to the point of WTO accession, there are three major points that we need to keep in mind as we think about how we will proceed in the future.

First, is that there has been, and continues to be, considerable legalization of the People's Republic of China which has been under way now for two decades. It is incomplete, it is problematic in some respects, but it is worth noting that this process will go on whether or not the United States chooses to participate in the future development of the process. I hope we do, as I will say in a few moments.

Second, the PRC has already experienced some considerable law reforms which have made important contributions to the economy.

This is important in connection with the WTO accession. But there are other commitments which have political ramifications, and they are not necessarily connected to the WTO or economic matters more generally, and we need to keep them in mind as we think about comprehensive development of the legal system in China.

Third, despite this legalization and law reform that has now extended for over 20 years, there is still, unfortunately, a great deal that has not changed in China with respect to the rule of law, civil rights, political liberties, and the meaningful enjoyment of freedoms that we take for granted in this country and other developed nations.

But this patchy liberalization that has taken place has at least brought a modicum of political and legal change, and economic development, which I think lays an important groundwork.

I have said in previous testimony to other committees in Congress in earlier years, that I think it was the case 4 or 5 years ago—and I think it is even more the case now—that more people in China today enjoy more political and civil rights than they have at any time in China history.

It is still not enough, and there are important groups that are not enjoying these overall effects that reach to most members of Chinese society. But that is an important thing to know.

We may want to try to push for a faster pace, faster than the Communist Party leadership in China might enjoy, but nonetheless we need to see where things stand currently.

I mentioned in my testimony a couple of areas that I think will demonstrate the partial success and the remaining problems of China's long, slow march toward the rule of law.

Here, I would just mention them in order and refer you to my written testimony: In areas like enterprise reform, where there has been a partial privatization of the Chinese economy, but many problems, including some that have already been mentioned this afternoon with regard to issues such as labor rights, such as the treatment of redundant workers in the modernization of the Chinese economy.

With regard to national and local leadership, there have been major reforms in many areas that make institutions that were previously virtually useless and bypassed usually by Communist Party authority much more important as we look at the future development. Especially, here, I would note things in the State Council, the administrative organs of the Chinese Government.

Third, there have been important developments with respect to corruption. Now, this is a problem that is beginning to be investigated by the Chinese authorities themselves. They understand that their political legitimacy depends on a belief on the part of those that they rule that the government is generally honest and uncorrupt.

Still, there is a tendency to scapegoat a few high-profile cases and not address some of the root causes of corruption, but this is an area where our experience may prove to be somewhat instructive and helpful.

In the legal profession there has been an important development, especially in terms of the numbers. My colleague, Professor Alford,

has written extensively and insightfully about the problematic developments in this realm.

But China went from having fewer than 3,000 lawyers 20 years ago to having over 100,000 lawyers there today. Here in Washington we may not necessarily see that as a positive development in every respect, but I think it means that people who do want to assert legal rights, at least, have someone available to help them do it.

Finally, appropriately, here in Congress I would mention that the National People's Congress itself has been undergoing a process of reform and there are now individuals and organs, including committees, that are trying to learn from the experience of developed legislatures around the world how to be more serious in their legislative work. This is obviously important.

I just want to mention two points about WTO accession before I conclude. As part of the protocol of accession to the WTO, China has made many important commitments to both reform its laws and to make basic changes in its legal system.

At the first level, these mainly involve things like passing certain laws that are necessary to comply with specific WTO requirements. Some of those have already been passed, other legislative reforms are under way. But that is just the first step.

On a second, deeper level, they have promised to adopt basic principles of WTO jurisprudence that most member countries already have, things like transparency of the regulatory regime, creation of impartial tribunals to hear WTO-related complaints and trade disputes. That will, I think, develop apace.

But on the third, deepest level, there are still some important choices that have to be made and bridges that the Chinese leadership, I think, has not yet crossed with respect to not only the WTO commitments, but the kind of rule of law that would really make it possible to honor the notion that would require structural changes that would transform the most basic features of not only Chinese law and legal culture, but I think Chinese culture, more generally.

The experience of other, former developing countries in the Asian region, such as South Korea and Taiwan, shows that this can happen over a period of time, but it also shows that it may take time.

It may take several decades, as happened there. The good news is, it has been under way in China for at least a couple of decades, so maybe we only have one or two more to go.

The challenges with respect to implementation, though, are legion. I outlined some of them in my written testimony. The report of the Working Party on Accession runs to 70 single-spaced pages of rather dense, legalistic prose. I commend it to you, but it gives you some sense of the scope of what China has to do next.

I would just like to close by making a pitch for something. I was gratified to hear in Congressman Bereuter's remarks opening the session today that there may be a commitment to more involvement on the part of the United States with respect to legal and other kinds of educational and cultural exchanges.

It is actually the case that the State Department and other Federal agencies that are involved in this today provide less support

for bilateral exchanges with China than they did 10 years ago. That, I think, is a shocking fact.

We devote less than 1/40th of the amount that is targeted in the United States Federal budget for aid to Central and Eastern Europe and the former Soviet Union and the newly-independent states to academic and cultural exchange with China. That is overall, not just focused on law.

Given the equal strategic importance of China and its vastly larger population, I think that this is short-sided and parsimonious on our part. I would note that, in the developed world, the European Union and Canada, for example, have major initiatives with respect to rule of law and law reform, not simply focused on the WTO, but broader.

I think, in conclusion, the development of the rule of law in the future in China is going to prove to be checkered, as it has been in the past two decades. China has made enormous strides since the 1970's, but in many areas it obviously has quite a long way to go.

I think that China has tried to make a kind of devil's bargain with respect to modernization. It wants to have a modern rule of law while it retains what they call "Chinese socialist characteristics." The situation is likely to persist, at least for the foreseeable future.

WTO accession, however, provides a unique opportunity to push the envelope and maybe hasten the pace of incremental change with respect to China's participation in the international economy, but in other, more basic legal areas as well. I think, with our eyes fully open, we should seize the opportunities that this historic era provides us.

Thank you.

[The prepared statement of Professor Feinerman appears in the appendix.]

Representative BEREUTER. Thank you very much.

Next, we would like to hear from Professor William P. Alford, the director of the East Asian Legal Studies Program at Harvard Law School. You may proceed as you wish, Professor.

**STATEMENT OF WILLIAM P. ALFORD, HENRY L. STIMSON PROFESSOR OF LAW AND DIRECTOR OF THE EAST ASIAN LEGAL STUDIES PROGRAM, HARVARD LAW SCHOOL**

Mr. ALFORD. Thank you very much. It is truly a privilege to appear before this important commission.

I start from the proposition that the two principal areas that this Commission is charged with overseeing, human rights and rule of law, are inextricably interwoven.

China needs to continue to develop legally for its citizens to have the means to vindicate their rights, but legal development insufficiently attentive to human rights will not enjoy credibility with the people of China, or with us.

Over the last quarter century the PRC has engaged in the most extensive program of legal construction in the history of the world. Considering that a generation ago there essentially was no legal system in China, a fair amount has been accomplished.

Today, as you know, China has an extensive body of legislation, especially in the economic area, and a nationwide judiciary and surfeit of lawyers, as Professor Feinerman mentioned. And, perhaps most importantly, Chinese citizens are using courts in unprecedented numbers and are vigorously concerned about legal issues.

But China's legal system continues to fall well short of meeting any widely accepted definition of the rule of law. As the State Department's annual report on China shows in its most recent edition, the legal system has yet to prove itself adequate to protect the rights of all Chinese citizens.

Arbitrary arrest, torture, and denial of the procedural protections of Chinese law itself remain serious problems, as do reeducation through labor, and custody and repatriation.

The judiciary does not enjoy sufficient independence and it is plagued by corruption, poor training, and local protectionism.

Now, Americans and others in the democratic world have tried to assist Chinese legal development in a variety of ways. In general, this work has been worthwhile.

In the short term, for example, foreign involvement has made possible programs such as the Women's Rights Center at Beijing University that are helping some victims of injustice to realize their rights through law.

In the medium term, Americans are usefully assisting people working to upgrade procedural protections for criminal defendants, while also acquainting less open-minded Chinese officials with just how out-of-step China is with the norms of countries it wishes to follow economically.

In the longer term, foreign legal assistance is enabling Chinese who are genuinely committed to changing their society to deepen their understanding of legal institutions in democratic states.

To be sure, as we do this work we have to be careful not to exaggerate its impact and to guard against efforts that some will make to use the law to legitimate repressive activity.

As you contemplate your mandate, let me provide you with four suggestions. First, we need to promote legal development without pulling punches on issues of human rights. That is not easy, but it is essential.

Without better institutions, without a legal system that better protects, Chinese citizens simply do not have the means to vindicate their rights. But the legal system will not be stable and respected over time if the law does not also apply to the powerful and if basic rights are flouted.

Second, as we assist legal development we need to hold true to our ideals, but also to appreciate that there may be multiple ways to realize those ideals.

We make a stronger case, I believe, for legality and pluralism, and we better empower the Chinese to make change in China when we portray the variety of ways through which different free societies seek to attain their shared goals of human rights and the rule of law.

Third, some points regarding targets for, and sources of, U.S. legal assistance. On the former, we cannot realistically advance the rule of law in China without engaging those who now oversee and

operate the PRC's legal system, notwithstanding the problems this panel has noted about them.

But we also need to reach out much, much more than has been done so far to emerging Chinese civil society, particularly beyond Beijing.

Senator Baucus asked for particular suggestions. Areas that we might concentrate on would be things like women's rights, labor rights, legal aid, and working with migrants, rather than simply being engaged in legislative drafting assistance in Beijing.

On sources, the fact that most American involvement so far has emanated from our civil society, as Professor Feinerman noted, is a strength in many ways. It facilitates diversity and I think it shows the Chinese, by doing, that our universities and our bar really are independent of government.

But this task is so massive, that substantially greater Federal support is essential. As Professor Feinerman noted, the Europeans and others are at work, but they tend to work more through official channels. I hope we will work more through civil society.

Finally, we must remember that the task is massive because it ultimately involves the way in which China's people think of themselves and their relationship to authority. This is not cultural determinism. Ideas of justice ring as true to the Chinese as they do to all of us.

Instead, it is to urge that if legal development is to be done well, we must appreciate that it takes time to build serious institutions, that it will be difficult, and that most likely the ultimate shape of the success and the credit for that success will reside principally with the Chinese people themselves.

I thank you very much for inviting me.

[The prepared statement of Professor Alford appears in the appendix.]

Representative BEREUTER. Thank you very much, Professor.

I am going to recognize Congressman Levin, and Senator Hagel, when he returns. But then Chairman Baucus has a list of order for questions, based apparently on time of arrival. I will try to stick with this, unless he changes his idea.

Thank you, first of all, very much for your testimony. I am sure that the members have some interesting and important questions for you.

We will follow the 5-minute rule, but I think there is opportunity for us to do several rounds, too.

Congressman Levin.

**OPENING STATEMENT OF HON. SANDER LEVIN, A U.S.  
REPRESENTATIVE FROM MICHIGAN**

Representative LEVIN. If I might just say a few things, preliminarily. This is really an important moment. This is not really another hearing, not to diminish the importance of regular Congressional hearings. But this is something different.

We have a commission that was set up that is executive and Congressional, and there are not very many examples of that, with its own staff. I must say, we have been privileged to receive resumes from people of immense talent, starting with Ira Wolf and John Foarde, who have not, I think, been introduced, but I think

you have come to know them. I think this indicates the seriousness of our intent.

I have an opening statement and I would ask, Mr. Chairman, that it be entered into the record.

Chairman BAUCUS [presiding]. Without objection.

[The prepared statement of Representative Levin appears in the appendix.]

Representative LEVIN. I just want to say a couple of words about it.

The reason for this Commission, we face this situation, China going into the WTO, a country of immense size and of immense importance. How are we to respond to this?

Are we to rely simply on kind of the natural unfolding of our relationships, our commercial relationships with China? Are we going to, in addition to whatever might unfold through those relationships, try to impact China's course?

That was important, not only in terms of our overall view of human rights, but also because increasingly China was going to be part of the overall picture. There needed to be rules of engagement, and also because China was going to compete with us and the rest of the world; in a sense, rules of competition.

Built into those rules, needing to be developed over time, are standards, floors, including human rights, including the rule of law, including as part of human rights in the legislation, worker rights. So that is what we are wrestling with, how we do that.

The feeling was that we needed to combine engagement with other ways to impact. For commercial reasons it was important because, without the rule of law, what would the commitments mean? But also, because we were going to engage and compete, the rule of law was important as we built a floor for this competition.

So that is what we are about. I think we are all intending to meet this challenge. So, we hope this is just the first of many productive hearings. The Helsinki Commission is perhaps the only model like this. I think it worked. We have to remember, though, that we are dealing with a different set of situations.

In a sense, with Russia, with the Soviet Union, there was little commercial contact, little contact of any kind. This was something from the outside almost completely, except when they would let us in.

In this case, the interaction is going to be much more vigorous and somewhat different, but no less important. So we have a commission that is not identical to Helsinki, but has some of the same earmarks in terms of staff, and in this case a Congressional executive level. So, I think this is really a very important moment.

So, let me just ask you if any of the four of you want to give us further advice. There has been some reference, for example, to what is going on among workers of China. There was a recent article in the Washington Post about this. It is just one example of the fermentation that is going on within China. The question is, how do we effectively impact, constructively impact?

So feel free to give us advice at our baptism. Mike, you are shaking your head.

Mr. JENDRZEJCZYK. Well, I have lots of suggestions, but I will just give you two. And Mr. Levin, I want to say I am especially

happy to be here today with you, because I remember the first discussion I had with you about the possibility of the Commission. I believe it was in a hotel in Seattle during the World Trade Organization Summit.

I never would have believed we would have reached this point at that stage just a few years ago. I remember in that discussion, you said many of the things you just said now, and with the same kind of eloquence.

I mean, I think this issue of labor rights is one of the most difficult, the most complex, but also the most important.

I think in a very practical way, there clearly are areas, for example, having to do with worker health and safety in the coal mining industry in China, for example, where there are a huge number of deaths and casualties, where China would probably welcome some forms of bilateral assistance and/or support.

That is relatively easy. That does not hinge on or touch on the far more sensitive political issues that have to do with, for example, reforming the labor law to make it possible for workers to organize their own independent trade unions. That is now, as you know, illegal.

Having said that, last October the labor law was amended and there are now provisions that theoretically say that workers, even when choosing representatives for the All China Workers Federation, the official trade union, that their representatives should be chosen by the workers, not the management or the party cadre, which is the way it is normally done.

Now, I do not know what this Commission itself can do to encourage adequate implementation of this relatively new provision. Certainly, monitoring how it is implemented would be a step in the right direction.

That brings us back to this fundamental problem that I think this Commission is going to face, and that is getting access to good, accurate, solid information on the ground in terms of what is actually happening, and where there are opportunities for change.

The labor disputes that reach the western press are just the tip of the iceberg. You know if you read the official Chinese media, there are tens of thousands of labor disputes every year, and they have been increasing in the last few years.

Many of them are very quickly resolved. The Chinese government says, pay off the workers, give them their owed wages, get them off the street. If they continue to stir up trouble, yes, detain or arrest them, or put them into a reeducation camp.

This is why I stressed access to China by the ILO, by this Commission in terms of having someone on the ground based in the American embassy. I think it is going to be fundamental for you to come up with a viable strategy to do precisely what you think you want to do.

Representative LEVIN. Thank you.

Chairman BAUCUS. Those are good points. There are many members of this Commission and little time, so we are going to have to honor the 5-minute rule. We will work our way through the procedure, since this is our first meeting.

I might tell my fellow Commission members that, our system is recognition in order of arrival.



I have a question for Mr. Xiao, and anyone else who wants to answer. How many senior people in the government in China share some of the concerns that we are now voicing?

That is, problems with the reeducation through labor system, and the hukou, and maybe the rule by law rather than the rule of law.

How many hold these views and how strongly? One, is who holds these views privately. Another is do they discuss it among the leadership privately. The third, is if it is voiced publicly.

So those are three different categories of the degree to which a significant number of people in the Chinese administration may agree with, to some degree, the basic points that we are now discussing.

Mr. XIAO. I think, first off, these issues are well-known issues among the Chinese leadership. It is not that they do not know about them. It is their perception or perspective, looking at these issues, that are different. Basically, from their position, they see the necessity that they maintain the political status quo. It is a necessity for stability. They know this issue, but too bad. That is how China runs.

There are reform-minded, thinking people in the leadership, and I think more and more people see it is inevitable. In the long-term, China has no other alternative, that being a modern a country, they have to follow the democratic government rule of law and protect human rights. I do not think, in the long term, people can really argue about that, even if they do not publicly say it.

What they do not know is, from today's China, the current status, how to get there, who wants to take the lead. This current leadership, President Jiang Zemin, Zhu Rongji, and Li Peng, decided on not taking political reform, period.

But Chinese leadership transition is coming up in the next 2 to 3 years for a new generation of leadership. I think political reform, including rule of law not just rule by law, is a fundamental issue and that leadership will look into it.

I think this actually is a way in for the Commission, for the powerful American Congress and administrative and Executive Branch to engage in those political visions and values with the Chinese leadership. I believe what they need is more on how to get it there. They are already aware of those issues.

Chairman BAUCUS. What is the proper way to engage the next generation?

Mr. XIAO. China's politics are not transparent. So whatever they say in the current political discourse does not really reflect what they believe is the next step.

But there are certain basics. I think there should be pressure from both sides, pressure from the outside externally. Several people have mentioned that, to engage China in playing by international rules, that includes human rights. If China wants to be part of the international community, which it does, increasingly, those basic norms must be respected. That is the one place where you can engage the Chinese leadership.

The other one I would fully emphasize is how to empower the Chinese people. When I say the Chinese people, not just those pub-

lic advocates for human rights and democracy, but also the reform-minded officials at every level in Chinese society.

In my view, one focus is to help to promote the freedom of information and freedom of expression in China, to ensure their rights, to facilitate that kind of effort. For example, with the internet. By that, the Chinese people will expose more corruptions, publicize labor exploitations, and to speak out more on the monitoring of the government. So freedom of information, freedom of expression, is a key.

Chairman BAUCUS. Do any of the rest of you want to respond to that basic question?

Mr. ALFORD. If I might. I am in concurrence with what was said. I think, of course, it is hard to know what is going on inside the Chinese leadership. But I imagine that there is pretty widespread recognition of a need to change. The question is, how to do it and how far to go.

It is interesting that there are statements on occasion by senior Chinese legal officials acknowledging some of the problems we have spoken of with regard to torture, arbitrary arrest, and official abuses.

Perhaps even more interestingly, there is now a broader spectrum of ideas that academics and others can voice—which suggests an increasing measure of tolerance. There have been academics who have spoken out strongly against reeducation through labor, something that would have been hard to imagine 8 or 10 years ago.

Chairman BAUCUS. Thank you very much. My time has expired.

Next, is Congresswoman Marcy Kaptur.

Representative KAPTUR. Thank you, Mr. Chairman.

Let me just say, this being our first meeting, I want to publicly acknowledge the yeoman's work that was done by Congressman Levin in the House in crafting this provision, along with Congresswoman Pelosi, who has just been a champion for human rights and has led us as a world, and our dear colleague Frank Wolf from Virginia, just for helping to make this day possible.

I want to thank Chairman Baucus and Co-Chairman Bereuter for leading us all in this extraordinarily important effort. I am very conscious, though not a senior Member of Congress, that I am here because the men and women in my district who struggle every day to earn a living and to have a better way of life have sent me here.

As a member of this Commission, I do not want to forget them and the plight that they face in the workplace every day. As a member of this Commission, I know it is my responsibility also to never forget the men, women, and children in China who are struggling to survive another day, often under very brutal conditions.

As one American, I view the military relationship that we have with China as probably predominating the policies that we have followed over the years, followed more recently by our commercial relationship, which has now resulted in a gigantic trade deficit with China, where China now remains the largest holder of our dollar reserves, \$30 billion, \$40 billion, \$50 billion, \$60 billion being made in a very lopsided way by certain interests.

My question really goes to the nature of that commercial relationship and to what extent we can use the power of the market-

place to help to promote the legal reforms that you all have asked to focus on in your testimonies today.

I have listened very carefully to Mr. Xiao and to Mr. Alford, Mr. Jendrzejczyk, and Mr. Feinerman talk about the perception versus reality of China.

I have to place this on the record, because I asked myself this question. These items, the women who made these in China, were paid 17 cents an hour. If I look at our trade deficit, I look at the toys of misery that come out of China. I say to myself, the dollars that are made off of this transaction, who makes them? How does that profit in any way get turned toward the development of a better human rights record in China?

In my own region, I wish to place on the record 2,000 workers at Huffly Bicycle in Salina, OH no longer have jobs. They used to earn \$11 to \$15 an hour, with benefits.

The workers in China who have replaced them through a subcontractor through Taiwan are paid 30 cents an hour. The quality of the bicycle has gone down in terms of the metal used in production.

Huffly maintains an 85 percent market share here in this country and the prices have not gone down at K-Mart and Wal-Mart where you purchase these bicycles. Who is making the profit off of that change, and how can some of those profits be turned to the development of a rule of law that really works?

So my question goes to the heart of the commercial relationship. Would anyone care to comment?

Mr. JENDRZEJCZYK. Representative Kaptur, I think you have touched on a very important problem. I do not know of any one solution, but I do know one suggestion that has made its way through the Congress as legislation, but has never been enacted.

That is, a code of conduct for American companies and their Chinese, Taiwanese, and Korean subcontractors and suppliers that looks at both their obligations under international and under Chinese law to protect their Chinese workers and others from this kind of exploitation.

This code of conduct bill was introduced by Mr. Lantos in the House in 1995. It earlier had been introduced in the Senate by Senator Ted Kennedy. It wound its way, in one case, through both Houses of Congress and got attached to another piece of legislation, but was never enacted.

My organization, and other groups, advocated strongly last year for enactment of this bill before China joined the World Trade Organization, precisely to provide American consumers with the information they need to know that if a company is not abiding by this code of conduct and filing regular, yearly reports with the Secretary of State and the Labor Department on how they are implementing this code, they should have that information at their disposal before they make decisions.

I would recommend that this legislation is now more important than ever, because China is in the World Trade Organization. I think it is a long way from implementing its WTO obligations, but I think this kind of legislation would provide at least more information and some assurance to American shareholders and consumers that workers in China are not being exploited and their basic

rights are being protected, especially, as you say, women workers who tend to be exploited the most.

Representative KAPTUR. Yes. As I said, in many locations trade is not gender-neutral.

I also want to place on the record at our first hearing that globalization may have a logic, but it does not have an ethic.

Mr. Xiao, did you wish to make a statement?

Mr. XIAO. Yes. I just wanted to simply say that is such an excellent question. If you engage in a substantive conversation with a Chinese official, that is the question to ask. Yes.

Representative KAPTUR. I would be very interested in the area. I will only end, in 10 seconds, by saying to both of our able chairmen, I hope that, as a part of this Commission's work, I long for the day to travel through China, through many of the provinces where this work is being done, and to somehow be able to talk to the workers. I doubt that we will ever be allowed an opportunity to see the real thing, but it would be my hope.

Thank you.

Chairman BAUCUS. Thank you very much, Congresswoman Kaptur.

Next, Secretary Findlay.

Mr. FINDLAY. Thank you very much, Mr. Chairman. I am very pleased and honored to be with the distinguished Members of the Congress and Senate on this panel.

It was said of the USSR years ago that, if you looked at the piece of paper that was the Soviet constitution, it was a spectacular constitution that included a lot of rights. The problem was that there was not the institutional backing to enforce the rights: an independent judiciary, independent labor unions, independent prosecution.

So it seems to me that the key to bringing human rights to China is not only to get the laws right, but to get the institutions right. I would just be curious, probably from Professor Alford first, to talk about how the United States can influence institutional change in China.

Mr. ALFORD. Thank you. That is a very perceptive question. My own sense is that that is exactly right. It is not chiefly a question today of the promulgation of legislation in China, although certainly much law, criminal procedural law, criminal law, labor law, and so forth, could be drafted far better and refined. It is a question of building institutions that give those laws vitality.

China is moving, as Jim Feinerman suggested, in that direction, but it needs a great deal of help. Some of the problems, as we have described in this panel, are clearly directly political in terms of the Communist Party's involvement, but some of them are even larger and deeper, in a way.

We need, as was suggested, to reach out to the Chinese populace as a whole to help acquaint it with its rights and provide it with more institutional vehicles for realizing those.

To give you a quick illustration, China has something called an administrative litigation law that enables people to take local officials to court. It has been over-sold in this country. It is not quite as spectacular as some of its proponents would suggest, but it is a beginning. Twenty years ago, 10 years ago, it was almost incon-

ceivable that somebody could challenge officials in that way. Now, it is there. The quality of judges is very uneven, but improving. So I hope we, as a government, will find means of supporting activity that makes more of this possible.

Mr. JENDRZEJCZYK. One other suggestion is to focus on legal aid. The new Chinese Justice Minister is eager to expand the nascent legal aid system to every part of China, especially in rural areas of China, as part of a poverty reduction strategy to empower women. There seems to be now an eagerness at the local level, but a lack of resources and training.

We have been talking with the World Bank to try to get the World Bank involved in this whole area as part of its poverty reduction strategy.

The bank has not given legal aid assistance to China, as far as I know, since 1994, when it got its last I.D.A. loan. So I think this area of legal aid might be one very specific area to focus on. I agree, otherwise, with all of the rest of the panelists, this is a very long-term, decades-long proposition, moving China from having laws on the books to enforcing them.

But having legal aid resources available to local peasants and workers who now, for the first time, may have the ability to go to the courts for some redress of grievances, that would be, I think, a significant contribution.

Mr. FEINERMAN. I would just like to add that there are some missing bricks in the structure that also need to be addressed, and there are programs that we could effectively mount that might help with them.

The judiciary, for example. If you are going to try and make these claims and process these rights, you need judges who understand the law, who can actually make change happen. That is one of the weakest links in the Chinese legal system as it has evolved today.

There are also resources that could be devoted, and we have a lot of experience in the United States with what would be called popular legal education, that is, making more citizens more broadly aware of what their existing legal rights are and creating a groundswell of pressure for pushing for more of them. That is the kind of thing where American experience and techniques might be brought to bear with regard to that.

Last, I would just echo a point that I think Professor Alford was making. That is, sometimes it is easy to mistake certain kinds of progress for genuine progress, to look—and the Chinese are often very good at this—at the number of laws that were passed, the number of lawyers that have been trained, and just look at statistics without seeing outcomes, without seeing what has really happened. That is the important thing, I think, to try to assess. It is something that we need to get more information about, too, on this end.

Mr. FINDLAY. I have another question, but I think with the yellow light on, it would take too long to ask.

Chairman BAUCUS. Go ahead. Shoehorn it in.

Mr. FINDLAY. The second question I wanted to ask was about China's accession to the WTO. It has been said that there is a demonstration effect that happens when a nation comes into the com-

munity of nations and begins to have to abide by international norms, that it can lead to abiding by human rights norms and its own internal laws.

I would like any of you to comment on whether you think such an effect works.

Mr. JENDRZEJCZYK. I think it does, perhaps, over time. I would underline the "perhaps" and the "over time." For example, China ratified a U.N. convention against torture and ill treatment, I believe, in 1986. Yet, Chinese official publications and legal authorities admit that torture and ill treatment is a huge problem.

On the other hand, having this as an international treaty that China is a party to, that it has to file reports with the United Nations on compliance and implementation of its treaty obligations is a contributing factor, but only a contributing factor.

I think, given the other complex dynamics that others here have described, everything from the succession struggle under way this year to the enormous dislocation likely to happen once WTO reforms are implemented, social and economic dislocations. Those are factors cutting against any treaty that is signed at the highest levels of the government.

So I think these long-term institutional reforms will be enhanced by China's adherence to international standards of all kinds having to do with trade, non-proliferation, and human rights.

But, again, I think we are all sounding the same theme here, that the gap between enforcement and implementation and signing on the dotted line is enormous. That is precisely the question: How do you address that?

Chairman BAUCUS. Thank you very much.

Let me read the list here that I have, in order. Congressman Dreier, Mr. Craner, Congresswoman Pelosi, Congressman Davis, Congressman Wolf, Congressman Pitts. I understand that Senator Hagel is going to return.

Go ahead, Mr. Craner.

Mr. CRANER. Thank you very much, Mr. Chairman.

I want to thank you and the other Senators and Congressmen here, for bringing this Commission together and addressing what I think is a very, very important aspect of our relationship that could have great long-term effects. Thank you.

I want to pose a question to Mr. Alford. That is, if you notice any significant shifts in legal reform, debate, or directions versus a decade ago. I think one would say that it was about a decade ago that these reforms began.

Mr. ALFORD. Yes. Thank you for your question. I also want to commend the work that you did previously with rural elections, which I think has proven over time to be very important.

I think we see signs, to be frank, in both directions, both positive and not as positive. That is, there are things people can talk about in terms of legal reform, some of which have been realized in action, amendments spoken of earlier in the labor law and efforts to improve the criminal procedure law, though it is still quite imperfect, to be sure.

But I think also, as we engage further in legal reform, want to be sure not to see it as a panacea for everything in China. For instance, corruption is a more staggering problem today than it was

10 years ago. Sadly, lawyers are a party to this. Indeed, they have disappointed some of the hopes that people had that they might be a vanguard for bringing about change.

That still leads me, in the end, to believe that we must intensify our efforts at engagement in legal development. But we do not want to be naive about it being a uniform path.

Mr. CRANER. Let me ask a follow-up question. In the area of legal reform, it seems that there are two directions one can go in. One has to do with the commercial area, and the other, I think some of you have outlined different ideas or different program ideas here today.

How do you see the effect of working on commercial law reform for human rights as opposed to what one might call more direct access through some of the programs you have discussed today?

