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ACCESS TO JUSTICE IN CHINA

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JULY 12, 2004

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SUBMISSION FOR THE RECORD

Excerpt from Rightful Resistance: Contentious Politics in Rural China, dated June 2, 2004, by Kevin J. O'Brien, Department of Political Science, University of California, Berkeley and Lianjiang Li, Department of Government and International Studies, Hong Kong Baptist University, Kowloon, Hong Kong, SAR, China 39

ACCESS TO JUSTICE IN CHINA

MONDAY, JULY 12, 2004

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2 p.m., in room 2200, Rayburn House Office Building, John Foarde (staff director of the Commission) presiding.

Also present: David Dorman, deputy staff director; Susan O'Sullivan and Rana A. Siu, Office of Assistant Secretary of State for Democracy, Human Rights, and Labor Lorne Craner; Susan Weld, general counsel; Carl Minzner, senior counsel; Keith Hand, senior counsel; and William Farris, senior specialist on Internet and commercial rule of law.

Mr. FOARDE. That is the magic signal that 2 o'clock has arrived and we ought to get under way.

My name is John Foarde. I am the staff director of the Congressional-Executive Commission on China and represent the Commission Chairman, Congressman Jim Leach.

On behalf of Chairman Leach, Co-Chairman Senator Chuck Hagel, and the other members of the Congressional-Executive Commission on China, welcome to this afternoon's roundtable.

Today we are going to look at the dangerous disconnect between formal Chinese legal institutions and the ability of the average citizen to access them. Authoritarian rule and relatively under-developed legal structures have meant that Chinese citizens must rely heavily on local protest movements and popular appeals for justice to find redress for their grievances, particularly in rural China. Despite a growing Chinese legal profession, the average citizen still faces significant political and economic problems in accessing the formal Chinese judicial system. As a result, Chinese citizens resort to a vast array of different tactics to resolve their grievances. These include mass petitions of government agencies, appeals to the media, and rural protests, in addition to more formal measures such as consultations with local justice bureaus or government-funded legal aid centers.

This afternoon, we want to examine the various strategies pursued by Chinese citizens to seek true justice, analyze how effective they may be, and assess how they reflect on government efforts to manage mounting social tensions.

We have two distinguished panelists to help us this afternoon, Professor Kevin O'Brien, professor of political science at the University of California, Berkeley, and Professor Benjamin Liebman,

who is associate professor and director of the Center for Chinese Legal Studies at Columbia Law School.

Let us get started by introducing Kevin O'Brien in more detail. He earned his Ph.D. from Yale University and works on Chinese politics, political institutions, and post-revolutionary change. His most recent work focuses on the theories of institutionalization and popular resistance, particularly the causes of rural instability. He is the author of "Reform Without Liberalization: China's National People's Congress and the Politics of Institutional Change," as well as articles on legislative politics, local elections, and village political reform.

As we have in the past two and a half years at these roundtables, each of our panelists will have 10 minutes to give an opening presentation. I will remind you after about 8 minutes that you have a couple of minutes left.

Then when both of you have had a chance to speak, we will open it up to questions from the staff panel. We will go until 3:30 or so, or until we run out of steam.

With that, Kevin O'Brien, welcome. Thank you for coming all the way out here from California to help us this afternoon.

STATEMENT OF KEVIN J. O'BRIEN, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF CALIFORNIA, BERKELEY, BERKELEY, CA

Mr. O'BRIEN. Well, thank you for the opportunity to come. I am particularly pleased to be here, not the least because Representative Leach was the Congressman from my district several redistrictings ago when I was in college.

For much of the 1980s and 1990s, some Chinese villagers engaged in a form of protest that has been called "rightful resistance." This involves using the policies, laws, and commitments of the central state to combat local officials who have been ignoring those policies, laws, and commitments.

In the early 1980s and 1990s, rightful resistance tended to be mediated, in the sense that protesters did not directly confront their opponents, but instead relied on a powerful third party to address their claims. This meant that activists acted under the sufferance of, and energetically sought support from, officials, cadres, journalists, anybody who would communicate their grievances to higher ranking officials. When they acted in this mediated fashion, rightful resisters sometimes mobilized popular action, but their main goal was to use the threat of unrest to attract attention from potential mediators and to apply pressure on office holders at higher levels to reign in their underlings. They sought to bypass their local opponents rather than to force them to negotiate.

More recently, there has been a noticeable radicalization of tactics, a move from the politics of humble petitioning to the politics of disruption. In places such as Hengyang County, Hunan Province, protest leaders increasingly place demands on their targets in person and try to wring concessions from them on the spot. This direct form of rightful resistance does not depend so much on high-level intercession, but on skilled rabble rousers and the popular pressure they can muster.

Although protest organizers still cite central policies, rather than sounding fire alarms, they and the villagers who join them try to put out the fires themselves. Rightful resisters may still view the center as a symbolic backer and a guarantor against repression, but they no longer genuinely expect higher-ups to intervene on their behalf. Instead, they assert a right to resist, not only to expose and denounce unlawful acts, and they regard themselves and their supporters to be capable of resolving the problems at hand.

The direct action that we are looking at has three different variants. The least confrontational might be called publicizing a policy. In the course of studying documents, activists make known or distribute materials which they say show the county, township, or village cadres have violated some central or provincial directive. They do this to alert the public to official misconduct and to mobilize opposition to unapproved local policies. The documents they select always relate to issues that concern villagers greatly, like reducing taxes, decrying corruption, or promoting well-run village elections.

Policy disseminators use a variety of methods. They might show copies of laws to their neighbors. As their confidence mounts, they tend to turn toward more public ways to expose local misconduct, such as playing tape recordings, or even using megaphones or loudspeakers to inform villagers of policy misimplementation. Sometimes they do this in one village. Sometimes they open up their field of action. An example of the latter is using something called propaganda vehicles, or putting up posters throughout a township criticizing excessive fees or rigged elections.

Although they usually stay away from physical confrontation, policy disseminators sometimes publicize policies and laws in ways that cannot help but lead to conflict. Two techniques, for example, that are sure to produce official ire are distributing documents or holding so-called 10,000 person meetings near a government compound, something they do quite often. These gatherings often turn into melees when township or county officials intervene.

Publicizing documents often leads to repression, but it sometimes works. By reading out or distributing central laws and policies, activists expose unlawful actions, they shatter information blockades, and they demonstrate both to officials and to interested bystanders that it might be possible to organize large-scale resistance to local misconduct.

The second variant of direct action is something that is called "demanding a dialog." Activists and their supporters often, after collective petitioning or publicizing a policy have failed, insist on face-to-face meetings with local officials to urge immediate revocation of unlawful local measures. Rightful resisters have used this tactic in Hengyang, most notably to fight mounting school fees. Instead of simply lodging a collective complaint, which would have been more common in the past, a group of burden reduction representatives may proceed directly to the school. The arrival of these peasant heroes typically attracts a large crowd, not least because the parents who invited them often encourage onlookers to come to support them and to watch the drama unfold.

In one such incident in Hengyang, a lead activist requested a face-to-face meeting with the head of a township middle school in

front of a large assembly of local residents. He displayed documents issued by the city Education Bureau that fixed fees at a certain level and told the schoolmaster item by item how much more the students have been charged. The presence of nearly 20 hardened activists, as well as over 100 bystanders at this little school, led to a round of intense bargaining, after which the schoolmaster agreed to return about 80 percent of the charges.

So, publicizing policy aims to remind errant cadres that they are vulnerable to rightful claims. Demanding a dialog is directed at unresponsive targets who refuse to back down. For these two kinds of direct action, negotiation and compromise are still possible, even desired.

Cool bargaining and face-saving sessions become less possible when protesters turn to the third variant of direct action, something we call face-to-face defiance. Activists who use face-to-face defiance confront local officials on the job, they try to halt any illegal acts, and they loudly encourage others to follow suit.

In Hengyang, for example, in 1998, one particularly feisty rightful resister followed township tax collectors wherever they went. With two other burden reduction representatives at his side, he brandished the copy of a central directive and contested every effort to collect even a yuan too much. The tax collectors dared not rebuff him in public, but when one of them muttered an insult after he refused to get out of their way and let them do their job, a scuffle broke out and hundreds of villagers came to defend the fee resister, eventually pinning the beleaguered tax man in his Jeep.

These three variants of directed action I have outlined often appear together; sometimes they appear in sequence. People may, for instance, popularize a policy first and then move on to demand dialogs later, and then proceed to face-to-face defiance. Whatever form it takes, direct action is a significant break from mediated contention. Its appearance leads local cadres and protesters themselves into uncharted territory, especially when activists lose control of their followers or officials panic.

It also opens up the possibility that protesters will continue to escalate their tactics, perhaps toward violence, while embracing broader and deeper claims, claims that are general and ideological rather than concrete and specific, claims that challenge the legitimacy of the local government rather than the lawfulness of local decisions.

One of the questions you might have is, how new is all of this? Mediated tactics have not gone away. In fact, they continue to be used, while direct confrontational forms of contention have also become more common.

Another question you might have is, how widespread is direct action? At this point, we can only talk about one county. But there are tantalizing signs of diffusion of these tactics as protesters run into each other while engaging in mediated forms of contention, be it in reception rooms, outside letters and visits offices, petitioners' camps, and share stories of their frustration with the older tactics and their victories with the newer ones. Mobile telephones also enable protest organizers in different counties to stay in touch, to carry tales of inventive tactics far and wide.

Why have these tactics appeared just now? We point to four factors. First, past defeats. For many longtime complainants, the bitter truth is that protectors at higher levels are often all talk and little action. Protesters who use mediated tactics are commonly ignored, given the run-around, or harassed. Even if they do get a favorable response from someone in power, their antagonists at lower levels often ignore soft instructions from above or delay endlessly in implementing them. New tactics thus arise, first and foremost, because mediators do not mediate. Failure leads to growing frustration and encourages some protest organizers to find new ways to further their goals. Second, despite their many failures, mediated contention can generate resources and create openings for direct contention. Activists, most notably, have obtained copies of authoritative red-headed documents and laws via mediated contention that confirm policy violations have taken place. Some of these measures even authorize direct action when central directives are ignored, such as the agricultural law, which empowers villagers to reject illegal fees.

Participants in mediated contention also sometimes obtain oral or written assurances that those disseminating policies are protected. While an official who scrawls on a letter of complaint "disseminating policies is protected by law" may mainly be seeking to get somebody out of their office, resourceful activists often interpret this as evidence that a meaningful gap exists between authorities at higher and lower levels which they can exploit.

Technology has also facilitated direct action. Beyond tape recorders, loudspeakers, and mobile broadcasting stations, cell phones have become important for coordination in planning rightful resistance, while photocopying and computerized printing have played a large role in easing duplication of central, provincial, and city regulations and lending a patina of authenticity to documents that officials previously would have claimed were bogus. All these technologies enable rightful resistors to reach out to, and fire up, a mass constituency in a way that is less critical when they were simply lodging collective complaints, and depended largely on elite allies rather than on agitated, disgruntled villagers.

Last, there is popular support. So long as rightful resistors refrain from demanding excessive donations or harassing free riders, tactical escalation usually generates more community approval than disapproval. Unlike protests in the West where the presence of a radical flank often works to the benefit of moderate protesters, in China, ordinary villagers often respect and admire people who engage in dramatic acts of resistance. The beginning of direct action in a village often sets in motion a sequence of events where wary but hopeful spectators, and some new participants, are delighted to see imperious, corrupt, and abusive local officials get their comeuppance, and they even privately egg on protest leaders to ratchet up the level of confrontation a notch.

Let me just close with few words on who these activists are. Although in many countries new tactics depend on the entry of new protesters, our evidence suggests that tactical escalation in China is mainly the handiwork of seasoned complainants.

In Hengyang, for example, all 32 protest leaders on whom we have information have been involved in collective action for at least

8 years, and all of them employed mediated tactics before moving on to direct action. Most of the innovators are unusually assertive and self-confident characters who, for example, enjoy telling anyone who would listen how much pride they take in fighting wrongdoing. These diehards have remarkably hard-charging personalities and their disenchantment with mediated tactics only feeds their indignation, their brinksmanship, and their dreams of grandeur, while enhancing their commitment to find a way to do whatever it takes to prevail.

I have a longer statement, but I will pass on it for now.

[The prepared statement of Mr. O'Brien appears in the appendix.]

Mr. FOARDE. We will come back to it in the question and answer session. Thanks very much for your discipline, as well as the very interesting ideas in the presentation. We will come back to those ideas in the Q&A.

Next, I would like to recognize Professor Benjamin Liebman. Ben is also the director of the Center for Chinese Legal Studies at Columbia University. He earned his J.D. from Harvard in 1998 and clerked for Justice David Souter on the U.S. Supreme Court. His recent research has focused on the popular use of the Chinese media and basic level legal institutions for dispute resolution. His publications include "Autonomy Through Separation? Environmental Law and the Basic Law of Hong Kong," "Legal Aid and Public Interest Law in China," and "Clean Air, Clear Process? The Struggle Over Air Pollution in the People's Republic of China," with our friend Bill Alford, published in the Hastings Law Journal in 2001.

Ben, thanks very much for coming. Congratulations on being a new father. I am glad you are getting a little bit of sleep, which made it possible for you to participate in the roundtable with us.

STATEMENT OF BENJAMIN L. LIEBMAN, ASSOCIATE PROFESSOR, DIRECTOR, THE CENTER FOR CHINESE LEGAL STUDIES, COLUMBIA LAW SCHOOL, NEW YORK, NY

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

I would like to address two specific aspects of access to justice in China: the growth of legal aid programs, and the role in rural areas of paraprofessional legal service workers known as basic level legal workers.

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

But the formal legal system is not the only or more effective route available to citizens seeking redress in China. Individuals also often pursue their claims by government departments, letters and visits offices, the media, or through the strategies that Professor O'Brien just described. Indeed, one defining characteristic of

the Chinese legal system is that individuals with grievances often pursue their claims in multiple forums concurrently.

So let me start with the recent development of legal aid. A decade ago, China had only a tiny number of legal aid institutions. These were generally university-based and funded by Western foundations. Over the past decade, China has embraced legal aid to a dramatic degree. There were virtually no government supported legal aid centers in 1994. By the end of 2002, China had more than 2,400 legal aid offices, the overwhelming majority of which were state funded. The number of cases legal aid centers handle has likewise risen considerably. Official statistics state that legal aid lawyers handled some 180,000 cases in 2002, a 28 percent increase on the prior year. Close to two-thirds of all these cases are civil cases, and approximately one-third are criminal cases. A very, very small percentage of cases are administrative cases.

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

Despite the significant progress to date, however, substantial problems remain. Clinics suffer from lack of funding. Some legal aid centers employ full-time lawyers, but many consist of reassigned Justice Bureau officials whose job it is to assign cases to local law firms. Local authorities also generally determine the cases that are deemed eligible for state-backed legal aid. As a result, certain classes of cases—in particular, administrative suits against local authorities, and also sometimes claims by migrant workers as well—may be explicitly or implicitly discouraged.

Critics complain that legal aid centers focus on "easy" cases, those that do not bring litigants into conflict with local authorities or locally powerful enterprises or institutions. In a criminal context, current laws mandate provision of lawyers to only a very small range of defendants. In most cases, the local legal aid center may provide a lawyer if a defendant is poor, but they have significant discretion over whether or not to do so.

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

So, turning to basic level legal workers. The biggest challenge facing those working to expand legal aid in China has been that, until very recently, legal aid centers have been overwhelmingly concentrated in cities. Although some centers in cities do represent

the rural poor and migrant workers, the legal aid system has been inaccessible to many of those most in need.

Yet China has a long established system for providing legal services in rural areas. Beginning in the late 1980s, China developed a network of paraprofessionals known as basic level legal workers. Such workers are not lawyers, but have received some legal training and are government licensed. There are approximately 100,000 such workers in China today, only somewhat fewer than the 130,000 registered lawyers. They operate out of some 27,000 legal services offices, ten times the total number of legal aid offices, and handle hundreds of thousands of civil cases a year.

In contrast to workers at the state legal aid centers, basic level legal workers are not state workers. They earn an income based on the modest fees they charge for services. Nevertheless, they are often considered to be engaged in "legal aid" and work closely with local justice bureaus, assisting with mediation and legal education campaigns, as well as providing legal advice in handling cases. Basic level legal workers are permitted to represent parties in civil and administrative cases. They are not allowed to represent criminal defendants.

The status of basic level legal workers is in flux. Originally designed to address legal needs in rural areas, many such workers have moved into urban areas in order to earn higher incomes. Lawyers are increasingly complaining of competition from their lower cost counterparts, and Ministry of Justice officials have indicated that basic level legal workers will be gradually phased out, at least in urban areas. These moves are understandable, as is the desire of China's lawyers to have a monopoly.

The strong reaction of lawyers toward basic level legal workers is noteworthy, in part, because it represents a rare instance in which the Chinese bar has asserted its collective self-interest. Yet China may also be moving too quickly toward its goal of a legal model in which legal services are provided by lawyers alone without sufficient consideration of the actual situation on the ground.

China has rapidly and impressively expanded legal training and the size of the bar, but the per capita number of lawyers is modest by international standards, in particular in rural areas, and the quality of training varies. Moreover, there is a strong argument that lawyers, the overwhelming majority of whom are based in urban areas, may not be best positioned to assist in dispute resolution in rural areas. Another indication of the strong demand for legal services in rural areas is the rising number of barefoot lawyers, who generally are self-trained and not licensed. These individuals assist fellow villagers in navigating the formal legal system, from writing legal documents to assisting them in court. The proliferation of barefoot lawyers in recent years is a testament both to their own ingenuity, and also to the success of state legal education campaigns.

The demand for lawyers, basic level legal workers, and barefoot lawyers, and the fact that many basic level legal workers are able to make a living while also meeting the legal needs of the rural poor, highlights the importance of market forces in bringing a widening range of disputes into the courts. China will not be able to meet the demand for legal services by those unable to afford law-

yers through legal aid alone. China permits contingency fees in class actions, and such mechanisms are already leading to a widening array of cases being brought in the courts. The expansion of these and other incentives to lawyers to represent the disadvantaged will be as important as the development of legal aid.

In summary, the growth of legal aid and continuation of the basic level legal worker system are playing important roles in making justice more accessible in China. But the ability of individuals to obtain redress will continue to depend as much on the evolution of a range of institutions, including the courts, the media, and government generally as it does on the availability of legal representation.

For those of us in this country with an interest in China's legal evolution, these developments have a number of implications. First, such developments highlight the need for a much greater understanding, both in China and in the United States, of developments in rural areas. We need a far better understanding of rural development if we are to play a constructive role in assisting access to justice. This is why the work by academics such as Professor O'Brien is so important. Second, this is an area in which very modest financial support can have a major effect. Most successful legal aid centers in China have all succeeded with financial support that is very modest when compared to overall international spending on legal reform in China. Third, these developments show the importance of the continued strengthening of the public interest bar in China. In particular, we in the United States should be doing much more to facilitate the training of public interest lawyers in China. Fourth, we should be encouraging our colleagues in China to look to a range of precedents for legal reform, not just those from the United States, or even only from Western or foreign countries. Fifth, and finally, in assessing developments in China, we should not underestimate the power of small changes. The single greatest effect of increased attention to legal aid, and to law and justice more generally, is likely to be the growing expectation among ordinary Chinese that the legal system should protect their interests.

Thank you.

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

Mr. FOARDE. Thank you, Ben, very much, for another set of very interesting ideas.

I am going to let you both rest your voices for a minute while I make an administrative announcement or two.

The roundtable series will take a hiatus in August, along with just about everybody else in Washington. But in the meantime, we will be working on more roundtables for the fall, and into the year end holiday season.

September will be a busy month, and we will resume roundtables that month. I do not have a date for you yet, but let me encourage everyone to sign up for our newsletter and automatic e-mailings on the website at *www.cecc.gov*. We very likely will have a full hearing of the Commission on Thursday, September 23. Again, more details will follow on that as we get them and can get them out to you.

And the Commission's annual report, as it has in the last couple of years, will come out in early October, so stay tuned for that.

Let us go now to the question and answer session. We have a good staff panel up here to pose questions and illuminate some of the very interesting issues that you both raised. Let me start out by asking Kevin O'Brien, probably two of the incidents that are of most interest to our Commission members are the Liaoyang labor protests of a couple of years ago and the plight of the workers and leaders who are still incarcerated. But we have also looked very closely, and most recently in another roundtable similar to this one, at property seizures in China, and particularly in the big cities, Beijing and Shanghai, as a part of urban development related, sometimes, to the Olympics. Are these types of movements similar or dissimilar, and do they reflect some of the same things that you articulated in your presentation?

Mr. O'BRIEN. They can be similar, though workers' conditions are also quite different than peasants' conditions.

They are similar in one important respect, in that it has long been a custom in China that leaders of collective action pay the highest price and followers get off.

With the escalation that I focused on today, little has changed. Leaders often end up in prison, but followers, the people who are in the crowd, milling about, are actually more likely to pay few consequences in this more disruptive direct form of contention than in mediated contention, where they would sign a petition and their name would be on a list for everyone to see. This is one of the reasons that popular support for radical, direct action is growing.

Protest leaders' psychology also comes into play. Rural protest leaders are very proud people. They are also often very ornery people. They say they are willing to suffer just like the protest leaders in Liaoyang. Thus there are similarities between leadership mass dynamics in protests in the countryside and in the cities.

On property issues, the biggest issue probably in the countryside now has to do with the appropriation of land for industrial uses. This is often done by cadres who are skirting the edges of what the law allows.

Quite often, villagers rise up against their local cadres on grounds that the Land Law is not being paid attention to. And here they are not losing apartments, but farmland that is being sold off, particularly in peri-urban areas, for very high prices. That is one of the issues that has lately produced much direct action, much more than we saw as recently as 5 or 10 years ago.

Mr. FOARDE. Interesting. Thank you.

Ben Liebman, I am interested in where the funding for legal aid is coming from, aside from foreign sources, which I think we are familiar with, but particularly at the local level in China. Can you illuminate that a little bit?

Mr. LIEBMAN. Sure. One of the problems, it is probably fair to say, in a lot of cases it is not coming from anywhere. There is not enough funding. There are some problems. But there is Guangdong, in particular, which has really committed significant funds to this, and I think has done an impressive job in building up legal aid centers.

In most cases, the way legal aid centers work in China is not having what we think of as a legal aid center with a team of lawyers working on these cases, but it is having officials whose job it

is to then take the cases and assign them to local law firms. Lawyers in China have mandatory pro bono obligations that vary from city to city and location to location. So in general, a legal aid center simply is the administrative arm that vets the case to see whether the applicants are entitled to legal aid, and then, with some modest support for fees incurred in the case, delegates the case to a local law firm.

One of the big issues is: Who is going to pay for this? The central government has sort of said, "Well, local authorities should pay for it." Local authorities say, "How are we supposed to pay for this? Where do we have the money?" So some of the better-off provinces have put in funds for this, but in other areas it remains a big problem coming up with the money. Therefore, they tend to rely on asking lawyers to help out.

Mr. FOARDE. Thank you. That is very useful.

Let me recognize my friend and colleague, Dave Dorman, deputy staff director of the Commission, who represents Senator Chuck Hagel, our Co-Chairman.

Dave.

Mr. DORMAN. Well, first of all, thank you for coming today. I had the opportunity to read your written statements over the weekend, and with that experience behind me, I can say with certainty that the issue we are addressing today is a very complex, and very important, one. It is important to the Commission's mandate and important to our Commissioners. So, I would just like to say again, thank you for coming today to share your experiences, your wisdom, and your insights.

I have a question for both of you, based on your opening statements.

Professor O'Brien, could you describe where the term "rightful resistance" originated? Where was the term coined?

Mr. O'BRIEN. It is a term that Lianjiang Li and I coined.

Mr. DORMAN. Oh, I see. All right. That was an easy question. As I listened to both of your testimonies, I wondered whether or not there is some relationship between these two phenomena: "rightful resistance" and the growth of legal aid centers and barefoot legal aides. Could both of you comment on whether you believe there is a relationship between these two phenomena, specifically whether they are growing in unison, and if so, is this happening because "rightful resisters" are learning more about their rights from legal aid centers or barefoot legal aides?

Mr. O'BRIEN. Yes, very much so. This is why I look forward to reading Professor Liebman's work as soon as it is available, because one of the big questions is: How do rightful resisters learn about specific laws, policies, and government commitments?

We must remember that in China the whole notion of policy, law, or leadership commitment is very broad. A hook to hang rightful resistance on could be nothing more than a speech by a top official. It could be a People's Daily editorial. There are many, many ways people learn about what sort of commitments the leadership has made. Law is only one form that commitments take.

But legal claims are turning out to be a particularly powerful weapon for rightful resisters. In many areas one of the key questions we have is, how do people find out about, for example, very

specific clauses in the family planning law that came out a few years ago? Legal aid would be one important way.

Legal aid also offers cadres a way to find out about laws; in particular which claims are truly rightful and which are not. This is important because villages often make claims and insist that the local leadership has to heed them, even when the claims have no legal basis.

So in one village I worked in, a former cadre set up a legal aid office to give advice to the local cadres—not the populace—about which claims they had to pay attention to and which they could safely ignore or suppress.

Beyond legal aid, television also brings word of official discourses concerning citizenship, rights consciousness and even the protection of human rights. Rightful resisters are picking up the language of protest from many different sources and legal aid is certainly one of them.

Mr. LIEBMAN. Just to echo that, in two respects. First, as Professor O'Brien just said, I think that people are more conscious of their rights and they are speaking more in terms of law and asserting those rights, and sometimes they assert those rights through the mechanism that Professor O'Brien described, sometimes they do it through legal aid, through the courts.

Often they do both at the same time, and they will raise their complaints in various ways. But I think there is rising attention to rights and to rights that are protected by law that gives rise to people being willing to have this taking place.

The other thing is something I hinted at maybe in the written version of my statement, which is to say that I think one of the reasons the state is interested in having legal aid is because they would like to have these claims addressed. It is better to have them addressed through legal aid, through formal channels, in some cases, than it is to have a hundred villagers gathering around and surrounding the Party office and raising complaints in that fashion.

So I think that part of this is also an actual attempt—and I think it is not just about keeping these disputes off the streets. I think it is a genuine attempt to sort of say, "Look, there is a lot of egregious behavior going on at the local level, and we, the central government, would also like to see some of this addressed." Legal aid is one way of doing that.

Mr. O'BRIEN. On that very point, rightful resistance is a monitoring mechanism, just like village elections are. An example I like to give is the logic that stands behind putting a 1–800 number on the back of trucks. The owner of a trucking company does not know if the truck driver is driving well or not. The person who does is driving right behind the rig. What the leadership is doing with village elections and permitting rightful resistance is allowing ordinary people, who are most exposed to official misconduct, to inform higher levels about misbehavior so they can control the people who are misbehaving. The central leadership has an interest in preventing their local agents from driving people to rebellion, and they are actively drawing in ordinary people through elections and through the kind of mechanisms we are talking about today to control officials are no longer held in line as directly as they were during the Maoist era.

Mr. DORMAN. Thank you.

Mr. FOARDE. I would like to recognize, now, Susan O'Sullivan, who represents our Commission member Lorne Craner, who is Assistant Secretary of State for Democracy, Human Rights, and Labor.

Susan, do you have a question?

Ms. O'SULLIVAN. Yes. Thanks. Thanks to both of the panelists for their excellent presentations. I was struck by one line in Professor Liebman's paper about how the United States should be doing much more to facilitate the training of public interest lawyers in China. As you know, my bureau is programming a fair amount of money to do things like this. I was wondering if you could expand on your thoughts about how we might go about this and what sorts of programs would be most helpful.

Mr. LIEBMAN. Sure. Let me say, to start off, I think one of the great challenges here, often, is that some of the most effective lawyers are not the people we ordinarily run into in the course of our interactions with China. They are not always going to be the people who have gone to the top law schools or speak English. So one of the challenges is, how do you reach out to the people at the local level in doing that? I guess, just to highlight a couple of different things.

I think there have been some in-country—meaning in China—training programs where lawyers have been brought together from around the country to talk about it. But I actually think that one of the most effective things we have seen done, is really trying to bring public interest lawyers from China together with public interest advocates elsewhere. The Ford Foundation has done a very good job of boosting clinical legal education. Carl Minzner was working in that capacity before coming here.

I will just cite one other thing that has been done, I think very successfully, in the Public Interest Law Initiative [PILI] at Columbia, which is actually a program originally focused on training public interest lawyers from Central Asia and Eastern Europe, and has actually now been bringing in some Chinese public interest lawyers who have some English language ability and working through their program, placing them in public interest positions in New York, and then also taking them to Budapest in the summer to work with public interest lawyers in other countries. I think that is something we should not underestimate—giving people an opportunity to learn about other countries that are also newly experimenting with legal aid.

So I think both in-country and external training is valuable, but I think the hardest thing we struggle with is really ways to take people and give them, in a sense, on-the-job training, given the language barriers, et cetera. But I think increasingly we are seeing people from China who have language ability to come over and gain some experience here working with public interest organizations.

I think something else we have to consider also is taking people and bringing them for longer durations if someone does not quite have the English language ability to come here, to bring them first to give them some training and then give them time.

But I think much more than having a seminar series, actually giving people on-the-ground training, is probably the most effective thing we can do.

Mr. FOARDE. Also representing Assistant Secretary of State Craner is our colleague Rana Siu.

Rana, please, over to you for questions.

Ms. SIU. Yes. Thanks, John. Thank you to the panelists for your presentations.

My question is about the role that the media can play, and does play, in terms of building an understanding of the legal system and legal rights. Do you see that role expanding? Do you think journalists in China today have a good understanding of the legal system?

Mr. LIEBMAN. It is a complex question because there are a lot of different types of journalists. So, let me take the second half first. There are some journalists who are very sophisticated in understanding the legal system, and certainly a number of journalists in China are legally trained and specialize in legal reporting. Whether the greater number of journalists, especially at the new tabloids and commercialized media, have a sophisticated understanding, I am not so sure. There are also efforts now to really boost legal knowledge among journalists. So I think that there is increasing sophistication among journalists, but it does vary a lot.