Mr. ALFORD. If I could offer a quick comment. I think the two really are interdependent. I think that the emphasis so far historically has been more on the commercial side, so I personally would prefer to see more on the other side. Work on the other side, the non-commercial side, benefits the commercial side in the long run because there will not be respect for contractual rights if there is not respect for very basic rights.

Mr. CRANER. Thank you.

Jim.

Mr. FEINERMAN. I would just echo that. I think that the problem that has been perceived so far in the incomplete process of reform that China has experienced is that legislating new laws, trying to make strides in the commercial area, without a contemporaneous development of the more structural and systematic aspects of the legal system leads to eventual failure, or at least partial success, because you cannot make the next breakthroughs unless you have those things in place.

You can have the most perfect commercial code on the books, but if you do not have the judges and the lawyers who can make them effective, then it all comes to naught.

Mr. XIAO. Just look at the legal reform from my particular perspective. About 12 years ago, we started the first effort in trying to find a lawyer for political prisoners in China. There was a lawyer, but he could do very little. But we were excited there was a lawyer trying to do something.

Twelve years later, it is even more difficult to find a lawyer to defend any political prisoner, and there are more political prisoners than there were 12 years ago.

Mr. CRANER. I yield back the rest of my time.

Chairman BAUCUS. All right. Thank you very much.

Next, Congresswoman Pelosi.

Representative PELOSI. Thank you very much, Mr. Chairman. I, too, want to commend you and Mr. Bereuter for your leadership here. I think you will present us with a tremendous opportunity where we can work together to hopefully accomplish something to promote human rights in China and improve the conditions of the people there.

So, as the Chairman has said, the decisions about what happens in China ultimately can only be made by the Chinese themselves.

I completely agree with you, and we want to give them that opportunity to do that.

I want to commend my colleague, Congressman Levin, for extraordinary leadership and persistence, and excellence in how he proceeded on this. I hope that we can, in the end, come together around something that will make a real difference. I am pleased to serve with all of you.

I want to commend the witnesses for their very excellent testimony. I want to congratulate you, Mr. Xiao, on your MacArthur Award for Excellence. Congratulations. And Mike Jendrzeczyk, of course, I have worked with over the years, and we appreciate the very scholarly presentations that we had. They were very useful.

Mr. Chairman, I think that if we could accomplish something in the area of rule of law, not rule by law, and rule of law with respect for human rights, it would be a great thing. I hope that it would not just focus on the economic side where we have transparency and opportunities because of the WTO, but it would be on both sides.

I fear a dual track, where we would do it so that it pleases the business community doing business there. That would be a good thing, but it is not the only thing. I do not want the people of China to be given any more rights than the business community operating there.

We have been at it for a long time, some of us, on this issue. At the time of the Tiananmen Square massacre, the reported trade deficit was \$2 billion a year.

We thought we could use that for leverage, conditioning trade with China to stop the proliferation of weapons of mass destruction, to stop unfair trade practices, and, most importantly, to free the prisoners of Tiananmen Square. When I say most importantly, most timely at that time. It was all-important.

Here we are, almost 13 years later. The prisoners are still in prison from Tiananmen Square, many still are. The Chinese are still proliferating weapons of mass destruction. The \$2 billion per year trade deficit is more like \$2 billion per week.

So I do not think it has worked, what is there. Again, none of us has been successful in freeing those prisoners or improving the situation in China.

I am interested in what our academic guests—you all are academic guests, but Mr. Feinerman and Mr. Alford—have to say because it just reminds me of what we all know: China has contradictions.

If you shine the bright light of freedom there, you will see areas of improvement, there is no question. But you will also see massive areas that we cannot ignore, we simply cannot ignore. So, I hope that we can come together around something.

I am pleased, and I want to congratulate the Bush administration. Many of us have worked for many years, many at this table, for Ngawang Choepel's release. I am so honored that he joins us here today, after so many years in Tibet, in prison. I do not know if he is still here, but he was here earlier. I think we should all welcome him. [Applause].



Mr. Secretary, again, I congratulate the Bush administration. It happened on your watch. Again, we have all been pushing for years. But thank you for your leadership in this area.

Mr. CRANER. It is the product of the work of very many people. Representative PELOSI. You are very gracious.

What we have heard from two of our witnesses, at least, is that intercession by Congress and by the outside world for political prisoners is effective.

So, in friendship, Mr. Chairman, I would just say that I would hope that the Commission would take up the suggestions that are offered in terms of the President's visit to China, in calling to the attention of the regime some of the names of prisoners that we would hope would also be released.

We know from the prisoners that their conditions in jail improve when their names are brought up. We also know that sometimes some of them are freed.

So that is why I do not want to be wedded to the systemic structural change, which I do not really see in the bill, but I see that has been presented as a criterion for whether we were to take a particular action. It is true, releasing a few prisoners does not solve the problem. But I still think that we should try to release some of the prisoners.

I just wanted to see if we could get any comment from our witnesses here on the prospect for us doing something, with allowing the Chinese people to make the decision, but how we could have real rule of law with respect for human rights which applies to people's lives, their human rights.

Not just that, if they are charged with a crime, do they have rights to defend themselves. But, for example, Xu Wenli, for example, is in prison because he talked about politics in another way than the regime would allow.

I see that my time has expired. I will have to defer to the discretion of the Chairs. Maybe I will just put it out there as something they can come back with later.

Chairman BAUCUS. You are good, Nancy. You are good. You are good. [Laughter.] All right. A very short answer.

Mr. FEINERMAN. I would just say two things. One, is I think it is important to keep in mind that this may happen over time, but there are ways that we can contribute to it.

One of them is the pressure from outside, which is very important. Another, is using the institutions here over the long run to provide people who can do this.

Let me give you one example of someone who combines both. A woman who is a contemporary of Professor Alford's and mine when we were law students over 20 years ago went back to Taiwan after getting her LLM, and was promptly put in prison. She was a political prisoner. In fact, I and many of my classmates joined Amnesty International to work for her release. She is now the Vice President of Taiwan.

It is an example of what can happen in another Chinese society which was a repressive regime for almost four decades, which existed under martial law, and which, at the time that she was arrested in 1980, seemed insusceptible to any forward movement. People had been working on them for years. But the long pressure

that was brought by people from Taiwan who had studied in the United States and stayed here or went back and began to build a middle class, who learned while they lived in other societies abroad what democracy and the rule of law could really bring to their lives, created a tidal wave that eventually won her freedom and propelled her and her party into political power.

Chairman BAUCUS. Thank you.

Mr. JENDRZEJCZYK. May I make one other suggestion?

Chairman BAUCUS. All right, but quickly. In honor and respect of others here who have not yet had a chance to ask questions, I think I am going to have to move on. I very much appreciate that. I think this hearing has whetted the appetite, and that is positive.

Congressman DAVIS.

Representative DAVIS. Thank you, Mr. Chairman.

The level of repression of what appears to be legitimate public political discussion and debate that you provided to us is both breathtaking and artful.

I would like to ask you some questions about the extent to which unleashing the full force of the internet is part of the solution here today.

How potent at force is that for the change we are all talking about today?

Chairman BAUCUS. Congressman, if I might just interrupt here. This is a very good session. I very regrettably must leave. Chairman Bereuter is going to continue here. We are going to gather together, frankly, after this and figure out where we go from here, both procedurally and substantively.

But I very much appreciate the interest of everyone. We all collectively, together, appreciate the interest of everyone. I pledge my efforts to make this work, to make this Commission effective. I think we can do it. I feel very good about it.

Our constitution provides for a separation of powers, but here we are in joint collaboration of the Executive Branch and the Legislative Branch, together on the same panel, asking questions together. That is something I think we should pursue as much as we possible can in the future.

Thank you very much. I very much apologize for interrupting.

Representative DAVIS. Thank you, Mr. Chairman.

My question is, to what extent is the power of the internet a significant force in what we are discussing today? How effective are these controls that many of you have documented? What role can we play in further unleashing the power of the internet to improve upon the quality of public discussion/debate on political issues?

Mr. XIAO. First, the internet population today is about 33 million, and growing rapidly. They are a relatively young, educated, urban population. It is also vastly expanding to many different corners of China.

It is a very special demographic. It is not for the peasants, not for the workers, not for other people. But it does reach to the urban-educated business and government officials in such a way that it has already had a visible impact on China's freedom of information and freedom of publication.

In other words, certain news that the government tries very hard to censor is already being exposed on the internet, and puts pres-

sure on official newspapers and televisions and they have to cover it.

The government censorship effort is also very remarkable, from the internet police section to 60-some internet regulations and laws, to actually working with some western tech companies to develop the surveillance, the firewalls, and the censorship, sophisticated software, trying to keep things under control.

The key issue here is what the American Government and civil society can do, and this Commission can do, to facilitate the further opening up of the internet. I would suggest that the first step is to look into the Chinese Government's WTO obligations. Already, what the Chinese Government is doing domestically, I believe, is violating certain of those rules already.

Mr. JENDRZEJCZYK. I would endorse what Mr. Xiao has said. I would just add, I think the private sector can also play a role. I think American companies, for example, can be encouraged to allow Chinese citizens—students, for example, and others, researchers—to use their internet facilities when the companies are shut down for the day, but when they are still on line, where it would be much easier for them to get around the various firewalls and obstacles to free access to the internet.

Beyond that, of course, American companies, especially those that are selling software and trying to expand access to the growing internet market, should, I think, be very cognizant of the fact that, under Chinese regulations, they are supposed to report those who are using the internet to download potentially subversive information about Taiwan, about Falong Gong, about Tibet, and so on, or perhaps even getting access to CNN or the Washington Post.

Companies have a responsibility to find a way to square their obligations to their online subscribers with their ostensible obligations under Chinese law while, most of all, protecting the rights of free expression. I think that would also be a contribution.

Mr. FEINERMAN. I would just like to suggest that you may want to consider other technologies besides the internet. I have participated in very effective call-in programs on VOA [Voice of America] radio and television, for example. People given access to free call-back services in China call in and ask wide-ranging questions about a range of issues in human rights and the rule of law.

You could flood Chinese markets with cheap CDs that provide this information. Many more people have access to a computer than have a connection to the internet. There are a lot of other ways to spread the message, although I would also commend the use of the internet as one of the vehicles.

Mr. ALFORD. I would echo what has been said. Indeed, as mundane as it may sound, efforts in which Professor Feinerman and I have been involved in building law libraries in China have actually begun to bear some fruit, where people can begin to use it. When we first went to China many, many years ago, nobody could get access to those materials. These days, they are being used. So, I think your question is a good one and we should work on all of these fronts.

Representative DAVIS. Thank you.  
Thank you, Mr. Chairman.

Representative BEREUTER [presiding]. Thank you very much, Mr. Davis.

The gentleman from Virginia, Mr. Wolf, is recognized.

Representative WOLF. Thank you, Mr. Chairman.

Let me, at the outset, just say I apologize for being late. I had a speech uptown.

I do not completely agree with what has been said, and I want to be proven wrong. One, I think the Commission is tilted too much toward business. I have looked at the resumes. I believe the business community has a greater impact on this Commission than those for human rights. If you look at the law that created this commission, it said, "Function: Monitor in compliance with human rights or to reflect compliance or violation of human rights," and to compile a Victims list. Well, if we do not contact people about the victims, then having a list will not be any good.

I put some names in with regard to staffing for human rights and religious freedom. The staff said, no, no, no, no, no. Finally, I said, hire somebody from my staff. They said, we only want an expert on China.

I would rather have an expert in labor issues who did not know anything about China but who cared passionately about religious freedom, than somebody who has been a professional China person and does not really care very much about religious freedom and human rights.

So, second, Mr. Levin, all I can say is, the Helsinki Commission, which I serve on, is an advocate for human rights. I will tell you, Mr. Smith and Mr. Hoyer and all of the Members, have always been advocates for those who have been in prison.

Mr. Hoyer used to go to Eastern Europe, go to the Soviet Union and advocate for it. Scharansky will tell you, when his name was mentioned on those lists when Mr. Hoyer would raise it, and others, that their life got better. Sometimes they did not get out, but their life in prison got better.

So this Commission should be an advocate for human rights. Second, I believe the Commission is too weighted from the business community and I have not seen anybody on the staff who has a passion for human rights. There are 11 Catholic bishops, and Bishop Su Zhimin gave Holy Communion to Rep. Chris Smith, and he is now in prison. There are evangelical house churches. There is a new document that a press person called me about today that is going to break on the persecution of the church.

So I think, if you have got a list, raise it. Second, hire some people. If you do not want to hire somebody from my staff, get somebody else. But hire somebody that maybe was not for MFN [Most-Favored-Nation], somebody who was not for all of these things.

I lost. My side lost. The business community who advocates for religious freedom and human rights can do more than those of us who are opposed. But I see a slant in the staff, and we should use this Commission for everything that we possibly can.

So, talk to Scharansky. Bring him as a witness and say, if we had had a list, and we just kind of kept it in the file cabinet, would that have helped you? He would have said, no. When you spoke out, and President Carter did—it is bipartisan. Jackson-Vanik, two

Democrats, did a better job than anybody else. So, that is my second point.

I have got more, but I just wanted to say to the witnesses, Mr. Feinerman, I went back and looked at what you said in an article. In 1997, this is what you said. "Harry Wu and others have tried to stir up great controversy about how goods made by forced labor are flooding into our market. It seems to me to be the height of hypocrisy for us to get on our high horse about China making its prisoners work, given the fact that we do the same thing in our prisons."

Wrong. I have been in Beijing Prison, number one, with Chris Smith. We picked up the shoes and the socks that they were making. They were going through living hell in that prison. To compare Beijing Prison, number one, to our prisons, is absolutely wrong. Do you still agree with that?

Then you went on to say that "the Chinese system is designed to make offenders pay a harsh penalty." Some of them give their organs, some of them give their kidneys, some of them give their cornea. You go on to say, "a harsh penalty, on the theory that it scares people so they will not come back into prison. You can argue that it works. Who are we to argue? It is their choice." Do you still agree with those statements that you made in 1997? Have you ever been in a Chinese prison?

Mr. FEINERMAN. Yes, I have.

Representative WOLF. What prison?

Mr. FEINERMAN. I have been in both the Beijing Number One Prison and the Shanghai Prison.

Representative WOLF. And do you think those conditions are as good as they are in the United States prisons?

Mr. FEINERMAN. No. But the conditions for life in China generally are not as good as they are in the United States.

Representative WOLF. The torture and the problems that are going on. Call their witnesses. We never ask anybody in our prisons to give their kidneys and their cornea. Have you seen the picture where they take people out of the prisons and shoot them?

Mr. FEINERMAN. You are putting words in my mouth, Congressman. I do not condone the death penalty at all. I certainly do not agree with forcing people to donate their organs.

Representative WOLF. Reclaiming my time, you said, "Harry Wu and others have tried to stir up a great controversy about how goods are made by forced labor and are flooding into our markets. It seems to me to be the height of hypocrisy," for Harry, who spent 17 years in a slave labor camp, "for us to get on our high horse about China making the prisoners work, given the fact that we do the same thing with our own prisons."

Mr. FEINERMAN. Parsing the English language, Mr. Congressman, I said it was the height of hypocrisy for us, not for Harry Wu. I admire his struggle.

Representative WOLF. Harry is an American citizen.

Mr. FEINERMAN. I know what he has survived. But I am saying, for other people who have not had those experiences, to first of all mischaracterize the percentage of goods that come to the United States that are actually the product of forced labor—

Representative WOLF. There is a lie. There is a lie. In their labor practices—we had a gentleman come through the other day. There are labor practices with regard to making products that are flooding the market, whereby the people live in dormitories.

So, Mr. Chairman, I would just say, I think you ought to hire somebody who has a commitment and a passion to human rights and religious freedom.

Last, Mr. Bereuter, there is no one that is a better Congressman than you, and for Mr. Baucus, who I do not know, I would stipulate the same. But I think the business community, if they speak out, and this Commission speaks out, will actually have a greater impact than when I speak out, or somebody on my side. The Sullivan principles from South Africa ought to be adopted.

So, I think the Commission ought to be an advocate for human rights. If we are trading, that's good. But, as we are trading, we should be speaking out. We can make a difference. I think this Commission can be—I was surprised that I was appointed to it—the difference. It can be the difference, but only if we are not a wall flower. We should be advocates for human rights. With that, I yield back the balance of my time.

Representative BEREUTER. I thank the gentleman from Virginia.

You might be interested to know—not that I had the influence—I requested you should be on the Commission, along with several other members.

Representative WOLF. I appreciate that.

Representative BEREUTER. And we all have a passion for human rights in many ways, or I think we would not have been appointed.

I will say this with respect to Chairman Baucus, myself, and Sandy Levin, and Senator Hagel. We anticipate 14 professional staff members, perhaps going beyond that. Only three, to my knowledge, have been hired. I know I was specifically requesting that we have one person to focus exclusively on religious issues. Of course, we had broad support for someone to focus predominantly, exclusively, perhaps, on labor rights issues.

So, give us an opportunity to demonstrate the balance on the Commission. I hope, and think, you will not be disappointed.

Representative PELOSI. Mr. Chairman.

Representative BEREUTER. Yes, gentle lady.

Representative PELOSI. I was going to ask Frank to yield, but I just want to make one point on the prison labor issue. It is not a question only of the conditions under which people are imprisoned in China.

The point is, use of prison labor for products for export to the United States is against our law. It is not about any question as to, do we have prisoners making products in our prisons. We do. But it is not for export to another country.

It is not where you round up people, without trial, without representation. You recruit your workforce free of charge, no-cost labor, and subject them to some of what Mr. Wolf said. But, regardless of the conditions, products made by prison labor are prohibited from entering our country under our law.

So to charge Mr. Wu with hypocrisy, or us as a country, for suggesting that we should not prohibit prison labor goods from coming

into our country because prisoners make goods in our country, is really more the point. I think you are wrong there, Mr. Chairman.

Representative BEREUTER. We will give Mr. Feinerman a chance to respond. But I would like to complete the first round here, and that is Mr. Pitts and myself.

So, Mr. Pitts, you are recognized for 5 minutes.

Representative PITTS. Thank you, Mr. Chairman, and thank Chairman Baucus for holding this important hearing. I thank the distinguished panel for their testimony.

I have formal remarks that I will submit for the record.

Representative BEREUTER. Without objection.

[The prepared statement of Representative Pitts appears in the appendix.]

Representative PITTS. As we talk about legal reform and giving assistance to the Chinese Government for civil society development, I think we must be specific in our assistance, targeting areas in which a real, practical difference can be made.

For example, it is vital that, as just rule of law is developed in China, that the distinction be made that criminal action be dealt with under established criminal law. Official PRC Government documents make it clear that the drive to maintain control over religious believers in China remain strong.

In one report regarding a meeting of Chinese officials, the officials were charged,

Quickly gather the essential personnel and find out the development and activities of this cult in our province. Carefully gather all the information and try to catch all the members in one blow.

Pay attention to keep it confidential, and work without talking. Comrade, the head of the Ministry of Public Security emphasized specifically that we need to work more and talk less, and smash the cult quietly.

Not the statement of officials who aim to protect the freedom of conscience of their people.

I have a couple of questions for our panel. One, how should the Commission be working with other governments to maximize influence on China? Can you be specific? What are the most important, specific questions that the commissioners should be asking Chinese officials? If you could comment.

Mr. JENDRZEJCZYK. I would just comment on your first question about working with other governments. I mean, I think you are absolutely right, Mr. Pitts, about targeting assistance.

There have been a lot of discussions in the various bilateral human rights dialogues with various governments, including the United States, the European Union, Japan, and others, and Mary Robinson, the U.N. High Commissioner on Human Rights, about reeducation through labor.

I think my colleague Xiao Qiang mentioned this. This is an arbitrary system of punishment used in much the way you described, that anyone can be administratively sentenced without charge or trial for up to 3 years in labor camps. This is used routinely to imprison thousands of Chinese every year.

For the United States to work with the EU, Japan, Australia, Canada, and the High Commissioner's office to develop a concerted legal and political strategy that can intersect with the discussions already going on in Chinese legal circles about doing away with

this huge system of arbitrary punishment, that, I think, is exactly the approach I would take.

The other, is to work with other governments to get observers into trials. The Chinese Government, a couple of years ago, said they would open up all trials except those involving subversion and state secrets to Chinese citizens as a way of building more confidence in the legal and judicial process. This is where I think this unfortunate dichotomy between human rights and the rule of law can be bridged.

I think the United States can work with other governments to get diplomats to try to attend both trials of ordinary Chinese citizens who are being subject to mistreatment, perhaps at the hands of a corrupt official, and the state security and subversion trials that are now ruled out of order, and develop a strategy with them to get diplomats to show up at the courtroom and try to get access. This is a way of promoting, I think, both human rights and the rule of law. They are not mutually exclusive.

Representative PITTS. Anyone else? Yes.

Mr. XIAO. Yes. Just in addition to what my colleague Mike said, the High Commissioner of Human Rights at the United Nations is actually publicly calling the Chinese Government to abolish reeducation by labor in Beijing in workshops. So, there is an effort, and I think this Commission should join in that.

I actually want to make a point and respond to your question, and also respond to, earlier, Nancy Pelosi and Frank Wolf's comments about individual cases and the systematic and structural changes, and how to achieve that.

Again, I come back to the issue of the state security law, under the criminal code of endangering state security. I think this Commission, the United States Government, should engage in a fully substantial discussion with the Chinese authorities about the non-compliance with international human rights standards on the national security law.

The United States faces its own challenges of national security and protecting civil rights. The Chinese Government always uses "protecting national security" to detain the peaceful advocates. I think you should look into it.

One specific example. "Counter-revolutionary" used to be a charge for political crimes a few years ago. Now they have changed to endangering security. Under the counter-revolutionary laws there are more than 2,000 people held in prison without even having their cases reviewed, but the charge does not exist in Chinese criminal law any more.

I think the Commission should ask the Chinese government to systematically review all of these cases to see whether they really endangered Chinese state security, whether that really complies with international human rights standards.

Representative PITTS. Thank you. Anyone else? Any specific questions we should be asking the Chinese officials?

Mr. ALFORD. I think it is important that your views be voiced to Chinese officials so they understand how deeply Americans care about these issues. I think it is important that we continue to work on building institutions.



It has been disappointing, as Xiao Qiang mentioned, that lawyers in China have not been more forthcoming in helping people who have been charged in the way you described. The bar is not sufficiently independent of the state. I think we need to continue to work to build an independent bar with integrity in China.

Thank you.

Representative PITTS. Thank you. Thank you, Mr. Chairman.

Representative BEREUTER. The gentleman's time has expired.

I feel very strongly, as a member and as, of course, co-chairman, that witnesses are treated with, of course, courtesy. Any views, past or current, or statements here, should not be misconstrued. So, Professor Feinerman, we will come back to you in a minute, right after my question period, if you wish.

I have noticed, in meeting with Chinese officials for about 14 years sporadically, that when we talk about human rights their conversation will shortly shift to the collective Chinese people, that things are improving and, therefore, this is a part of the important human rights.

Now, we do not look at that in the same fashion at all in this country. I think that is a very strong consensus, that we have great focus on the individual human rights.

But I want to ask you your reactions to that. Relatedly, Professor Alford, you said, I believe, if I have got this right—I was scratching down quickly here—your four final recommendations.

But we need to go what we can with total respect for human rights and rule of law to help them understand that there are a variety of legitimate ways in free societies for ensuring human rights and rule of law, or something of that nature. Correct me, if I am wrong.

Now, we have all run into discussions about the Asian model, especially a couple of years ago, which was not coming from Chinese itself, but from elsewhere in Southeast Asia.

I think a great many people in this country, including this member, had problems with that as an excuse for not proceeding, really, with a focus on individual human rights.

What would you, or any other panel members, like to say about this subject? I do think we have to be careful that we do not say, this is a prescription. This is the American way to do it and, therefore, try to apply that exclusively.

Mr. ALFORD. Thank you very much.

When I made my comment, it was about a variety of ways that free societies strive to attain our shared objectives of democracy, human rights, rule of law. So, in that sense, I was not referencing the Asian values/universal norm debate, some of which I feel has been put to the disservice of Asian values, which include freedom.

What I meant, was simply to avoid the binary situation that has characterized some legal assistance projects, where we in effect say to the Chinese, you have two choices. You can either be where you are today, or you should be exactly like us.

It strikes me that, if we begin to help portray a broader panorama of possibilities, how the British do it, how the French do it, how the Japanese do it, how people in Taiwan do it, I think we give the Chinese a broader set of choices that would still improve markedly where China is today.

For example, our mode of administrative law, wonderful though it may be, is not shared by many Europeans. They can effectively foster transparency and government responsibility in a different way. So, my simple point was to give the Chinese a broader panorama of possibilities from free societies.

Representative BEREUTER. And what would any of you say about the Chinese Government's officials' focus on the collective versus the individual?

Mr. XIAO. Mr. Chairman, I believe in my testimony I mentioned quite a few issues, composed of 80 percent of the Chinese population, or millions of people every year are being discriminated against. That is collective, their rights being suppressed.

I am in exile, but I am still a Chinese national—I believe all my fellow countrymen deserve and demand the same basic human dignity and rights as the American people, as people in Taiwan, as people in Africa, and everywhere else. Asia values versus human dignity or human rights never stands, in my life experience and instinct, for a minute.

Mr. JENDRZEJCZYK. I think there is the enormous generational change in China. From my conversations with both party bureaucrats and students, it is eroding that distinction, that very false distinction. I think, over the next two generations, we are going to see an end to this stress currently, which of course is party ideology, on the collective versus the individual.

The two will be seen as mutually enforcing and not one canceling out or taking priority over the other. But I think the generational change already under way, and Xiao Qiang is a great example of this, I think is beginning to do that already.

Representative BEREUTER. Thank you.

Mr. Feinerman.

Mr. FEINERMAN. I would just say that I think that the Asian values thing is made much of by people who are usually apologists for repressive regimes. A boot in the face is a boot in the face, whether you are an Asian or a Caucasian. But I think a larger point that I think we need to underscore, and I appreciate Professor Alford's comments about not making this United States values or Chinese values, but maybe we should stress more about Chinese values.

China is a signatory, for example, to the international covenants. They have made certain undertakings as a result of that. They have ratified one, and will the other. Likewise, their own law, their own constitution contains extensive guarantees of rights. Some of them are coupled with problematic duties, but nonetheless, if China lived up to the promises that it makes in its own domestic legislation, it would be a human rights paradise.

Representative BEREUTER. I think that is an important focus for us. Thank you all for your response.

My time has nearly expired. Before we see if any other members have a question or a concluding comment for today's hearing, I would like to turn to you, Professor Feinerman, if there is anything you want to say in light of what I previously promised you.

Mr. FEINERMAN. I appreciate the heat that certain comments, particularly taken out of context, may sometimes generate.

As a Catholic, I know in Catholic theology that there is a distinction made between what is known as vincible and invincible igno-

rance. You can persuade some people of some things, and other things you just have to walk away from because deeply-held principles are not going to be swayed.

But I do want to stress that, as a lawyer and a law professor, I understand the dictates of U.S. law and I support our policy to exclude prison labor-produced goods from this country.

Perhaps I was trying to make, in that piece that was quoted by Congressman Wolf, a subtler point, that law and legality can sometimes exist side by side with a certain degree of hypocrisy.

Just as I believe it is hypocritical of people to condemn China for using the death penalty when their own jurisdiction may also employ it, I believe it is also hypocritical, in cases where there are legitimate legal means that may be otherwise employed to exercise control over our own borders with respect to imports, that would make it hypocritical at the same time to say we only want for market in our economies prison goods produced from certain prisons.

If there is a problem with prison labor, it may be a more universal problem. Although I do take the point that was made by both Congressman Wolf and Congresswoman Pelosi, that the conditions in prisons are different and may have a significant impact on the choices we make.

Representative BEREUTER. Thank you very much.

Since we are down to two additional commissioners, I think it is about time to adjourn. But I would call on either of my two colleagues who might have a concluding question or remark.

Representative LEVIN. This has been a wonderful hearing. I do think we need to talk more about comparabilities, because I think there really is not any in this case in terms of prison labor.

But you have been terrific, Professor Feinerman and the rest of you. We probably should have ended a few minutes ago, when Xiao Qiang talked about all of the aspirations of the people in China and the notion that, when it comes to freedom, there really is not—and Mr. Bereuter's question sparked this—Asian freedom, or American freedom, or European freedom. I do think there are some basic principles here. The purpose of this Commission is to promote them actively.

Speaking for, I think, the two of us, Mr. Bereuter, we are determined, with our colleagues in this rare Executive Congressional Commission, to carry out this charge. We are determined to do just that.

Representative BEREUTER. Sandy, we are, indeed. I want to very sincerely express our appreciation to the first of many, hopefully, distinguished panels that we have before the Commission.

I appreciate the fact that you have devoted your time this afternoon, and all the experience that you have brought to the table to help us today. It is a very good start for the Commission. With that said, the first hearing of the Commission is hereby adjourned.

[Whereupon, at 4:48 p.m., the hearing was concluded.]



## **A P P E N D I X**

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## PREPARED STATEMENTS

PREPARED STATEMENT OF XIAO QIANG

HUMAN RIGHTS IN THE CONTEXT OF THE RULE OF LAW

FEBRUARY 7, 2002

## I. INTRODUCTION

Founded in March 1989 by Chinese scientists and scholars, HRIC is an international non-governmental organization dedicated to the promotion of universally recognized human rights and the advancement of the institutional protections of these rights in China. Based in New York, with a Hong Kong office established in 1996, and a EU/UN liaison based in Paris, HRIC's board and staff include prominent human rights advocates, China scholars, and Chinese political exiles.

Through its extensive network among human rights activists inside China, and its education, advocacy, and cutting-edge research programs, HRIC addresses one of the most significant and complex challenges facing the international human rights movement today: how to promote human rights in an emerging economic, military, and political major power. The geo-political reconfigurations of the world since September 11 make it clear that China is pivotal to the region and the world, and also emphasize the difficulties in raising human rights concerns internationally.