One of the complaints you hear a lot from judges and lawyers is that journalists will write articles that are very critical of cases, for example, without having a full understanding of the law, and will appeal to the popular morality instead of actual legal standards. There is this raging battle, in a sense. Raging battle may be overstating it, but there is a lot of tension right now between the courts and the media in China with, in effect, the courts saying the media are too influential, and the media saying we are just doing our job of making sure courts follow the law.

On the first question—and I can expand on that if you would like—of legal education, I think the media has had a tremendous effect in terms of raising both awareness of law, and more generally awareness of individual rights. It is surprising in some respects, but in fact all these, what we call, propaganda campaigns about legal education had a big effect.

When I talk about "barefoot lawyers," these really are villagers who have learned about law and legal procedures. They have learned about things like the Administrative Litigation Law, sometimes by reading about things in the papers, but often just, for example, by watching the daily legal show, "Legal Report," which is incredibly influential in the countryside.

So, I do think this attention to law—and some of it gets manifested in sensationalism, but a lot of it is also commentary, and even just reporting on new laws does have a very big effect and raises awareness of it, but also encourages people to use law more to protect themselves.

Mr. O'BRIEN. For rightful resisters, journalists are a very important source of information, as is the media more broadly. First, there is informing ordinary people of cases that have been decided. Little homilies are published in many outlets, on television and elsewhere, and villagers often take that as a signal that a certain issue is ripe to be contested.

A topic like land would be a good example. There has been a lot of discussion of land cases recently. I am quite sure that after a land case is discussed in Farmers' Daily, or in a letter to an editor somewhere, in the next few months there are many more cases on precisely that topic. The media are a signaling mechanism in that respect.

Many rightful resisters in their often unsuccessful search for elite allies try to lure, or even hire, journalists to come to their village to look into their case and to get it resolved via publicity.

Of course, this strategy does not always work, but it is important and it does suggest a mechanism of redress outside the formal legal system.

This is one advantage of the fact that the Chinese system is not highly institutionalized. If you have a complaint in the United States, you have a relatively limited number of places to go. In China, complainants go to anyone who is more powerful than the person they are attacking. A journalist is often that person. So are local Anti-Corruption Offices, People's Congresses, or anywhere else where somebody can lean on your antagonist.

It is worth noting that this is not the rule of law. This is using law as a weapon to produce substantively just outcomes through rather irregular procedures. Journalists and other elite backers are a mechanism for precisely this.

Mr. LIEBMAN. Can I just add to that? When I talk about, for example, impact litigation in China, the most effective legal aid lawyers in China are always those with the best contacts in the media, and have friends in the media who can help them.

When we talk about impact litigation in China we are not talking about impact litigation and the way we think about it in this country where you have a legal precedent that then has a binding effect on a lot of other cases. You are really talking about a case that has impact because the media picks up on it, covers it widely, and it is that action that actually leads to changes and leads to a broader change and to laws sometimes being revised, or simply problems being addressed through policy mechanisms rather than through a case being laid down in law and taken as precedent.

Mr. O'BRIEN. It stiffens the resolve of people using the law, and it frightens the people who are misusing the law.

Mr. FOARDE. Fascinating. Thank you.

I would like to recognize Susan Roosevelt Weld, the general counsel of the Commission.

Susan.

Ms. WELD. I was wondering, just to keep on media for a moment, are there cases in which reporting some of these incidents of rightful resistance are treated as state secrets? Is one always allowed to report these kinds of incidents, both rural and urban?

Mr. O'BRIEN. Some of the more interesting documents I have come across are often long reports, 40 or 50 pages, laying out a case in detail. Then, in each iteration of the document, comments from ranking leaders will be attached, saying such things as: "This is very interesting. Pass it on to such and such an office. It may even be worth publishing in a newspaper." Often, however, as a report moves toward open publication, many of the most interesting details are removed and it is drastically shortened.

Mr. LIEBMAN. Can I just add one point on that? I think the language you used may suggest a formality that is way beyond what actually exists on the ground, which is to say that things are not classified necessarily as state secrets. That is, the system by which articles, for example, are blocked or allowed to publish is much less formal than that, so that it is not a question of something being actually classified as a state secret and then the newspaper being informed they cannot publish on it. It is often the case of someone picking up the phone and calling a friend who happens to work over at either the local newspaper or local propaganda department saying, maybe it would be better if this did not get published, and it goes through those channels. So I think most things that are blocked from publication in China are blocked informally through phone calls or someone dropping by the office that way. So it is not as if a formal classification happens.

Often, things are not necessarily what we would think of as politically sensitive. It is sensitive to an individual, the person does not want it published. It is not because it is touching on some real political issue.

Ms. WELD. I am interested in that answer, because sometimes, when some information that has been given to the press or given to people outside of China is labeled a state secret, it does not seem to one, as an outsider, to be really the kind of thing that you would classify for state security reasons. It seems to be more a feeling that the information causes humiliation, or that somebody would be embarrassed. Is that right? I do not know. What I am thinking of, of course, is the case of the uncertified lawyer in Shanghai who was doing cases on behalf of the evictees in the "Dongba East" housing development.

Mr. LIEBMAN. Certainly. I think that is right. One of the problems, of course, is that the standard is incredibly ambiguous and ill-defined. This has been widely discussed in China. The Chinese scholars have been arguing that the standard on what is a state secret, what is subversion, needs to be clarified. I think in a lot of these cases, also, it is a post facto determination when an issue comes up, then something is labeled as having been a state secret and the person is then charged with violating state secrets.

But one of the problems here is that the standard is very unclear and the Ministry of State Security generally has the authority to determine whether or not something is a state secret. So the problem comes from that side, is that the law does not gives us a lot of clarification in advance as to what might be determined as a state secret.

Mr. O'BRIEN. Just one more point on this: commercialization of the press has also helped bring more information out.

I think particularly of the magazine "Democracy and Legal System," which used to be a relatively staid political-legal journal. In the last 10 or 15 years it has turned into a kind of scandal sheet that produces stories about movie actors' foibles and the such. That is what most people want to read, in China or anywhere. But they are also publishing stories about rightful resistance, and some of the juicier ones can help sell copy, too.

Ms. WELD. Thanks.

Mr. FOARDE. Let me recognize Carl Minzner, a senior counsel who is responsible for organizing today's roundtable.

Carl.

Mr. MINZNER. Thank you both for coming today. I really appreciate the opportunity to hear both of you and to have both of you together.

Let me go back to the point that Susan O'Sullivan raised, which I thought was particularly interesting, which is the role of outside U.S. NGOs and organizations in perhaps training or working with Chinese public interest lawyers, and particularly the point that Professor Liebman mentioned about training that might be provided in the United States.

Let me just question you a little bit further about training and the level that we are talking about here. Could it be effectively provided outside China or would it be better to be doing in-country training?

Then for Professor O'Brien, you talked in particular about the leaders that you were meeting who were the activists, the hardcore activists who were running some of these protests. What would be useful training? If there were going to be training for these types of people, what is it that they need or could use? Would it be training in law? Would it be training in tactics? I would just ask you to talk about things that you might imagine that would be useful in that context.

Mr. LIEBMAN. I think it is a very good question. I certainly did not mean to suggest in my response to the prior question that we were advocating taking people from this local level and just sort of putting them down in New York or Budapest. It is obviously not a model that is going to work.

I think what you are hinting at is a very important point, which is that I think also a lot can be done to facilitate more discussion within China, so you have also some more sophisticated public interest lawyers in China, some who have been trained outside, some of whom have had a lot of interaction with the west. I also think one thing we can do is give people elsewhere in China the opportunity to learn from them.

One of the great challenges, as I indicated, is there have been some very successful legal aid centers based at universities. One of the challenges has been, how do you replicate this model without, say, the Ford Foundation or EU money, or other international support?

The most successful ones have almost universally had international support. So the great challenge is, can we actually encourage the development of these institutions elsewhere without that foreign money there? I think one thing you can do, is also encourage lawyers and elsewhere to come and learn from more successful centers in China.

But the other thing I would like to emphasize, and I mentioned this in my remarks, I think also we need to consider the possibility that simply training more lawyers and sending them out there may not be, especially when you are talking about the local level and especially in rural areas, always be the most effective mechanism because you need people from that area. You need people who understand how things work in that village, in that township to make

things work. But I think there is a lot of learning that can be done in China from other Chinese public interest lawyers.

Mr. O'BRIEN. Addressing the first question first, Professor Stanley Lubman of the University of California, Berkeley, has brought over some Chinese under the auspices of the Asia Foundation to study administrative law in practice. They went to Sacramento and elsewhere, and from his reports, learned a lot about the nuts and bolt of administrative law in the United States. In fact, he told me just a couple of days ago that these judges and legal scholars are now starting training programs in China and feel there were large payoffs from their trip to the United States.

It's harder to imagine the United States actively supporting rightful resisters, since they skirt so close to unlawful action and are vigorously exploring the limits of the permissible and the gap between what the Center offers and local officials deliver.

I expect the most the United States can do is to continue to support China's program to institute the rule of law. This indirectly provides resources to villagers on the ground who are testing what is allowed and what is not, who are working different levels of government against each other.

Rightful resisters, we must remember, are people who work within the system. They are not revolutionaries but people who are looking for somebody influential somewhere who has a stake in having what they desire happen. I think the best the United States can probably do is to stand behind rule of law and not be too disappointed when it is not fully implemented. There are people on the ground in China working this very territory.

Mr. FOARDE. Very useful. Thank you.

I would like to recognize our colleague, Keith Hand, who is a senior counsel on the Commission staff.

Keith.

Mr. HAND. Thanks, John.

I join my colleagues in thanking you both very much for your statements.

Professor Liebman, at several points in your talk you referenced the rising expectation among Chinese citizens that the legal system can be used to redress their grievances. Yet in our work here on the Commission and in other roundtables, we often hear about rampant corruption in the judiciary, the kinds of access problems you alluded to at several points in your talk, an inability to enforce judgments, and all kinds of operational problems.

I wonder if, in your opinion, the expectations of Chinese citizens are growing faster the capacity of the legal system to address these kinds of problems. Do you see a risk that the concept of rule of law could be somehow de-legitimized before it really has a chance to take root?

Mr. LIEBMAN. That is a very interesting question. I think it is one also that people in China, academics in China, are thinking very seriously about. People certainly talk about this, and do you want to create expectations that then are met and lead to people not having confidence in law? Certainly this comes up also in the media, where arguments are made sometimes against critical reporting. Well, are you going to completely disillusion that the courts will be of use.

So I think the risk is probably there, but I also think that the trend is positive in a sense. I think that there certainly are these enormous problems in the courts, for example, but I also think that we are now seeing within the court hierarchy much more attention to these problems and attempts to address them.

So I think one of the things that is promising is the sense that the things you talked about in terms of problems, corruption, enforcement of judgments, these are not things that the courts, for example, think are good to have around. They are working to get rid of them.

So I think the risk is there, but I would actually say that in some way the greater problem right now is not so much that people are going to become disillusioned, there is also a big problem, of course, that we cannot handle the volume of complaints. They do not have the mechanisms there to deal with some of this.

And by mechanisms, I mean manpower. They do not have enough people, there are too many complaints, and also they still lack sophisticated legal knowledge to handle cases, especially the increasingly complex cases being brought in. I think that is as great a challenge as anything. So in some ways, I think the risk is there.

But I also think that the trend is perhaps a little bit positive and perhaps I think maybe they can actually do enough to address these problems so they do not fundamentally undermine confidence in the courts.

Mr. O'BRIEN. We see a lot of disillusionment in the countryside as people lose faith in higher and higher levels and find out that allies are not available to help them out.

We have also seen other kinds of disillusionment, particularly on the issue of limiting corruption. Some villagers are actually calling for the return of Maoist-style political campaigns against corrupt cadres because the rule of law is so ineffective in handling them. They said that the only way to deal with malfeasant officials is to struggle against them.

I do not know if they were serious or if this was based on a rose-tinted view of the past, but it does reflect a high level of cynicism and disappointment in what the law can do. I have to admit, as I've read similar articles for more than a decade by legal reformers about how the rule of law is going to clean up pervasive corruption, they've gradually lost their persuasiveness, even to me.

Mr. FOARDE. Hugely frustrating.

Let me recognize our colleague, William Farris, who is our senior specialist on the Internet, and also for commercial rule of law, and follows freedom of expression issues for us.

William.

Mr. FARRIS. Thank you.

It seems like a lot of the kind of resistance you are talking about is receiving official or semi-official tolerance, if not encouragement. I am wondering if either of you could comment on, to what heights this kind of encouragement goes. What topics are off limits when it comes to this kind of resistance, extra-judicial resistance? To what level can people not go above in terms of resisting mandates from the government?

Mr. O'BRIEN. Until the passage of the family planning law, birth control would have been the archetypal example. Any policy in which the center is not on villagers' side is something, by definition, not amenable to rightful resistance, because protesters will immediately be accused of being counter-revolutionary, anti-party, anti-government, and officials at all levels will agree that repression is called for.

Violence is another example. Analytically, rightful resistance stops short of violence. Of course, in practice that is not always the case. Aggrieved villagers often go beyond rightful resistance.

Household registration reform is another difficult issue because the center has been rather dodgy about where it stands on, for example, rights of migrant workers.

Rightful resistance depends on there being a promise that protesters have some reason to think someone in officialdom takes them seriously. So calling for greater attention to the Constitution or the end of one-party rule is not open to rightful resistance because state officials will be united in opposition. Protesters will not find a divided state that they can work against itself.

Mr. LIEBMAN. I would just add that the same is also true in the litigation context, in the formal context. That is, people who are effective at bringing these cases and get widespread attention or push for change are doing it because they are pursuing policy goals that are consistent with state policy goals, women's rights, environment, poverty alleviation, protecting the elderly, protecting children, things like that. That is where people have been the most effective in bringing these claims, for the same reasons, exactly, that litigators, public interest advocates, are very careful to choose policy topics that are consistent with central policy goals.

Mr. FARRIS. Do you see any sort of movement in the area of freedom of expression? The right to publish in China is very tightly restricted pursuant to some very clear and specific laws. So under a rule of law system, people in China do not have any kind of right to engage in free press or publishing.

Do you see any interest in the Chinese populace with addressing this as a problem that they see that needs to be resolved?

Mr. LIEBMAN. I think it is very hard to answer the question of Chinese popular views. But I guess there are two ways to respond to this. One, is to say I think we are seeing that the power of commercialization of the media has certainly brought a wider range of topics into public discourse and it gives the media an incentive because they have an incentive to produce racy headlines, to break stories. It gives the media incentive to push the boundaries of the political controls that exist. There is no question that the media are more willing to take risks than they were in the pre-commercialized days. So, that is one development we are seeing.

The other area—and I think the jury is still out on this one—is that the Internet is giving voice to more and more complaints from a certain section of the population. Again, villagers are not, in large numbers, going online and raising their complaints, but for that subsection of society that is online, we are seeing more and more room for people to raise issues in chat rooms. We are also seeing, in the last 6 months, I would say, renewed focus from central

authorities as to exactly what limits should be imposed on Internet discussion.

Mr. O'BRIEN. In the countryside, I have not heard much about freedom of expression, though access to information is very important to rightful resisters. Aggrieved people benefit when there is more information around and they have ways of getting that information, be it through mobile phones, photocopying, computerized printing, and so on.