The Congressional-Executive Commission can play a key role in ensuring that human rights concerns remain on the table. Both the Chinese and American people share important values and aspirations for human dignity and freedom. Both nations are facing great challenges and responsibilities for promoting human rights, ensuring domestic and global peace, and sustaining development.

For today's hearing, "Human Rights in the Context of the Rule of Law," I would like to make four points about the human rights situation in China, and conclude by suggesting five recommendations.

## II. KEY HUMAN RIGHTS CHALLENGES

*A. Rule by law is not rule of law: Using law to suppress citizens' fundamental rights of association, freedom of expression, and religion*

There is a crucial distinction between "Rule of law" and "Rule by law". Chinese leadership has repeatedly reiterated its policy of "Yifa Zhiguo" ruling the country according to law. However, when there is no real democratic and representative legislative process and no judiciary independent from the party and state, law often becomes a tool that suppresses rather than protects the fundamental rights of Chinese people, including the rights to association, freedom of expression, and religion. For example, law is often used to crack down on peaceful political activism, Falun Gong practitioners, and labor organizers, as well as peaceful advocates for Tibetan and Xinjiang self-determination. Too often, those trying to exercise these fundamental rights are accused of "endangering State security", an ambiguous charge that allows overarching flexibility in silencing voices of dissent. In addition, recent years have seen the implementation of extensive regulations to censor and control the Internet, China's virtual public space. In the limited time today, I will focus on those people whose fundamental rights have been stripped by the Chinese government.

- *Political Dissidents in China: Prisoners of Conscience*—HRIC has closely followed the Chinese government's shift of recent years toward using "state security" as a rationale for the suppression of dissent. This concept has culminated in the replacement of the accusation of "counter-revolution" with that of "endangering State security" in the newly revised Criminal Code. However, the term "state security," and what constitutes harm to it, is wrought with ambiguities in the Chinese legal system. Too often, this concept of State security is used to justify violations of basic rights, including the peaceful freedom of expression, association and assembly, and practice of religion. HRIC is concerned that the charge of "endangering State security" has broadened the capacity of the State to curtail the peaceful exercise of fundamental rights. The fact that over 2,000 "counter-revolutionary" prisoners (according to official statistics) have not had their convictions reviewed after the revision of the Criminal Code underscores this abuse. Political activists of the China Democracy Party have been given heavy sentences under the State Security Law. For example, Xu Wenli, Qing Yongmin, Wang Youcai were sentenced to 13, 12, and 11 years respectively in 1998.

- *June Fourth Victims*—Mr. Chairman, almost 13 years after the June 4th Massacre and subsequent repression throughout China, more than a hundred Chinese citizens remain in prison for participating in the peaceful protests of 1989. We have names of 158 individuals for the city of Beijing alone (supporting documentation). Over 50 of these political prisoners are held in Beijing No. 2 Prison and are serving sentences of 15 years to life. Their only crime consisted of promoting democracy and respect for human rights. Yet these people were charged with criminal offenses and convicted of subversion of the State in patently unfair trials. Furthermore, for compiling this list of political prisoners and making it public, Beijing student Li Hal was found guilty of “prying into and gathering” “state secrets,” and sentenced in 1996 to 9 years’ imprisonment. Even commemorating those who participated in the Tiananmen Movement is a crime against the state. On December 26, 2000, after more than a year and a half in incommunicado detention, Jiang Qisheng was sentenced to 4 years in prison for circulating an open letter suggesting citizens engage in peaceful activities to commemorate the tenth anniversary of the June Fourth Massacre, such as lighting candles at home.

*B. Institutionalized discrimination: Using law to discriminate against rural residents, migrants, and ethnic minorities*

In HRIC’s NGO shadow report to the U.N. Committee on the Elimination of Racial Discrimination (CERD), HRIC pointed out on the discriminatory effect of PRC laws and policies on three main overlapping groups: rural residents, that is people with rural household registration or hukou, comprising 63.91 percent of the population; internal rural-to-urban migrants, part of a vast “floating population” estimated to range anywhere from 40 million to 120 million; and national minorities, making up 106.43 million persons or 8.41 percent of the population. Together these three groups constitute the vast majority of the PRC’s population. The hukou system has created a system that gives the urban population privileged access to education, housing, economic opportunities and political participation. This hukou system thus violates the rights of rural residents and migrants to equal enjoyment and exercise of their human rights and fundamental freedoms. The failure of the PRC government to provide equal access and treatment in political, economic, social, cultural and other fields of public life has created an apartheid-like system that threatens to undermine the security, stability and fairness of the PRC’s modernization and reform efforts.

*C. Ineffective implementation and lack of accountability: The persistent gap between law on the books and law in practice*

Two examples stand out in the persistent gap between law on the books and law in practice: the lack of accountability for the June Fourth Massacre and the Revision of the Criminal Procedure Law.

- *Criminal Procedure Law (CPL)*—China’s National People’s Congress has revised the Criminal Procedure Law (CPL), effective on January 1, 1997. CPL provisions aimed at safeguarding rights have either been watered down by interpretative rules issued by law enforcement agencies, or violated outright without the authors of the violations suffering any consequences. Loopholes and ambiguities in the CPL have been exploited to the full by law enforcement authorities. In certain areas, the new CPL has actually resulted in greater limitations of key rights, such as regarding defense lawyers’ access to prosecution evidence.

HRIC published a report, “Empty Promises: Human Rights Protections and China’s Criminal Procedure Law in Practice” (March 2001). The report focuses on the Chinese Communist Party (CCP) control of the judiciary, the role of lawyers, pre-trial detention, use of illegal evidence, discriminatory application of the law and assessment of these issues in terms of international human rights standards in 2001. The full 90-page report (in English) is attached for the Commission to our submission.

- *Tiananmen Mothers Campaign*—Patterns of rights violations show that impunity and lack of accountability are a principal cause of human rights abuses in China. Mechanisms to hold officials accountable are deficient or non-existent. Controls on freedom of expression and association make it very difficult for people to expose abuses by officials and to achieve accountability.

For example, the crime committed against unarmed demonstrators in Beijing on June 4, 1989, remains uninvestigated and unpunished, despite the brave efforts of the victims’ families acting under the banner of the Tiananmen Mothers. Hundreds of Chinese citizens remain in prison for participating in that year’s peaceful protests. In June 1999, the victims’ families asked China’s Supreme People’s Procuratorate to initiate a criminal investigation in order to determine the legal responsibility of the perpetrators. They submitted evidence consisting of testimonies

from 24 victims' families and three people who were injured, and a list of the 155 known dead and the 67 known injured. To date they have received no reply. These families are subjected to constant harassment, from brief detentions and house arrest to surveillance and the confiscation of humanitarian funds sent from abroad.

*D. Arbitrary nature of the system: Administrative detention*

The improvement of the legal system will do nothing to improve conditions in the wide range of punishment institutions that operate outside the legal system, and in which large numbers of people are incarcerated. These include the system of "custody and repatriation" (C&R) under which "undesirables" of all types, including women and children, are detained without trial, occasionally for periods as long as a year or more, and then shipped back to their home towns and villages; the system by which individuals can be sentenced by police or work-unit security personnel to 3-year sentences of "re-education through labor" (RTL) in camps; the system of psychiatric hospitals, known as the Ankang, run by the Ministry of Public Security; and a host of other institutions, such as establishments for forced drug addiction treatment and for rehabilitation of prostitutes and clients, "welfare homes" for the detention of elderly dissident clerics, and unit-level detention facilities set up entirely outside existing regulatory structures by local governments, institutions, and companies. The scale of such administrative detentions is vast.

*Custody and repatriation:* In 1996, at a Ministry of Civil affairs conference on C&R, it was announced that across the country more than one million "vagrant beggars" were taken into custody every year, as well as upwards of 100,000 indigent children, and that over 600,000 persons were "repatriated" or "assisted in returning home"—a total of 1.7 million detainees in C&R facilities alone in that year.

*Reeducation Through Labor:* According to China's official figures, 230,000 people are currently held under RTL, as compared with around 150,000 in the early 1990's. RTL applies to people believed to be responsible of acts "too minor" to merit formal prosecution and is ordered by the public security departments alone, without any judicial review. RTL detainees do not have the right to counsel, the right to a hearing or the right to have the lawfulness of their detention reviewed by a judicial authority. Although its maximum duration is 3 years, it can be renewed for up to one more year if the detainee is believed to have performed badly in his or her "reform." It is frequently used to detain Chinese people who have peacefully exercised their rights to freedom of thought, religion, expression and association. However, we believe that this measure is arbitrary under the definition put forward in the judgment of the U.N. Working Group on Arbitrary Detention, and thus should not be applied to any detainees, regardless of the reason for which they are sent to RTL.

### III. RECOMMENDATIONS

1. The Commission should urge the Chinese authorities to proceed with a comprehensive review of the convictions and sentences of all those imprisoned for alleged "counterrevolutionary" crimes, especially in light of the revisions to the Chinese Criminal Procedure Law that eliminated this category of crime. The Commission should also urge the Chinese authorities to unconditionally release all prisoners of conscience.

2. The upcoming visit of President Bush to China provides an important opportunity to publicly raise human rights concerns. Congressional members should urge President Bush to press for the release of political prisoners in a significant way and to publicly raise human rights issues such as the crack-down on freedom of expression, and the discriminatory treatment of China's rural and ethnic minority populations, and to engage the Chinese leadership in serious substantive discussions about these issues.

3. In monitoring the protection of freedom of expression and information in China, we urge the Commission to pay particular attention to the increasingly restrictive Internet regulation and surveillance by Chinese authorities, especially as these regulations interface with China's WTO accession obligations.

4. On multilateral initiatives, we urge the U.S. government to immediately announce and lobby for a United Nations resolution expressing concern about the human rights situation in China.

5. We urge the Commission to develop and announce benchmarks for human rights compliance and rule of law developments over the next 7 years leading up to the Olympics. For example, benchmarks regarding steps taken toward ending political imprisonment, abolishing reeducation Through Labor, and the hukou system.

Thank you, Mr. Chairman.



## HUMAN RIGHTS IN CHINA: SUPPORTING DOCUMENTATION AND MATERIALS

1. HRIC List of Urgent Cases of Political Prisoners (February 6, 2002)
2. Announcement of the Tiananmen Mother's Campaign (July 27, 2000)
3. HRIC Report: "Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice" (March 2001)
4. HRIC Report: "Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns" (February 2001)
5. HRIC Report: "Not Welcome at the Party: Behind the 'Clean-Up' of China's Cities—a Report on Administrative Detention Under Custody and Repatriation Centers" (September 1999)
6. "Promoting Human Rights in China: Report of the China Human Rights Strategy Group" sponsored by the Open Society Institute and Human Rights in China (November 2001)
7. "Implementation of the international Convention on the Elimination of all Forms of Racial Discrimination in the People's Republic of China: A Report by Human Rights in China" (July 2001)

## PREPARED STATEMENT OF MIKE JENDRZEJCZYK

FEBRUARY 7, 2002

Thank you, Senator Baucus and Representative Bereuter, for inviting us to testify at the first public hearing of the Congressional-Executive Commission on China. The timing of today's hearing makes it particularly important and useful—exactly 2 weeks before President Bush's first official visit to Beijing on February 21–22.

I would like to begin by offering some specific recommendations to the Commission, and then I will outline major human rights and rule of law concerns in China, based on Human Rights Watch's documentation of abuses in China and Tibet over the past year.

I realize that the Commission's mandate, under the PNTR (Permanent Normal Trade Relations) bill establishing the body, is quite broad. The Commission is charged with monitoring China's compliance with the rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights, as well as the development of the rule of law in China.

But to be effective, I believe the Commission should focus its work—especially this first year of its active involvement—in some strategic areas. These should include, for example, the release of political and religious prisoners; greater cooperation with U.N. human rights mechanisms and adherence to U.N. human rights treaties; and increased access by human rights monitors. Over the longer term, other issues should also be considered, such as freedom of expression and restrictions on the Internet (see below for details), and ways to creatively use the 2008 Olympics in Beijing as a catalyst for human rights improvements. These could be topics for future Commission hearings.

I hope the Commission's initial report to the President and the Congress, originally due last October, will be issued early this spring and, at a minimum, will highlight some of the Commission's key concerns and make some policy recommendations for both the Executive and Congressional branches.

I would also urge the Commission to seek to post one of its professional staff members at the U.S. embassy in Beijing, in order to facilitate and expand upon the research activities of the Washington-based staffed. This suggestion was contained in a letter sent to the Commission last September by several NGO's, including Human Rights Watch; we also discussed it with the U.S. Ambassador to China, Clark Randt, during one of his recent visits to the U.S.

## RECOMMENDATIONS FOR U.S. POLICY

*(1) President Bush's China visit*

The significance and symbolic value of the president's visit to Beijing—exactly thirty years after President Nixon's historic visit, and shortly after China has joined the World Trade Organization—provides some real leverage. It should be used to press for significant steps to improve human rights.

We welcomed the release last month of Ngawang Choepel, a Tibetan musicologist and former Fulbright scholar who was serving an 18-year prison sentence on espionage charges. Whether or not his release on medical grounds was in any way related to the forthcoming Presidential visit, it seems to indicate that even at a time of political transition in Beijing, China's leaders are anxious to maintain good relations with the U.S. Ngawang Choepel's case received sustained, high level attention

from both the Clinton and Bush administrations and, perhaps most significantly, from many Members of Congress. Active concern by Congress was clearly a major factor in bringing about his release. I think his release also illustrates that pressure can work. And it is precisely this kind of pressure—generated through both private and public diplomacy—that the Commission should seek to exert, in the lead up to the president’s visit and in the weeks and months to come.

I certainly hope that there will be many more releases of political dissidents, religious activists, Tibetans activists and others. Further releases may even be announced before the president’s trip.

However, the administration and Congress should also press for more far-reaching steps. This is one area where the Commission and its individual members can be particularly helpful. First, I would urge some members of the Commission to offer to travel to Beijing with the president, in order to hold bilateral discussions with senior officials in key ministries, such as the Bureau of Religious Affairs, Ministry of Foreign Affairs, the Labor Ministry, and others; to introduce the Commission and its mandate to the Chinese leadership; and perhaps to explore establishing a framework for talks with members of the National People’s Congress (NPC) on human rights and rule of law concerns.

Secondly, I hope the Commission will write to China’s leaders in advance of Bush’s visit, then follow up with private contacts with Chinese officials by individual Congressional members. Such a letter might, for example, urge China not only to release large numbers of political prisoners but also to submit the ICCPR to the NPC for ratification as soon as possible; to invite the U.N. Special Rapporteur on Religious Freedom to conduct a return visit to China and Tibet this year to assess any progress made in implementing the recommendations resulting from his November 1994 visit; to agree to the terms of the new U.N. Special Rapporteur on Torture and Ill-Treatment for a visit; and to open up Xinjiang, the far northwestern province of China, to regular, unrestricted access by U.N. and private human rights monitors.

The situation in Xinjiang deserves special attention in light of the widespread and systematic human rights violations against ethnic Uighurs, including many involved in non-violent political, religious and cultural activities. China has tried to justify its broad denial of basic freedoms in Xinjiang on counter-terrorism grounds; but Chinese authorities have failed to discriminate between peaceful and violent dissent in their fight against “separatism” and “religious extremism.” (More details on the situation in Xinjiang follow in the next section of my testimony.)

### *(2) U.N. Commission on Human Rights*

The annual session of the U.N. Commission on Human Rights will begin in Geneva on March 16. Although the U.S. does not have a seat on the Commission this year, it can propose and promote resolutions. The administration, to my knowledge, has yet to formally decide whether to pursue a China resolution and to identify a possible sponsor, although the State Department has begun informal consultations with the European Union and others about the agenda for Geneva.

I urge the Commission to use its influence with the executive branch to reiterate the strong concerns of Members of Congress in both houses that China should be held accountable for its international human rights obligations in the highest U.N. body charged with monitoring compliance. Whether or not a resolution is ultimately passed, the multilateral pressure exerted by a serious Geneva campaign gives China’s leaders an incentive to make progress on human rights, and to cooperate with U.N. human rights mechanisms, in order to avoid the loss of face that U.N. censure would entail.

The State Department’s annual human rights country report is due to be delivered to Congress on February 25, soon after President Bush’s Beijing visit. I expect the report will make it apparent that based on the overall record of China’s human rights performance, action in Geneva is warranted.

If a China resolution is introduced, I hope that the Congressional-Executive Commission and its members will work with the State Department to urge other governments to support a resolution and to oppose any “no action” motion by China to prevent it from coming up for debate and vote in April.

### *(3) Labor Rights*

Protection of internationally recognized worker rights is an explicit part of this Commission’s agenda, referred to in the PNTR bill, and yet the issue has not received adequate attention in U.S.-China relations.

With China’s entry into the WTO, increasing unrest among laid off and unemployed workers is expected. Despite some changes in the Chinese labor law adopted last October, there has been little progress toward allowing rights of free association

for Chinese workers as recommended by the International Labor Organization (ILO). All attempts to organize independent trade unions are considered illegal, and free trade union organizers are often detained and arrested.

The ILO has offered to send a mission to Beijing to discuss China's obligations, as an ILO member, to respect workers' right of free association. The Commission should consider developing a strategy to encourage China's cooperation with the ILO on this core international standard. Last May, the ILO signed an agreement in Beijing to cooperate on the creation of social safety net programs, job retraining and other issues. But freedom of association was not addressed in the agreement.

The Commission could also help by scheduling a hearing to examine the human rights implications of China's WTO membership, especially with regard to workers' and migrants' rights. It should also recommend that Elaine Chao, the U.S. Secretary of Labor, arrange to go to China later this year to begin a high-level dialog on core ILO standards, as well as to offer U.S. assistance with social safety net and worker health and safety programs. Her predecessor was formally invited to visit China by the Chinese labor minister when he came to Washington in March 1999.

As the administration develops programs to enhance rule of law, human rights and democracy in China with the funds provided by Congress this fiscal year—approximately \$10 million all together—the Labor and State Department and Congressional members of this Commission should meet to discuss ways of constructively addressing reform of China's labor laws.

#### HUMAN RIGHTS DEVELOPMENTS IN 2001

The Chinese leadership's preoccupation with stability in the face of continued economic and social upheaval fueled an increase in human rights violations in 2001. China's increasingly prominent international profile, symbolized by its entry into the World Trade Organization (WTO) and by Beijing's successful bid to host the 2008 Olympics, was accompanied by tightened controls on fundamental freedoms. The leadership turned to trusted tools, limiting free expression by arresting academics, closing newspapers and magazines, and strictly controlling Internet content. It utilized a refurbished "Strike Hard" anti-crime campaign to circumvent legal safeguards for criminal suspects and alleged separatists, terrorists, and so-called religious extremists. In its campaign to eradicate Falun Gong, Chinese officials imprisoned thousands of practitioners and used torture and psychological pressure to force recantations. Today, we are releasing a major new report, "Dangerous Meditation: China's Campaign Against Falun Gong," documenting the crackdown. (Copies are available for Commission members.)

#### *Freedom of Expression*

Starting in late 2000, authorities began tightening existing restrictions on the circulation of information, limiting the space available to academics, journalists, writers and Internet users. Attacks on academic researchers may have been partly a response to the January 2001 publication of the Tiananmen Papers, a collection of government documents spirited out of China which described in detail the role played by Chinese leaders at the time of the historic June 1989 crackdown.

In December 2000, Guangdong's publicity bureau told newspapers and journals not to publish articles by 11 prominent scholars. In June 2001, one of those named, economist He Qinglian, fled China after Chinese security agents seized documents, letters, her cell phone, and photos of America friends. Although her 1998 book, China's Pitfalls, had been widely praised by the Communist leadership for its expose of corruption, she later angered authorities when she publicized the widening income gap in the country. Before she fled, the propaganda department of the Chinese Communist Party banned publication of her works; she lost her reporting job at the Shenzhen Legal Daily; and was subject to round-the-clock-surveillance. In May, after the Yancheng Evening News published an interview with Ms. He, Chinese authorities ordered top staff to submit self-criticisms.

Between February and September, four Chinese academics who were either naturalized U.S. citizens or permanent U.S. residents were arrested and tried on charges of spying for Taiwan. Dr. Gao Zhan, a scholar at American University in Washington, sentenced to 10 years' imprisonment, was permitted to return to the U.S. within days after the conclusion of her trial; Qin Guangguang, a former editor and scholar, was granted medical parole and returned to the U.S. immediately after being sentenced to a 10-year term; journalist and writer Wu Jianmin was expelled following his trial in September; and Dr. Li Shaomin, a naturalized U.S. citizen teaching in Hong Kong, was deported in July after a 4-hour trial. Sichuan native Xu Zerong, a Hong Kong resident since 1987, detained in June 2000, was put on trial on charges of illegally supplying State secrets and sentenced to 13 years in prison in late January 2002, according to his family.

Scholars were also affected when the Chinese Academy of Social Sciences rescinded invitations to foreign and Taiwan scholars to participate in an August 2001 conference on income disparities. In November 2000, authorities canceled an officially sponsored poets' meeting in Guangxi province after it became known that dissident poets, some of whom helped underground colleagues publish, were expected to attend. Three organizers were detained. In May, police in Hunan province raided a political reading club that had attracted teachers and intellectuals, and detained several participants including the founder.

Restrictions on information flows also affected HIV-AIDS research and reporting. In May, Beijing prohibited Dr. Gao Yaojie, who had helped publicize the role of unsanitary blood collection stations in the spread of the disease, from traveling to the U.S. to receive an award. Earlier, Henan health officials had accused her of being used by "anti-Chinese forces;" local officials, who often profited from the sale of blood, had warned her not to speak out. In July, village cadres refused to allow her to enter their AIDS-ridden villages.

Media regulations were also tightened. In November, the Communist Party's top publicity official signaled a new policy when he told a meeting of journalists that "the broad masses of journalists must be in strict agreement with the central committee with President Jiang Zemin at its core," a warning repeated in January by Jiang himself. The same month, a Party Central Propaganda Department internal circular warned that any newspaper, television channel, or radio station would be closed if it acted independently to publish stories on sensitive or taboo topics such as domestic politics, national unity, or social stability. The regulations instituted a new warning system; after three citations, a media outlet was subject to closure.

By June, the Party had instituted a stricter regime. A decree expanded taboo content to include speculation on leadership changes, calls for political reforms, criticism of Party policies including those related to ethnic minorities or religion, and rejection of the guiding role of Marxism-Leninism and Mao-Deng theories, among many other categories. The decree forbade independent reporting on major corruption scandals, major criminal cases, and human and natural disasters and threatened immediate shutdown for violators. The government also ordered a nationwide campaign to educate journalists in "Marxist news ideology."

In the immediate aftermath of the September 11 attacks in New York and Washington, the Chinese Communist Party's Central Committee Propaganda Department ordered news media to refrain from playing up the incident, relaying foreign news photos or reports, holding forums, publishing news commentaries without permission, or taking sides. Chinese youth had welcomed the attacks on Internet postings and officials said the restrictions were needed to prevent damage to U.S.-China relations.

Authorities routinely prohibited the domestic press from reporting on incidents it considered damaging to China's image, but permitted exposes when it suited the government's purposes. On September 8, 2001, former Xinhua reporter Gao Xinrong, sentenced to a thirteen-year term in 1998 for exposing corruption associated with an irrigation project in Shanxi province, wrote U.N. High Commissioner for Human Rights Mary Robinson asking that she intercede on his behalf after appeals in China were unsuccessful. Similarly, Jiang Weiping, a Dalian, Liaoning province journalist, who also exposed corruption, was arrested in December 2000 and tried in September 2001 on charges of "leaking State secrets." He received a 9-year sentence. After a military truck blew up in Xinjiang in November 2000, three journalists at two newspapers were punished for "violat[ing] news discipline and reveal[ing] a lot of detailed information" before Xinhua, the official news agency, printed the official line on the incident. News media in China are required to use Xinhua reports on any stories that local or central propaganda authorities deem sensitive. In June, Yao Xiaohong, head of news for Dushi Consumer Daily in Jiangxi province, was dismissed after reporting an illegal kidney transplant from an executed prisoner. In October, under pressure from central government publicity authorities, he was fired from his new job at the Yangcheng Evening News in Guangdong province.

Chinese authorities, however, did not always succeed in silencing the press. In March, after Chinese authorities insisted that a mentally ill man had caused an elementary school blast that killed over forty youngsters and teachers in Jiangxi province, the domestic press and Internet sites stopped reporting that the children had been involved in the manufacture of firecrackers. After parents used the press and the Internet to establish the truth of what really happened, Premier Zhu Rongji, who had initially denied local accounts, was forced to renege.

Chinese authorities moved against publications as well as individual journalists. In May, a magazine called *Today's Celebrities* was peremptorily closed for printing articles about corruption and the Cultural Revolution (1966-76). Employees had to stop the post office from delivering copies of the offending issue. In June, in a move

to change its character, authorities replaced the acting editor and other editorial staff at Southern Weekend (Nanfang Zhoumo), China's most outspoken news publication. The magazine had published a series of articles blaming the government for problems in rural areas, reported on the school explosion, and featured an in-depth discussion of President Jiang Zemin's "three represents" thesis. The latter has been promulgated as Jiang's important contribution to the theoretical underpinnings of communism in China. Officials also closed the Guangxi Business Daily, which had operated for 2 years as an independent, privately owned paper, when it refused to merge with the Guanxi Daily. In Jiangsu province, officials ordered the immediate suspension of the Business Morning Daily after it suggested that President Jiang's policies had advanced Shanghai's development at the expense of other cities.

At the other extreme, when Beijing's interests coincided with independent press accounts, the government encouraged the reporting. Such was the case in July, when owners of the Nandan tin mine and local officials hindered accurate reporting of a flooding disaster at the site. They had been denying that the accident, which claimed close to 100 lives, had occurred. Beijing has been trying to close down illegal mines and improve safety standards in others. In the Nandan case, local officials had ignored the violations because the mine contributed heavily to the county's coffers.

The foreign press was also muzzled. In early March, after Time ran a story on Falun Gong, Beijing banned future newsstand sales of the magazine. In June, five security officers beat an Agence France-Presse reporter after he photographed a protestor outside a "Three Tenors" concert held to support Beijing's Olympic bid. In July, government officials in Beijing prohibited the U.S. CBS television network from transmitting video footage for a story about Falun Gong. Chinese authorities banned the October 29 issue of Newsweek when it ran a cover story on corruption. China International Television Corporation, which administers satellite broadcasting, informed foreign TV channels that as of January 1, 2002, they must transmit through a government "rebroadcast platform," a move making censorship of incoming broadcasts easier. China Central Television also reneged on a July agreement to air in full U.S. Secretary of State Colin Powell's Beijing interview. It cut one-fifth of his remarks, including those defending U.S. criticism of Beijing's human rights record.

#### *Restrictions on the Internet*

Stringent regulations on rapidly growing Internet use came into effect in November 2000. New regulations required general portal sites to get their news solely from state-controlled media unless they had received special permission to post news from foreign media or from their own sources, required that bulletin board services and chatrooms limit postings to approved topics, and made monitoring of postings routine. A month later, Chinese authorities increased the number of Internet police to more than 300,000. In January 2001, a new regulation made it a capital crime to send "secret" or "reactionary" information over the Internet. In February, software called Internet Police 100, capable of "capturing" computer screens and "casting" them onto screens at local public security bureaus, was released in versions that could be installed in homes, cafes, and schools. The product was designed in part to keep "unhealthy" information such as cults, sex, and violence, off the Net. But even with some sixty sets of regulations in force, President Jiang in July decried the spread of "pernicious information" over the Web and called the existing legal framework inadequate.

By January 2002, the Ministry of Information and Technology had ordered service providers in "sensitive and strategic areas" to keep detailed records of who uses their services and at what times. Providers were also required to install software capable of screening and copying private e-mails with "sensitive material," to end transmissions of such material immediately, and to report offenders to public and State security bureaus.

Chinese regulations limited news postings on the websites of U.S.-based companies operating in China. The English chatroom of SOHU.com, partly owned by Dow Jones, posted a list of issues prohibited on the Internet by Chinese law, including criticism of the Chinese constitution, topics which damage China's reputation, discussion that undermines China's religious policy, and "any discussion and promotion of content which PRC laws prohibit." The posting continues: "If you are a Chinese national and willingly choose to break these laws, SOHU.com is legally obligated to report you to the Public Security Bureau." An internal AOL memo recommended that if AOL were asked what it would do if the Chinese government demanded records relating to political dissidents, AOL staff should respond "It is our policy to abide by the laws of the country in which we offer services."

In an attempt to control the proliferation of Internet cafes, Chinese officials stopped issuing new licenses while a clean-up operation to uncover evidence of banned sites or posting of subversive messages was underway. Beginning in April, public security departments checked more than 55,000 sites. Also in April, four State ministries and departments, including the Ministry of Information Industry, promulgated "The Procedure for Managing Internet Service Business Sites." It bars cafes along a major Beijing thoroughfare and within 200 meters of key central party, political, and military organs, and middle and elementary schools, and within residential buildings. In October, officials announced that more than 17,000 cafes had been closed.

Internet bulletin boards, chat rooms, and online magazines, including university-based sites and those catering to journalists, were also closed. In June, Southern Weekend Forum, which allowed postings criticizing the firings at the Southern Weekend, was closed; Democracy and Human Rights Forum, produced by the website Xici Hutong was suspended for complaints about lack of press freedom. In August, two sites that criticized Jiang Zemin's stand on allowing private entrepreneurs to join the Party, the electronic magazine China Bulletin and the Tianya Zongheng forum were closed. Even People's Daily, the Party newspaper, was forced to remove a collection of articles by a Party member opposed to Jiang's initiative. In September, the State Council ordered the closure of Baiyun Huanghe, a bulletin board with 30,000 registered users at the Huazhong University of Science and Technology in Wuhan, after students posted articles about events in Tiananmen Square in 1989. Once the bulletin board reopens, the university's Party committee will manage it. In mid-October, the Telecommunications Administration and Office of Information closed Zhejiang Media Forum, a bulletin board for journalists, and demoted the webmaster for leaking secrets, slandering leaders, and attacking government bodies.