The fact that there are photocopying shops in almost every county town, even in most townships, makes a big difference because cadres are now hard pressed to claim that a policy document they have been presented is a fake.

Recently, there has been even greater attention to freedom of association and freedom of organization. The latter, in particular, has always been a "forbidden zone," and increasingly we are seeing examples where there is a high level of organization in formulating collective letters of complaint and village leaders from different areas who band together.

The extent to which informal organization is repressed is a very salient issue for ordinary people who are weighing the costs and benefits of ratcheting up the level of confrontation and trying to decide whether they can get away with direct forms of rightful resistance.

Mr. FOARDE. Let me pick up the questioning now and raise, again, the issue of corruption, which is an issue of very great concern to our whole Commission, and something that we look at very carefully.

One of the ideas that we keep discussing at the staff level is whether there is any benefit to the PRC in picking up the model of Hong Kong's Independent Commission on Corruption [ICOC]. Do either of you have a view whether that model might work in some way in mainland China in the way that it has worked in Hong Kong?

Mr. LIEBMAN. It is a model that is talked about in China as well, again, but it is a hard model to replicate because the question is, could you create, in a sense, an anti-corruption body that does not fall within the Party hierarchy?

I think the great challenge in China, and there often are discussions and comparisons made between the Central Discipline Commission of the Party and the ICOC in Hong Kong. I guess I am a little bit skeptical of how that could be done. There clearly needs to be greater powers to fight corruption. The question is, how would you sort of remove it, not just from government, but also from party oversight? I think it is a very big challenge remaining.

As you well know, the procuracies have set up these anti-corruption offices at most levels of the party state that investigate corruption and often work with the Discipline Commissions. But it is still being done from one level up looking down at the next level. It is not being done completely autonomously. So I guess I think it is a model worth discussing. I guess I am not sure how easy it is going to be to put into place in China.

Mr. O'BRIEN. I only know it from the bottom up. I would say there is a certain level of tolerated corruption, at least in the vil-

lages and townships, not the least because it is a very hard job to be a village cadre.

Local cadres are subject to all sorts of incompatible demands from above and below: carry out the birth control policy, but do not use coercion; conduct fair village elections but make sure that only "reliable" people win. In some places, it has actually become hard to recruit people into the Party. There are lots of villages where nobody has been recruited into the Party for years.

Some cadres, particularly in poorer areas, are deciding they don't want to do the job any longer. This, in one sense, has increased the power of village cadres to tell higher levels that they had better turn their eyes away when they, for example, make off with collective property, because if not, we are going to quit. Some villages have also been turned over to so-called local bullies. And in places where this has caused predictable problems it is easy for higher levels to decide that it is better to allow the incumbents to put their hands in the till a bit.

Mr. FOARDE. Interesting.

Let me ask one more question of Ben Liebman having to do with what the United States could do in the way of assistance.

One of the things that you talked about was strengthening the public interest bar and advocating more training that we might contribute to, financially or otherwise. Are there other things that we could do to strengthen the public interest bar besides training?

Mr. LIEBMAN. I certainly think not just training, but simply supporting some of these centers. I mentioned a few minutes ago, we have had a number of very successful centers, Beijing University, Wuhan, Chinese University of Law and Politics, Tsinghua, these very good centers. The problem has been, how do you replicate this model without funding? So, direct support also of some of these centers, especially the ones based at universities, can be very successful. I have actually seen some of the ones that have been issue-specific—environmental clinic, women's rights clinics—that have been very successful models. It does not cost a lot of money to support a legal aid center for a year, two, or five.

I think actually expanding that, and also expanding it away from the major cities, is very important. So I think that there are exceptions. The Asia Foundation has done a very good job of funding some legal aid work outside the major cities.

I actually think one of the problems we have seen is that a lot of the foreign aid that has gone into this area, especially in the last years, has really gone into the major cities. I think we should be thinking also about, can we help fund legal aid programs more in the interior, perhaps not at famous universities, some of the places that train lawyers elsewhere. I mean, there are legal aid clinics in a lot of these places, but they have not gotten as much attention from outside of China.

Mr. O'BRIEN. There are legal aid offices in some townships and counties. They are often very small, but there is something of an infrastructure to work with.

Mr. FOARDE. Useful. Thank you.

Let me pass the questioning now back to Dave Dorman.

David.

Mr. DORMAN. Professor O'Brien, we have had Murray Scot Tanner testify in front of us as well and he has written recently on what appears to be a dramatic escalation of rural protests in the 1990s.

If you don't mind using your crystal ball for a second, with what you have written on this subject and with what Dr. Tanner has written, where do you see this all leading three, four, five years from now?

Will "rightful resistance" lead to a successful resolution of key issues, or is it a reflection of more serious problems on the horizon? How does this all mix together, and where does it all lead?

Mr. O'BRIEN. Rightful resisters are escalating because more moderate tactics often fail. The next step is to move toward even more direct confrontation, even more defiance, and ultimately violence and conventional kinds of protests of the sort that Murray Scot Tanner examines. That is, indeed, quite possible. What we have seen is a declining level of trust in higher levels of government. There used to be a saying in the countryside that "the center is our benefactor, the provinces are our relative, the county is a good person, the township is bad, and the village is evil."

Now the saying is, "there are clear skies at the center, clouds are forming in the province, it is raining in the county, it's pouring in the township, and we're being drowned in the village." Note: the province used to be our relative. Now, clouds are forming there. Rightful resisters are losing faith in the middle levels, and it's quite possible that the Center will be next. At that point, it will become more conventional society-versus-state resistance. There ability to work the system disappears if it is perceived that one's problems originate right at the top. There are no allies to be found and it truly become us against them.

That is why the study of outcomes of rightful resistance is so important. How many people are succeeding? Is it legitimating the system? Ultimately, rightful resistance should convince people the system works. But if it does not succeed often enough, presumably these people will either give up and become passive and cynical, ratchet up their tactics further, or move on to true anti-state violence. Maybe they will go after the birth control policy or taxes. Not just arbitrary and unlawful taxes, but even lawful taxes that are perceived to be too high.

Mr. DORMAN. Thank you.

Professor Liebman, you mentioned quasi-independent legal aid centers. Could you tell us more about what that means? Is that in risk of being closed, less effective at what they do, or just operating outside of what is necessary to give people what they need?

Mr. LIEBMAN. The reason I used this term—some people call them GONGOs, government NGOs, or whatever—quasi-independent, is for a couple of different reasons. What I mean here, is they are not under the direct supervision of the Justice Bureau. Most of the legal aid infrastructure in China basically is under the Ministry of Justice, and then the provincial Justice Bureaus, et cetera. When I talk about government in that way, that is what I mean. These tend to be university-based, sometimes women's associations, occasionally trade unions working on workers' rights, but

mainly universities and women's organizations. The reason I say independent, is that they do not answer to the Justice Bureau.

One of the things actually that was quite encouraging when the 2002 legal aid regulations came out, is that there had been a lot of concern that the Ministry of Justice was going to say, basically, all legal aid has to be done through us. In fact, they basically said that the state encourages "social organizations to develop legal aid." So, they explicitly authorized non-Justice Bureau legal aid centers.

I say "quasi-independent" because, although they are not directly under the Ministry of Justice hierarchy and they are not subject to supervision day to day from them, there certainly are limits and they have to be careful. They are also a type of state entity. Even the ones at the university—the university is still a state entity.

So, they are not completely without any state links at all, and they generally operate autonomously, but they do have to be careful. Part of why they are successful, the ones that are successful, is they know how to negotiate that with what is permissible.

Mr. DORMAN. Thank you.

Mr. FOARDE. Let me again recognize Susan O'Sullivan for a question.

Ms. O'SULLIVAN. No questions.

Mr. FOARDE. Rana, do you have another question?

Ms. SIU. Thank you.

I have a question about barefoot lawyers. I know you said that they are self-trained. Do you think that they could become effective change agents? Is this a group that we should be focusing on in terms of programming?

Mr. LIEBMAN. I think the answer is, I do not know, because there is still important work to be done in understanding what they are doing. It is really only in the last three or 4 years that there has started to be some attention to these people, both in the western media a little bit, but mainly in the Chinese media.

There are some interesting similarities to other people that Professor O'Brien is talking about. These are sort of villagers who have day jobs in the village or they are working and they usually have a little more education than other people in the village, but they are basically people who have learned a bit about law and they start going out and trying to help. They get known as being the person in the village who knows how the legal system works.

There are also interesting historical precedents, the tradition of litigation tricksters, the *sungun* in Imperial China. But they are the people who know how to work the system and people go to them and ask them for help, and these people start being resources for people who have cases.

It is interesting. I have heard about cases in which barefoot lawyers, for example, get paid a certain amount to handle all legal matters for a family for a year. It is interesting, both because it suggests a high level of expertise, and it is also technically illegal. They are not actually supposed to charge fees. The lawyer's law says you cannot charge fees unless you are a lawyer, and these people sort of are skirting the edges of that.

So I think it might be hard to identify these people as a class to be trained, but I do think that the basic level legal workers who

are a little bit more trained and a little bit more sophisticated are something that is worth thinking about, whether there are ways to think about how we might strengthen training paraprofessionals in China as a way of meeting the needs in rural areas. I think that is a very important area.

Mr. O'BRIEN. Professor Liebman is exactly right. Many rightful resisters, after winning, go back home and become resources in their village. Because they succeeded, other aggrieved people come to them for both legal advice and suggestions about engaging in collective action.

Many rightful resisters do have a fair amount of legal knowledge and some provide informal legal advice to all comers. But the most important thing is that they won once. Many of these people have no formal legal training, but they do have experience and can be quite skillful in presenting popular claims in an effective way.

This will even go out in a press story about an administrative litigation case that went well. I have to imagine that is encouraging more of these sorts of people to go back and do this, at least on the side.

Ms. SIU. It sounds like barefoot lawyers can be entrepreneurs just as much as they might be activists.

Mr. LIEBMAN. I think that is right. I think that is true of lawyers and basic level legal workers as well. A lot of this is about people trying to work the system because they are pursuing certain goals, but some of those goals are clearly their financial interest.

In fact, some of these paraprofessionals can make quite good incomes as well. But I think that is right. I think it is a side business often where they can make a little bit of money, or not officially make money, but be paid in kind and other ways. I think that is right.

I also do think there is some underlying desire to get results. I actually think that what you are hinting at is an important trend we are seeing. It is important also to think about ways in which more incentives can be given to people to pursue these claims and get these cases brought into the courts, and to get skilled people who understand how to work the system, bringing more of these cases, is probably a positive thing.

Mr. O'BRIEN. There is another relevant issue, too—raising money. It is not just an issue of getting paid oneself. Rightful resisters need to raise money to carry out collective action, to go to cities and pursue their claims. So, this is one reason that popular support in the village, from my viewpoint, is becoming more and more important.

Mr. FOARDE. Interesting.

Let us go on to Susan Weld for another question.

Susan.

Ms. WELD. Thanks a lot.

I wanted to just go back to that. I think it was Ben who said that there might be other models for improving legal assistance in China rather than the U.S. model. Do you have something in particular in mind as to which nation, and what model would be useful?

Mr. LIEBMAN. Well, I am really suggesting that China look to a range of models, including its own. One of the things I am sug-

gesting is that I think this race to get rid of paraprofessionals and really embrace lawyers alone as the only people who can bring these cases, is a mistake.

If you think about where China is, 130,000 lawyers, the numbers are not that different per capita from places like Japan and Korea. But, in fact, if you go to the rural areas, there are no lawyers. Government statistics say that something like 10 percent of counties in China, 300-some-odd counties, have zero lawyers in them.

So if you create a system in which only lawyers can represent people in court, or only lawyers can bring these types of cases, the lawyers are not there to do these cases so you may actually in some ways cause harm to the system. I think the Ministry of Justice may actually be moving too quickly to have lawyers only bringing these cases. One of the things I am suggesting is looking at other systems that rely on paraprofessionals, especially other developing countries that have relied on paraprofessionals to bring these claims, and to not rely so heavily on lawyers.

Mr. O'BRIEN. Local protectionism is also of importance here. For some of the administrative litigation cases we have examined in the countryside, when litigants bring in lawyers from another county, local officials denounce these attorneys as outside agitators who are coming in to stir up trouble. Local paraprofessionals from the village are not subject to these sorts of charges.

Mr. LIEBMAN. It is incredibly important. If you take someone from the city who goes down there, they really do not have the ability to work through these claims.

I do not claim to be an expert on these other models, but if you look at other developing countries—Brazil, the Philippines, Southeast Asia, South Africa—there are other countries out there that have systems that allow paraprofessionals to play a wider role in the system, as does the United States, the United Kingdom, or many other western countries.

Mr. O'BRIEN. The legal claim is not the only thing. Rightful resisters need a good legal claim. That is their ante. That gets them a seat at the table. But they also need political resources as well. Rightful resisters are very skilled rabble-rousers and organizers. They have those resources and that is why those who succeed have gotten as far as they have, and that is why they have not given up.

Ms. WELD. This may be slightly off the wall, and perhaps more of Kevin's bailiwick. One hears so much and reads so much about growing mass participation in religion in the countryside. I wonder if those sorts of organizations play into any of the forms of rightful resistance. I mean, do those kinds of gatherings have any political function?

Mr. O'BRIEN. Religion, you said?

Ms. WELD. Religion. Yes.

Mr. O'BRIEN. I've not seen much, but this may just be an artifact of where we happen to be working.

Ms. WELD. I would not suppose that the religious claims would be raised, but that an organization that might have formed around religious practices or beliefs could be a vehicle——

Mr. O'BRIEN. I have not seen it in the places I work. One of the next questions to consider is what are the grounds on which right-

ful resisters mobilize? We are not talking about a pluralist system where it is legitimate to organize around interests for any reason. Banding together with fellow believers may be difficult in the wake of Falun Gong, but there are, of course, other religious organizations that are at least tolerated by the state, and I would think that some of these would provide a way to mobilize people with similar grievances.

Ms. WELD. Right.

Mr. O'BRIEN. But to take a religious organization and use it on other grounds, I would think that is Collective Action 101.

Mr. FOARDE. Let us go on to Carl Minzner for another round of questions.

Carl.

Mr. MINZNER. Let me just follow up on that last question with Professor O'Brien. You were talking about 20 or 30 hardened activists showing up at a school's doorstep. There must be some sort of organizational strength that it is coming from.

What is generating the organization that allows these 20 or 30 people to show up? If it is not a religious organization, where do they come together? What brings them together in that organizational format? That would be the first question.

The second question is, where, do they get their skills from? Is it a case of a particular county having experienced successful protests, drawing in people who come to that county to learn skills, and then having them go back to their home counties to engage in this kind of resistance themselves, or is it a self-generating process within each county?

Mr. O'BRIEN. Renshou County was famous for this in 1992. We talked to officials in the Ministry of Civil Affairs after an enormous riot took place there. In good Chinese Communist fashion, people from surrounding counties starting coming to Renshou to learn from the experience of the rioters there. The Ministry of Civil Affairs actually had to close off the county to prevent people from coming in. Demobilized soldiers and former cadres played a large role in Renshou, as they have elsewhere.