At least 16 people were arrested or sentenced in 2001 for using the Internet to send information or to express views that the leadership disliked. In March, a court in Sichuan province sentenced Jiang Shihua, a middle-school teacher, to a 2-year term for "inciting the subversion of State political power." In April, Wang Sen, was detained for having exposed local trafficking in medicines; a Hebei province court sentenced Guo Qinghai, a bank employee, to a 4-year term for subversion for posting pro-democracy articles on a U.S. web site; and veteran activist Chi Shouzhu, who had printed out pro-democracy writings from a web site, was detained. In May, public security officers detained Hu Dalin for helping his father maintain websites featuring the latter's leftist writings, and Wang Jinbo for libeling the police (he received a 4-year sentence in December on subversion charges.)

Four intellectuals, Yang Zili, Xu Wei, Zhang Honghai, and Jin Haike, detained in March, were tried at the end of September on charges of subversion for organizing the Association for New Chinese Youth and publishing articles about political reform. To date, they have not been sentenced. Huang Qi, detained in June 2000 and tried in secret in August 2001 on subversion charges for featuring articles about democracy on his website, had not been sentenced as of January 2002.

#### *Political activists*

Political dissidents continued to be persecuted. Two members of the banned China Democracy Party, Wang Zechen and Wang Wenjiang, were sentenced to six and 4-year terms respectively in December 2000. Dissident Jiang Qisheng, held since May 1999 and tried in November 1999, was finally sentenced to a 4-year term at the end of December 2000 for circulating a political essay calling for a candlelight commemoration and public mourning of those who died in the massacre in Beijing on June 3-4, 1989. Authorities also let it be known that interference with Beijing's Olympic bid would not be tolerated, sentencing activist Shan Chenfeng, who urged the International Olympic Committee to pressure China to release dissidents, to a 2-year administrative sentence in February. Shen Hongqi, a lawyer, received a 3-year sentence for an article advocating reform of China's political system. Police in Inner Mongolia detained activists associated with the Southern Mongolian Democratic Alliance, which seeks to promote Mongolian traditions and cultural values, but which the government accuses of splittist activities. In May, Dalai, also known as Bai Xiaojun, was detained for promoting the coming celebration of the birthday of Genghis Khan; in June, police detained Altanbulag, a young musician, for distributing materials relating to human rights and ethnic problems in Inner Mongolia. Authorities also banned works by two young Mongolian poets and in October detained one, Unag, for several weeks.

*Criminal Justice*

On April 3, 2001, President Jiang initiated a 3-month "Strike Hard" (yan da) anti-crime campaign. Stressing the need to safeguard social stability and the reform process, he asked that improvements in fighting crime be made with "two tough hands." The following day, Xiao Yang, president of the Supreme People's Court, announced that China's court would abide strictly by the law during intensified efforts to punish criminal elements. The pledge has been honored more in the breach, as the campaign has featured hastily processed cases, denial of due process rights, summary trials, harsh sentences, mass sentencing rallies, and an upsurge in executions. In Shanghai, for example, judges were ordered to take less time to review evidence in the pre-trial phase. A Supreme Court circular on April 12 stipulated that courts should mete out severe punishments to offenders, stressed the need for courts to act rapidly, and noted that capital cases should be made irreversible through irrevocable evidence. Although the prohibition against the use of torture was reinforced by Luo Gan, the Chinese Communist Party's chief law and order official, forced confessions under duress were officially acknowledged. The practice is illegal, but evidence obtained through torture is admissible in court. Li Kuisheng, a prominent lawyer in Zhengzhou, Henan, was finally cleared of all charges and released in January 2001. He had been arrested in November 1998 after defending a client fighting corruption charges, and under torture had "confessed" to fabricating evidence.

Provinces and municipalities reported regularly on their compliance with the campaign. Their accounts included totals of those apprehended, sentenced, and executed, and information on the kinds of crimes committed. Capital sentences were imposed for some sixty offenses including, in addition to violent acts, economic crimes, drug trafficking, smuggling, arms dealing, racketeering, counterfeiting, poaching, pimping, robbery, and theft. During the first month of Strike Hard, some 10,000 people were arrested and at least five hundred executed. By the end of October, at least 1,800 people had been executed, at least double that number had received death sentences, and officials had announced they would continue the campaign at least through June 2002 with increased "intensity." By September, China's deputy procurator general called for a "strike always" campaign. The elimination of prostitution and gambling, a crackdown on superstitious activities, and better management of migrants joined the list of targets. In July, the Public Security Ministry distributed cash awards amounting to 1.15 million renminbi (over U.S.\$140,000) to departments in five provinces in recognition of their Strike Hard efforts. In January 2002, The Minister of Public Security warned the police not to relax their efforts but rather to step up the campaign.

Despite the Strike Hard campaign, officials in some areas implicitly acknowledged unfairness in the criminal justice system. In October, Beijing courts began implementation of new rules on the presentation of evidence requiring that both sides present evidence in open court rather than to judges privately. In November 2000, Liaoning officials announced that prosecutions in some cities would be based on proof rather than confessions, thus guaranteeing suspects' right to remain silent during criminal interrogation. However, the following month, a senior National People's Congress member admitted that in many places forced confessions, extended detentions, and restrictions on the activities of attorneys for the defense were still problems. In January, the vice-president of the Supreme People's Court admitted to corruption within the legal system, including intentional errors of judgment, forged court papers, and bribe taking. In June, the Supreme People's Procuratorate issued six new regulations to prevent violations in the handling of cases and acknowledged Communist Party interference in sensitive cases. However, in August, in Luoyang, Henan province, judges who heard the cases of twenty-three defendants charged in a fire that killed 309 people said they would not release their findings until they had talked to provincial leaders.

China's commitment to a rule of law is being severely tested in two cases involving businessmen, Fong Fuming, a U.S. citizen, and Liu Yaping, a permanent resident. Mr. Fong, an engineer and power industry consultant accused of bribery and obtaining State secrets, was held without trial from February 28, 2000 to October 22, 2001. Fong's indictment was dated September 24, 2001, but the defense did not learn of it until 2 weeks before trial. Although the U.S. Embassy was informed the trial would be open, Mr. Fong's son was turned away when he arrived at court. As of late January 2002, no verdict had been issued.

Liu Yaping, held in Hohhot, Inner Mongolia, on charges of fraud and tax evasion since March 2001, has been denied proper medical treatment despite a life-threatening brain aneurysm. On August 7, he was "released pending trial," but instead of being free to move about the city as was expected, he was transferred to a hospital and kept under twenty-four hour guard until mid-January 2002 when he was released and informed he could go to Beijing for medical treatment. However, as of

late January, he still had not received the documents, including his passport, that would make travel possible. During his months in custody, Mr. Liu has had only very limited to family members and to legal counsel. He has never been indicted.

*Freedom of Religion and Belief*

China continued to crack down on groups it labeled cults and on religious expression practiced outside the aegis of official churches. Falun Gong continued to experience the harshest repression, with thousands of practitioners assigned to "reeducation through labor" camps and more than 350 imprisoned, many for nothing more than printing leaflets or recruiting followers for protests. Throughout the year, recalcitrant practitioners were subjected to stepped up physical abuse and psychological coercion. Unconfirmed but credible reports of practitioners dying in custody mounted. On June 11, the Supreme People's Court and the Supreme People's Procuratorate issued a new interpretation of cult provisions in the Criminal Law to make it easier to punish practitioners on a wide variety of charges. The interpretation made incitement to injure oneself a capital offense, and it increased punishments for self-immolation, leaking State secrets, subversion, separatist activities, small-scale "assemblies," and small-scale publishing and distribution. There were reports in mid-August of forty-five followers tried and at least five sentenced to terms of up to 13 years for offenses such as organizing the printing of leaflets and banners and recruiting followers for protests. In December 2001, the Beijing police arrested 11 members of a "criminal gang" for spreading Falun Gong propaganda. Ten members were administratively sentenced to reeducation through labor; the eleventh is in custody.

Authorities also targeted other so-called cults, among them Zhonggong, Xiang Gong, Guanyin Famin, Kuangmin Zhaimen, the Holy Spirit Reconstruction Church, Mentuhui, Nanfang Jiaohui, and the Local Church (also known as the Shouters), sentencing members and leaders, closing their offices, and seizing their publications. On January 28, 2002, a court in Fuqing, Fujian province, sentenced Lai Kwong-keung (Li Guangqiang in Mandarin), a Hong Kong resident, to 2 years' imprisonment for "smuggling" some 33,000 bibles to Local Church groups. The smuggled version was not one approved by Chinese religious officials. Yu Zhudi and Lin Xifu, from the mainland, received 3-year terms. After U.S. protests, the original charge, "using an evil cult to damage a law-based society," was downgraded to running an "illegal business operation," but each man was fined the equivalent of U.S.\$18,000. A Local Church follower who organized songs and prayers in front of the courthouse also was detained until the trial concluded. Two other Local Church members from Anhui province have also been indicted on cult charges for proselytizing. After news broke in December that a Hubei province court had sentenced Gong Shengliang, leader of the Nanfang Jiaohui, to death on charges of "premeditated assault," rape, hooliganism, and using an evil cult to damage society, sufficient international pressure succeeded in reducing the charges to death with a 2-year reprieve. Four other members also received death with reprieve. Such sentences are generally commuted to life imprisonment. It has been charged that several alleged rape victims were coerced into giving false testimony. A total of sixty-three members of the church have been charged. A court in Xiamen sentenced three mainland members of the Taiwan-based Holy Spirit Reconstruction Church to 7-year prison terms in January.

A few weeks before Christmas 2000, hundreds of "illegal" Protestant and Catholic churches and Buddhist and Taoist temples and shrines in Wenzhou were demolished. In March and April, several dozen house church leaders in Hubei province were detained; in May, 12 others were administratively sentenced in Inner Mongolia and twenty-three others released after they paid fines amounting to approximately U.S.\$25 each. The Chinese government also instituted a special study group to bring Christianity "into line with socialism" through reinterpretation of basic beliefs. As part of the movement, the study group is looking into local church publications considered incompatible with the new interpretations.

The continuing government-ordered merger of Catholic dioceses, a move that went unrecognized by Rome, also signaled Beijing's determination to run the church in accord with its own needs. As a result of a student-teacher boycott of Chinese-controlled ordinations in early 2000, fewer seminarians were enrolled in the Chinese Catholic Theological and Philosophical seminary in Beijing. After political education sessions, some seminarians were dismissed or ordered to return to their dioceses. In October, after Pope John Paul expressed regrets for Catholic Church errors committed during the "colonial period" and expressed hope of normalized relations, Chinese religious officials responded by demanding that the Vatican first sever its ties with Taiwan, refrain from "using the pretext of religious issues to meddle in Chinese internal affairs," and apologize for last year's canonization of "foreign missionaries and their followers who committed notorious crimes in China." Detentions in



2001 included those of several elderly influential bishops and priests including Bishop Pei of Inner Mongolia, Bishop Li Hongye of Henan province, Father Feng Yunxiang in Fujian province, Father Liao Haiqing in Jiangxi province, and Bishop Shi Enxiang, Father Li Jianbo, and Father Lu Genjun from Hebei province.

#### *Labor Rights*

Reports of clashes between police and workers and farmers protesting layoffs, unpaid wages and benefits, corruption, and relocation problems continued throughout the year. Details as to the course of the incidents and the outcomes differed markedly. In December 2000, there were conflicting accounts of whether workers from a construction company in Heilongjiang were detained after some 2,000 of them blocked a railway line. One report of a dispute at the Guiyang Cotton Textile Factory in January 2001 said ten workers were hospitalized with injuries; local officials said the protests ended peacefully. In Changchun in September, either police or members of a private security force reportedly beat some one hundred distillery workers protesting the privatization of their company and lack of adequate compensation. Local authorities denied the allegations. In April police in Yuntang village, Jiangxi province arrested five villagers who had been leading a 3-year protest against new taxes, then stormed the village killing two unarmed protestors and injuring some thirty-eight others. In October, in Qingdao, Shandong province, one hundred police officers detained protestors demonstrating against the city's failure to honor its commitment to provide appropriate housing for residents forced to relocate to make way for a real estate project.

Labor activists continued to be targeted. Hu Mingjun, Deng Yongliang, and Wang Shen were detained in May after helping steel workers in Sichuan province organize a protest to demand back wages. In one prominent case, Li Wangyang, imprisoned from 1989 to 2000 for his 1989 participation in the Shaoyang Workers Autonomous Federation, was sentenced for subversion in September to a new 10-year term after petitioning for compensation for mistreatment suffered in prison. Li's sister, Li Wangling, received a 3-year administrative sentence on June 7 for publicizing her brother's case.

In October 2001, the Standing Committee of the National People's Congress Workers passed a revised Trade Union Law requiring enterprises with more than twenty-five workers to establish a union and prohibiting management personnel from holding important union positions. But only government-affiliated unions were mentioned in the law, and the right to strike was not guaranteed. In November 2000, a month after workers tried to form an independent union in a silk factory in Jiangsu province, Chinese authorities committed Cao Maobing, the union organizer, to a mental hospital. It took 210 days for him to be released.

#### *Tibet*

China revised its overall Tibetan policy in June 2001, the fourth such change since it took command of the region in 1950. Goals for 2001–2006 included accelerated economic development and tightened control over alleged “secessionist” activities. A semantic shift from “general stability” to “permanent rule and lasting peace” (*chang zhi jiu an*) at the June forum may also have signaled Beijing's determination to strengthen direct control over Tibetan affairs. During a July visit, Vice-President Hu Jintao stated that it was “essential to fight unequivocally against separatist activities by the Dalai clique and anti-China forces in the world.”

Efforts to engage the Chinese leadership in a dialog with representatives of the Dalai Lama were unsuccessful in 2001. Following the Dalai Lama's criticism of Chinese policy during a speech to the European Parliament general assembly on October 24, the Foreign Affairs Committee of the National People's Congress reiterated the position that talks could take place only if the Dalai Lama renounced his “separatist stand,” and openly acknowledged that Tibet was an inalienable part of China, Taiwan merely a province, and “the government of the People's Republic of China the sole legitimate government representing the whole of China.”

At the same time as Chinese officials refuted the Dalai Lama's accusations of cultural and religious extinction, they continued to suppress free expression, limit the growth of religious practice, and ensure that worship was consistent with socialism and patriotism. In February 2001, at the beginning of the Tibetan New Year, government workers, cadres, and school children were banned from attending prayer festivals at monasteries or from contributing to temples and monasteries. During *Monlam Chemo*, once a festival of great religious significance, monks at Lhasa's major monasteries were not permitted to leave their respective complexes, and government authorities banned certain rites. In June, in Lhasa, officials distributed circulars entitled “Strengthening Abolition of the Illegal Activities of Trunghla Yarsol (the Dalai Lama's Birthday) and Protection of Social Stability.” Police in the region

then detained hundreds of Tibetans who burned incense, said prayers, or threw tsampa (roasted barley) into the air in defiance of the order.

Larung Gar, a Tibetan monastic encampment near Serthar in Sichuan province, had come under virtual siege by Chinese authorities by mid-2001. Central authorities had ordered the expulsion of all but 400 nuns and 1,000 monks out of an estimated population of 8,800 over concerns about the institution's alleged impact on social stability, and officials were determined to complete the downsizing quickly. As monks and nuns were forced out, many with no place to go, their meditation huts, most built at individual expense, were destroyed, as were shops, restaurants, and other structures. All teaching was suspended at Larung Gar, once a leading Buddhist studies center, and its leader, Khenpo Jigme, was moved to Chengdu, Sichuan's capital.

Authorities continued to deny access to the Panchen Lama, the second most important figure in Tibetan Buddhism. The latest request, in October by Australia's deputy foreign minister, was denied on the grounds that Gendun Choekyi Nyima's parents want his and their privacy protected. The boy, now 12 years old, disappeared from public view in 1995 after Beijing chose another child as the reincarnation. Chadrel Rinpoche, the senior lama who led the search, was still in prison. He was last seen in mid-May 1995 shortly before he was sentenced to a 6-year prison term.

In a further effort to ensure that the next generation of lamas would be beholden to Chinese authorities rather than to the Dalai Lama, in July, an 8-year old recognized as an incarnate lama by the Seventeenth Karmapa was forced take off his monastic robes, forego religious training, and attend a normal primary school. He is closely guarded at all times. The Karmapa, recognized by both Chinese authorities and the Dalai Lama, escaped to India in 2000.

The Strike Hard campaign in Tibet had a decidedly political focus. At a May meeting in Lhasa, capital of the Tibet Autonomous Region (TAR), courts were ordered to forcefully carry out the campaign against "those whose crimes endanger State security," and "those who guide people illegally across borders," in other words, against those who help Tibetans reach Nepal or Dharamsala, India, the Dalai Lama's home in exile. During the first month of the campaign, 254 people were caught trying to leave or reenter the TAR, many allegedly carrying "reactionary propaganda materials." Many were severely beaten after capture.

"Splittist" activities accounted for numerous political arrests and trials in 2001. In January, a Lhasa court sentenced Cengdan Gyaco to an 8-year term for agitating separatism and spying for the Dalai Lama. That same month, an officer patrolling Sera monastery caught Jampel Gyatso listening to an audio tape of the Dalai Lama's teachings. As of late January 2002, he was detained in the Gutsa Detention Center in Lhasa. Two months later, a second Sera monk, Tendar, was detained for involvement in political activities. In February, police arrested Migmar and four friends caught watching a video of the Dalai Lama. The friends were released after payment of 5,000 yuan (approximately U.S.\$600) apiece. A Lhasa court sentenced Migmar to a 6-year term in May. In March, in Qinghai province, after police raided Tibetan households to confiscate photographs of the Dalai Lama, three local men took it upon themselves to collect and hide the villagers' photos. Police who caught the men confiscated the pictures and levied fines of 5,000 yuan. In July, the Nagchu court tried six people, Sey Khedup, Tenzin Choewang, Tenzin Lhagon, Yeshe Tenzin, Traku Yeshe, and Gyurmey, for colluding with the Dalai clique and endangering State security. Four of the six were monks. Terms ranged from 7 years to life imprisonment.

### *Xinjiang*

Even before September 18, when the Chinese government publicly equated Uighur calls for autonomy or independence with global terrorism, Beijing had instituted strict measures to crush "separatism" and "religious extremism" in Xinjiang. In April, at the beginning of the nationwide Strike Hard campaign, Ablat Abdureshit, chairman of the region, was explicit as to targets in Xinjiang: "national splittists," "violent terrorists," and "religious extremists." At the same time, the leadership reiterated its determination to develop the region economically. Both campaigns were entrusted to patriotic Party cadres working at the grassroots, kept in check by a local law passed in May threatening punishment should they sympathize with Uighur aims or refuse to give up their religious beliefs. In April, China's defense minister emphasized the role of the People's Liberation Army in stabilizing the region so as to ensure the success of China's Western Development project. In June, Vice-President Hu Jintao, reiterated the call to root out Islamic activists.

In June and again in January 2002 when their foreign ministers met, the Shanghai Cooperation Organization (formerly the Shanghai Five), composed of China, Russia and four republics in Central Asia, reiterated its pledge of cooperation to combat “terrorism, separatism and extremists” and to establish “a regular anti-terrorist structure. According to a Chinese official, the campaign would be aimed at alleged terrorists groups in Xinjiang, Chechnya, and Uzbekistan.

Although there were credible reports of violence by Uighur separatists in Xinjiang, strict Chinese controls on information coming from the region often made it impossible to know whether particular individuals had indeed committed criminal acts or whether they were being punished for exercising their rights to free political expression, association, or assembly. Typical charges included “splittism,” subverting State power, setting up an organization to establish Islamic rule, stockpiling weapons, endangering social order, and printing anti-government literature. There were also new reports of torture, forced confessions, unfair trial procedures, and collective punishment. In November 2000, Abdullelil Abdumejit died while serving a sentence for the anti-Chinese riots in Yining in 1997. Supporters claimed he died from beatings and torture; the State claimed he died from his refusal to follow an appropriate medical regime.

The Strike Hard campaign exacerbated the rate of arrests and sentencing. Within 3 months of the campaign's start in April, Xinjiang police reported solving 8,000 cases, arresting 9,605 suspects, destroying six separatist and terrorist organizations, and in conjunction with the procuracy holding more than 100 sentencing rallies involving 300,000 spectators to parade “criminals” and announce sentences before a public expected to signify approval.

In April, police in Kashgar arrested twenty-five people for buying ten guns, allegedly to further an independence movement; in Urumqi, Abdulaimit Mehmet, convicted of murder and separatism, received a death sentence; six Uighurs were executed in Korla on charges of separatism and subverting State power; and Osman Yimit, a trader from Kucha, received a 7-year sentence on charges of endangering the social order and engaging in separatist activities for failing to register an aid fund for poor families.

In June, Wusiman Yimiti and Maimaiti Reheman were executed for “forming a criminal gang with the aim of splitting the country.” Erkhin Talip was executed in September for crimes linked to separatism. In October in Yining, five Uyghurs, including Abdulmejid and Abdulahmad, received death sentences on charges of anti-state terrorism; two others were sentenced to life imprisonment. And in November at a combined Aksu and Uchturpan county mass rally, death sentences and long prison terms were handed out to twenty-eight Uighurs for separatist and terrorist activities. Abdehelil Zunun, who had translated the Universal Declaration of Human Rights into Uighur, drew a twenty-year sentence.

Efforts to bring religious practices under the aegis of the State included the April formation of a China Islamic Affairs Steering Committee under the administration of the Islamic Association of China. The members, 16 senior China-based experts on Islam, interpreted religious doctrines in accordance with Chinese law and Islamic doctrine, drafted sermon pamphlets, and worked to bring Islam into conformity with Chinese political ideology. An imam “patriotic reeducation” campaign, begun in March, assigned some 8,000 religious leaders to twenty-day sessions stressing patriotism, loving socialism, upholding Party leadership, combating separatism, and the like. In a number of cases, mosques were leveled, clerics arrested, and “illegal” books and audio cassettes confiscated. Before and during the holy month of Ramadan, there was considerable pressure, including threats of expulsion, against students who fasted or observed other religious rules such as the use of head scarves or performance of daily prayers. In December, nine Muslims were arrested for preaching illegally more than 20 times in Bayingolin Mongol Prefecture and for translating the Koran into local languages. In January 2002, it was reported that Ibrahim received a 4-year prison term for running a school where English, Arabic, and other languages were taught and for talking about Uighur troubles. The school was forced to close around the time of his arrest in May 2000. He was also part of a group which advocated Islamic law.

In January 2001, Chinese officials took aim at Xinjiang's publications market, calling for stricter policing and punishment of those spreading religious fanaticism and ethnic “splittism.” Access to Radio Free Asia's Uighur language programs is limited by severe jamming.

In January 2002, pressure to follow the official ideological line was explicitly extended to include artists, writers, performers, and historians, among others, when Abulahat Abdurixit, the region's chairman, made clear that “all who openly advocate separatism using the name of art” would be purged. The announcement followed recitation of a poem by a homeless man at the end of a concert at Xinjiang People's

Hall on January 1. That same month, Yili prefecture ordered a campaign against folk customs such as wedding, funeral, and house-moving rituals. Uighur cadres must have permission before attending such events and must report back to their superiors. A Party official said the aim of the order was to curb extravagance and eradicate superstition.

In violation of its once-a-month prison visit policy, Rebiya Kadeer, sentenced in March 2000 to an 8-year term for sending Xinjiang newspapers to her husband in the U.S., was limited to one family visit every 3 months. Glass separated her family members during the thirty- to fifty-minute visits, at least one guard recorded everything that was said, and topics for discussion were limited. Ms. Kadeer was required to wear a black tag signaling that her crime was serious and her behavior bad, in part because she was unable to complete her assignments in the prison cardigan factory. However, she was denied the glasses she needed to work efficiently. Ms. Kadeer's family was subject to surveillance and harassment. A fourth son, Ablikim Reyim, was released in February, some 6 months before his 2-year reeducation through labor term expired.

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PREPARED STATEMENT OF JAMES V. FEINERMAN

THE ACCESSION TO THE WORLD TRADE ORGANIZATION OF THE PEOPLE'S REPUBLIC OF CHINA (PRC) AND RELATED RULE-OF-LAW ISSUES

FEBRUARY 7, 2002

Members of the Commission:

Thank you for holding these hearings and for providing an opportunity to present my views and to share information gathered from my study of Chinese law, visits to the People's Republic of China (PRC) and ongoing work in the field of academic exchanges between the United States and the PRC. Given China's population and size, strategic position, and growing economic importance, it remains necessary to focus upon a number of other significant considerations in formulating United States policy toward the PRC. In addition to recent problems relating to United States actions and responses to the international behavior of the PRC, recurrent questions surround the development of a law and the legal system in the PRC which remain difficult to answer. This statement is an attempt to address at least a few of them in the context of China's recent accession to the World Trade Organization (WTO) and attendant legal concerns.

In considering the current situation with respect to the Rule of Law in China at the time of PRC accession to the World Trade Organization, there are three major points, further developed below, that I would like to make today. First, there has been and continues to be a considerable legalization of the PRC which began in the late 1970's. This process will go on whether or not the United States participates in the future developments. Second, the PRC has already experienced law reforms which have made important contributions to the economy and polity of the PRC and continue apace partly, but not solely, due to commitments the PRC has made with regard to WTO accession. Third, despite this legalization and law reform now extending for more than two decades, there is still unfortunately a great deal that has not changed in China with respect to the Rule of Law, civil rights and political liberties and the meaningful enjoyment freedoms taken for granted in most developed nations.

*Legal Development in China Since 1979—Background.* When China opened the door a crack to private entrepreneurship in the late 1970's, individuals long under the thumb of China's Communist nomenklatura at long last began to have some ability to control their own fates. Today, China's dramatic economic growth is the result of the efforts of millions of privately owned enterprises and reforming, semi-privatized State and collective enterprises. The economic changes in China over the past two decades have enabled a significant part of the Chinese populace to achieve more than a modicum of economic liberty and resulting personal freedom. They can throw off the shackles of their state-assigned jobs, their controlling danweis (all-powerful work "units") and the petty martinets who previously ordered their lives. This, in turn, opens the door to greater political liberty and even activism. Indeed, the public display of anti-government sentiment in Beijing and elsewhere in China in the spring of 1989 was largely funded—and often initiated—by such individuals.

Similarly, the police-issued residence permit (hukou) no longer serves as an indispensable passport to everything from food rations to job placement, housing or employment. Market-oriented reforms have so undermined the hukou system that the Chinese government is unable to exercise the demographic, political and economic

control it enjoyed from 1949 until the late 1980's. In a dynamic economy, the leadership has little choice but to allow a freer flow of workers to stoke China's booming economy. This increase in labor market mobility comes at the expense of social control, as migrant laborers swarm into China's coastal cities and provincial centers. Evidence of the system's breakdown was already visible over a decade ago, when scores of "most-wanted" student activists and dissidents managed to slip through the yawning gaps of the hukou net to escape from China in the aftermath of the 1989 massacre. Former paramount leader Deng Xiaoping's 1992 trip to the south of China and contemporaneous call for unleashing economic growth proved merely the final nail in the coffin lid of a crumbling system. An army of anywhere from 100 million to 200 million migrant laborers now provides the lifeblood of China's economic boom.

The death of China's paramount leader, Deng Xiaoping, led to much reflection about the many changes wrought in China during Mr. Deng's leadership over almost two decades; however, curiously little attention was paid to Deng's efforts to bring law to the lawless China he inherited from Mao Zedong at the end of the so-called "Great Proletarian Cultural Revolution." Nevertheless, all of the economic reforms and opening to the outside world for which Deng Xiaoping was rightfully acclaimed would have been difficult—if not impossible—without the simultaneous embrace of a rudimentary legal order that has become increasingly embedded in Chinese society with each passing year. At the same time, it remains necessary to exercise caution in assessing post-Mao China's legalization; the extent and depth of law's penetration of Chinese society today is both problematic and erratic. Parallel to China's economic modernization without corresponding political reform, there has been a considerable amount of lawmaking activity since the late 1970's without the nationwide entrenchment of fundamental concepts of civil liberties and restraints upon Party and State leaders.

The reasons for these developments in the legal field are not difficult to understand. The contradiction, to borrow now-discarded Marxist terminology, arises from the desire to enjoy the benefits of predictability and regularity provided by law to economic transactions while at the same time eschewing the contentious pluralism in political life that might arise from the protection of individual rights under a more Western-style legal order. In the view of most of China's leaders, including the late Mr. Deng, the striking economic growth of China over most of the past two decades vindicates their predilection for economic reform without political liberalization, particularly when contrasted with the rather different path taken by their once fellow socialists in the former Soviet Union. In the Chinese view, political liberalization too far ahead of economic development seems to have produced the worst of both worlds: deadlocked reforms leaving inefficient economies mired in backwardness and explosive political resentment of the failed promises of the new order to produce prosperity. Despite tight political and legal controls, China's leaders feel that they can take pride in having "delivered the goods," with year-to-year double-digit growth rates and visible symbols of economic success in the rapidly changing skylines of major Chinese cities.

Yet the patchy legalization which has occurred in China since the late 1970's, along with other sporadic political reforms, illustrates both the inseparability of at least a modicum of political and legal change from accompanying economic development along capitalist market lines and the intractable difficulty of partial political reform which creates popular expectations of more change, at a faster pace than most cautiously reforming regimes—particularly one as hidebound as China's Communist Party—are willing to provide. The particular areas considered below demonstrate just a few of the partial successes and remaining problems in China's long, slow march toward the rule of law.