The biggest division in a village often is not between cadres and villagers, but between cadres who are on the party branch and other party members who have been edged out and are not important figures in the village. The leaders of rightful resistance are often former cadres, retired cadres who are not being treated well, and demobilized soldiers who are party members, who feel they are worldly, yet have no role in running the village.

Mr. MINZNER. So would it be fair to say, one, that their organizational experience as to how to run a unit often comes from their military background, and second—and this is something we talked about at lunch today—the petitioner camps——

Mr. O'BRIEN. No, I did not mention that. The logic here is that after one form of contention fails people move on to another. But even as mediated contention was failing, protesters were busy talking to each other in petitioners' camps or outside complaint bureaus, trading experiences, hearing about successes, hearing about failures, and developing new tactics while they were in the process of not succeeding and not finding allies.

The big recent change is that rightful resisters now increasingly expect their grievances to be redressed on the spot. They are not trying to get an official in the Education Bureau to come down and reverse excessive tuition fees. Twenty "burden reduction heroes" surrounded by 100 parents are demanding that the money be returned now. The Center is invoked to legitimate their claim, but in a concrete sense what matters is the pressure that a mass of vaguely threatening people standing in a room at a given moment can muster.

Mr. FOARDE. Let me go on to ask Keith Hand if he has another question or two.

Mr. HAND. I have one more.

We now have 15 years of experience under the Administrative Litigation Law and 10 years under the State Compensation Law. These statutes were held up as important legal checks on official abuse. Yet, Professor Liebman, in your written statement you mention that very few legal aid cases involve an administrative claim.

In your view, have these laws had a significant impact in practice in terms of improving access to justice? Are they a factor at all in the countryside?

Mr. O'BRIEN. We just wrote a paper about this in the January 2004 issue of the China Journal. The gist of it is that legal channels are often not as effective as other channels. The legal weapon, ironically, may work better outside the legal arena than in it.

If a rightful resister can get to the number-one man in the township, a problem can often be resolved. In the courts there are many obstacles to having a case accepted, on the kinds of claims one can make, and even on having a judgment enforced.

Mr. LIEBMAN. I might have a little bit, but not much, rosier view. I have three responses to Keith's question. One is to say, and this picks up on what Professor O'Brien just said, the problems with administrative litigation law somewhat are due to the law and somewhat are just symptomatic of the system in general.

The problem is with administrative litigation law is that these problems like local protectionism, influence on the court, external influence, whether it is corruption, party influence, et cetera, are more acute in this case because the other side has a vested interest and has ties and is, by definition, the party state, the government.

So, I think what is important to remember, is a lot of these problems are more acute in this context, but they also are not unique to the administrative litigation law.

The second thing, is to say that it is hard to judge whether these have been a success, in a sense, because it is hard to know what the expectation should have been, for example, in 1989 with regard to this. Statistics show some leveling off of the number of cases. The number of cases is significant, 80,000 cases a year.

So if we were sitting there in 1989, would we have thought that was a realistic goal? It is very hard to judge whether it is has been a success or not in those regards. Some cases are being brought in. A lot of cases are not being brought, and there is a lot of discussion as to why this is not happening.

This leads me to my third point, which is to say, in some ways the law can be said to be a success in the sense that it has engendered a lot of discussion about what the law does not do. That is,

the problems of the law are now being more and more discussed and there is a serious effort to redraft the law to address some of this. So you could say that in a sense the administrative litigation law undertook a very, very modest first step toward allowing people to bring these sorts of claims against the state, and did lay the groundwork for further change.

I think the jury is still out as to how much more change will happen. One of the problems with the law, as Professor O'Brien suggested, is that these claims are very hard to bring. But some of the problems are also that what the law actually permits to be brought is very narrow. At least on that point, I think there is going to be change within the next few years. There is certainly a lot of discussion of it. So, I think it is hard to judge.

On the State Compensation Law, I am not an expert. It is not something I have looked at in detail. You are the expert on State Compensation Law. But I think, again, going back to some of the things we have talked about before, one of the great successes is that people think that these claims can be brought. That is stage one. Stage two is actually seeing it through to completion and actually having enforcement.

But in a sense, what we are seeing is a very gradual movement, perhaps slower than we would like to see, and slower than many people in China would like to see, but I think it has perhaps laid the groundwork for revisions of these laws and to claims being brought.

One final point. I think the best way of thinking of administrative litigation law is as really one tool in the tool kit if people were seeking redress. It is a mistake, I think, to think of it as the solution to these problems. It is simply another weapon, another tool that people with grievances rely on, along with the various other things we have been discussing today.

Mr. O'BRIEN. And just to be fair, if you brought Randy Peerenboom to this room, he would tell you that it has actually been quite successful, and that a 40 percent success rate—at least arguably 40 percent—is one of the higher ones in the world compared to administrative litigation almost anywhere else.

Mr. FOARDE. Let us give the final round of questions to William Farris.

William.

Mr. FARRIS. No questions.

Mr. FOARDE. All right. Good.

We have reached the magic hour. We do not want to impose upon your good humor and your patience any longer. So, on behalf of Chairman Jim Leach and our Co-Chairman, Senator Chuck Hagel, and the members of the Congressional-Executive Commission on China, our thanks to Kevin O'Brien and Ben Liebman for helping us out this afternoon and helping us understand access to justice issues.

Thank you to all who attended. Please keep watching the website and your e-mail for announcements about our events in September. I hope you all have a good August break. See you again. Thank you.

[Whereupon, at 3:30 p.m. the roundtable was concluded.]

A P P E N D I X

PREPARED STATEMENT OF KEVIN J. O'BRIEN

JULY 12, 2004

NEW TACTICS IN RURAL PROTEST

For much of the 1980s and 1990s, some Chinese villagers engaged in a form of protest that has been called rightful resistance. This involves using the policies, laws, and commitments of the central State to combat local officials who have been ignoring those policies, laws and commitments. In the early post-Mao period, rightful resistance tended to be mediated, in the sense that protesters didn't directly confront their opponents, but instead relied on a powerful third party to address their claims. Activists acted under the sufferance of, and energetically sought support from (1) officials as high as central policymakers, (2) cadres as low as any local official other than the ones they were denouncing, and (3) journalists (or others) who could communicate their grievances to high-ranking officials. When they acted in this mediated fashion, rightful resisters sometimes mobilized popular action, but their main goal was to use the threat of unrest to attract attention from potential mediators and to apply pressure on officeholders at higher levels to rein in their underlings. They sought, in other words, to bypass their local opponents rather than to force them to negotiate.

More recently, there's been a notable radicalization of tactics—a move from humble petitioning to the politics of disruption. In places such as Hengyang county, Hunan, protest leaders increasingly place demands on their targets in person and try to wring concessions from them on-the-spot. This increasingly direct form of rightful resistance doesn't depend on high-level intercession, but on skilled rabble-rousers and the popular pressure they can muster. Although protest organizers still cite central policies, rather than sounding "fire alarms" they (and the villagers who join them) try to put out the fires themselves. Rightful resisters may still view the Center as a symbolic backer and a guarantor against repression, but they no longer genuinely expect higher-ups to intervene on their behalf. Instead, they assert a right to resist (not only expose and denounce) unlawful acts, and they regard themselves and their supporters to be capable of resolving the problems at hand.

Direct action has three main variants. The least confrontational might be called publicizing a policy. In the course of "studying documents," activists make known or distribute materials which (they contend) show that county, township, or village cadres have violated a central or provincial directive. They do so to alert the public to official misconduct and mobilize opposition to unapproved "local policies." The documents they select always relate to issues that concern villagers greatly, like reducing excessive taxes and fees, decrying the use of violence, corruption, or promoting well-run village elections.

Policy disseminators use a variety of methods. They may begin by showing copies of laws they have acquired to their neighbors. As their confidence mounts, they may often turn to more public ways to expose local misconduct, such as playing tape recordings, or even using megaphones or loudspeakers, to inform villagers of policy misimplementation. Many efforts to make beneficial policies and laws known are limited to a single village; others expand the field of action. An example of the latter is employing "propaganda vehicles" or putting up posters throughout a township criticizing excessive fees or rigged elections. Although they usually shy away from physical confrontation, policy disseminators sometimes publicize policies and laws in ways that can't help but lead to conflict. Two techniques sure to produce official ire are distributing documents or holding so-called "ten thousand person meetings" near a government compound. Such gatherings often turn into melees when township or county officials intervene.

Publicizing documents often leads to repression; but it also sometimes further protesters' ends. By reading out or distributing central laws and policies, activists expose unlawful actions, shatter information blockades, and demonstrate (both to officials and interested bystanders) that it may be possible to muster large-scale resistance to local misconduct. In so doing, rightful resisters assert their right to know about beneficial measures and to communicate their knowledge. Ordinary villagers may be emboldened to join them, or at least support them, not simply because they have been made aware that central directives have been neglected, but because they have seen fellow community members take the lead in standing up to unlawful local actions.

The second variant of direct action is "demanding a dialog." Activists and their supporters, often after collective petitioning or publicizing a policy fails, may insist on face-to-face meetings with local officials (or their proxies) to urge immediate revocation of unlawful local measures. Rightful resisters have used this tactic in

Hengyang most notably to fight mounting school fees. Instead of simply lodging a collective complaint, which would have been more common in the past, a group of "burden reduction representatives" may proceed directly to the school. The arrival of these "peasant heroes" typically attracts a large crowd, not least because the parents who invited them often encourage onlookers to come, support them, and watch the drama unfold. In one such incident in Hengyang, the lead activist requested a face-to-face meeting with the head of a township middle school. In front of a large assembly of local residents, he displayed documents issued by the city and county education bureau that fixed fees at a certain level and told the schoolmaster item by item how much more students had been charged. The presence of nearly twenty hardened activists as well as over one hundred bystanders, led to a round of intense bargaining, after which the schoolmaster agreed to return about 80 percent of the illegal charges.

If publicizing a policy aims to remind errant cadres that they are vulnerable to rightful claims, demanding a dialog is directed at unresponsive targets who refuse to back down. At this stage, negotiation and compromise are still possible, even desired by activists. Cool bargaining and face-saving concessions become less possible when protesters turn to the third variant of direct action: face-to-face defiance.

Activists who use face-to-face defiance confront local officials on the job and try to halt any illegal acts. They, for example, flatly reject unauthorized local impositions and loudly encourage others to follow suit. In Hengyang in 1998, one particularly feisty rightful resister followed township tax collectors wherever they went. With two other "burden reduction representatives" at his side, he brandished a copy of a central directive and contested every effort to collect even a yuan too much. The tax collectors dared not challenge him in public, but one of them mumbled an insult after he refused to get out of their way and let them do their job. A scuffle broke out and hundreds of villagers came to defend the fee resister, eventually pinning the beleaguered taxman in his jeep.

The three variants of direct action I've outlined here often appear together. In addition, rightful resisters sometimes employ them in sequence, starting by publicizing policies and then moving on to demanding dialogs or face-to-face defiance. Whatever form it takes, direct action marks a significant break from mediated contention. Its appearance leads local cadres (and protesters themselves) into uncharted territory, especially when activists lose control of their followers or officials panic. It also opens up the possibility that protesters will continue to escalate their tactics (perhaps toward out-and-out violence) while embracing broader and deeper claims—claims that are general and ideological rather than concrete and specific, claims that challenge the legitimacy of local government rather than the lawfulness of local decisions.

How new is all this? Mediated tactics haven't gone away; in fact, they continue to be employed while direct, confrontational forms of contention have also become more common.

How widespread is direct action? We can only speak at this point about tactical escalation in Hengyang. But there are tantalizing signs of tactical diffusion as protesters run into each other while engaging in mediated forms of contention, be it in reception rooms, outside "letters and visits offices," and in "petitioners' camps," and share stories of their frustration with the older tactics and victories with the newer ones. Mobile telephones also enable protest organizers in different counties to stay in touch and carry tales of inventive tactics far and wide.

Why have direct tactics appeared just now? There are four factors. First, past defeats. For many long-time complainants, the bitter truth is that protectors at higher levels are often all talk and little action. Protesters who employ mediated tactics are commonly ignored, given the run-around, or harassed. Even if they do obtain a favorable response from someone in power, their antagonists at lower levels often ignore "soft" instructions from above or delay endlessly in implementing them. So, new tactics arise first and foremost because mediators don't mediate. Failure leads to growing frustration and encourages some protest organizer to find new ways to further their goals.

Second, despite these many failures, mediated contention can generate resources and create openings for direct contention. Activists, most notably, have obtained copies of authoritative "red-headed documents" and laws via mediated contention that confirmed policy violations were taking place. Some of these measures even authorize direct action when central directives are ignored, such as the Agriculture Law, which empowers villagers to reject illegal fees. Participants in mediated contention also sometimes obtain oral or written assurances that, for example, disseminating beneficial policies is legally protected. While an official who scrawls on a letter of complaint "disseminating policies is protected by law" may be seeking mainly to get a group of activists out of his or her office and to discourage them from returning,

resourceful activists often interpret these off-hand "instructions," to be evidence that a meaningful gap exists between authorities at higher and lower levels, which they can exploit.

Technology has also facilitated direct action. Beyond tape recorders, loudspeakers, and mobile broadcasting stations, cell phones have become important for coordination and planning rightful resistance, while photocopying and computerized printing have played a large role in easing duplication of central, provincial and city regulations and lending a patina of authenticity to documents that officials previously would have claimed were bogus. All these technologies enable rightful resisters to reach out to (and fire up) a mass constituency in a way that was less critical when they were simply lodging mass complaints and depended largely on elite allies rather than agitated, disgruntled villagers.

Fourth, there is popular support. So long as rightful resisters refrain from demanding excessive donations or harassing free-riders, tactical escalation usually generates more community approval than disapproval. Unlike protest in the West, where the presence of a "radical flank" often works to the benefits of more moderate elements, ordinary villagers often respect and admire people who engage in dramatic acts of resistance. The beginning of direct action in a village often sets in motion a sequence of events where wary but hopeful spectators (and some new participants) are delighted to see imperious, corrupt, and abusive local officials get their comeuppance and even privately egg protest leaders to ratchet the level of confrontation up a notch.

Let me close with just a few words on who innovates. Although in many countries new tactics depend on the entry of new protesters, our evidence suggests that tactical escalation is mainly the handiwork of seasoned complainants. In Hengyang, for instance, all 32 protest leaders on whom we have information had been involved in collective action for at least eight years, and all of them employed mediated tactics before moving on to direct action. Most of the innovators we have encountered are unusually assertive and self-confident characters, who, for example, enjoy telling anyone who would listen how much pride they took in fighting wrongdoing. These die-hards have remarkably hard-charging personalities, and disenchantment with mediated tactics only feeds their indignation, brinksmanship, and dreams of grandeur while boosting their commitment to find a way to do whatever it takes to prevail.

Putting it all in a nutshell, rightful resistance has evolved in rural China. Some long-time activists, seeing few alternatives and too proud to accept defeat, have turned to more confrontational forms of protest. Instead of counting on higher-level patrons to address their claims, protesters and their followers have increasingly come to demand justice on the spot. In an attempt to halt policy violations, they have transformed tiny openings into opportunities to deploy more disruptive tactics, such as publicizing policies, demanding dialogs, and face-to-face defiance. In the course of doing so, they have exploited the spread of communications and information technologies, including mobile phones, photocopying, and computerized printing. Direct tactics, to this point, have generally not overstepped the Center's sufferance (so long as protest leaders and their followers stop short of violence and clearly illegal acts), and they almost always meet with popular acclaim, as rightful resisters persist, win occasional victories, and keep trumpeting their willingness to sacrifice all for the interests of the Party and the people.

PREPARED STATEMENT OF BENJAMIN L. LIEBMAN

JULY 12, 2004

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

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

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

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

I. LEGAL AID

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

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

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

Most of the development of legal aid has been state-driven. Nevertheless, numerous quasi-independent legal aid centers have also emerged, mostly linked to universities or women's organizations. Indeed, although the statistics focus on the development of government legal aid centers, some of the most important developments are happening in this quasi-independent sector. A number of university-based centers are focusing on impact litigation, using cases—frequently class actions—to highlight structural problems in the legal system. Often working with the media, the goal of these cases is to apply pressure for change within the system.

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

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

Some legal aid centers have focused on the rights of migrant workers. In other areas, however, legal aid offices have been reluctant to represent migrant workers, arguing that legal aid should be provided to local residents only, or that migrant workers are unable to prove that they qualify for legal aid. And in the criminal context, current laws mandate provision of lawyers to only a very small range of

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

defendants—foreigners, juveniles, the disabled, and those facing a possible death sentence. In other cases, the local legal aid center may provide a lawyer if the defendant is poor, but they have significant discretion over whether to do so. Many legal aid centers have been reluctant to focus their limited resources on criminal cases. The expansion of legal aid has also largely been concentrated in urban areas—most legal aid centers are in cities or major county towns—and in the wealthier eastern provinces. Legal aid has thus remained out of reach for many of those most in need.

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

In addition, the continued growth of university-based and other legal aid organizations outside the direct oversight of the Ministry of Justice is of particular note given concerns that the Ministry of Justice would attempt to bring all legal aid organizations under its direct control.

Instead, language in the 2002 Legal Aid Regulations provides that the state encourages and supports "social institutions" to provide legal aid.[2] Non-government legal aid organizations must operate with care, but they do appear to have widening space within which to operate.

II. BASIC LEVEL LEGAL WORKERS

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

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

Yet China has a long-established system for providing legal services in rural areas. Beginning the late 1980s, China developed a network of para-professionals, known as Basic Level Legal Workers.[3] Most Basic Level Legal Workers are not lawyers, but have received some legal training and are licensed by the provincial justice bureau, either through an exam or by meeting other requirements.

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

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

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

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

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

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

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

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

Another indication of the strong demand for legal services in rural areas is the rising number of "barefoot lawyers." In contrast to Basic Level Legal Workers and lawyers, "barefoot lawyers" generally are self-trained and not licensed. These individuals assist fellow villagers in navigating the formal legal system, from writing legal documents to assisting them in court. Officially barefoot lawyers are not permitted to charge fees for their services, although whether they do so difficult for the authorities to determine. The proliferation of barefoot lawyers in recent years is a testament both to their own ingenuity, and to the success of State legal education campaigns. Such campaigns have raised knowledge of law and legal procedures, and also expectations of the system's role in protecting the rights of individuals.

The demand for lawyers, Basic Level Legal Workers, and barefoot lawyers—and the fact that many Basic Level Legal Workers are able to make a living while also meeting the legal needs of the rural poor—highlights the importance of market forces in bringing a widening range of disputes into the courts. China will not be able to meet the demand for legal services by those unable to afford lawyers through legal aid alone. China permits contingency fees and class actions, and such mechanisms are already leading to a widening array of cases being brought in the courts.[4] The expansion of these and other incentives to lawyers to represent the disadvantaged will be as important as the development of legal aid.

III. CONCLUSION

As I indicated at the beginning of these remarks, the developments I have described cannot be understood in isolation, in particular because litigants themselves often pursue multiple avenues of redress. In addition, in the past 2 years authorities have begun to reemphasize the importance of mediation, which has in recent years declined in importance when compared to litigation. This recent focus on mediation is apparently designed to reduce both the number of cases that are litigated and the number of complaints brought to letters and visits offices. Authorities appear concerned both with the rising tide of popular complaints brought to such offices, and also with the ability of the courts to handle a rapidly growing volume of cases.

The growth of legal aid and continuation of the Basic Level Legal Worker system are playing important roles in making justice more accessible in China. But the ability of individuals to obtain redress will continue to depend as much on the evo-

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

lution of the courts, the media, and government more generally as it does on the availability of legal representation. The media, in particular, have in recent years emerged as one of the most influential actors in the Chinese legal system.[5]

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

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

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

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

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

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

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

SUBMISSION FOR THE RECORD

[Excerpt From Rightful Resistance: Contentious Politics in Rural China, June 2, 2004]

CHAPTER 5.—TACTICAL ESCALATION

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Forms of contention generally have a limited lifespan. Even the most creative tactics tend, over time, to lose their power to surprise opponents and stir followers. Tactical escalation offers a means to regain momentumwhen established techniques of protest no longer create the sense of crises and excitement they once did. As the effectiveness of familiar methods wanes, enterprisingactivists sometimes turn to more disruptive acts to demonstrate their commitment, leave their opponents rattled, and mobilize supporters (on the advantages of unruliness, see Andrews, 2001; Gamson, 1990; Guigni, 1999: xvi–xviii; Tarrow, 1998: 163, chap. 6). Although confrontational tactics can at times alienate the public and generate a backlash (Rochon, 1988), they can also help draw newcomers to a cause (Jasper, 1997: 248) while offering leverage to actors who have few other resources (Piven and Cloward, 1992).

Tactical escalation typically involves dramatic gestures and provocations that test the vulnerabilities of one's foes. It may appear in the form of a single tactic (e.g. the sit-in, the mock shantytown, the suffrage parade) that vividly symbolizes injustice and is difficult for the authorities and onlookers to ignore. Or it may arise as a cluster of related innovations (Voss and Sherman, 2000) that reflects a fresh approach to protest and signals a new "tactical grammar" (Ennis, 1987: 531) is at work.

In rural China, much like it did during the American Civil Rights Movement, revitalizing the repertoire of contention has entailed a radicalization of tactics—a move from humble petitioning to the politics of disruption (McAdam, 1983: 738) In places such as Hengyang county, Hunan, rightful resistance has become far more confrontational over the last decade, as the mediated tactics of the past are being demoted or adapted and more direct protest routines are on the rise.

In its basic form, rightful resistance is a rather tame form of contention that makes use of existing (if clogged) channels of participation and relies heavily on the patronage of elite backers. It is mediated in the sense that complainants do not directly confront their opponents, but instead rely on a powerful third party to address their claims. Activists at this point always act under the sufferance of, and energetically seek support from (1) officials as high as central policymakers, (2) cadres as low as any local official other than the ones they are denouncing, and (3) journalists (or others) who can communicate their grievances to high-ranking authorities. In this basic form, rightful resisters may mobilize popular action, but their main aim is to use the threat of unrest to attract attention from possible mediators and to apply pressure on officeholders at higher levels to rein in their underlings. Protest leaders, in other words, seek to bypass their local adversaries rather than to compel them to negotiate.

Direct action is quite different. In Hengyang county, for instance, activists increasingly place demands on their targets in person and try to wring concessions from them on-the-spot. This form of rightful resistance does not depend on high-level intercession, but on skilled rabble-rousers and the popular pressure they can muster. Although protest organizers still cite central policies, rather than sounding "fire alarms" (McCubbins and Schwarz, 1984) they (and the villagers who join them) try to put out the fires themselves—they enforce rather than inform. In direct rightful resistance, though activists may still view the Center as a source of legitimacy, a symbolic backer, and a guarantor against repression, they no longer genuinely expect higher-ups to intervene on their behalf. Instead, they regard themselves and their supporters to be capable of resolving the problems at hand. Acting as ever in the name of faithful policy implementation, rightful resisters now confront their targets (often face-to-face) and mobilize as much popular action as they can to induce them to halt policy violations. Direct action, in the end, relies on appeals to the community rather than to higher level authorities and its goal is immediate concessions.

This chapter will begin by examining some of the forms that direct rightful resistance takes in rural China. Then we will move on to a series of questions suggested by the broader literature on tactical innovation, including: are these tactics truly new and how widespread are they? Who is mainly responsible for initiating direct

action, newcomers or seasoned complainants? And, most importantly, why is tactical escalation occurring? Along the way we will alight on a number of explanations for tactical change, including ones that underscore the role of prior experiences with contention, resources, and popular support.

It is worth mentioning that studies of tactical innovation usually concentrate on how a repertoire of contention evolves rather than why certain tactics are chosen (Jasper, 1997: 234; Brown, 2003). We tread a middle path here, emphasizing both external forces that structure the options open to rightful resisters and internal factors that sometimes lead them to make tactical decisions that attention to the environment alone would never predict. We derive most of our conclusions from talking with rural protest organizers about actions they have taken and why they thought certain tactics were effective or not (on the advantages of interviewing over after-the-fact theorizing, see Brown, 2003). We also draw on government reports that detail episodes of popular unrest, other written accounts, and our own earlier field research.

THREE VARIANTS OF DIRECT ACTION

Mediated contention is a form of seeking grace from highly placed intercessors whose characteristic expression is group petitioning. Direct action, on the contrary, rests on a public rallying call and high-pressure methods that are designed to coax local leaders to revoke an illegal decision. When employing direct tactics, protesters and their supporters assert a right to resist (not only expose and denounce) unlawful acts.

In contemporary rural China, direct action has three main variants. The least confrontational might be called publicizing a policy. In the course of "studying" (*xue*) or "disseminating documents" (*xuanchuan wenjian*), activists make known or distribute materials which (they contend) show that county, township, or village cadres have violated a central or provincial directive. They do so for the purpose of alerting the public to official misconduct and mobilizing opposition to unapproved "local policies" (*tu zhengce*). The documents they select always relate to issues that concern villagers greatly, be it reducing excessive taxes and fees, decrying the use of violence, or promoting well-run village elections. In Hengyang county alone, activists have publicized the following materials: President Jiang Zemin's 1998 speech on reducing "peasant burdens" (*nongmin fudan*) (Wang et al., 1998: 1), Hunan Provincial Document No. 9 (1996) on the same subject (Int. 7; Yu Jianrong, 2001: 559), and the 1993 Agriculture Law (Int. 6), especially its clauses (Arts. 18, 19, 59) that forbid imposing unlawful fees, affirm the right of villagers to "reject" (*jujue*) unsanctioned exactions, and stipulate that higher levels should work to halt such impositions and have them returned to villagers.

Participants in direct action use a variety of methods to make beneficial policies known and to mobilize resistance to their violation. They may begin by showing government papers they have acquired to their neighbors. The most inconspicuous way to do this is in a private home (Ints. 5, 6, 7, 38). A somewhat more overt approach involves photocopying central or provincial documents and then handing or selling them to interested villagers (Ints. 17, 21). One activist in Hengyang (Int. 17) proudly told us that he charged his neighbors precisely what he paid the copy shop and actually lost a fair sum when some villagers walked off with photocopied documents without reimbursing him.

As their confidence mounts, rightful resisters may turn to more public ways to expose local misconduct. An example of this is playing tape recordings, or even using megaphones or loudspeakers, to inform villagers of beneficial policies. In Henan, for instance, in response to township manipulation of village elections and increasing exactions, a young man from Suiping county used a megaphone to acquaint his fellow villagers with the Organic Law of Villagers' Committees (1998) and central directives prohibiting excessive taxes and fees (Hao Fu and Chen Lei, 2002).[1] In Hengyang county, a middle-aged shop-owner went a step further and was ultimately detained and beaten by township authorities for his cheekiness. He rented some audio equipment, set it up on his roof, and aired central and provincial documents about easing peasant burdens to his entire village (Mo Zhengtian, 2003).

[1] On an activist posting copies of a State Council directive (which warned local governments against the illegal use of land) on the walls of his Zhejiang village, see Yu, 2003. The man claimed that "all I did was tell people what their legal rights were."

Disseminating policies need not employ even the simplest technology and can occur at unexpected times, as is seen when resourceful activists appropriate apolitical rituals or celebrations and turn them to their own ends. In rural Hengyang for instance, rightful resisters hijacked a traditional dragon dance during Spring Festival (three consecutive years!) to publicize central documents granting villagers a right to reject unreasonable burdens and (on the sly) to solicit donations for their cause. While parading up and down every lane, they summarized the "spirit of central documents" (*zhongyang wenjian jingshen*) in rhymed verse, chanting in unison as they wound their way from home to home (Ints. 21, 39).

Many efforts to make beneficial policies known are limited to a single village; others expand the field of action. An example of the latter is employing "propaganda vehicles" (*xuanchuan che*) or putting up posters throughout a township criticizing excessive fees or rigged elections (Ints. 8, 21, 39). One activist in Hengyang (Int. 5), already famous for organizing a road blockade in 1999, rented a truck and used it as a mobile broadcasting station to transmit provincial directives limiting rural taxation to a number of small hamlets scattered throughout his township (see also Johnson 2004: 63, 67, 71). Another protest leader, after participating in an expensive and fruitless collective complaint to the Hunan provincial government in 1996, copied excerpts of central documents calling for tax and fee reductions on large posters and had a group of young villagers paste them up around the county (Int. 8).

For many of these tactics, the intended audience does not have to make any special effort. They can stay indoors, open their windows and listen, or simply walk outside and watch what is going on. One variety of dissemination that involves a more direct (if surreptitious) effort to attract a crowd is presenting a movie and then publicizing beneficial policies moments before the show begins. In Henan, as early as 1993, a villager did this with a State Council regulation that limited township and village fees (Yu Xin, 1993). Activists may also inform villagers about poor implementation at rural markets. This again, involves taking advantage of a ready-made audience. According to several Hengyang protest organizers, on market days they sometimes simply set up a loudspeaker in the town center and read out documents concerning tax and fee reduction that were issued by the Center, Hunan province, or Hengyang city (Yu Jianrong, 2001: 555; Ints. 4, 13, 40). In such cases, even though rightful resisters may do their best to minimize confrontation, clashes frequently occur after local officials appear. Township cadres, when they heard the Hengyang activists disclosing fee limits one busy market day in 1998, first cutoff electricity to their loudspeaker. But a sympathetic restaurant owner stepped in and supplied the villagers with a generator. Then, a number of officials came out of their offices and ordered the protesters to disperse, only to find themselves upbraided for impeding the lawful dissemination of central policies.

Although they usually shy away from physical confrontation with their adversaries, policy disseminators sometimes publicize policies in ways that cannot help but lead to conflict. One technique of protest sure to produce official ire is distributing policy documents near a government compound. A Hengyang activist (Int. 6), for example, excerpted central directives limiting peasant burdens on large, red posters and plastered them on several buildings in the township government complex. Protest organizers in Jiangxi have likewise sold pamphlets about Beijing's fee reduction policies directly in front of a Party office building (Ding Guoguang, 2001: 433–34). In both cases, these tactics cornered township officials, heightened their fears that further popular action was imminent, and led to a swift (and negative) response. In Hengyang, township cadres removed the posters; in Jiangxi, the book sellers were arrested.