*Legalization in Action.* A few areas where legalization has led to significant social change will illustrate the new importance law has assumed in Chinese society over the past two decades:

- *Enterprise Reform.* Since the start of China's market-oriented reforms, China's state-owned enterprises (SOEs) have faced increasing difficulties and economic decline; by contrast, collectively and privately owned enterprises have expanded rapidly. In the late 1990's, China had more than 2 million collectively owned enterprises, employing over 30 million people. In the mid-1990's, there were already 25 million self-employed business units and 600,000 privately owned enterprises; these enterprises employed 56 million people. Non-state-owned enterprises produce over 50 percent of China's GDP, and the output value of non-state-owned industrial enterprises now accounts for the lion's share of gross industrial output value. All of this has depended upon new legal rules for enterprise, company law, bankruptcy reorganization and even constitutional reforms that guaranteed the protections for private enterprise.

- *National and Local Leadership.* Roles and responsibilities for China's national and local politicians are changing radically. By 2010, the Chinese Communist Party (CCP) will be pre-occupied with managing the state's (and the CCP's) relationship to an emergent "civil society." This trend has several implications for the future: national and local leadership will have to be both educated technocrats and skilled political operatives; the CCP will have to adapt to new roles in order to maintain its leadership; technocratic imperatives will marginalize traditional CCP political leadership; and the CCP will likely, as a result, become less politicized and more educated, at both national and local levels, reflecting its membership. Much depends upon the ability of the CCP to institutionalize its new roles and to incorporate new members and leaders who depart from the traditional mold, making use of new legislation to regularize these practices. For example, fixed terms for senior and lower-level leaders are now being observed, and retirement at increasingly younger upper age limits is becoming common. Although indications are that the CCP will adapt and maintain its control over the State and political institutions in China, resisting attempts to pluralize Chinese politics and suppressing dissident forces, its ability to influence all policies (especially in the economic realm) will recede as its membership and leadership come more to resemble the business, education and other technocratic elites in Chinese society.

- *Corruption.* Notwithstanding the considerable attention paid to law reform in other areas, a separate and long running debate has been underway in China for the past several years with respect to the extensive and seemingly ineradicable problem of corruption. While the Chinese economy enjoyed tremendous growth under Deng Xiaoping's policies, embezzlement, bribery, extortion, favoritism, nepotism and even smuggling have not only increased in extent and variety; moreover, there is virtually no area of China free from these influences. Even Chinese Communist Party leaders view corruption as a threat to social and political stability. It weakens the legitimacy of the Chinese state, the capacity of those in power to govern and the attempts to create a more extensive rule of law in Chinese society. Partly to address these concerns, the leadership has since 1989 initiated various anti-corruption campaigns of limited duration and geographic scope. A few cases have been widely publicized, particularly where economic malfeasance has resulted in severe penalties, including the death penalty.

- *Local protectionism.* Local protectionism is another; related difficulty with respect to the elimination not so much of corruption but of distorting favoritism which skews markets and cuts against economic efficiency. An unfortunate concomitant of China's market economic reforms, local protectionism has resulted from the obvious economic incentives created the reforms to favor local enterprises and industries and to eliminate, by fair means or foul, outside competition. Reportedly, in certain provinces this has even led to attempts to impose illegal "duties" and other disadvantageous charges on goods and services originating outside of that particular province. The ability of local governments under the new economic order to retain more of the revenue produced in that locality, along with a diminished authority on the part of a central government which no longer provides either central guidance or wealth-transferring subsidies, has exacerbated these trends. The central government's apparent powerlessness in the face of these developments only further erodes local willingness to abide by central government directives, including those ordering an end to local protectionism. The PRC's WTO accession commitments to national treatment create a great dilemma in this arena.

- *The Legal Profession.* Once the decision was made, as part of China's Four Modernizations program begun under Deng Xiaoping in late 1978, to resuscitate the legal profession and to educate much larger numbers of lawyers in Chinese universities, a remarkable growth of this long-neglected sector took place. In 1980, when China promulgated its Provisional Regulations on Lawyers, only a few thousand lawyers could be identified in the entire PRC, many of them trained either before 1949 or during the brief period of "socialist legality" along Soviet lines during the post-liberation honeymoon between China and the Soviet Union before 1958. During the early 1980's, dozens of new law faculties were added to the small handful which had previously existed (and all of which were re-established and strengthened). Changes in both the Chinese economic system and in the realities of legal practice over a decade and a half required a total reworking of China's laws regulating the legal profession, which finally occurred in May, 1996 (effective January 1, 1997). The new Chinese "Lawyers' Law" introduced certain far-reaching and long-overdue reforms, reflecting not only certain developments which had already taken place but also describing a course of future reforms desired by many in the practicing bar and at least grudgingly conceded by the senior leadership. The liberalization permitted under this new legislation, including the ability of lawyers to form firms as partnerships, responded more to the needs of China's continuing economic modernization

than to the calls of lawyers for greater autonomy in their practice. Nevertheless, the law recognizes that the former requires the latter; moreover, the expansion and extension of China's economic reforms are now understood to depend upon governing the country by law, particularly in its market economic sectors.

- *NPC Reform.* Under the leadership of Qiao Shi and its current head, Li Peng, China's National People's Congress (NPC) has begun to emerge from its longtime status as a "rubber-stamp" parliament. To be sure, it remains far from an independent, multiparty legislative institution enjoying actual powers of parliamentary supremacy described in great detail in the 1982 Chinese Constitution. It is probably fair to say, however, that the new, higher status of the NPC stems from a leadership determination to exercise "rule by law" rather than "rule of law." In the formulation "rule by law," law exists not so much as a limit on State power (a feature of the "rule of law" in the usual Western understanding) but rather serves as a mechanism for the exercise of State power—which can still also be exercised by other available means, such as a Party discipline or leadership fiat. Thus, a more powerful NPC does not necessarily diminish the other organs of power in the PRC; in fact, their predominance—particularly in the case of the Communist Party of China—is very little challenged by enhancement of the NPC's strength. A number of foreign scholars have begun to credit the NPC with greater independence and initiative. Under Qiao Shi, who served as a Vice Premier and head of China's security apparatus, new stress was given to the NPC's role in both originating and passing legislation as well as providing oversight of the nation's legal work in the judicial, prosecutorial and administrative spheres, as well as in legislation. During the past several legislative sessions under the leadership of Li Peng, former Premier, there has been considerable controversy—as well as a sizable number of negative votes—in connection with various legislative initiatives; such open dissension would have been unthinkable even a decade ago.

*Law Reform Activities.* Over the past 20 years, various organizations in the United States have provided assistance and support for law reform in the PRC. The programs they created, in conjunction with a huge domestic law reform project undertaken by the Chinese themselves and parallel programs supported by other foreign governments and organizations, benefited the construction of new legal institutions and the development of a legal infrastructure which are still being perfected.

In the early phases, a few pioneers played a major role in working with Chinese counterparts to get things off the ground. Among them were the Ford Foundation, the United States Information Agency (as it was then named), the Henry R. Luce Foundation and the National Endowment for Democracy and its party grantees, particularly the International Republican Institute. More recently, new entrants arrived on the scene to continue and to expand the work, such as The Asia Foundation, the Lawyers' Committee for Human Rights, the Freedom Forum, and even the State Department. Two summits between Presidents Clinton and Jiang in the late 1990's promised even greater United States assistance in the following areas:

- Judicial and lawyer training—new avenues for law schools from both countries to collaborate, legal cooperation between the American Bar Association and Chinese counterparts, United States Information Agency support for preparation and translation of legal teaching materials;
- Legal protection of human rights—The US and China held a symposium on this topic;
- Administrative law—A broad-ranging exchange involving decisionmakers and academic experts on comparative administrative law was planned;
- Legal aid for the poor—At least one symposium in Beijing has been held to consider ways to expand programs already initiated by the Chinese side;
- Commercial Law and Arbitration—Exchanges on securities law, electronic commerce and judicial handling of commercial disputes were planned, along with a program of cooperative training for arbitrators. The Chinese government also promised steps to ensure prompt enforcement of arbitral awards in local Chinese courts.

In most cases, the promises of those heady days of "constructive engagement" and "strategic partnership" went unfulfilled, in part due to the fallout of the accidental bombing of China's Belgrade embassy, the change in Presidential administrations and the downing of the EP-3 in China last spring.

*Committee on Legal Education Exchange with China (CLEEC).* No treatment of the law reform era in China over the last two decades, or any consideration of future US-government supported activities in legal assistance to China, should ignore the experience of CLEEC, created and generously supported for a decade and a half by the Ford Foundation.

Over the past two decades, the volume of international legal exchange between the People's Republic of China (PRC) and the United States has grown remarkably. Much of the contact between Chinese and American legal circles has occurred in the academy, and no organization has been more instrumental in encouraging this development than the Ford Foundation-sponsored CLEEC. For 15 years (1982–1997), CLEEC was directly involved in the education of over 250 young Chinese legal academics—in the PRC and in the U.S.—and in the promotion of many other forms of scholarly exchange between lawyers, law professors and government legal specialists. During that time, in no small part due to CLEEC's efforts, the underdeveloped legal education profession in the PRC grew tremendously, both in size and expertise; law faculties expanded and became much more international in their outlook; and academic research by Chinese specialists developed greater sophistication.

From its inception, CLEEC endeavored in several ways to promote both Sino-U.S. understanding, at least as it related to law, and the development of Chinese university law faculties. First, CLEEC provided training at U.S. law schools—including degree programs—for a wide range of Chinese legal educators. Chinese participants were given placements at the best American law schools, with supervision (for visiting scholars) or instruction (for degree candidates) by eminent faculty; such placements were arranged carefully to match the needs and backgrounds of Chinese scholars to the schools best able to meet those needs. In certain cases, these placements have resulted in longstanding exchange relationships, often beyond CLEEC's auspices. American host law schools generally shared part of the costs of the program. Virtually all the other costs of this activity were supported by a series of grants from the Ford Foundation, totaling over \$4 million. Among China's leading law faculties today, at least half a dozen are headed by alumni of CLEEC.

Second, CLEEC, beginning in the mid-1980's, offered an in-country short course in American law for candidates selected to visit American law schools as well as other individuals. This program brought some of the finest legal academics from the U.S. to China to teach law faculty, students and government lawyers and officials the rudiments of the U.S. legal system and, after 1990, specialized legal topics as well. The U.S. law teachers served as unsalaried instructors in a challenging three-to-four-week course that involved a great deal of contact beyond lectures in the classroom and proved both stimulating and inspiring to every cohort of Chinese students that has experienced the program. The largest number of direct beneficiaries of CLEEC are alumni of this program. This activity was generously funded by what was at the time known as the United States Information Agency (USIA), now part of the State Department.

A third major activity, organized by a subcommittee of CLEEC comprising law librarians and supported largely by separate funding from the Henry R. Luce Foundation, was involved in the provision of legal information in print and electronic forms to the leading law faculties of the PRC, the Institute of Law of the Chinese Academy of Social Sciences and other institutions in China. Originally charged with making "stock" law libraries of U.S. legal materials for Chinese law faculties, this subcommittee kept abreast of technological developments during the period of CLEEC's existence to move from print materials—largely law school textbooks and treatises—toward more modern media, including CD-ROMs, on-line legal data bases and the Internet and World Wide Web. Although technological limitations on the Chinese side during the period of CLEEC's operation limited the ability of the subcommittee to do as much as it had hoped, important inroads were made.

Finally, CLEEC and its individual members proved a valuable conduit for other types of scholarly exchange in law between China and the U.S. Aside from the direct funding of a handful of American researchers to carry out projects in China, CLEEC also helped to arrange bilateral conferences, to provide attendees for international meetings in China and to offer information and other assistance to any person or institution seeking to establish links with the legal academic community in the PRC. Many of CLEEC's members were themselves leading academic specialists and experts on China's modern legal system. At the same time, no attempt was made to funnel Chinese participants to those U.S. law schools which had Chinese law specialists; to the contrary, every effort was made to place each Chinese student and scholar at the American law faculty with the best resources for his or her individual program. In the end, over 40 U.S. law schools hosted CLEEC visitors. Today, it remains the case that no single school or group of institutions can hope to satisfy, by itself, the multifarious needs of China's evolving legal order or even its legal education system. CLEEC's successes demonstrate that a broad-based program that harnesses all the available talent in the United States is vastly to be preferred. In the light of the far more generous support that has recently been promised by the European Union, Canada and other foreign governments and foundations, it is high time for the United States officially to step up to the plate, make good on the prom-



ises of several years' standing and build upon the broad and strong foundation of earlier efforts.

*WTO Accession.* As part of its protocol of accession to the WTO, China has made many commitments to reform its laws and legal system. At the first level, these commitments mainly involve undertaking to pass certain new legislation and to revise some existing legislation to make China's foreign trade regime and related institutions compatible with the requirements of the WTO. On a second, deeper level, the PRC has also promised to adopt basic practices of WTO jurisprudence, such as transparency in its regulatory regime and the creation of impartial tribunals for the adjudication of trade-related disputes. Yet, at a third, deepest level, the commitments that the PRC has made in joining the WTO presage structural changes which promise to transform the most basic features of Chinese law and legal culture. Indeed, the experience of other former developing countries in the Asian region, such as South Korea and Taiwan, is that the adoption of modern legal mechanisms and their subsequent practice over a long term inevitably creates pressures for reform across the board, including political liberalization in line with economic modernization and development.

Among the reasons the PRC has been seeking membership in the WTO, enjoyment of unconditional Most Favored Nation (MFN) status pursuant to WTO rules is clearly the most significant. Under the WTO, trade among member nations is subject only to minimal tariff restraints and requires that all Contracting Parties treat each other "equally." Once the PRC becomes a WTO member nation, China would be able to eliminate its need for bilateral trade arrangements; although these provide benefits, including MFN, similar to those promised by the GATT, such arrangements must be periodically renegotiated and may be unilaterally terminated.

Membership in WTO would promise other benefits for the PRC's international trade in addition to MFN. The WTO provides an important forum for coordination of international economic policy and resolution of trade disputes. Useful, detailed information about the economies of member nations, as well as economic policies and activities, is compiled by its Secretariat; such material will assist China's formulation of its foreign economic and trade policy. Moreover, from the perspective of China's leadership and economic reformers, the WTO's requirements and market orientation are conducive to continuing reform in China's domestic economy, including price reform, tariff reduction and elimination of economically inefficient subsidies and other market distortions.

Notwithstanding these commitments and the substantial benefits to China of WTO accession, as the Report of the Working Party on the Accession of China documents, there are a number of challenges in effective implementation of China's WTO commitments. Some of these relate to China's basic economic policies and the framework for making and enforcing them; others relate to specific policy areas—trade in goods, intellectual property, trade in services, etc. The report itself runs to over 70 pages of dense prose, single-spaced in tiny type. Although less than four of those pages are devoted to framework issues related to economic policies, that brief section deals with such important and intractable issues as the authority of sub-national governments (often the source of local protectionism); the uniform administration of the trade regime (threatened by both local variation in enforcement and the lack of understanding of China's WTO commitments at the lower levels of government in China); and judicial review of administrative actions relating to WTO requirements as implemented in Chinese law (which may be hampered by lack of infrastructure and training, corruption and local protectionism).

A careful examination and historical overview of China's WTO accession process would reveal the WTO's impact on China. Necessary legislative and statutory changes in Chinese legislation are being made pursuant to WTO accession. The need for compliance with WTO rules imposes new constraints on Chinese policies and the uneconomic operations of state-owned enterprises. The role of China in WTO diplomacy, decisionmaking, and the dispute settlement system as a result of the Chinese accession (e.g. role of civil society, *amicus curiae* briefs, etc.) should also provide impetus for developments in the legal realm. Despite consideration given to special WTO rules designed for China and China's weight in the WTO diplomatic/decision process, China will still have to interact with other WTO member nations in this important international legal arena.

Processes and problems for China in implementing WTO rules include questions about whether the PRC maintains the political will to implement the WTO obligations and the challenges the PRC leadership faces in maintaining Chinese commitments over time. At the same time, there will be considerable economic impact of Chinese WTO membership on world trade and vice versa, in particular the tensions resulting from increased competition in Chinese main export markets, such as textiles, microchips, etc.

The rise and development of procedural rules in the WTO is part of a larger movement in the general WTO jurisprudence and structures. This movement is sometimes criticized as a move toward excessive legalism in the regulation of the global economy, an unfortunate move from diplomacy to a rule-based trade regulatory framework, characterized as a process of “judicialization.” Yet, efforts to develop procedural review at the WTO level were taken mainly as a response to the concerns over misuse and abuse of domestic legal systems for protectionist purpose. The particular sensitivity of issues such as antidumping and political legitimacy concerns about national legal systems provided both an internal dynamic and discipline for the WTO dispute settlement. China’s accession will require that WTO panels dealing with challenges to Chinese practices must demonstrate that often too rare combination of willingness to enter into the arena of conflict on the one hand, and the wisdom to know when to intervene on the other.

*The Practical Implications for China.* Procedural review and transparency in WTO jurisprudence is a recent phenomenon in the area of international regulation of world economy. Some have characterized the WTO rules and adjudication as a code of international administrative law; compared with earlier eras of “international administration” it is intrusive to an unprecedented degree. Yet, at the same time, PRC accession to the WTO offers some legal safeguards for China’s rights and legitimate interests. Moreover, China can take advantage of the procedural review in Geneva, for example, to curb abuse of antidumping actions by its trading partners.

Bureaucratic culture and legal procedures in China will have to change, however, for the PRC to take full advantage of WTO accession. While there have been considerable efforts to improve administrative procedure in China in recent years, judicial supervision in China in general tends to be weak, at least by common law standards. Chinese authorities will probably face a much more searching review in Geneva than in their domestic courts. Given the need to provide a domestic forum in China before proceeding to WTO review in Geneva, it will take time and effort for the individual officials in Chinese investigating authorities to become familiar with WTO procedures, to improve their own procedures, and to follow those procedures.

*What Is To Be Done?* The needs that China obviously has in so many areas also present opportunities not only for United States assistance but also, in the process of providing such support, to inculcate American institutional preferences and legal cultural values. More to the point, the assistance that is being offered (and generously underwritten) by others insures that their institutions and values will displace those which we might prefer if the United States does not provide similar sorts of Rule of Law assistance in connection with WTO accession.

Moreover, the challenge now facing the U.S. is to emphasize China’s obligations under all those international agreement it has signed (such as the Convention against Torture, International Human Rights Covenants and the Convention on the Elimination of All Forms of Discrimination against Women). Furthermore, China’s domestic laws—beginning with China’s 1982 Constitution—express in domestic Chinese legislation those universal values which are elsewhere enshrined in both in international treaties and other nation’s domestic laws. We need to increase the level and frequency—at the same time lowering the volume—of dialog with China, bilaterally and multilaterally, over a range of legal issues, not only WTO-related but extending to civil and political rights. Expanding current exchange relationships focused on economic law can provide both an avenue for such dialog and a base on which to build relationships with sympathetic audiences in China.

The evolution of democracy in China will be a long, painful process. It depends primarily on economic growth, including greatly increased domestic investments in infrastructure, education and science and technology. The rise of a middle class in China—as in Hong Kong, Singapore, Taiwan and South Korea previously—along with exposure to the outside world and moral support from the West will inevitably press for a more open political system.

Most significantly, China’s dissidents—within China and abroad—are virtually unanimous in their support of China’s accession to the WTO. They understand the crucial linkages between China’s enjoyment of MFN status, along with access to U.S. export markets, and the increase in personal liberty that results from concomitant economic growth. With virtually one voice, these individuals—many of whom have suffered grievously at the hands of the Chinese State and the Communist Party—urge a more nuanced policy, building on existing relationships, promising true “comprehensive engagement.”

The economic and trade relationship between the U.S. and China reaches many more lives on both sides of the Pacific than does any other aspect of our bilateral relationship. Yet I would be remiss in representing my organization and my own experiences as a scholar researching Chinese law and the former director of a national U.S.-China educational exchange organization if I did not also describe for

you the remarkable opening of China to educational exchange and the greatly increased access for foreign researchers. More than two decades' hard work on the U.S. side has, particularly in the last several years, yielded new opportunities for study and research in China. For Chinese host institutions, the prospect of economic gain—and the promise that those gains can be enjoyed and controlled by the people most responsible for their realization—has resulted in a previously unimaginable opening. While there are still some problems to be resolved, especially in the light of recent arrests and show trials of Chinese-American scholars and researchers on trumped-up charges, remarkable progress since 1990 has led to unprecedented access to libraries, laboratories, archives and educational institutions.

Yet, despite these gains, the State Department and other Federal Government agencies now provide less than half the support for bilateral exchanges between the U.S. and China that they gave in 1988! Shockingly, we devote 1/40 of the amount targeted in the U.S. Federal budget for such aid to Central and Eastern Europe and the former Soviet Union to academic and cultural exchange with China. Given the at least equal strategic importance of China and its vastly larger population, such parsimony is inexplicably short-sighted.

*Conclusion.* The future development of the rule of law in the PRC is likely to prove as checkered as has the process of the past almost two decades. Since the late 1970's, China has made enormous strides in passing laws, rebuilding shattered institutions such as the bench, bar and legal education, and in using law and legal mechanisms to lend some greater predictability to the overall conduct of Chinese society and—in particular—the economy. Nonetheless, significant gaps remain with respect to enforcement of enacted laws, serious attacks on official corruption and elimination (or at least the gradual reduction) of the number of highly placed individuals who remain outside of the reach of the law, usually due to their status at Communist Party leaders. Although it is certainly no longer fair nor accurate to describe the PRC as a Nation without law, it would also be difficult to characterize it as a Nation where the rule of law enjoys quite the same prominence as it does in most developed Western nations or even Japan. As the Chinese like to say in describing their hybrid market economy, which possesses certain elements of the free market along with some remnants of the Communist planned economy, China's legal system is an attempt to create a more modern rule of law while still retaining "Chinese socialist characteristics." This situation is likely to persist for the foreseeable future. WTO accession provides a unique opportunity, however, to hasten the pace of incremental change at a time when the very structure of China's participation in the international economy is being perhaps permanently transformed. With our eyes fully open, we should seize the opportunities such historic changes may provide.

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PREPARED STATEMENT OF WILLIAM P. ALFORD

FEBRUARY 7, 2002

To the Chairmen and Members of the Commission:

I am honored to have been invited to testify at this, the first public hearing of the Congressional-Executive Commission on the People's Republic of China, given your charge to monitor compliance with human rights and the development of the rule of law in the PRC at this critical time in our bilateral relationship.

My fields of specialization are Chinese law and legal history, international trade (including the World Trade Organization), and the legal profession. I have been involved with legal development in the PRC from the early 1980's onward when, together with Professors Randle Edwards of Columbia University and Dr. Stanley Lubman, among others, I established the first regular program of instruction in American law in the PRC and the first sustained program bringing Chinese legal professionals to this country for advanced training. In addition, I have taught in China; provided advice to our government, non-governmental organizations, foundations, and others about Chinese affairs; and had extensive occasion to observe Chinese legal development.

In this statement I first offer a brief overview of my understanding of Chinese legal development—which I see as necessary for the realization in China of internationally recognized standards of human rights, but not a substitute for that vital end. I then turn my attention to American and other foreign efforts to assist legal development before concluding by suggesting directions in which attention might be focused. As time and space are short, this statement is perforce a summary for which elaboration may be found in the materials cited in my endnotes.

To assess the Chinese legal system today, we need to appreciate just how far legal development has come and how far it has yet to go before it meets any widely accepted definition of the rule of law.

Over the past quarter century, the PRC has been engaged in the most concerted program of legal construction in world history.<sup>1</sup> At the end of the Cultural Revolution (1966–1976), the PRC's modest legal infrastructure lay in near ruin—with but a skeletal body of legislation, a thinly staffed judicial system, and a populace having scant awareness of law. Today, the PRC has an extensive body of national and sub-national legislation and other legal enactment, concentrated on, but not limited to, economic matters, and has joined major international agreements covering trade, the environment, human rights, intellectual property and a host of other issues. Moreover, as Dr. Lubman and Professor James Feinerman of Georgetown elaborate in their statements for this hearing, in acceding to the WTO, the PRC has agreed to bring both its pertinent substantive laws and their administration into compliance with international norms. The Chinese judicial system now has a nation-wide presence, with specialized chambers to address criminal, civil, economic, administrative and, in some instances, intellectual property law questions. Whereas a generation ago, China had fewer than 3,000 lawyers and approximately a dozen law schools, today there are over 125,000 lawyers and hundreds of law schools, with law a very popular subject for university study and well over 150,000 candidates yearly taking the bar exam. Chinese citizens now avail themselves of the formal legal system in an unprecedented manner, with, for example, some 5.5 million new litigations annually, and widespread public interest in at least some legal issues, as was demonstrated, for instance, by the extensive and vigorous national debate surrounding proposals that led in 2001 to the revision of the marriage law.<sup>2</sup>

These and other accomplishments need to be taken seriously, but so do the many respects in which the legal system continues to fall well short of meeting any widely accepted definition of the rule of law. As the United States Department of State's latest annual country report shows in detail, the legal system has yet to prove itself adequate to protect the rights of all Chinese citizens.<sup>3</sup> Accounts, for example, of arbitrary arrests, torture and mistreatment while in official custody, and denial of the basic procedural protections that Chinese law is intended to provide abound—as has to a degree been acknowledged by senior PRC legal personnel.<sup>4</sup> The re-education through labor system, whereby the police may sentence detainees for periods of up to 3 years in labor camps, continues—notwithstanding the objections of some PRC legal scholars and the international human rights community, including Dr. Mary Robinson, the United Nations Commissioner for Human Rights.<sup>5</sup> And it is no secret that there are serious problems when it comes to efforts by citizens to avail themselves of such basic internationally recognized freedoms as those of association, assembly, and religious expression.

Turning our attention inward, the legal system itself is in need of substantial improvement. Efforts have been made, with foreign assistance playing a part, to nurture professionalism through intensified training, the promulgation of higher standards for legal personnel, and attempts to root out official mal and misfeasance, but much more remains to be done. The judiciary clearly does not enjoy the degree of independence from political authority that we associate with the rule of law. Judges typically are chosen from among Party members at the same time that actions of the Party itself are not reviewable in a court of law.<sup>6</sup> Corruption plagues the legal

<sup>1</sup>The most comprehensive overview of this phenomenon in English is Stanley B. Lubman, *Bird in a Cage: Legal Reform in China After Mao* (Stanford University Press, 1999). My own views are elaborated in, inter alia, William P. Alford, "A Second Great Wall? China's Post-Cultural Revolution Project of Legal Construction," *Cultural Dynamics*, vol. 11, p. 193 (1999).

<sup>2</sup>These debates included considerable and heated discussion about appropriate roles about the interplay between the interests of the State and individual autonomy. I discuss these debates in a forthcoming paper entitled "Have You Eaten? Have You Divorced? Debating the Meaning of Freedom in Marriage in China."

<sup>3</sup>The United States Department of State, *Country Reports on Human Rights Practices—2000, China* (February 23, 2001).

<sup>4</sup>See, "China: Procurator General Calls for Crackdown on Exploiters of Position," *Xinhua [New China] News Agency*, available in English via BBC Monitoring Asia Pacific—Political, December 27, 2000.

<sup>5</sup>See, for example, Chen Guangzhong & Zhang Jianwei, "The United Nations International Covenant on Civil and Political Rights and China's Criminal Process," *China Jurisprudence*, No. 86, p. 98 (December 1998).

<sup>6</sup>Professor Jerome Cohen of New York University Law School estimates that "over 90 percent of the country's approximately 180,000 judges are Party members." Opening Statement of Je-

system as it does Chinese society more generally—indeed, this is so pervasive a problem that one influential PRC economist, Professor Hu Angang of Qinghua University, estimates that it may have consumed as much as 15 percent of GDP in recent years.<sup>7</sup> The educational level of legal personnel remains far lower than it should be, with some observers estimating that even today only roughly one out of every ten judges has a 4-year university degree in law.<sup>8</sup> The legislative and rule-making processes are expanding to hear from a broader spectrum of interests,<sup>9</sup> but they remain heavily top-down, typically lacking regular opportunities for input by ordinary citizens. And enforcement of the law can be problematic, as demonstrated last autumn when the Supreme People's Court temporarily put a hold on lower level courts accepting shareholder suits for damages<sup>10</sup> and as is manifested by what Chinese authorities themselves describe as “local protectionism,” meaning undue favoritism shown by the courts at local levels to the “home team.”

#### THE ROLE OF FOREIGN LEGAL ASSISTANCE

The past two decades have witnessed a range of efforts from throughout the democratic world to assist Chinese legal development, although it remains modest in view of the enormity of the challenge (particularly if we wish to engage ordinary citizens as well as governing elites). In the case of the United States, the bulk of assistance for legal development until the late 1990's came from foundations, universities, non-governmental organizations, business, the bar, and private citizens, although our government did play a part through programs such as the Fulbright and the Committee on Scholarly Communication.<sup>11</sup> Over the past 5 years, the US government has begun to take more of a role in legal development, first through the Clinton administration's rule of law initiative and more recently through both the Bush administration's choice of a lawyer with expertise on China as Ambassador to Beijing and through the administration's recent request for and Congress's allocation of funds for Chinese legal development. Outside of the United States, support for Chinese legal development has tended to come more substantially from governmental sources rather than civil society, as evidenced by official developmental assistance provided by the governments of the United Kingdom, Germany, Canada, and the Scandinavian countries, among others.<sup>12</sup> Additionally, multilateral organizations such as the World Bank, the Asian Development Bank and the United Nations Development Programme have also provided support.

As might be expected given their varied genesis, American programs have not been uniform in their approach and objectives. Some have accentuated linkages with the Supreme People's Court (which oversees the judiciary administratively) that have resulted in new training opportunities for Chinese judges. Others have counseled Chinese legislative drafters and writers of regulations (typically on an informal basis) and helped them establish data banks of Chinese and other laws. Yet others have focused on assisting Chinese law schools by providing otherwise unavailable materials about American and international law, enabling future leaders of Chinese law to study in this country, and arranging for a range of Americans to lecture on law (including constitutional law and human rights) in China. And still others have concentrated on civil society, offering guidance about legal aid, training

rome A. Cohen before the first public hearing of the U.S.-China Security Review Commission, Washington, D.C. (June 14, 2001).

<sup>7</sup>Hu Angang, *Zhongguo: Tiaozhan Fubai* [China: Fighting Against Corruption] (Zhejiang People's Publishing House, 2001).

<sup>8</sup>Statement of Donald C. Clarke Before the U.S.-China Security Review Commission, Washington, D.C. (January 17, 2002).

<sup>9</sup>The opening up of legislative drafting to a broader range of interests is discussed in William P. Alford and Benjamin L. Liebman, “Clean Air, Clear Processes? The Struggle over Air Pollution Law in the People's Republic of China,” *Hastings Law Journal*, vol. 52, p. 703 (2001).

<sup>10</sup>See Supreme People's Court, “Guanyu she Zhengquan Minshi Peichang Anjian zan bu Shouli de Tongzhi” [Notice on Temporarily Not Accepting Securities Cases Involving Civil Actions for Compensation], September 21, 2001. This and other issues of law enforcement in the PRC are treated in the Statement of Professor Clarke of the University of Washington, *supra* note 8.

<sup>11</sup>See, for example, the writing of Professor Jacques deLisle of the University of Pennsylvania. Jacques deLisle, “Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond,” *University of Pennsylvania Journal of International Economic Law*, vol. 20, p. 179 (1999). See also Allen Choate, “Legal Aid in China,” (The Asia Foundation, 2000) and Aubrey McCutcheon, “Contributing to Legal Reform in China,” in *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (Ford Foundation, 2000).

<sup>12</sup>A recent appropriation of more than 5 million pounds for a single project intended to beef up the Chinese legal profession is described at Frances Gibb, “Lord Woolf Goes to China,” *The Times of London*, July 24, 2001.

advocates for the disadvantaged, and supporting centers concerned with matters such as women's rights and environmental justice. Although also diverse, non-US origin programs have tended to provide more support to official actors and, especially in the case of multilateral organizations, to concentrate on issues pertaining to economic law.

Given that there is no way scientifically to isolate the variable of foreign assistance from all the other factors influencing Chinese legal development, any assessment of it must in some measure be subjective. My own sense is that in general such assistance is of value. It is, for example, enabling relatively open-minded Chinese in and beyond legal circles to deepen their understanding of legal institutions in democratic societies and so to have a broader array of choices from which to think about change in their own society. It is acquainting their less open-minded colleagues with just how out of step China is with the norms of nations they may wish to emulate economically (if not politically). And it is providing financial, moral and even political support for China's emerging civil society (including entities that might otherwise have a hard time surviving).

In taking account of such accomplishments, it is important, however, not to overstate what we can expect from such assistance in the absence of meaningful political reform in China. Moreover, candor requires that we acknowledge problems that have cropped up with respect to such programs. Most notably, these include attempts by Chinese authorities at times to legitimate repressive activity by cloaking it in a veil of legality, and the wastage of funds used to support ill-conceived or ill-managed programs.

#### DIRECTIONS

I strongly believe that we in the United States should increase our involvement in legal development in the PRC. In saying this, I appreciate that there are serious limits to what any kind of foreign legal assistance can accomplish and that there is a need to be staunchly vigilant against the possibility of such assistance being misused. Nonetheless, such involvement is worthwhile for many reasons. It has been and can be used to help some who suffer unfairly today, as borne out by the work done via the center for women's rights at Beijing University or the center for environmental justice at the China University of Politics and Law. It can buttress Chinese who are serious about building a better legal foundation for securing fundamental human rights, such as those bold individuals who have criticized the Party's role in the judiciary or others who have sought for years to have the law of criminal procedure redrafted so as to afford substantially greater protection to defendants. And it can aid in implanting ideas that may over time bear fruit, for whatever the nature and pace of political change in China, the Chinese people will need to draw far more than they now do on law and legal institutions if they are to achieve a more just and freer society.

As we think about further involvement in Chinese legal development, I would urge that we be mindful of the following:

1. Legal development is necessary for the realization of internationally recognized standards of human rights in China, but it is not a substitute for that vital end. Some here and in China may find it tempting to accentuate the former rather than the latter on the grounds that it less likely to come across as confrontational. That would be a mistake. As I demonstrate in my scholarly work, the two are so interwoven that an insufficient commitment to fundamental rights risks undermining the integrity of legal development more generally.<sup>13</sup> Indeed, the analogous point might be made about the ways in which economic, legal and political development are related. China's engagement with the world economy clearly has fostered overall prosperity and a greater appetite for economic and other freedoms, but it also is yielding enormous inequality and unleashing widespread social problems that without better legal and political institutions through which ordinary citizens can express legitimate grievances pose serious challenges to social stability and to that very prosperity.

2. As we seek to promote legal development, we need to hold true to our ideals, but not necessarily the particular forms through which we may seek to realize those ideals at any given moment in our own nation. All too often well-intentioned Americans present what we do today (or what we like to think we do) as the only alternative to China's current circumstances. I think that we make a stronger case for legality and pluralism, and better empower change in China when we are help the Chinese to appreciate the different choices that different free societies make in their

<sup>13</sup> William P. Alford, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford University Press, 1995).

efforts to attain the ideals of rule of law and of democracy that all such societies share. We need, for instance, to be mindful that approaches we may advocate in our country, given our ready access to lawyers, may not accomplish the same ends given the relative inaccessibility of China's rural populace to professional legal assistance and given the greater role that administrative solutions are likely to play there for some time to come. In this vein, I might also add that candor about our own shortcomings, as well as pride in our accomplishments, is helpful in countering the objections of Chinese authorities that we are too ready to take their Nation to task. The Enron debacle, for instance, has not gone unnoticed in China and, in fact, has become an issue in debates between the China Securities Regulatory Commission and the Ministry of Finance over the former's efforts to require use of foreign accounting firms.<sup>14</sup>

3. We need to think further about both the targets for and sources of our legal assistance. With regard to targets, it not realistic to think that we can advance the rule of law in China without engaging those who oversee and operate the legal system even as we stress the importance of legal institutions attaining far greater independence. Thoughtful and honest foreign assistance can be of value to Chinese legal personnel searching for ways in which to address the endemic problems discussed above. At the same time, however, it is absolutely essential that those providing foreign legal assistance break out of what has been an excessively top-down focus on a small number of Beijing-based entities and endeavor to reach out far more than it has to China's emerging civil society—so that our actions match our words about law being an instrument for citizen empowerment. With regard to sources, the fact that most American involvement has been a product of our civil society has, in my view, been a strength—making possible a genuine diversity of approaches and demonstrating that in our country universities and the bar are not agents of the government. Nonetheless, given the importance of this undertaking and the difficulty of securing greater private support, substantially greater Federal support would be very helpful.

4. Finally, we need to appreciate just how massive an undertaking this is—for China will not attain a rule of law without a further change in the way in which Chinese citizens think of themselves and their relationship to authority. To note this is not to subscribe to cultural determinism—I think that ideas of justice and fairness ring as true to Chinese as to Americans. Instead, it is to urge that we understand that this is not an area amenable to quick fixes and to commit ourselves to work that will prove difficult and in which the ultimate shape of success and the credit for it will principally reside with the people of China.

I thank you for inviting me to offer this statement and stand ready to answer any questions you may have regarding it.

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OPENING STATEMENT OF HON. MAX BAUCUS, CHAIRMAN, CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA

FEBRUARY 7, 2002

I am pleased to call to order this first hearing of the Congressional-Executive Commission on China, and to be joined by my distinguished Co-Chair, Congressman Doug Bereuter, and other Commission members from the Congress and the executive branch.

This Commission represents a unique endeavor, and a unique challenge, in bringing the resources of the Congress and the Administration together to help improve human rights and the rule of law in China.

I want to start by recognizing and thanking my Co-Chair, Congressman Bereuter, and my good friend Congressman Sandy Levin, for their work during the PNTR debate in creating this Commission as a way for Congress to maintain a strong and continuing interest in human rights and the rule of law in China. Myriad circumstances delayed the start of the Commission, but today we begin a vigorous set of activities.

Let me start by explaining the role this Commission will play in US/China relations.

First, we in the United States cannot impose our will on China and its 1.3 billion citizens. The decisions about what happens inside China can only be made by the Chinese people.

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<sup>14</sup>Richard McGregor, "Creative Chinese Accounting Works for Andersen: Scandals Involving Local Firms are Boosting the Big Five," Financial Times, January 28, 2002.

Second, China is an emerging regional and international power, and our national interest requires intensive engagement. We must look at China—not through rose-colored glasses, and not through dark glasses that see only evil and danger—but through the lens of reality. China represents a significant challenge to the United States in many areas, and it represents a significant opportunity in many other areas. We need to look at the facts, analyze them objectively and dispassionately, and then act in ways that support our national interest.

Third, there are significant human rights abuses in China. In some areas, the situation is worse today than in the past. In other areas, there have been improvements. We will recognize the latter, and be critical of the former.

Fourth, in no country can there be sustained protection of human rights without the rule of law. Members of Congress, including many on this Commission, as well as every recent Administration, have been active in securing the release, or reduction of sentences, for individual prisoners of conscience in China. I expect that to continue, as it should. However, this Commission will look at human rights within the context of the rule of law in China. As a Commission, we may address individual cases, but only when there is likely to be a broader systemic and structural impact in China.

The witnesses appearing today reflect that orientation. Human Rights Watch and Human Rights in China have done excellent work looking at the legal and political context in China within which human rights can be protected. And Professors Feinerman and Alford have focused much of their work on the rule of law and legal reform in China.

The US-China relationship today is different than a year ago. Following the resolution of the downing of our reconnaissance plane on Hainan Island in April, and the horrible events of September 11, there has been a change in the bilateral relationship. Beijing is cooperating with us on the war against terrorism. China's rhetoric over Taiwan has ameliorated somewhat. China has joined the WTO. But serious problems remain between us in a number of areas—arms proliferation, human rights, and significant differences over Taiwan.

This Commission will concentrate on the human rights aspects of our relationship, with a focus on the rule of law in China. We will look closely at areas such as religious freedom, political prisoners, Tibet and minority areas, labor rights, and the flow of information in China. We will examine the developing role of NGO's in China. We will look especially at developments in the rule of law, including legal reform in the civil, criminal, and commercial areas, and the way in which these laws are, or are not, being implemented. We will look at how the United States—and that means our government, the business community, and the NGO sector—can pursue policies and programs that will increase the respect for law in China, and strengthen those in China who are working to increase the transparency and objectivity of the legal system.

China is not a monolith. There are many inside the Chinese government, the Communist Party, and State-Owned Enterprises who are working desperately to maintain the status quo. But there are also many in China who want to see genuine reform, both economic and political reform. They recognize that for China to become a great Nation and fully join the international community, China will have to follow international standards in the human rights area, meet the obligations the government has made in international covenants covering political, economic, social, cultural, and civil rights, and honor those provisions in the Chinese constitution and in Chinese law that claim to protect the individual from abuse by the state.

As I said earlier, decisions about what happens inside China can, ultimately, only be made by the Chinese themselves. The question for this Commission, and for the Congress and the Administration, is: How can we best assist those who seek reform? Incorporating China into the WTO is, surely, one way to begin down the road of significant commercial law reform.

We will not shrink from pointing out the ways in which the Chinese system is falling short of meeting those standards. But, the major challenge for this Commission is: How can we contribute to an improvement in the human rights of Chinese citizens? And how can we influence the structural change necessary to improve how those citizens are treated?

In our hearings, we want to hear from groups and individuals who can add to our knowledge and understanding of the reality inside China. But we also want to hear from them about the ways that this Commission, with its Congressional and executive branch membership, can help promote and support positive, constructive, and lasting change in China.

Let me address some remarks to the Chinese government. When the House of Representatives approved the PNTR legislation in May of 2000, the Chinese government said that it was a wise decision. But their spokesperson went on to say, "The



Chinese side is seriously concerned and dissatisfied that the bill contains provisions that attempt to interfere in China's internal affairs in various names like human rights and harm the interests of China. The Chinese side has . . . announced in explicit terms that it firmly opposes and cannot accept these provisions." I have two comments about that statement.

First, this Commission is an instrument of the United States government and will vigorously pursue the issues of human rights and the rule of law in China. We do not seek to impose American standards on China. But, there are numerous international covenants relating to human rights that China has entered. The Chinese Constitution and Chinese laws include many written guarantees for the citizens of China. For China to be a full and responsible member of the international community, and that includes the global trading system, the rule of law must be honored. This is an issue of concern and interest to all nations interacting with China.

We will work with China when we can. We will acknowledge progress. We will criticize when there is no progress. I firmly believe that there are many in China—government officials, business people, and ordinary citizens—who agree with this approach.

Second, I urge the Chinese authorities to work with this Commission. I spent a decade fighting against putting conditions on our trading relationship with China. Along with others on this Commission, I fought hard for PNTR because I believe that engagement and deepening the relations between our two nations is the best way to induce change in China and bring them fully into the community of nations. It is in China's long-term interest to work closely with us.

Let me conclude with a few comments about the Administration's human rights policy. In his meeting with Chinese President Jiang Zemin in Shanghai in October, President Bush discussed the importance of religious freedom and made a strong statement that the war on terrorism should not be used to justify a crackdown on minority groups in China. Under the leadership of Assistant Secretary of State Lorne Craner, a member of this Commission, the United States has re-engaged China in a bilateral human rights dialog. President Bush will visit Beijing February 21 to 22 and meet again with senior Chinese leaders. I urge him to ensure that human rights and rule of law issues are among his top priorities in those discussions.

Let me turn to my Co-Chairman, Congressman Bereuter, for his statement as we initiate the work of the Congressional-Executive Commission on China. I invite the other members of the Commission to submit their opening statement for the record. After Congressman Bereuter's remarks, we will turn right to our panel of experts.

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OPENING STATEMENT OF HON. DOUG BEREUTER, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

FEBRUARY 7, 2002

Chairman Baucus, Senator Hagel, Congressman Levin, Under Secretary Aldonas, fellow Commissioners, distinguished panelists, ladies and gentlemen:

I consider it a privilege to join Senator Baucus in convening this first formal hearing of the Congressional-Executive Commission on the People's Republic of China. I am particularly pleased to recognize the presence of my colleague and fellow Commissioner, the distinguished gentleman from Michigan, Sandy Levin, who deserves great credit for being the leading intellectual godfather of this Commission and who has worked tirelessly with me and others to see it come into being. I look forward to our continued association in guiding the work of the Commission over the coming years.

As Senator Baucus has noted, this Commission was created by the China Relations Act of 2000 to create a forum for continuing congressional involvement in monitoring China's human rights practices and the development of the rule of law there. The Commission's mandate reflects continuing concerns, in both Houses of Congress and among Members of both political parties, not only about individual instances of human rights abuses in China but also about the need for encouraging systemic changes in China to end such practices. Undoubtedly all on the Commission share the goal of encouraging positive changes in Chinese Government policy and practice that will help those who have been punished unjustly for seeking to exercise basic human rights, prevent future abuses, or bring China's human rights practices into conformity with international standards. There are differences in the international community, and undoubtedly in Congress, as to the best methods for achieving this goal, but I believe there is broad consensus in Congress and America on the importance of the goal itself.

In this context, I think that the Commission should concentrate primarily on systemic changes to China's human rights practices and legal regime, and not attempt to duplicate the important advocacy work on individual cases already being done by individual Members of Congress, human rights NGO's, and concerned members of the public. Of course, the registry of victims of human rights abuses that our mandate requires will provide an important resource for such advocacy, so the Commission will have a crucial role in this work.

In my view, the human rights and rule of law parts of this Commission's mandate are intimately related. Virtually everyone in China, the United States, and elsewhere, who is concerned with human rights practices in China believes that progress in legal reform will necessarily result in greater compliance with the basic human rights enshrined in such international covenants as the Universal Declaration of Human Rights. Many also believe that such reforms will improve not only government transparency, but also the development of the essential institutions of democratic governance. The development of an open, transparent, and predictable legal system throughout China should also be beneficial over time in other ways, such as providing ordinary Chinese citizens with the legal means to check the arbitrary exercise of official power, as well as helping to ensure China's full implementation of its commitments under the World Trade Organization protocol of accession.

Before we hear from our outstanding panel, I would offer some thoughts on four aspects of our Commission's work that I think will be of continuing importance to us. These aspects are:

1. The Commission as a forum for a balanced, constructive focus on human rights issues in China;
2. The Commission as a catalyst for US efforts to support the development of the Rule of Law in China;
3. The Commission's development of a registry of victims of human rights abuses; and
4. The Commission as a resource for Senators, Members of the House and their respective staffs, U.S. China specialists, and the general public.

With respect to the Commission's mandate on human rights, I believe it will be vital for us to undertake a comprehensive, objective look at the current State of Chinese Government compliance or non-compliance with international human rights norms. Following the sensible requirements of our legislative mandate, Commission staff should receive information and perspectives from human rights, labor, and religious freedom NGO's in the United States and elsewhere. We should also build on the work of relevant U.S. Government agencies (including those who are represented by our five Commissioners from executive branch), and from sources in China, Hong Kong, and elsewhere. This undertaking is a big job, but one made considerably easier by the important work of many people in the U.S. Government, U.S. universities and think tanks, and U.S. and international human rights NGO's. With this factual framework in place, we can then assess whether to recommend specific action by Congress or the Administration in our annual report.

Second, I believe it is important that the Commission act as a catalyst for encouraging and supporting U.S. and multinational programs to build legal institutions in China. I hope that the Chinese Government will accept and welcome U.S. initiatives to help train judges and lawyers, inculcate a culture of transparency in the legislative and regulatory process, and to improve Chinese efforts to extend legal services to ordinary Chinese people, focusing particularly on the poor, women, and people in rural areas.

Since the Chinese leadership embarked on the "reform and opening up" policy in the late 1970's, a number of Americans -among whom two of our panelists are the most distinguished- have participated in successful legal exchange and legal cooperation initiatives with counterparts in China. But the U.S. Government has never had its own directly funded program to complement these private efforts, and I believe the time has come for us to take a hard look at such a program. The Commission should determine in which areas additional U.S. public investment in rule of law programs in China might add value to existing private efforts or might permit new initiatives in areas previously untouched by U.S. efforts. The overall goal should be to produce significant long-term results on the ground in China without wastefully duplicating previous or existing initiatives. An understanding by the Commission, Congress, and our Government of the rule of law programs that other countries currently have with China will be an important part of this effort to avoid duplication and maximize the effectiveness of any U.S. rule of law program.

Although many in the United States are interested in commercial rule of law programs, particularly as they relate to building capacity for WTO implementation and compliance, any U.S.-funded rule of law program should focus more broadly on civil,

criminal, and administrative law reform. We should also welcome, encourage, and support initiatives to improve the transparency of the legislative and regulatory processes in China.

Third, I believe that the establishment and maintenance of a useful, factually accurate, up-to-date registry of prisoners of conscience and other victims of human rights abuses will be a vital part of the Commission's work. Successful achievement of this task will be a complex and difficult undertaking, but my hope is that over time this registry will be a useful resource for Members of Congress and staff, researchers, the press, and the general public. Fortunately, individuals and organizations with experience in collecting, storing, and using such information have offered to cooperate with the Commission. In addition, I think that recent advances in information technology will help Commission staff in meeting this important aspect of our mandate.

Fourth and finally, as we progress in staffing the Commission and gathering information on the specific issues in the mandate, I hope that the Commission would earn the confidence of Members of Congress and their staffs as a resource for timely, objective information about China generally. Naturally, our focus and expertise will be principally with respect to the specific areas of human rights and the rule of law, but we expect to staff the Commission with qualified staff possessing broad experience in China. I hope that the Commission could assist Members of Congress and staff who plan to travel to China to prepare for their visits, particularly in becoming familiar with human rights and rule of law issues. The registry should provide the type of information that would permit Members of Congress to raise and discuss the cases of specific individuals during official meetings in China.

Mr. Chairman, we have a distinguished panel this afternoon to share their views with us, and I would like to express my appreciation for their appearance and testimony. Each has dedicated a significant part of his professional life to one or more of the issues in our mandate, and I know we will hear lively, informative, and thoughtful presentations. Thank you, Mr. Chairman.

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PREPARED STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM MICHIGAN

FEBRUARY 7, 2002

Mr. Chairman, Thank you for convening the first hearing of the Congressional-Executive Commission on China. The members of this commission have an important and difficult task ahead of us. Our challenge is to find a way to prod China to comply with internationally accepted human rights standards, respect for labor rights, religious freedom and the development of rule of law, when prior efforts met with little success.

I, like many of my colleagues, voted to grant China permanent normal trade relations in part because the legislation included a specific mechanism to monitor and report on China's human rights practices. That mechanism is this Commission which my brother, Congressman Sander Levin, put forward as a way to keep some public, visible and ongoing pressure to replace the annual congressional vote on China's MFN on China to reform in the areas of human rights, labor rights and the development of the rule of law. The Commission offers the promise of an effective tool for both monitoring and changing the human rights conditions in China. Clearly the mechanisms of the past were largely ineffective in impacting the human rights climate in China.

The Commission must be bold and innovative in carving out new and effective ways to influence China. China's human rights record is abysmal and is getting worse. And China has shown little willingness to change this record. The Commission has its work cut out for it.

The State Department's most recent Human Rights Report on China (year 2000) concludes that the Chinese government's poor human rights record has worsened, and China continued to commit numerous serious abuses. It comes as no surprise that the State Department found China in violation of many of the basic human rights contained in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights. These include the right to engage in free expression; the right to peaceful assembly, religious freedom, protection of internationally recognized worker rights, freedom from incarceration as punishment for political opposition to the government or for exercising or advocating human rights.

Examples of human rights abuses by the Chinese Government are extensive and disturbing. For example, the State Department reported that China intensified its harsh treatment of political dissent, crackdowns on religion and, in Tibet, and gen-

erally, suppressed any person or group perceived to threaten the Government. The State Department reports abuses including instances of extrajudicial killings, the use of torture, forced confessions, arbitrary arrests and detention, the mistreatment of prisoners, lengthy incommunicado detention, and denial of due process.

Over the past few years, China has cracked down harshly on the Falun Gong movement and imprisoned hundreds of its leaders and placed thousands of its followers in detention, reeducation-through-labor camps or in mental institutions. Hundreds of Falun Gong members died in police custody and many were tortured.

U.S.-China relations were seriously strained when China detained a number of U.S. citizen or U.S. permanent resident academics of Chinese dissent, including detaining the 5 year old son of a U.S. permanent resident, a U.S. citizen, for 26 days without notification to U.S. officials.

China executes more people in 1 year than all other countries put together, and this is often after unfair and secret trials. There is also the horrendous issue of organ harvesting which is directly linked to the execution of prisoners.

I am also concerned about the use of prison labor in China, especially when the products made by forced prison labor are exported to the United States. The State Department reports that forced labor in prison facilities is still a serious problem and confirms that some Chinese prisons contract directly with regular industries to supply prison labor or operate their own factories.

More U.S. Customs Service enforcement actions involving prison or forced labor facilities have been issued for China—20 of 23 outstanding orders to detain merchandise suspected of containing content made with prison labor B than for any other country.

However, the State Department has been denied access to Chinese prisons suspected of producing products for export made with prison labor. This is despite a 1992 Memorandum of Understanding (MOU) with China prohibiting the export of prison made products and a 1994 Statement of Cooperation (SOC) allowing us to inspect Chinese plants suspected of using prison labor to make goods for export. China's compliance with the MOU and SOC is poor. China continues to deny almost all of our repeated requests to visit suspected prison factories. The few visits that were permitted in the late 1990's were only the result of significant high level diplomatic pressure.

There are 8 pending requests to visit Chinese factories suspected of producing goods for export with prison labor, dating back as far as 1992. This is in addition to 11 outstanding requests for the PRC to investigate prison labor allegations pertaining to exports to the United States to which the Ministry of Justice has not responded.

The State Department report specifically mentions a 1998 report that soccer balls were being made for export by prisons near Shanghai. The Chinese Government failed to respond to an October 1998 request to investigate these allocations. Unfortunately, one negative side effect of China's inaction is that people may be less willing to take the risk of reporting prison labor violations when they know nothing will be done about it.

I am also concerned about the lack of respect in China for labor rights. The five core International Labor Organization (ILO) labor standards are: (1) the right of association; (2) the right to organize and bargain collectively; (3) a ban on child labor; (4) a ban on compulsory labor; and (5) a ban on discrimination in employment. China has had a poor track record to date in recognizing and protecting these internationally recognized rights. For one thing, China only recognizes approved registered unions. So, while Chinese workers may have had the right to be in a union, it had to be the State sanctioned union. China has cracked down on efforts to organize other unions by detaining or arresting labor activists involved in Aillegal@ union activity.

Recently there are signs that China may be changing regarding labor rights. Last year a new law was passed that would allow for union organizing and bargaining from the bottom up, although the new unions would still have to be affiliated in some way with the State sanctioned unions.

It remains to be seen if these new labor rights will be meaningful. Much depends on the extent to which these new rights are real. The Commission should monitor whether the new law is implemented vigorously and if the new rights are protected by the central government.

In summary, the human rights situation in China is offensive, intolerable and in violation of internationally accepted norms. Improvements in China's human rights record is an essential requirement for improving the U.S.- China relationship. The American people will have little tolerance to trade with a Nation that has no respect for the rights of its own people. Trade and human rights are therefore inextricable

linked. The hope is that through the establishment of the rule of law in China, respect for and protection of human rights will increase.

Now that China has been granted PNTR and joined 142 other nations in the World Trade Organization, we should use this membership as a way to open China's markets to our goods the way our market has been open to China's goods. We should also use it to exert meaningful pressure on China to join that community of nations that respects basic human rights so that 1 day the people of that country can enjoy their fundamental human rights. I hope the Commission can make an important contribution to achieving that goal.

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PREPARED STATEMENT OF HON. SANDER M. LEVIN, A U.S. REPRESENTATIVE FROM MICHIGAN

FEBRUARY 7, 2002

I am very glad to be here today as a member of this Commission and I am pleased that the Commission is becoming operational. It is vital that this Commission fulfills the function that Congress intended for it when we created it.

Two years ago, in deliberating Permanent Normal Trade Relations for China, we spelled out clear goals for the Commission as a critical part of the effort to both engage and confront China:

"The Congressional-Executive Commission will be an effective tool for pressing China to improve its record in the vital areas of human rights, adherence to core labor standards, rule of law and democracy building. Comprised of Members of Congress and senior Administration officials, the Commission will have unparalleled profile and credibility to call attention to its analysis and recommendations.

"The Commission will place an ongoing, focused spotlight on human rights and other government practices in China. . . .

"The Commission will be a vast improvement over the annual review. That process concentrates congressional attention on China for only a few weeks each year. The Commission, by contrast, would have permanent, expert staff and resources devoted to monitoring China on a systematic, year-round basis.

"The Commission will perform a unique role in the U.S. effort to press for reform in China.

"The Commission will for the first time provide a mechanism focused solely on human rights, labor rights and religious freedom issues in the U.S. relationship with China. . . .

"Finally, by bringing together senior executive branch officials with Members of Congress on a bipartisan basis, the Commission will have a profile and level of credibility that existing congressional committees or executive branch agencies simply cannot match."

The events since the House vote have only confirmed the need for this Commission to play each of these vital roles. The State Department reports that China's human rights record has grown worse in the last 2 years. China continues to prevent its citizens from the free exercise of their religion and has continued and stepped up its campaign against members of the Falun Gong movement. China's repression of Tibet continues, as well as its repression of ethnic minorities such as the uighurs. China has detained a number of scholars and American citizens, as it continues to try to thwart free speech and freedom of ideas. An article in the January 21 edition of the Washington Post, detailing the use of police and the military to quell a strike in the Shuangfeng Textile Factory, illustrates the serious labor rights violations continuing in China.

At the same time, China's efforts to move away from a state-dominated to a free market economy have accelerated and the Chinese legal system is inching toward the rule of law. In both cases, however, there are still miles to go, validating the need for policies and programs that reinforce any positive impacts arising from the movement toward a market economy. China has formally become a member of the WTO, but it still has very far to go in implementing all of its commitments. Just in the past 2 weeks, businesses and the USTR have raised serious concerns about China's WTO implementation.

I am pleased that this inaugural hearing is focused on human rights issues. The Commission must help keep Congress informed and focused on human rights and political prisoners issues in China. It will not be an easy task, but this job is crucial to the Commission's success.

The Commission also has a key role to play in monitoring labor rights in China. Democratic staff from the Ways and Means Committee were recently in Cambodia

examining the operation of the U.S.-Cambodia textiles and apparel agreement. This agreement addressed the labor rights issue in an innovative way—encouraging Cambodia to improve its labor rights through positive market access incentives. One of the issues that became clear on that trip was that China enjoyed an advantage because of its failure to respect labor rights: As one factory owner comparing his labor practices in his factory in Cambodia with his practices in his factory in China stated, “I can do whatever I want in China.” As China’s accession to the WTO takes hold, other countries, particularly neighbors of China, will find it difficult to compete with China in attracting labor-intensive industries if China continues to allow investors there to ignore labor rights. There will truly be pressure for a race to the bottom.

Separately, respect for labor rights will help further develop a middle class in China. Although some claim that more trade in and of itself will automatically lead to a middle class, I do not believe that is the case. When workers have the right to organize and bargain collectively, they can enjoy a larger share of the profits that they help create.