By far the most assertive form of publicizing policies involves both deliberate confrontation and undisguised mass mobilization. One common tactic employed in Hengyang is to trail behind township tax collectors as they try to collect fees, all the time loudly quoting tax reduction directives (Ints. 13, 21). This practice not only challenges the legality of an exaction, it also often draws scores of onlookers and encourages less daring villagers to withhold their payments. Another highly provocative form of propagating policies involves calling so-called "ten thousand-person meetings" (*wan ren dahui*) in a government compound to study policies that excoriate corruption or limit fees (Duan Xianju et al., 2000). Such gatherings can rapidly turn into melees when township or county officials intervene. In Hengyang, a protest leader organized a mass meeting to force a rollback in taxes and fees. To symbolize the activists' willingness to challenge the township head-on, the speaker's podium was placed just steps away from the main government office building. Hundreds of villagers were invited to attend the rally and the organizers planned to detain and deliver to the city government any township official who ventured to interfere (Int. 4). In another widely reported episode in Ningxiang county, Hunan, after a multi-village band of "Volunteer Propagandists for the Policy of Reducing Burden"

used tape recorders and hired a loudspeaker truck in 1999 to tell villagers about their rights, protest organizers assembled 4,000 people outside the town government complex to demand adherence to central and provincial directives that capped taxation and opposed corruption. But before the speakers could say a word, the assembled villagers rushed into the compound. Over one thousand police and 500 soldiers dispersed the demonstrators, using clubs and tear gas. Many villagers were arrested or injured, and one man was killed (Bernstein and Lü, 2003: 128–129).

Publicizing documents does not always lead to repression; it can sometimes further protesters' ends. By reading out or distributing central policies, activists expose unlawful actions, shatter information blockades, and demonstrate (both to officials and interested bystanders) that it may be possible to muster large-scale resistance to local misconduct.[2] In so doing, rightful resisters assert their right to know about beneficial measures and to communicate their knowledge to others. Ordinary villagers may be emboldened to join them, or at least support them, not simply because they have been made aware that central directives have been neglected, but because they have seen fellow community members take the lead in standing up to unlawful local actions. As we will see in the next chapter, when a campaign of dissemination unfolds, formerly uninvolved villagers sometimes become much less timid insomuch as they observe new "peasant leaders" (*nongmin lingxiu*) emerging and a weakening of the local government's usual stranglehold over political life.

The second variant of direct action is "demanding a dialog" (*yaoqiu duihua*). Activists and their supporters, often after collective petitioning or publicizing a policy fails to budge their foes, may insist on face-to-face meetings with local officials (or their proxies) to urge immediate revocation of unlawful local measures. Rightful resisters have used this tactic in Hengyang most notably to fight mounting school fees. Since many townships can no longer collect as much revenue as they used to (owing both to pressure from above and resistance from below), and many poorer districts are financially starved in the wake of the 1994 fiscal reforms, township leaders have frequently allowed local schoolmasters to increase educational fees on their own.[3] Self-styled "burden-reduction representatives" (*jianfu daibiao*), usually after hard-pressed parents come to them for help, may demand that all overcharges be returned. Instead of lodging a collective complaint, which would have been more common in the past, a group of representatives may proceed directly to the school. The arrival of these "peasant heroes" (*nongmin yingxiong*) typically attracts a large crowd, not least because the parents who invited them often encourage onlookers to come, support them, and watch the drama unfold. In one such incident in Hengyang, the lead activist requested a face-to-face meeting with the head of a township middle school. In front of a large assembly of local residents, he displayed documents issued by the city and county education bureau that fixed fees at a certain level and told the schoolmaster item by item how much more students had been charged. The presence of nearly 20 hardened "burden reduction representatives," as well as over one hundred bystanders, led to a round of intense bargaining, after which the schoolmaster agreed to return about 80 percent of the illegal charges (Int. 18).

But events do not always unfold so peacefully. On another occasion also in Hengyang, a school head postponed a scheduled dialog so that he would have time to hire a group of local toughs to scare off the "burden reduction representatives." But when the meeting began and the schoolmaster signaled his men to make their move, an elderly bystander came to the defense of the representatives. He said he admired their altruism and would protect them to the end (Int. 18).

"Demanding a dialog" has also been employed against far more powerful targets than local school heads. In Qidong county, Hunan, a riot occurred in July 1996 in which hundreds of people attacked township and village officials and smashed the signboards of the township government. (Destroying the placards that identify government offices is a symbolic denial of their legitimacy, much like burning a flag or effigy). The county Party secretary rushed to the area to look into the causes of the unrest. At the urging of hundreds of villagers, he agreed to have an unlawfully collected education surcharge rescinded. The incident ended, but news of the successful protest spread rapidly. Upon learning of it, villagers in other parts of Qidong county were inspired to rise up and demand dialogs. In early September 1996 three

[2] For urban workers in China who "are no longer simply presenting their grievances to those in charge, but publicizing them," see Kernen, 2003a: 5. On their being "not only concerned with handing over a petition to the authorities, but also with inserting their claims into the 'public arena'" see Kernen, 2003b: 9.

[3] Beginning in 2001, the Center began increasing rural education funding significantly (Bernstein 2003: 31–32). Whether this defuses conflicts between school masters and villagers materially remains to be seen.

activists arranged a movie presentation in order to read out a Hunan provincial document that reduced peasant burdens, to organize villagers to resist excessive education apportionments, and to gather signatures for a petition to present to the township. After the video ended, just before a group of indignant movie-goers set out for the a nearby government compound, a skirmish broke out with township officials who had come to dissuade the protesters from demonstrating at township headquarters. Two days later, over 600 villagers, carrying banners and flags, beating drums and gongs, and setting off fireworks, first paraded down the busiest street in the township and then went to the main office building to insist on a meeting with the Party secretary and government head. Over the next three days, hundreds of villagers from four other townships in Qidong marched to their township seats and demanded dialogs with Party and government leaders (Yu Jianrong, 2001: 558–60).

If publicizing a policy aims to remind errant cadres that they are vulnerable to rightful claims, demanding a dialog is directed at unresponsive targets who refuse to back down. At this stage, negotiation and compromise are still possible, even desired by activists. Cool bargaining and face-saving concessions become distinctly less possible when protesters turn to the third variant of direct action: face-to-face defiance.

Activists who use this tactic openly confront local officials on the job and try to halt any illegal acts. They, for example, flatly reject unauthorized local impositions and loudly encourage others to follow suit (Ints. 13, 17). In Hengyang in 1998, one particularly feisty rightful resister followed township tax collectors wherever they went. With two other "burden reduction representatives" at his side, he brandished a copy of a central directive and contested every effort to collect even a yuan (12 US cents) too much. The tax collectors dared not challenge him in public, but one of them mumbled an insult after he refused to get out of their way and let them do their job. A scuffle broke out and hundreds of villagers came to defend the fee resister, eventually pinning the beleaguered taxman in his jeep (Int. 17). That same year a similar incident occurred in another township in Hengyang county. Two "burden-reduction representatives" had locked horns with township revenue collectors when they tried to prevent the collection of several unauthorized fees. When the officials struck the lead protest organizer with a flashlight, a shoving match broke out. Again, angry villagers responded, this time overturning two jeeps the township cadres used to conduct their work (Ints. 13, 41).

Rightful resisters may also use face-to-face defiance to challenge rigged elections. In one dramatic episode in the early 1990s, a group of villagers in Hubei successfully disrupted a villagers' committee election in which nominations were not handled according to approved procedures. Just as the ballots were being distributed, one villager leapt to the platform where the election committee was presiding, grabbed a microphone and shouted: "Xiong Dachao is a corrupt cadre. Don't vote for him!" Immediately several of his confederates stood up and started shouting words of support, seconding his charges. To further dramatize their resistance, the assembled protesters then tore up their own ballots as well as those of other villagers who were milling about waiting to vote. (Zhongguo Jiceng Zhengquan Jianshe Yanjiuhui, 1994; on six villagers seizing stuffed ballot boxes, see Agence France Presse, 1999).

Public-minded intellectuals sometimes urge on direct action. The following episode involved both disseminating policies and face-to-face defiance. In Jiangxi, the deputy editor of a rural affairs journal published 12,000 copies of a Work Manual on Reducing Farmers' Tax Burdens. He later said: "I was just carrying out my duty to help farmers personally monitor arbitrary fees," and "at the end of the day, central government policies are not enough to help the farmers. They need to be able to help themselves." The book had a section advising farmers how to seek redress and its subtitle was "The imperial sword is in your hands, farmer friends, hold on tight!" Although the editor ultimately lost his position and the provincial government dispatched the police to confiscate as many copies of the book as they could locate, the story received national attention in the newspaper Southern Weekend (Nanfang Zhoumo) (Gilley, 2001; O'Brien and Li, 2004: 78; Wang Zhiquan, 2002: 6; Yang Xuewu, 2001: 39).

The three variants of direct action outlined here are interrelated and often appear together. In addition, rightful resisters sometimes employ them in sequence, starting by publicizing policies and then moving on to demanding dialogs or face-to-face defiance. Whatever form it takes, direct action marks a significant break from mediated contention. Its appearance leads local cadres (and protesters themselves) into uncharted territory and introduces new uncertainties, especially when activists lose control of their followers or officials panic. It also opens up the possibility that rightful resisters will continue to escalate their tactics (perhaps toward out-and-out violence) while embracing broader and deeper claims (see Rucht, 1990: 171–72)—claims

that are general and ideological rather than concrete and specific (Mueller, 1999: 530–31; Tarrow, 1989), claims that challenge the legitimacy of local government rather than the lawfulness of local decisions.

HOW NEW?

Techniques of protest are seldom invented out of whole cloth. More often, they appear at the edge of an existing repertoire of contention as "creative modifications or extensions of familiar routines" (McAdam, Tarrow and Tilly, 2001: 49; Tilly, 1993: 265–66). Innovations, in this way, signal a broadening of tactics and a growing strategic flexibility by activists who are collectively generating a multi-pronged strategy that can be deployed on many fronts (Andrews, 2001: 77; McCann, 1994: 86, 145; Rochon, 1998: 202–03; Tarrow, 1998: 37, 104).

This is very much the story in rural China today. Mediated tactics continue to be employed while direct, confrontational forms of contention have also become more common. Especially in locations where the old ways have been found wanting time and again, more contained acts are being augmented by boundary-spanning or even transgressive acts, as protesters begin to enforce central directives themselves and literally use policies as a weapon in their battles. As a researcher from the Development Research Center of the State Council put it: "'contention within the system' (*tizhi nei kangzheng*) (such as petitioning) is still the main feature of peasant action, but contention outside the system (such as violence) is also obviously increasing . . . Peasants start by lodging complaints at the county level or higher, and doing so at the province or in Beijing is also fairly common . . . If the petitions fail, they often turn to 'direct' (*zhijie*) resistance" (Zhao Shukai, 2003: 2, 6–7).

The repertoire of contention, in other words, has expanded and some of the newer tunes are becoming quite popular. Protest leaders in places such as Hengyang are "stretching the boundaries" (Tilly, 1978: 155) of rightful resistance and are trying to breathe life into a form of contention that had been enjoying only limited success. In particular, they have established a "radical flank" (McAdam, McCarthy and Zald, 1996: 14) at a time when it has become clear that the mediators they put their faith in are often ineffective and local opponents are largely impervious to half-hearted pressure from above.

HOW WIDESPREAD?

We can only speak with confidence, at this point, about tactical escalation in Hengyang and a handful of other counties. Moreover, there are good reasons to believe that protest forms spread slower in China than in open polities where the media deems dramatic, innovative tactics newsworthy (della Porta and Diani, 1999: 186; Rochon, 1988: 102–04) and rapidly transmits accounts of them nationwide (Soule, 1997: 858). In China, tactical diffusion still depends on word-of-mouth and informal social networks.[4] Complainants, in the course of lodging complaints at higher levels (i.e. using mediated tactics), encounter one another in reception rooms, outside "letters and visits offices," and in "petitioners' camps" (*shangfang cun*), and share stories of their frustration with the old forms and victories with the newer ones.[5] Telephones enable protest organizers in different counties to stay in touch and carry tales of inventive tactics far and wide.[6] Migrant workers bring word of popular action in distant locales. Successful tactics often draw a stream of activists from the surrounding area to confer with "peasant heroes" who have achieved what had seemed impossible (Int. 41). Much as it has in other authoritarian settings, "low-intensity forms of communication . . . enable rural agitators to learn their trade, share experiences, and develop common identities" away from official scrutiny and interference (Euchner, 1996: 150–51).

Direct rightful resistance spreads by imitation; it can also become more common owing to contemporaneous creation. Broadly similar grievances and experiences with contention can help forge a collective identity when limited interpersonal con-

[4] On the limited reach and generality of "diffusion" compared to "brokerage," see McAdam, Tarrow and Tilly, 2001: 335. On "contagion effects" in rural China, see Bernstein, 2003: 21.

[5] On finding, at any given time, about 50,000 aggrieved individuals in a petitioners' camp outside one of the largest of Beijing's complaints' offices, see (Beech, 2004). "Training classes" (*peixun ban*) run by some public intellectuals in Beijing have also provided opportunities for rural complainants to meet and discuss their experiences.

[6] According to a Chinese researcher, "some leading figures among the peasantry have close ties with dozens or even a hundred peasant complainants inside and outside the province. Sometimes they even assemble to discuss important matters" (Zhao Shukai, 2003: 7). On the "elaborate organization" of many protests, including having designated leaders, public spokespersons, underground core groups, as well as hired lawyers and invited journalist to cover their events, see Tanner, 2004: 141.

tact establishes minimal identification between transmitters and adopters (McAdam and Rucht, 1993), or even without any direct, relational ties (Soule, 1997: 861; Strang and Meyer, 1993).[7] And this collective identity can inspire a wave of a similar protests when a tactic becomes modular (Tarrow, 1998) and adroit practitioners either import it wholesale or reinvent it (with perhaps a local twist) to fit their particular situation (Scalmer, 2002: 2).

To this point, Chinese researchers have uncovered evidence of direct action in the provinces of Sichuan, Anhui, Hunan, Jiangxi, Henan, Shaanxi, and Hebei (Yang Hao, 1999; Jiang Zuoping and Yang Sanjun, 1999; Duan Xianju et al., 2000; Yu Jianrong, 2001; Liu Shuyun and Bai Lin, 2001; Jiang Zuoping et al., 2001; Ding Guoguang, 2001; Hao Fu and Chen Lei, 2002; Xiao Tangbiao, 2002; Zhao Shukai, 2003). Our interviews suggest that direct rightful resistance may be particularly well-developed in Dangshan County, Anhui, Gushi County, Henan, and Fengcheng County, Jiangxi. Furthermore, direct tactics in Hunan have appeared not only in Hengyang, but also in the counties of Lianyuan, Ningxiang, Qidong, Taoyuan, Xiangyin, and Yizhang (Duan Xianju et al., 2000).