The Commission will provide a key tool to Congress and the Administration to help improve labor rights in China. It will provide a source of information and monitoring that both the Administration and Congress can trust. I hope the Commission will also make useful recommendations on ways to work with China to improve the respect for worker rights.

Finally, the rule of law is both a human rights issue and a commercial issue. China made a host of important commitments as part of its WTO accession. In order for the United States to obtain the full benefits of those commitments, China must implement them in its law and properly enforce the law. I think the Commission can play a ground-breaking role in helping the rule of law to flourish in China.

The Commission must pursue each of its roles aggressively. I would hope that by this time next year, the Commission will be seen as a fixture, having earned the respect of the human rights community, the business and labor community, Members of Congress, the Administration, as well as the Government of China.

Former President Clinton said in his January 27, 2000 State of the Union address: “[W]e need to know that we did everything we possibly could to maximize the chance that China will choose the right future.” China is a dynamic, complex, and evolving country. The U.S. relationship with China reflects these facts and is itself dynamic, complex, and evolving. This Commission has important potential to shape the development of U.S. policy toward China, and even to impact constructively the evolution of China.

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PREPARED STATEMENT OF HON. MARCY KAPTUR, A U.S. REPRESENTATIVE FROM OHIO

FEBRUARY 7, 2002

Mr. Chairmen, I am pleased that the Congressional-Executive Commission on China finally is meeting. This hearing has been a long time coming.

First, I would like to thank the witnesses for appearing before our Commission. Your unique perspectives on the grave human rights situation in China draw attention not only to the oppressed on the mainland, but to all struggling people who face of cruelty and brutality at the hands of repressive regimes. Your cause is noble.

While some Members of Congress opposed the unconditional granting of most favored Nation status to China, no one could object to a body investigating the disregard for human rights in that nation. For those nominated to serve on this Commission, we face many challenges—the first being the maintenance of Congress’ commitment to this vital matter. Already, we have seen almost 2 years since the passage of H.R. 4444. That is an unacceptable waste of time. During this period, the rate of persecutions in China among those struggling for human, religious, and labor rights has arguably increased at an alarming pace. Our hearings should be regular, open and timely.

Since 2000, organizations like Human Rights Watch and The National Labor Committee (NLC) have done yeomen’s work in highlighting the ongoing abuse of people in China. “Toys of Misery,” a recent report by NLC, documents the shocking and flagrant exploitation of internationally recognized human and worker rights. I urge Members of the Commission to examine closely the groundbreaking report on toy manufacturers at [www.nlcnet.org](http://www.nlcnet.org). Included are first-hand accounts of 16-hour workdays at starvation wages of 17 cents per hour. Many employees work in factories with little or no ventilation, safety protections, or sanitary break areas. Workdays often consist of 100-plus degree heat while handling toxic glues, paints and solvents. The end product—toys—end up in McDonald’s Happy Meals, on the shelves

at the local Wal-Mart, and, eventually, in our families' homes. Unfortunately, all too often, reports like this are lost in the churning media cycle. Our responsibility is to never forget the women, men, and children struggling to survive another day in these brutal conditions. Globalization may have logic, but it has no ethic.

As I have stated many times, trade does not bring freedom nor economic security for the rank and file. Only a nation's patient commitment to legal and social justice that dignifies the individual will uplift living conditions. I encourage President Bush to place human worker rights among his top discussion points during his upcoming trip to the People's Republic of China. Better yet, why not include Members of the Commission as part of his delegation? If the President's sincere commitment to freedom is to be shared throughout the world, he must be diligent in all international dialogs. The best way to stem the flow of violence and terrorism is through a free people.

Rights of association, freedom of the press, and, surely, freedom of religion should never be abridged. Both chambers and the Administration have acknowledged the positive role faith can play in the development of a healthy and productive society. Those brave few who push for these rights in China and Tibet find an almost impossible feat ahead. In its 2001 Annual Report, the United States Commission on International Religious Freedom (USCIRF) released the following summary:

In the last year, the government of the People's Republic of China (PRC or China) has expanded its crackdown on unregistered religious communities and tightened its control on official religious organizations. The government has intensified its campaign against the Falun Gong movement and its followers. It apparently has also been involved in the confiscation and destruction of up to 3,000 unregistered religious buildings and sites in southeastern China. Government control over the official Protestant and Catholic churches has increased. It continues to interfere in the training and selection of religious leaders and clergy. At the same time, the government continues to maintain tight control over Uighur Muslims and Tibetan Buddhists. Finally, cases of torture by government officials reportedly are on the rise.

According to reports from the State Department and USCIRF, some members of the officially sanctioned Chinese Catholic church do not recognize the legitimacy of bishops appointed by the Vatican. America's trade and foreign policy should stand to reaffirm our support for religious freedom at home and abroad.

The success of this Commission rests solely on our shoulders. The hopes of billions of people pivot on the world's voices for freedom.

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PREPARED STATEMENT OF HON. JOSEPH R. PITTS, A U.S. REPRESENTATIVE FROM  
PENNSYLVANIA

FEBRUARY 7, 2002

Mr. Chairman, thank you for holding this important hearing on China's Accession to the World Trade Organization of the People's Republic of China and Related Rule-of-Law Issues. Also, I would like to thank Mr. Mike Jendrzeczyk, Mr. Xiao Qiang, Professor James V. Feinerman, and Professor William P. Alford for sharing their expertise and insight with us today.

Addressing rule of law issues in China, as reported by many scholars and human rights experts, is vital to establishing international human rights standards in China. Unfortunately, as noted in the testimonies this morning, recent incidents, particularly related to freedom of speech and freedom of conscience, reflect the intense battle within Chinese society between those who wish to live in freedom and those who wish to exert extreme control over the society and individuals, their actions, speech, and even their thoughts.

As our government gives assistance to the Chinese government for civil society development, we must be specific in our assistance targeting areas in which a real, practical difference can be made. For example, it is vital that as just rule of law is developed in China. It is also vital that the distinction be made that criminal action be dealt with under established criminal law, but that no new laws are needed to limit freedom of religion. Official PRC Government documents make it clear that the drive to maintain control over religious believers in China remains strong. In one report regarding a meeting of Chinese officials, the officials were charged to "Quickly gather the essential personnel and find out the development and activities of this cult in our province. Carefully gather all the information and try to catch all the members in one blow. Pay attention to keep it confidential and work without talking." Comrade, the head of the Ministry of Public Security, emphasized specifically that "we need to work more and talk less and smash the cult quietly." This

is not the statement of officials who aim to protect the freedom of conscience of their people.

In one case from December 2001, reports suggest that Mr. Gong Shengliang was accused of “crying out to his followers to ‘fight a bloody battle with the devil (referring to the government) till the end, so that the Satan’s (referring to the Communist Party) authority will be destroyed and the kingdom of the ever-lasting God will be established.” The Communist Party’s accusations against Mr. Gong Shengliang are reminiscent of those against Pastor Xu Yongze, also a Protestant church leader, accused of instigating his followers to fight against the devils and demons in power. According to various reports, neither of these men were attempting to engage their fellow religious believers in a physical battle against anyone. The Communist Party, however, has their own interpretation.

Mr. Chairman, these brief examples, along with the others reported today, underscore the importance of continuing to address these issues in deliberate, practical ways.

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PREPARED STATEMENT OF HON. FRANK R. WOLF, A U.S. REPRESENTATIVE FROM VIRGINIA

FEBRUARY 7, 2002

I want to thank Chairman Baucus and Chairman Bereuter for holding this hearing today.

I have strong concerns at the direction that this commission appears to be heading.

The legislation that created this commission is very clear about its functions. By law, this commission is to:

- (a) “monitor the acts of the People’s Republic of China which reflect compliance with or violation of human rights. . . .”
- (b) “compile and maintain lists of persons believed to be imprisoned, detained, or placed under house arrest, tortured, or otherwise persecuted by the Government of the People’s Republic of China. . . .”
- (c) “monitor the development of the rule of law.”

It was said by some Members who helped form this commission that they wanted it to be modeled on the highly effective Helsinki Commission. The Helsinki Commission played an important role in confronting, monitoring, and promoting human rights in the former Soviet Union. I believe the Helsinki Commission had a significant role in helping tear down the Iron Curtain. The Helsinki Commission was and is a strong advocate for human rights and religious freedom. Helsinki Commission Members traveled to the former Soviet Union and Eastern Bloc countries and confronted the political leadership about human rights and religious freedom issues. The Helsinki Commission sent letters to the former Soviet Union and spoke out publicly, advocating for specific individuals, for religious freedom, for the development of democracy and for the rule of law.

If the Congressional-Executive Commission on China wants to be successful; if the Congressional-Executive Commission on China wants to emulate the Helsinki Commission; if the Congressional-Executive Commission on China truly wants to promote human rights and the rule of law in China, it has to be a strong and outspoken advocate for human rights and religious freedom in China. I am concerned that this commission may not be willing to be such an advocate. I believe that the future of this commission depends on whether or not it will step up to the plate and confront the Chinese leadership on behalf of human rights, religious freedom and the rule of law.

I also am very concerned with the selection of commission staff members. Staff members appear to lack the experience in promoting human rights and religious freedom in China. With the commission’s function to monitor human rights, religious freedom and the rule of law, the commission staff should be comprised of people who have a proven track record of promoting human rights, religious freedom and the rule of law in China.

Lastly, I am concerned with a statement made by James Feinerman who is testifying today. While I am sure Mr. Feinerman is a fine scholar and I respect his work, Mr. Feinerman stated in a 1997 Washington Post article that people in the United States who criticize China for its practice of forced prison labor are hypocrites. I enclose this article for the record. Mr. Feinerman is quoted as saying,

Harry Wu and others have tried to stir up a great controversy about how goods made by forced labor are flooding into our market. . . . But in fact, it’s only a tiny fraction of all Chinese goods. And it seems to me the height of hy-



pocrisy for us to get on our high horse about China making its prisoners work, given the fact that we do the same thing with our prisoners . . . [the Chinese prison system is designed] to make offenders pay a harsh penalty, on the theory that it scares people so they won't come back into the prison system. You can argue that it works. They have very low rates of recidivism. Who are we to argue with their choices?

Given that the Chinese government has imprisoned thousands of people—Roman Catholics, Protestants, Buddhists and Muslims—simply because of their faith; given that the Chinese government has imprisoned thousands of people for promoting democracy, if accurate, Mr. Feinerman's statement is very troubling.

I question the wisdom of selecting a person to testify about the rule of law in China who says of the Chinese system and its critics: "You can argue that it works. . . . Who are we to argue with their choices?"

This commission is full of promise and faces great opportunity to make a difference. Like the Helsinki Committee, the Congressional-Executive Commission on China will only be effective if it speaks out and becomes an advocate for human rights and the rule of law in China.

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PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM CALIFORNIA

FEBRUARY 7, 2002

Mr. Chairman, I would like to thank the panel of witnesses for joining us for this inaugural session of the Congressional-Executive Commission on China. And I would also like to thank the Chairman and Vice-Chairman for all their hard work over the past few months in organizing both this hearing and the Commission itself.

This Commission has been created with a mandate both to monitor China's compliance with human rights agreements and its development of rule of law, and to encourage programs and activities that will assist in that development.

I say this as one who believes it is neither possible nor desirable to isolate or contain China, and that empty rhetoric will not be sufficient to improve China's human rights record. Rather, the national interests of the United States are best served by the evolution of a China that is peaceful, stable, and a leader in Asia with whom we can work to solve serious problems whether they be retarding aggression by North Korea or solving the Kashmiri crisis now polarizing India and Pakistan.

A first glance at the complexities of the U.S.-China relationship reveals many points of apparent conflict: our contrasting forms of government, our dissimilar cultures and historical background, and our varying perspectives. Yet in spite of these differences, we share an agenda of common goals.

China has existed for 5,000 years, and over its history has experienced some of the most brutal tyrannies earth has witnessed, as well as revolutionary change. And, for 5,000 years the Chinese people have not enjoyed democracy or rule of law in the way that, for 225 years, has allowed the United States to experience unprecedented freedom and "government of the people, by the people, for the people."

Since the United States and China normalized relations almost three decades ago, China has undergone extensive change, ushering in an era of massive social reform and economic advancement. Economic growth and dynamism, privatization of state-owned enterprises, communication and exchange of ideas with the west, and the positive impact of the Hong Kong model have brought increased living standards and quality of life to many in China.

And although it is clear China still has a long way to go where human rights and the rule of law are concerned, few objective observers would argue that there have not been significant benefits and advances that have come from interaction with the west during this time. The post-Deng China of Jiang Zemin and Zhu Rongji is simply not the China of Mao or the Gang of Four.

Some western analysts look at China's policy in Tibet, or its treatment of the Muslim Uygur people or the crack-down on the Falun Gong and argue that China's behavior in these cases reveals the true nature of the Chinese government. Others point to the success of the Hong Kong model, and China's booming south, where however imperfectly, greater personal freedoms, village and local elections, respect for private property, and a budding infrastructure of commercial law point toward a future where political pluralism, human rights, and rule of law can be imagined.

The next few years will witness if China's leadership will demonstrate that they understand that the right course for their Nation includes an increased respect for human rights and rule of law. Following this path will continue to improve relations

with the west and help make China a more responsible and fully integrated member of the of the international community.

The establishment of this Commission represents, in this context, an important new opportunity to extend U.S.-China dialog on human rights, and I strongly believe that the Commission must, where possible, find ways in which the U.S. and China can work together to attain commonly desired goals in areas such as the rule of law.

In order to do so, we will need to work closely with non-governmental organizations, such as those represented here today on the panel. Your experiences and insights provided to us through reports, updates and testimony will enable us to carry out our responsibilities. I look forward to hearing your views: what the key issues are and how we as a commission might best address those issues.

I intend to work energetically as a member of the Commission to ensure China's compliance with its human rights covenants and its progress on rule of law, and I will also urge as an equally important part of the Commission's work the encouragement of those programs and activities of both the U.S. Government and private organizations that will improve bilateral relations and increase the interchange of people and ideas between the United States and China.

I am pleased to have the opportunity to serve on the Congressional-Executive Commission on China.

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PREPARED STATEMENT OF HON. BOB SMITH, A U.S. SENATOR FROM NEW HAMPSHIRE

FEBRUARY 7, 2002

I am pleased at the leadership exhibited by the China Commission Co-Chairmen, Senator Baucus and Congressman Bereuter, as they have organized this commission through turbulent times in the last several months. Furthermore, it is also an honor and a distinct privilege for myself to be a part of the China Commission and I look forward to my work on this commission.

As we meet this afternoon to hear testimony from the experts before us on the issue of human rights in the context of the rule of law, I would like to take this opportunity to express my vision and desires for this commission. I did not support the China PNTR legislation which granted China the privilege of trading with the United States on preferential terms. I feel now as I did in October of 2000, that enriching a communist regime and furthering its ability to repress its people and threaten the citizens of the this Nation as well as the democratic island of Taiwan was not in the best interests of America or the Chinese people.

However, I did support the creation of this commission to monitor China's transition and adoption of the principles of rule of law and human rights in that nation. It is my hope that this commission will diligently work toward advancing these universally sacred principles. It is also my hope that the China Commission will not act in the expediency of promoting corporate business interests nor give unbalanced reports that will allow us or the American people a false sense China's movement toward and commitment of conducting itself along recognized international norms.

I strongly feel that it is imperative the China Commission use its leverage to keep China accountable for the ideals which proponents of PNTR have stated trade will nurture in China. Moreover, I am hopeful that the China Commission will actively pursue and document reports of religious persecution, forced abortion, slave labor and other egregious human rights violations which are still sanctioned by the Chinese Government.

I am disheartened to read reports by the press and human and religious rights groups who find no lack of documentation of China's repression of Christians, Muslims, Falun Gong practitioners and other religions. I believe this commission could have great impact on human rights in China. Given the fact that the United States no longer has a seat on the U.N. Human Rights Commission, the China Commission could release its report to influence the U.N. Human Rights Commission's findings on that nation.

The China Commission's other task, to monitor the rule of law—both civil and trade law, is also of grave importance. As more and more U.S. companies decide to try to grow their business and commit substantial investment in China, I am concerned at the lack of transparency, corruption and the general murky environment of Chinese business practices which U.S. companies must navigate. I believe this commission must diligently examine the impact of China's difficulties or unwillingness in adhering to WTO rules and regulations and bring these issues to light.

It is imperative that we not continue to blur the line between national security and trade. In the past, the United States has had to transfer high-tech know-how

to Chinese companies in order to facilitate the completion of business transactions. I am alarmed about this not only because of my national security concerns, but because we are giving up advantages in lucrative niche markets, such as aerospace.

Furthermore, I have strong concerns for U.S. companies whose intellectual property rights are being stolen, an area in which the U.S. has tried to work with the Chinese for years to no avail. This is an area I would like to address later.

Clearly, this Commission will encounter the fundamental challenges facing relations between the United States and China now and into the foreseeable future. I believe this commission can be used as a tool to help shape that relationship, and will I work to ensure it is balanced in its approach and reporting on China, as laid out in the legislation which formed it.

Before I close, I would like to take this opportunity to quote remarks made by William Hawkins, a Senior Fellow for National Security Studies at the U.S. Business and Industry Council, which addresses major concerns of mine, and I hope members of this commission. In an article written recently by Mr. Hawkins, he illustrated examples of new industrial/economic powers emerging to global powers, such as Great Britain, Japan and the United States. Mr. Hawkins accurately notes that their emergence in economic and political power had enormous consequences to the global balance of power—England established an empire on which the sun never set, Japan used its economic power to drive the British and other powers out of Asia, while the United States used its economic power to win WWII and to end Soviet communism and oppression during the cold war. After noting these observations, Mr. Hawkins then posed the following question, “What will China do with its expanding economic capabilities? Beijing’s ambition to become the dominant power in Asia is well known. If the United States continues to think only in terms of ‘rules-based trading system’ when it looks at the Chinese economy and the behavior of private corporations, it will ‘suddenly’ find itself facing a power with the means to back its bellicose rhetoric—and the change will not be ‘positive’ in any way.”

## SUBMISSIONS FOR THE RECORD

[The following article was submitted for the record by Representative Frank Wolf.]

[From the Washington Post, June 3, 1997]

PRISON LABOR: CAN U.S. POINT FINGER AT CHINA? AMERICAN INMATES  
MANUFACTURE PRODUCTS, BUT TRADE DEBATE CENTERS ON BEIJING'S POLICIES

(By Paul Blustein)

Horror stories are surfacing anew about the Chinese prison labor system and the sale of its products in the United States. But consider what is happening to the 64,000 U.S. convicts in the Florida prison system:

Prisoners are required to work—or face punishment. Most inmates, even ones digging ditches on chain gangs, are paid nothing. Moreover, some of the products they make, such as boots and license plates, are exported to foreign countries.

Therein lies a question: Because inmates in many U.S. prisons are obliged to work, do Americans have the right to condemn China's prison labor practices?

The question arises because China's "reform through labor" penal system, known in Chinese as *laogai*, is becoming a hot issue in Congress and the media amid the mounting debate over whether Beijing should be allowed to retain its trading privileges.

Senate and House committees held hearings May 21 and 22 on allegations that goods made in Chinese prisons are being imported into the United States in violation of U.S. law and a U.S.-China agreement. Among those offering testimony about how easy it is to buy convict-made goods was Harry Wu, a former inmate laborer who has gained worldwide fame for returning to China to document the nation's "prison economy." An ABC "Nightline" program broadcast the night after the hearing featured videotape from another witness indicating that binder clips were being made in a Chinese women's prison for a U.S. office-supplies company.

All of this is generating potent ammunition for critics of U.S. trade with China, who contend that Beijing is profiting from the toil of people railroaded into working cruelly long hours under appalling conditions. TV ads being readied by the Family Research Council, a group seeking to overturn China's most-favored-nation trade status, accuse Beijing of employing "slave labor."

But some academic experts call this argument a classic example of hyping an issue to advance a political agenda.

"Harry Wu and others have tried to stir up a great controversy about how goods made by forced labor are flooding into our market," said James Feinerman, a professor of Asian Legal Studies at Georgetown University. "But in fact, it's only a tiny fraction of all Chinese goods. And it seems to me to be the height of hypocrisy for us to get on our high horse about China making its prisoners work, given the fact that we do the same thing with our prisoners."

The importation of goods made in Chinese prisons, while against U.S. law, should be a "non-issue because the amounts are so small," agreed James Seymour, a senior research scholar at Columbia University whose book on Chinese prisons is scheduled to be published shortly. Although the precise amount is impossible to determine, Seymour's book cites Chinese economic data indicating that the output of Chinese prisons constitutes less than one-fifth of 1 percent of total Chinese production.

The U.S. Federal prison system, and many State prison systems, require all able-bodied inmates to work, often in tasks that are designed to save taxpayers money, such as cleaning up highways, painting public buildings or making office furniture. Those who refuse typically are deprived of privileges or sent to higher-security institutions.

Pay is far below minimum wage—12 cents to \$ 1.15 an hour for Federal inmates, and less than that in many State systems. So their products usually are barred from sale except to government agencies. But ironically, while the law prohibits importing prison-made goods and restricts their sale across State lines, there is no law barring their export.

Thus, boots made by Florida prisoners have been shipped to Trinidad, license plates have been sent to Nicaragua and cedar-lined boxes have been exported to the Dominican Republic, according to Pamela Jo Davis, president of Pride Enterprises, an organization that pays about 4,300 Florida inmates 20 cents to 50 cents an hour for their labor and provides job training as well.

“Being in Florida, we’re targeting Latin America and South America,” Davis said. “Those are clearly our trading partners.”

Florida’s prisoners are not the only ones making goods for export; blue jeans bearing the brand name “Prison Blues,” made by Oregon inmates, have become big sellers in Asia.

Critics of China’s penal system argue that it shouldn’t be viewed as even remotely similar to the one in the United States.

“Are you willing to compare the American system with the gulag [in the Soviet Union under Joseph Stalin] or the Nazi [labor camp] system?” said Wu, who directs the Laogai Research Foundation in Milpitas, Calif.

Added Jeffrey L. Fiedler, president of the AFL–CIO’s Food and Allied Service Trades Department, who investigates violations of U.S. prison labor laws: “The whole system is different. There is no law or due process in China.”

In China, Fiedler noted, a person accused of petty thievery or other misdemeanors can be sentenced to up to 3 years in a labor camp, with a possibility of an extended sentence, based simply on an administrative decision by local law enforcement authorities, with no formal trial. And while serious offenders usually are tried, judges often are Communist Party loyalists who dispense justice arbitrarily, according to experts on the Chinese system.

Moreover, some of China’s inmates are imprisoned for political activism—or “counterrevolutionary offenses,” as the Chinese put it. But by virtually all accounts, the number of such people—about 2,700, according to the U.S. government—is dwarfed by the numbers of others convicted of crimes such as murder, rape and robbery. (Wu estimates that 6 million to 8 million people are laboring in the various branches of the penal system.)

“Most of the people in the laogai are of course ordinary criminals, not political,” said Chen Pokong, a 33-year-old visiting economics scholar at Columbia who spent 5 years as an inmate.

Chen’s case illustrates what many experts find most troubling about the Chinese penal system—the extensively documented evidence that prisoners often are treated brutally. Chen, who said he was sentenced in 1989 for helping to lead a student democracy movement in the southern province of Guangdong, said he spent 2 years in one facility where prisoners were forced to carry heavy stones for 8 hours to load on ships. “Then, until midnight, we made artificial flowers; sometimes we had to work through the night,” he said. “If you collapsed before you finished the quota, you were heavily beaten.”

Columbia’s Seymour said some of the prisons he researched for his book were “totally inhumane,” while in others, “conditions were much better.” Prisoners generally received some paltry wage, he said.

But repugnant as conditions in Chinese prisons might seem to many Americans, Georgetown’s Feinerman said, they are based on a decision by the Chinese authorities “to make offenders pay a harsh penalty, on the theory that it scares people so they won’t come back into the prison system. You can argue that it works. They have very low rates of recidivism. Who are we to argue with their choices?”

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PREPARED STATEMENT OF ROBERT M. HATHAWAY, DIRECTOR OF THE ASIA PROGRAM  
AT THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

HUMAN RIGHTS IN CHINA: WHAT CAN WE DO? WHAT SHOULD WE EXPECT?

FEBRUARY 7, 2002

President Bush departs for Beijing later this month for discussions with Chinese leader Jiang Zemin. Heading the president’s agenda will be the war against international terrorism. Looking beyond our current preoccupation with terrorism, however, President Bush will also seek to solidify the recent progress that has brought a new stability to U.S.-China relations, after a rocky period in the early months of his presidency.

The Bush administration has been notably silent since September 11 on China’s human rights behavior, and the White House has given no indication that human rights issues will figure prominently in Bush’s Beijing talking points. But it would be a grave mistake for the president to allow the Chinese to conclude that human rights have slipped off the U.S. agenda. At the same time, Bush must also keep in mind that there is an important difference between publicly haranguing China on human rights, which will play well in many American circles, and acting as an effective advocate for better human rights practices in China.

Beijing's sorry human rights record continues to offend us. Last year's State Department human rights report concluded that in some respects, human rights conditions in China are getting worse, not better. Just last week a Chinese court sentenced a Hong Kong citizen to 2 years in prison for bringing annotated Bibles into China for use by a banned evangelical Christian group, even though the Bible is legally available in China. Remarkably, the jailed man's friends expressed relief that the sentence was not even harsher.

Reports about a renewed crackdown on Christians and other religious minorities in China follow a long string of Chinese activities that most Americans deem deplorable. Those Chinese courageous enough to challenge the official line do so only at great personal risk. National minorities in Buddhist Tibet and Moslem Xinjiang face persecution, imprisonment, and even death. Political as well as criminal considerations appear behind the extraordinarily high number of executions carried out in China each year. The rule of law has yet to supplant the cynical use of rule by law, under which Chinese authorities exploit the power of the State to crush those who challenge the right of the Chinese Communist Party to exercise a monopoly on political power.

Few Americans would deny that China's human rights behavior leaves much to be desired. Few would challenge the proposition that the United States and the rest of the international community have the right and the responsibility to inquire into China's human rights practices and Beijing's commitment to the rule of law. China's recent accession to the World Trade Organization is likely to bring these issues even more to the forefront.

Of special concern at the moment is the danger that China will try to hijack our new interest in working with Beijing in the global war against terrorism to promote its own internal security agenda. We must be on our guard lest China manipulate us into supporting, under the guise of counterterrorism, repressive measures against the 7.2 million Moslem Uighurs in China's western province of Xinjiang, who seek greater autonomy from Beijing, and whom China has tried to link with Osama bin Laden and his al Qaeda zealots. The overwhelming majority of Uighurs have no connection whatsoever with bin Laden's murderous intrigues—indeed, Chinese scholars estimate that the number of Uighurs linked to al Qaeda is no more than a few dozen. We must take care that in our understandable desire to destroy bin Laden and his organization, we not inadvertently provide support or political legitimacy for repression in Xinjiang.

The U.S.-China relationship is likely to be our most difficult bilateral relationship for the foreseeable future. It will not be a close or cordial relationship, for we have too many differences on issues of fundamental importance, including human rights. But neither are we destined or preordained to being adversaries, let alone enemies. To the contrary, both countries share an interest in finding ways to surmount our very substantial disagreements. The task for the leadership of the two nations is to devise methods of working together when our interests and values permit, while containing the very real and serious differences that will inevitably arise between us so that they do not sour the entire relationship.

As the U.S. Congress, the Bush administration, and the American people seek to manage what will surely be a trying relationship for many years to come, it may be useful to keep a few general propositions in mind.

- First, Americans should employ a strategic vision as they look at U.S.-China relations. This relationship is a complex, multifaceted, and in many ways contradictory relationship. All too many of us make little effort to view it in a comprehensive way, to consider the totality of our relations with Beijing.

Many Americans tend to think about this relationship in terms of a single issue. For some it is human rights, for others trade or Taiwan, for still others abortion or Tibet or religious freedom. These are all important issues. They deserve to be part of the overall equation. But not any one of them is so important that it should be permitted to dominate or drive the entire bilateral relationship. Should we succumb to this temptation, not only will we jeopardize our ability to achieve other crucial American objectives, but we will also decrease the likelihood of succeeding even in the area of most concern to us.

Rather than allow single-issue politics to determine the future of this relationship, we must instead ask what is the range of American interests at stake here, and how can we best advance the totality of those interests.

- Second, exercising strategic vision also means establishing priorities. At the moment the Bush administration sees China through the lens of the war against terrorism, and other important issues, including human rights, have been relegated to the back burner. At other times, nonproliferation or trade or Taiwan-related concerns have governed U.S. management of Sino-American relations.

In truth, we have numerous items on our China agenda, and efforts to achieve our objectives in one area may impede our ability to realize other goals. So we need to ask—to give one example—how a decision to sell arms to Taiwan could affect our efforts to block North Korea's nuclear weapons program, or our ability to promote better human rights conditions in China. Strategic vision, in other words, requires us to balance competing policy objectives in such a manner as to maximize the prospects of promoting our most vital interests.

- Third, we need a much more historical perspective as we think about relations with China. Much of the current debate about China in Washington and across the United States is strikingly ahistorical. It reflects little sense of change over time, little recognition of how far—in some respects—China has traveled in recent decades. It rarely attempts to measure China by anything other than American standards.

Take the bombing of the Chinese embassy in Belgrade a few years ago. Most Americans instinctively assumed this was the unfortunate result of official error or incompetence. Most of us found ludicrous the idea that the bombing of the embassy might have been deliberate.

The Chinese, on the other hand, view this incident in the context of 150 years of foreign bullying, and of what they see as a stubborn Western refusal to grant China the respect its achievements have earned it. Moreover, they place the attack on the embassy in a spectrum of U.S. actions in recent years that seem to them manifestations of American arrogance and hostility—including the current war in Afghanistan, the use of American airpower against Iraq and Serbia, Washington's lack of interest in certain international agreements and multinational institutions, the Bush administration's pursuit of ballistic missile defenses, and U.S. military alliances in East Asia.

Or take the case of Taiwan. Here again the historical experiences of our two countries lead to very different judgments about current U.S. policy. To most Americans Taiwan offers a stirring example of a people sloughing off an autocratic government to create a vibrant democracy and prosperous economy. Their very different historical memories encourage the majority of Chinese, however, to see Taiwan in terms of Chinese territorial integrity, national sovereignty, and national pride, and of a history of being denied China's legitimate rights and its rightful place in the world.

So it is with the issue of human rights. Whereas most Americans believe that there is a universal standard of rights and responsibilities that should govern the conduct of individuals and their governments, this is a peculiarly Western, if not American, notion. And even when there is general agreement on the appropriateness of a human rights focus, we will not always agree on how to define that concept. Many peoples, and not just the Chinese, tend to place a higher premium on the right to food, clothing, and shelter, even if in doing so they subordinate the political and legal rights most Americans tend to emphasize when they talk about human rights.

This is not to suggest that a greater understanding of the Chinese perspective will lead us to agree with Beijing, or to abandon our commitment to act as a human rights champion. But without such an understanding, we have little hope of fashioning policies toward China that offer much chance of success in advancing our human rights agenda.

- Fourth, we must pay more attention than we customarily do to the constraining influence of China's domestic politics.

Americans talk in considerable detail of differences between the Pentagon and the State Department, or Congress and the White House, and accept these differences as both routine and inevitable. Less well understood is the fact that the Chinese government is similarly divided, with a variety of viewpoints, bureaucratic interests, threat perceptions, and policy preferences.

True, China is an authoritarian State where one party controls virtually all the formal levers of power. But Chinese president Jiang Zemin does not wield the unchallenged power exercised in an earlier day by Mao Zedong or Deng Xiaoping. Bargaining and negotiation among powerful individuals, interests, and bureaucracies, not dictation, is the norm. If China's domestic politics are not as transparent as ours, they are every bit as lively.

American policy is unlikely to succeed without domestic political support and popular backing. Might not a version of this political fact of life apply for China as well, even conceding the very different nature of the two political systems?

China, moreover, is heading into an extended period of political flux, as the current leadership prepares to make way for a new generation. While it appears that Jiang's successor has already been designated, Beijing is likely to experience considerable behind-the-scenes jockeying over the next several years as various contenders for other senior positions jostle for power and influence.

What does this suggest about China's probable policies over the next year or two? We are likely to see a cautious rather than an adventurous China—a China adverse to risk-taking or bold initiatives, which may impede resolution of long-standing disputes with the United States over Taiwan, proliferation, and yes, human rights.

We are likely to encounter a prickly, nationalistic China that will take offense at perceived slights or signs of foreign, especially American, dictation or bullying. Nationalism is on the rise in China today—in part because the regime, having lost its ideological moorings, has deliberately beat the nationalism drum in order to sustain popular support. Feelings of a fierce nationalism will place constraints on even an autocratic government. Officials well-disposed toward the United States will find reason to be firm in the face of perceived U.S. pressure.

And last, we are likely to see a China unenthusiastic about pushing political reform, permitting public discussion of sensitive issues, lifting government controls over the activities of dissidents, or taking other steps that could threaten political turmoil or social instability.

What does this mean for American policy? In the first place, we should keep in mind how little we know about China's internal political line-up. We don't even have a good read on what policies Hu Jintao, Jiang's probable successor, is likely to follow, even though Hu has been the heir apparent for the better part of a decade. Lacking a sophisticated understanding of what political currents lie beneath the surface, we should be modest in our expectations about influencing those currents.

Second, we should be careful not to provoke the very behavior we seek to discourage by appearing overbearing or insensitive to Chinese pride and historical sensibilities. Certainly we should push China on human rights issues, but we should do so in a way that avoids setting off a nationalistic backlash.

Third, in thinking about China, Americans must learn patience. This is foreign to the American character; we want to see everything done yesterday. But that is not the way things work in the real world. Certainly it is not the way things happen in China—or in the United States, for that matter.

If one views human rights conditions in China today as a snapshot, a static picture, things look bleak indeed. None of us would willingly trade places with the Chinese people. But in truth, things are far better, in almost every area of daily life, for the overwhelming majority of Chinese than they were twenty-five years ago. There have been massive changes, and for the better, since Mao's death and the end of the Cultural Revolution. Human rights in China have a long way to go, but for those Chinese old enough to remember Mao, the improvements have been dramatic.

Finally, we must ensure that the Chinese understand that for Americans, human rights are not simply a convenient club with which to beat China. Rather, U.S. advocacy of human rights reflects the deeply held values of the American people. China makes a serious mistake if it discounts American complaints about its human rights practices, or if it concludes it can build a satisfactory relationship with the United States without taking American human rights concerns into account.

President Bush faces a formidable task as he journeys to Beijing later this month. He must impress upon his Chinese hosts the centrality of the human rights issue for the successful management of U.S.-China relations, while simultaneously not allowing our fundamental differences with China on human rights to impede progress on other important political, security, and economic issues.

In seeking to reconcile these competing goals, consistency, patience, and a trace of humility regarding our own shortcomings and failures might ultimately have a better chance of edging China toward responsible human rights behavior than a more in-your-face approach.

We must never hesitate to stand up for American values. But we should be realistic as to what we can reasonably expect from Beijing—and what China's political system will bear.

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PREPARED STATEMENT OF STANLEY LUBMAN, VISITING SCHOLAR, CENTER FOR LAW AND SOCIETY AND LECTURER OF LAW, SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA (BERKELEY)

FEBRUARY 7, 2002

I welcome the opportunity to submit this statement to the Commission. I have been specializing on Chinese law and related matters since 1963 as a scholar of Chinese law teaching at universities in the United States (Stanford, Columbia and Harvard, in addition to Berkeley) and Europe (the Universities of London and Heidelberg) and simultaneously, since 1972, as a practicing lawyer representing foreign clients in China. For twenty years I headed the China practice at two American law firms (1977–1993) and an English firm of solicitors (1993–1997). A third and growing dimension of my involvement with Chinese law has been work on projects related to law reform. During the 1980's I participated in the activities of the Committee on Legal Educational Exchange with China, funded by the Ford and Luce Foundations and USIA, which brought Chinese law teachers to the United States for study and research; since 1998 I have participated in law reform projects in China under the auspices of the Asia Foundation, where I am advisor on China legal projects.

#### SUMMARY

Twenty years of reforms have led to remarkable transformations in China's society and economy, and have also driven an extensive program of legal reform. The Chinese leadership, desiring to accelerate economic reform, has recently agreed to strengthen legal institutions in order to comply with obligations that China has assumed upon accession to the WTO. Sustained effort over a period of years will be needed for China to be able to meet its WTO commitments regarding trade-related laws.

Wider legal reform, extending beyond trade-related matters, is also contemplated, but faces considerable difficulties. Efforts must be made from the top down, although official policy and many officials have less than a firm commitment to the rule of law; efforts are required from the bottom up, although Chinese civil society is weak and undeveloped. For protection of human rights to expand, the leadership must energetically support legal development, and legal culture among officials and the general populace must change. Broadened political participation, too, could deepen the extent to which legal institutions can protect human rights in China.

The policy of the United States should simultaneously aim at a number of goals: The U.S. should energetically promote legal reform, including the establishment and strengthening of institutions that will buttress the protection of rights by Chinese. Congress should advance beyond the small commitment it has hitherto made to funding U.S. assistance to Chinese law reform, and support well-planned efforts by foundations, NGO's and universities. At the same time, Americans should not assume that Chinese institutions must be judged by the extent to which they resemble our own.

The U.S. should condemn human rights abuses by bilateral diplomatic means and in international forums. At the same time, American criticism and insistence on change in Chinese institutions should be tempered by recognition of the limits on U.S. ability to change internal Chinese conditions.

American perspectives on China should not focus on single issues or clusters of issues. Balance is necessary among human rights and other issues in Sino-American relations that are significant to U.S. national security. Critics of human rights abuses should avoid demonizing China and thereby complicating the shaping of policy on other questions.

#### CHINESE LEGAL REFORM SINCE 1979

##### *Accomplishments*

Reform has brought a fundamental new orientation toward governing China, in which formal legislation has become the major framework for the organization and operation of the Chinese government. To implement economic reforms, since 1979 China has generated an extraordinary volume of legislation. Illustratively, legislation has been used to frame commercial activity; to express policies of State macro-economic control and their implementation; to give legal recognition to new rights and interests; and to create a framework for direct foreign investment.

China has acceded to an extensive range of treaties and international agreements that signal its participation in a global economic community; legislation has been used for a host of purposes related to building the necessary infrastructure for a

marketizing economy, as in regulating basic industries, setting standards for environmental protection, and sanctioning violations of intellectual property rights. Institutions intended to curb administrative arbitrariness have been created, and codes of criminal law and procedure have been promulgated and revised.

The courts have been reconstructed. Formerly scorned as “rightist” institutions at the end of the 1950’s and as “bourgeois” during the Cultural Revolution, they have been rebuilt in a four-level hierarchy.

Courts are increasingly being used as the forums in which rights created by legislation are asserted by citizens against each other and, to some extent, against State agencies. The bar, too, has been established; there are probably now over 150,000 lawyers. Although most of the 8,000 law firms are state-run, the number of “cooperative” firms is growing.

#### *Obstacles*

##### *Ambivalence in leadership policies on the rule of law*

Chinese policy toward the rule of law reflects an ambivalence that is sharply illustrated by President Jiang Zemin’s statement in February, 1996, when he stated Let China be ruled by law, a phrase that was given extensive publicity throughout China. Unfortunately, that was not the entire sentence: In the next phrase, Jiang exhorted all to maintain the long-term stability of the nation, that is, preserve the leading role of the Chinese Communist Party (CCP) over Chinese society.

Just as symbolically, in 1999 China’s National Peoples Congress amended the Chinese Constitution to insert the rule of law into that document as a leading principle for the first time. It co-exists there, however, with Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, all doctrines that insist on CCP dominance.

##### *The persistence of pre-reform institutions of the Party-state; ineffective implementation*

In some areas, the authoritarianism of the Party-state continues.

Chinese criminal law and criminal procedure remain heavily dominated by the police and by Party influence over individual cases; recurrent campaigns to punish crime distort the operation of the criminal process. Police still have the power to send alleged offenders against certain laws to labor reeducation camps for as long as 3 years.

Both within and outside the criminal area, much legislation has only been hesitantly and incompletely implemented.

##### *Deficiencies in the judicial system*

The operation of the courts is seriously deficient. The judiciary is inadequately professionalized: Only some 10 percent of all judges have a complete 4-year legal education; many judges have previously served in the army or in other jobs that did not qualify them for their current tasks. Corruption is widespread. Moreover, the extensive decentralization of power that has taken place since 1979 has led to the phenomenon that Chinese call local protectionism. Because local judges are appointed and the courts are financed by local governments, when deciding disputes the courts often favor local enterprises on which the local governments depend for their revenues. In addition, the courts are frequently criticized for their unwillingness to enforce judgments rendered by courts elsewhere in China against local defendants.

The difficulty of enforcing judgments has surfaced not only in disputes among Chinese parties, but in attempts by foreign parties that have obtained awards from foreign arbitration tribunals or from the China International Economic and Trade Arbitration Commission (CIETAC). In one case of which I have extensive personal knowledge, the Zidell Valve Corporation of Houston, Texas obtained CIETAC awards against two separate Chinese defendants that were found to have sold millions of dollars of flanges to Zidell that did not meet contract specifications. When the Chinese parties refused to pay the amounts awarded, Zidell brought timely suit in the appropriate courts in Beijing and Taiyuan. The courts violated Chinese law by raising issues that had been definitively disposed of by the arbitral tribunals; by failing to report the cases to the Supreme Peoples Court; and by misapplying Chinese law to decide in the defendants favor a spurious claim that the proper legal representative of the plaintiff had not authorized the suit. The courts, including the Supreme Peoples Court, to whose attention this case has been called, remain unresponsive to protests against the blatant obstruction to the plaintiffs attempt to exercise its rights to enforce Chinese arbitral awards. This case is not unique, and the courts plain violations of law and procedure suggest the persistence of ongoing problems in the functioning of the courts.

Although central government leaders have endorsed proposals to reform the courts in order to remove or lessen the impact of local protectionism on their work, judicial reform has not yet been decisively advanced. It may be desirable for the central government to finance the judicial system, but there is considerable question whether it has the necessary financial resources.

#### RECENT CHINESE COMMITMENTS TO DEEPEN THE RULE OF LAW

China's accession to the WTO has brought China's leaders to realize the need to deepen of law reform with regard to trade-related and certain other laws. They seem willing, too, to engage in wider legal reform, but some obstacles will impede the further strengthening of institutions.

##### *Uniformity of compliance with WTO obligations*

Chinese commitments in the Protocol of Accession include an undertaking to ensure that local government regulations would conform to China's WTO obligations. Some impetus will be given to uniform administration by implementation of the Chinese undertaking to establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime, (Protocol of Accession, Art. 2 (A) 4) but it may be difficult to bring about effective national action to modify or annul local deviations from WTO standards. Nationwide uniformity may be a distant goal, and

##### *Transparency*

The Chinese government has undertaken not to enforce unpublished laws, formerly common. It has also promised that China shall make available . . . upon request, all laws, regulations and other measures pertaining to or affecting trade . . . before such measures are implemented or enforced. (Protocol of Accession 2 (C)1) Compliance with this provision will require legislatures and administrative agencies to make public, before they become effective, a much wider range of rules and regulations than they have before. The term rules and regulations is used here generically to cover both laws promulgated by central and local governments and various forms of rules issued by administrative agencies; in practice, the terminology is more complex and the relationship of various norms to each other is very disorderly.

Attempts are under way to put greater order into the system, and the formulation of legislation is being transformed from the passive translation of policy into a specialized professional activity.

Compliance with the undertaking quoted above also would import a high degree of transparency into law-making and rulemaking processes that have been impenetrable to outside gaze for decades. China has never required a consultation phase in these processes, and is just beginning to experiment in this area. The Legislation Law adopted in 1999 provides generally for legislative bodies and administrative agencies that are drafting legislation or rules to engage in consultations with concerned citizens or organizations. Similarly, the State Council has recently adopted regulations on the drafting process of its rules that provide for in-depth, on-the-spot investigations and studies of the main issues in the draft regulations; when the vital interests of citizens, corporations, or other organizations are involved, hearings may be held. A similar provision is included in regulations on the drafting of rules by State Council agencies.

These provisions reflect the Chinese leaderships willingness to begin to consider ways of channeling inputs from Chinese society.

Preliminary reports suggest, however, that some experimental hearings have involved only carefully chosen participants. Considerable time will have to elapse for experimentation with these new procedures to unfold—and for officials to change their mentalities so that that they will accept comment on proposed rules from outside the drafting bodies.

##### *Judicial review of administrative acts*

One of China's most ambitious undertakings upon accession to the WTO is its commitment to institute judicial review of administrative actions:

China shall establish or designate and maintain tribunals contact points and procedures for the prompt review of all disputes relating to the implementation of laws, regulations judicial decisions and administrative rulings of general application . . . Such tribunals shall be impartial and independent of the agencies entrusted with administrative enforcement (Protocol of Accession 2(D)1).

It is unclear whether the main tasks of scrutiny of administrative decisionmaking will be performed by courts. If so, apart from the weaknesses that have been men-

tioned above—low professionalization, local protectionism and corruption—there are others as well, because the powers of the courts are limited.

The Administrative Litigation Law that became effective in 1990 permits affected parties to sue administrative agencies in the courts for alleged illegal application of an administrative rule, and some litigation has ensued. A more recent administrative punishment law places limits on which organs have power to create different types of punishments; specifies mandatory procedures for imposing different types of punishment; requires that decisions to impose punishments must state the reasons therefor and requires agencies to comply with procedures set out in law.

Courts may only review the legality, not the reasonableness of the acts complained of. However, Chinese regulations are intentionally drafted in vague language to give maximum discretionary authority to agencies, and as a result it may be difficult to establish that a regulation was actually violated. As long as an administrative action is technically consistent with the rule it applies, the act may not be challenged in the courts. The courts are at the same level in each locality as other administrative agencies; in the past, in interpreting administrative regulations, the courts have usually deferred to the agencies own interpretations of their rules. If a court finds a rule to be inconsistent with a higher-level regulation it may not invalidate it; although it may refuse to apply it, such non-application hardly ever occurs.

The courts also lack the power to decide on the inherent validity of administrative rules, regulations, decisions or orders of universal application. Under the Chinese Constitution and legislation doctrine, legislatures are superior to the courts in power; only they may invalidate legislation and administrative rules, while courts may not.

The Legislation Law of 1999 provides for only limited challenge to national or local legislation or administrative rules, by written request to the Standing Committee of the National Peoples Congress.

Governmental organizations—but not citizens—may challenge State Council regulations by written statement to the State Council itself; anyone may address challenges of department rules to the State Council; and anyone may the administrative enactments of large cities.

Administrative law reform is under way. For example, the State Council is drafting a law on licensing intended to address the need to define—and limit—the powers of local governments and agencies to issue rules for granting, suspending or modifying licenses, including procedures to give affected parties ample opportunity to present their views, in some cases in the context of a public hearing. Work is actively going forward on drafting a statute that is intended by the Legislative Affairs Commission of the NPC to be an administrative procedure act for China. A crucial unresolved issue is whether the powers of the courts can be increased to bear the burden that such a law would place on them.

*The requirement of uniform, impartial and reasonable administration of law*

China's commitment to standards in the GATT derived from the rule of law is further stated in its acceptance of a key provision in the Protocol of Accession (Art. 2 (A) 3):

China shall administer in a uniform, impartial and reasonable manner all its laws, regulations, rules, decrees, directives, administrative guidance, policies and other measures pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights or the control of foreign exchange.

The major obstacles that lie in the path of implementation of this provision should be clear: The links between the courts and administrative agencies and the defects in the courts that have already been noted here, as well as local protectionism and corruption, all seriously dilute the State capacity of PRC institutions to meet this general standard.

HUMAN RIGHTS

The foregoing review of some salient characteristics of Chinese legal institutions provides a context for considering the system from the perspective of human rights. A sober review of accomplishments to date suggests that the a legal system in China is still a work in the making, and that realization of even trade-related legal reforms will require considerable time and effort. This is all the more true with regard to human rights.

I believe that the protection of human rights can expand as certain legal institutions are strengthened. Expansion of the nascent legal aid scheme, judicial reform and reform of administrative law and procedure would all bring obvious benefit. Progress will depend, among other things, on the pace of economic reform and the stability of the current regime or whatever post-Communist regime might succeed

it. Moreover, it is wise to be cautious about the extent to which economic development can generate legal and political reform. It is a necessary condition for such reform, but it hardly makes such reform inevitable. Critical, too, will be the extent to which institutions of Chinese civil society can grow and seek to improve protections for human rights.

Americans should also keep in mind that whatever form legal institutions and rights-based protections might take in the future, they are likely to vary from our institutions and from the ideals that we often project onto China. The legal traditions of the two nations are very different, and transition away from totalitarianism is rife with uncertainties.

I emphasize here the importance of legal culture, by which I mean nothing more than the attitudes toward law of both officials and the general populace. The Chinese legal tradition did not know any doctrine of individual rights, and ill-fated Republican rule did little to plant the seeds of rights-based doctrine. After the PRC was established in 1949, it did not advance any notions of individual rights. The protection of legal rights, much less human rights, is a new transplant brought to inhospitable Chinese soil. Regardless of any foreign assistance or pressure, much work must be done by even the most willing government to nourish that frail transplant in China. This is not to say that conceptions of human rights cannot grow in China. Quite the opposite; after almost thirty years of traveling and working there, I am sure that many Chinese understand very well that the rule of law is a desirable alternative to governmental arbitrariness and lack of protection for individual rights.

The task of strengthening rights-based doctrine is all the more difficult because of a crisis in values that is likely to continue for years. Economic reforms have weakened traditional ideas of morality, already bruised by Communist rule, and faith in socialism and in the rule of the CCP. No system of values have taken their place. Social cohesion is threatened by social inequalities that have been created and aggravated by economic reforms; moreover, foreign access to Chinese markets will increase economic distress further in some sectors of the economy and foster the social instability that the Chinese leadership seeks to avoid.

In the face of the enormous social flux in the world's most populous nation, Americans, policymakers and otherwise, have no choice but to be modest about what the United States can do to influence internal conditions in China. Such restraint should be complemented by emphasizing Chinese conduct that affects U.S. national security, and which should therefore assume first priority in diplomacy.

Nonproliferation, the status of Taiwan, the future of the Korean peninsula, Chinese participation in the war against terrorism, Chinese diplomacy in South Asia and missile defense are only the most obvious issues.

Those Members of Congress most concerned about human rights abuses might reconsider the approach that has allied them with other members who regard China as a future enemy and who disdain engagement. Demonizing China will not contribute to enhancing institutions that can protect human rights, while engagement in legal reform projects could possibly have constructive effects that would be welcomed by many Chinese and by foreign observers.

#### AMERICAN SUPPORT FOR LAW REFORM IN CHINA

Congress should seriously consider funding meaningful and well-planned projects for the building of Chinese legal institutions. For all the vocal insistence from Congress on improving Chinese legality, Congress has been reluctant to appropriate funds to support such institution-building. Presidents Clinton and Jiang agreed on a program of legal cooperation in October 1997, but Congress provided no financial support for it. Since then, fortunately, Congressional has expressed willingness to support rule of law programs.

NGO's and academic institutions can contribute to law reform efforts.

Recent experience of the Asia Foundation is an example. The Foundation decided in 1998 to promote administrative law reform, and obtained support from the Smith Richardson Foundation for a 3-year program of Sino-American consultation. As director of the project, I formed a committee of leading American experts on administrative law and on Chinese law. Our Chinese counterparts are members of the administrative law drafting group of the Legislative Affairs Commission of the National Peoples Congress. Our committee reviewed and commented on a draft law on licensing (1999); sent specialists to lecture on administrative law (2000); and organized a conference on the impact of the WTO on Chinese administrative law (2001). We now hope to help the same group in its work of drafting an administrative procedure law.

With China's accession to the WTO, Chinese interest in foreign training and consultation on important areas of law has grown. The Asia Foundation is now financing a program for training officials of the Legislative Affairs Office (LAO) of the State Council on the requirements that WTO accession now imposes on China. The local offices of the LAO will be responsible for reviewing proposed local laws and regulations for compliance with WTO standards. In March, 2002 a group of American WTO experts will lecture in Beijing; thereafter, Chinese officials will visit the U.S. to learn about U.S. administrative law; in a third stage, after returning home, Chinese officials will meet U.S. counterparts to discuss practical problems of making new Chinese laws and administrative rules consistent with WTO requirements. The Asia Foundation experience summarized here illustrates the contribution to incremental progress that can be made by NGO's, foundations and universities.

Congress ought to support other programs that combine expertise on specific areas of the law with familiarity with Chinese circumstances; that promise to have significant effects; that involve sustained interaction between Chinese and American personnel; and that emphasize repeated contacts with the same counterparts over time rather than one-time trips or delegations in either direction.

#### CONCLUSION

I have presented a mixed view of Chinese legal reform during the last two decades, and have outlined current uncertainties without predicting a likely outcome. It seems clear, though, that U.S. refusal to assist legal development will contribute nothing positive to the prospects for the growth of the rule of law in China or, even more remotely, to the further dilution of authoritarianism. Although the eventual outcome is in doubt, China's accession to the WTO may mark a new stage in its legal development. The United States ought now bring its influence and assistance to bear on furthering that legal development.

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#### QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR BOB SMITH

Last month, Assistant U.S. Trade Representative Joseph Papovich stated that China is not doing enough to curb intellectual property rights. Furthermore, Papovich hinted at the unlikelihood of using the WTO dispute resolution system to remedy these unacceptable and illegal acts. The United States has been trying to work with China on the enforcement of this issue for several years to no avail. Now, China has ascended to the WTO. Professor Feinerman, can you give me your assessment of China's ability to fulfill their obligations under WTO regulations, pertaining to violations of U.S. intellectual property thefts?

I have been one of the Senate's most outspoken critics of China's deplorable human rights abuses, especially concerning the repression of Christians and other religious groups who do not choose to worship in the "official" PRC State churches. In December of 2000, I was deeply disturbed at the PRC sanctioned razing of churches and other places of worship along the eastern coast. In fact, I wrote a rather forthright letter to former Secretary of State Albright concerning this issue, to which I never received a reply from the Clinton State Department. I would like all the witnesses to give me their opinions on where do they see religious rights in the PRC moving in the future, given the fact that PNTR and membership to the WTO in theory was to curb Beijing's crackdown and even loosen restrictions and allow for more religious freedom.

In your opinion, is it plausible for China to remain a stridently ideologically communist driven state, keeping with its brutal repression and policies, while still being able to reap economic profits and higher living standards for the Chinese people? I would request all witnesses to respond.

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#### RESPONSES OF MIKE JENDRZEJCZYK TO QUESTIONS FROM SENATOR BOB SMITH

*Question 2.* I have been one of the Senate's most outspoken critics of China's deplorable human rights abuses, especially concerning the repression of Christians and other religious groups who do not choose to worship in the "official" PRC state churches. In December of 2000, I was deeply disturbed at the PRC sanctioned razing of churches and other places of worship along the eastern coast. In fact, I wrote a rather forthright letter to former Secretary of State Albright concerning this issue, to which I never received a reply from the Clinton State Department. I would like all the witnesses to give me their opinions on where do they see religious rights in the PRC moving in the future, given the fact that PNTR and membership to the

WTO in theory was to curb Beijing's crackdown and even loosen restrictions and allow for more religious freedom.

Answer 2. The State Department's annual human rights country report, just issued for 2001, mentions the razing of churches in December 2000. It also notes that unofficial religious groups in China last year suffered "official interference, harassment and repression." This analysis tracks closely with that of Human Rights Watch, as we described in some detail in our written testimony to the Commission on February 7. I expect that future Chinese government policy on religious activities will be much the same, i.e. in some areas there is a level of toleration, and in others, strict implementation of PRC laws and regulations aimed at managing and controlling religious expression. Official policy on religion does not seem to be affected, one way or another, by China's entry into the World Trade Organization or its PNTR trading status with the US.

*Question 3.* In your opinion, is it plausible for China to remain a stridently ideologically communist driven state, keeping with its brutal repression and policies, while still being able to reap economic profits and higher living standards for the Chinese people? I would request all witnesses to respond.

Answer 3. Clearly, the Chinese Communist Party hopes to derive some measure of domestic legitimacy, if not popular support, by providing economic benefits to many of the Chinese people. However, it's not clear whether the government can indefinitely maintain its economic reform program—and even accelerate the reforms—without at some point having to tackle the more difficult question of political reform and the monopoly of the Party on State power. Pressure is growing internally for a less corrupt, and more open and accountable system.

I think that pressure is likely to grow over time.

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RESPONSES OF WILLIAM P. ALFORD TO QUESTIONS SUBMITTED BY SENATOR BOB SMITH

*Question 1.* Last month, Assistant U.S. Trade Representative Joseph Papovich stated that China is not doing enough to curb intellectual property rights. Furthermore, Papovich hinted at the unlikelihood of using the WTO dispute resolution system to remedy these unacceptable and illegal acts. The United States has been trying to work with China on the enforcement of this issue for several years to no avail. Now, China has ascended to the WTO. Professor Feinerman, can you give me your assessment of China's ability to fulfill their obligations under WTO regulations, pertaining to violations of U.S. intellectual property thefts?

Answer 1. At the risk of undue self-promotion, I would like to direct the Senator's attention to my book on this subject which is entitled "To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization" (Stanford University Press). Although the book was published in 1995, I think that its basic argument about the factors impeding the development of greater respect for intellectual property rights still holds. The Senator may find my discussion of the links between enhanced respect for fundamental rights and for intellectual property rights of particular interest.

*Question 2.* I have been one of the Senate's most outspoken critics of China's deplorable human rights abuses, especially concerning the repression of Christians and other religious groups who do not choose to worship in the "official" PRC State churches. In December of 2000, I was deeply disturbed at the PRC sanctioned razing of churches and other places of worship along the eastern coast. In fact, I wrote a rather forthright letter to former Secretary of State Albright concerning this issue, to which I never received a reply from the Clinton State Department. I would like all the witnesses to give me their opinions on where do they see religious rights in the PRC moving in the future, given the fact that PNTR and membership to the WTO in theory was to curb Beijing's crackdown and even loosen restrictions and allow for more religious freedom.

Answer 2. I would certainly agree that the promotion of greater respect for religious freedom is a paramount concern. My own sense is that the forces drawing Chinese citizens in rapidly increasing numbers to religion—in particular, the quest for meaning at a time of major social dislocation—are so powerful that they can not be vanquished, even by the state. I think that for us the question is how to be most effective in lending support for this fundamental freedom. I think that it is incumbent on the American government and American citizens to continue to speak out on this issue and to make it known to Chinese authorities, publicly and privately, that the practices your question describes are unacceptable in this day and age.

*Question 3.* In your opinion, is it plausible for China to remain a stridently ideologically communist driven state, keeping with its brutal repression and policies,

while still being able to reap economic profits and higher living standards for the Chinese people? I would request all witnesses to respond.

Answer 3. I would like to respond by suggesting modifications, if I might, to two key assumptions in the Senator's question. First, while it is certainly the case that the Communist Party remains immensely powerful, I think it is no longer as ideologically committed as the Senator's question implies, as we can see from the extent to which corruption has entered its ranks. Second, while the overall standard of living in China certainly has improved quite significantly over the past two decades, I think we need both to take statistics about economic growth with a healthy grain of salt and to recognize that the gap between rich and poor in China has grown at a very rapid rate in recent years. In short, the model the Senator is questioning is already encountering serious problems, even on its own terms.