ORIGINS OF DIRECT TACTICS

It is only a start to say that tactics wear out "in the same way that rote speech falls flat" (McAdam, Tarrow, and Tilly, 2001: 138). New tactics are not a "blind reflex" (della Porta and Diani, 1999: 185) or an automatic response to anything. They must be created through an interactive process (Jasper, 1997: 295; Tarrow, 1998: 102) that entails "incessant improvisation on the part of all participants" (McAdam, Tarrow, and Tilly, 2001: 138) and "a series of reciprocal adjustments" (della Porta and Diani, 1999: 186–87). This depends on strategic decisions by protest leaders and their foes, as well as newly available resources and changes in the external environment. Most of all, in rural China, it hinges on activists who reflect on their earlier experiences with mediated tactics, learn from their successes and failures, and come up with perhaps brilliant, perhaps ill-advised ways to pursue their ends the next time around (on tactical virtuosi, see Jasper, 1997: 301, 319–20).

In the following pages, we discuss four factors that have contributed to tactical escalation in the Chinese countryside: (1) past defeats, (2) information about government policies and assurances obtained during mediated contention, (3) advances in communications and information technology, and (4) popular support for disruptive protests.

Defeats

Defeat sometimes drives protest leaders underground or spurs them to give up. It may also, however, motivate them to up the ante and touch off a round of tactical escalation. Recurring failures can trigger thoughts about jettisoning ineffective tactics (Beckwith, 2000; McCammon, 2003) while the harsh policing often associated with defeat may usher moderates into private life, leaving the stage to those with more militant inclinations (Tarrow, 1998: 84–85, 150, 158, 201; see also della Porta, 1996: 89–90; della Porta and Diani, 1999: 211).[8] In rural China, even without a marked improvement in the political opportunity structure (in other contexts, see McCammon, 2003; Scalmer 2002: 21; Voss and Sherman, 2000: 341), a growing realization of the inadequacy[9] and riskiness of mediated tactics has undermined the faith some activists had in lodging complaints and has induced them to take direct action.

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[7] Collective identities can be strengthened on the basis of little more than a snippet of news. After the 1996 protests against education surcharges in Hezhou town, Qidong county, Hunan, news of success spread rapidly and other activists argued that elite solidarity was not as great as it seemed, that villagers elsewhere should not suffer more than those in Hezhou, and that other townships were also vulnerable to direct tactics. One protest leader rallied his followers with the words: "We are all citizens of the People's Republic. We live under the same blue sky. Why do we have to pay this unlawful apportionment if our fellow citizens in Hezhou don't?" (Int. 30; also see Yu Jianrong, 2001: 558–60).

[8] In Hengyang in 1998, 13 "burden-reduction representatives" were whittled down to six by threats leveled by a township government. Backed into a corner, the remaining activists felt they either had to accept defeat or change their course of action. They decided to press on and engage in direct action by publicizing the Center's effort to reduce farmers' burdens to every household in the township (Yu Jianrong, 2001: 555).

[9] Our 1999 survey of 1384 villagers in 25 provinces included 190 participants in collective complaints. Of these 190, 3 per cent were very satisfied with the outcome of their action, 18 per cent relatively satisfied, 24 per cent neither satisfied nor dissatisfied, 31 per cent dissatisfied, and 23 per cent very dissatisfied. For more on this survey, see Li, 2001: 1.

For many long-time complainants, the bitter truth is that protectors at higher levels have too often shown themselves to be all talk and little action. Anticipated backers frequently turn out to be little more than a symbolic source of legitimacy, who intervene only when egregious wrongs threaten political stability (such as after village cadres in Henan killed a villager who persisted in pursuing complaints) (Zhang Sutang and Xie Guoji, 1995: 4). In less incendiary circumstances, rightful resisters who employ mediated tactics are commonly ignored, given the run-around, or harassed. Even if they do receive a favorable response from someone in power, their antagonists at lower levels often ignore "soft" instructions from above or delay endlessly in implementing them (O'Brien and Li, 1999; Wedeman, 2001; but cf. Edin, 2003).

Defeats arise first and foremost because mediators do not mediate. Delegations languish for weeks waiting for an appointment with leaders who never emerge. Oral sympathy is not backed up with written instructions (Int. 4). Complainants are treated politely in person and then undercut behind their backs (Int. 5). The appearance of many open doors in Beijing (e.g. letters and visits offices at the Central Committee, the Party Discipline Inspection Committee, the National People's Congress, various ministries, People's Daily, Farmer's Daily) and at lower levels can keep hopes of mediated rightful resisters alive for a while, but only intensifies their resentment when they receive no response, are referred to yet another office, or a complaint ends up in the hands of the official charged with misconduct (on letters and visits, see Bernstein and Lü, 2003: 177–190; Chen, 2003; Luehrmann, 2003; Thireau and Hua, 2003).[10] According to a policy researcher from the Hunan Organization Department: "People who visit higher levels to lodge complaints very rarely obtain justice. Justice for them is like a carrot dangling in front of a donkey. The donkey walks for many kilometers but can never eat the carrot" (Zhang Yinghong, 2002; also Cai, 2003: 664, 679).

In the end, many veteran activists have come to doubt the capacity of the Center to ensure faithful policy implementation, and some even think of it as a clay Buddha that local officials must bow to but can ignore with impunity (Li, 2004: Int. 10). All this has led to growing frustration among protesters who had relied on mediated tactics and has encouraged some of them to find new ways to further their goals.

Information and Assurances

Despite its frequent failure to produce much redress, mediated contention can generate resources and create openings that promote direct contention. Activists, most notably, have obtained copies of authoritative "red-headed documents" via mediated contention that confirmed policy violations were taking place. In Hengyang, for instance, Hunan Provincial Regulation No. 9 (1996) on limiting exactions has played a large part in helping activists pinpoint misconduct by local officials. Such documents can be shown to potential supporters to prove, in detailed and clearly worded language, that township and county cadres have betrayed their superiors.

Some of these measures even authorize direct action when central directives are ignored. A 1991 State Council regulation, for example, states: "It is the obligation of farmers to remit taxes to the state, to fulfill the state's procurement quotas for agricultural products, and to be responsible for the various fees and services stipulated in these regulations. Any other demands on farmers to provide financial, material, or labor contributions gratis are illegal and farmers have the right to reject them" (cited in Bernstein and Lü, 2003: 48). Even more authoritatively, the 1993 Agriculture Law (Art. 18) explicitly grants villagers the right to refuse to pay illegal impositions. It is true that these acts offer little protection if rejecting a demand leads to detention, a beating, having one's home torn down, or having one's valuables or livestock confiscated. Nor do they spell out punishments for cadres who flout the limits. But this incompleteness has only stimulated some protest leaders to devise their own ways to make these rights real. Among other initiatives, activists in various provinces have organized mass meetings to study and publicize the Agriculture Law and provincial caps on taxation, and they have openly challenged officials who fail to comply with them (Ints. 6, 7; Duan Xianju et al., 2000; Ma Zhongdong, 2000).

[10] Complainants are often rounded up and sent home during annual people's Congress sessions and at other times when officials are busy announcing their achievements or showing off their city (see Beech, 2004). Before the 2004 National People's Congress, for example, the Ministry of Land and Resources issued an urgent circular instructing local officials to use "firm and effective" measures to handle long-time complainants who were disputing land requisitions, and to "do everything possible to stabilize the masses in their locality" (*jinliang ba qunzhong wending zai dangdi*) (Guo Tu Ziyuanbu, 2004).

Participants in mediated contention also sometimes obtain oral or written assurances that disseminating beneficial policies is legally protected. When several farmers in Hunan asked whether they could publicize documents concerning excessive fees, officials at the provincial letters and visits office encouraged them to do so, so that villagers knew what was forbidden and what was not. On one occasion, the office director also reassured them that such actions were lawful and jotted some supportive remarks on the cover of a provincial regulation he gave to the lead complainant (Int. 5). Another Hengyang protest leader received similar words of encouragement when he visited the Ministry of Agriculture in Beijing (Int. 6). More remarkably, when several farmers lodged a complaint at the Fujian provincial government concerning a township's illegal sale of farmland they had contracted, the staff member who received them at the Letters and Visits Office reassured them that they had the right to block the purchaser from taking over the land (Int. 37). Acting on the belief that they had located a "guarantor against repression" (Tarrow, 1998: 79), each of these protest leaders then transformed a few kind words (in fact, the only politically correct response) into permission to pursue a broad-based campaign of publicizing policies. In the Fujian case, villagers also went a step further: they acted on the official's advice and physically blocked the land buyer's men when they came to claim the property (Int. 37).

Strictly speaking, there is no law that allows Chinese citizens to publicize Party policies and State laws. But at the same time this is an act whose correctness no one can legitimately challenge. While an official who scrawls on a letter of complaint "disseminating policies is protected by law" may be seeking mainly to get a group of activists out of his or her office and to discourage them from returning (see Guo, 2001: 434), resourceful activists often waste little time expanding this discursive crack into a window of opportunity. They interpret official "instructions" (*pishi*), as informal and off-hand as they usually are, to be evidence that a meaningful gap exists between authorities at higher and lower levels. What might have been little more than a brush-off, in other words, can easily justify upgrading a general license to publicize policies into an explicit go-ahead to challenge abusive local officials and mobilize opposition to unlawful decisions in one's own village.

In sum, even though mediated contention usually fails to generate the hoped-for relief, it can provide activists with crucial information about official misconduct, suggest political openings (that may or may not exist), and (by changing protest leaders' expectations and their store or resources) set the stage for direct rightful resistance.

Communications and Information Technologies

Some activists in rural China use remarkably low-tech (or no-tech) means to mobilize and coordinate direct action. In Jize county, Hebei, for example, protest leaders set off firecrackers to assemble villagers in front of a general store before leading them to demand a dialog with township leaders (Yang Shouyong and Wang Jintao, 2001: 40–42), while in Hunan village lookouts used gongs to summon community members to defend protest organizers who were about to be arrested (Duan Xianju et al., 2000; Int. 6).

But some newer technologies (which have only recently reached the countryside) have played an even bigger role in facilitating direct rightful resistance. We have already seen how audio equipment such as tape recorders, loudspeakers, and mobile broadcasting stations can help publicize policies and rally supporters. Insomuch as direct action requires considerable coordination and planning, telephones have also become an important tool for many protest leaders. More and more activists these days use mobile phones to arrange multi-village or even multi-township actions. In Hengyang, for instance, one farmer (Int. 4) set up a telephone tree that connected hundreds of activists in nearly a dozen townships. Many of his fellow organizers now have cell phones or land lines at home; those who do not, rely on neighbors who are willing to pass on messages about the time and place of meetings, upcoming actions, the number of protesters to turn out, and so on. In Hunan, villagers have even used mobile phones to protect investigators who have come to conduct research on rural contention. One protest leader called two journalists sent by the magazine Window on the South Wind (*Nanfeng Chuang*) to warn them (three times!) to change taxis after his followers discovered that county officials had learned the license plate number of their vehicle; later, after the reporters stayed in one location too long and were detained, another activist phoned to offer to mobilize hundreds of villagers to free them (Int. 43; on other rescues, see Bernstein, 2003: 15; Johnson, 2004: 69).

Personal computers are another breakthrough that has promoted the use of direct tactics. Computer printing, in particular, can aid both in publicizing policies and reproducing letters of complaints. Activists in Anhui province, for instance, painstak-

ingly entered a beneficial tax policy on a computer, character by character, and then distributed printouts to stir up resistance to unlawful taxation (Zhang Cuiling, 2002). Shortly before a number of "burden reduction representatives" in Hengyang demanded a dialog with a school head concerning tuition and fee increases, they circulated printouts of their letter of complaint to parents of school children (Int. 18).

Most of these newer technologies are no longer forbiddingly expensive. Mobile phones can be bought for 200 to 300 yuan (approximately US$25–$40) and calls run about 60 fen (7 US cents) or less per minute. Shops that provide word-processing and computer printing can be found in virtually all county towns and many townships.

The technology that has transformed protest the most is also one of the most widely available: photocopying. In Hunan, it costs 30 fen (4 US cents) to reproduce a page the size of this one and copy shops can be found in most township seats. Photocopying not only eases duplication of central, provincial and city regulations, it also lends a patina of authenticity and legitimacy to those documents and impedes crackdowns by officials who previously would have claimed they were bogus (Ints. 4, 6, 7). In Hengyang, when a deputy township head and the chair of the township people's Congress attempted to shut down a group of activists who were reading copied regulations over a loudspeaker and alleged that they were publicizing phony "black documents" (*hei wenjian*), several activists challenged them to produce the real or "red" (*hong*) versions. Rebuffed, the officials had nothing more to say. The protest leaders then immediately announced to the surrounding crowd that these officials were "active counter-revolutionaries" (*xianxing fan geming*) because they had "defiled" (*wumie*) central policies (Int. 44).

All these technologies enable adept rightful resisters to reach out to (and fire up) a mass constituency in a way that was less critical when they were simply lodging mass complaints and depended largely on elite allies rather than agitated, disgruntled villagers. Advances in duplication and communication (with faxes, e-mail, text-messaging, and the internet not far behind) (Tarrow 1998: 132; on Falun Gong, see Thornton 2002) also help organizers mount popular action and gauge how disruptive they can be without crossing into "forbidden zones" (*jinqu*).

POPULAR SUPPORT

In rural China today, there is not much evidence of a "strategic dilemma" where disruption is necessary to draw attention but militancy reliably alienates the public (cf. Jasper, 2004: 9, 13; Rochon, 1988). So long as rightful resisters refrain from demanding excessive donations or harassing free-riders, tactical escalation usually generates more community approval than disapproval. Particularly in locations where villagers have become exasperated with the Center's failure to rectify long-standing wrongs, unconventional tactics do not undermine the legitimacy of protest and drive away supporters, but more often lead to comments such as: "when officials push people to rebel, people have to resist" (Int. 45).

Direct, rightful tactics can help a group of activists expand their base by creating solidarity, forging a collective identity, and strengthening trust. It is often the case that the more assertive and enterprising protest leaders are, the more their stature rises—though popular acclaim does not always translate into active participation in the next round of contention. As we will see in Chapter 6, interested onlookers sometimes join protests or become leaders themselves; more frequently, they offer modest financial support or applaud the actions of activists whom they have come to respect or even admire. In this way, although direct tactics establish a "radical flank," they do not redound chiefly to the benefit of those who employ moderate, mediated tactics. Instead, they often set in motion a sequence of events where wary but hopeful spectators (and some new participants) are delighted to see imperious, corrupt, and abusive local officials get their comeuppance and even privately egg rightful resisters to ratchet the level of confrontation up a notch.

The following episode illustrates how the back-and-forth between protest leaders and their followers can lead to tactical escalation. In Shandong, an elected villagers' committee director lodged numerous complaints and even filed a lawsuit against a village accountant who was the front-man for a corrupt village Party secretary. But the director could not secure access to the accounts that confirmed the financial shenanigans of the two men. (To shield their underlings and themselves township officials had spirited away the account books to the township office and locked them up). In 2002, with a new election approaching, the director realized that he might lose, largely because he had been so ineffective in bringing the Party secretary and the accountant to justice. His supporters were concerned and urged him to use bolder, direct tactics. The director demanded a meeting with the township head, during which he threatened, if he was again prevented from seeing the accounts, to mobi-

lize his following to occupy the township office building. The township head relented but only granted permission to review the books for a single day. The director agreed but decided to spring a surprise. At the end of the appointed time, nearly 60 of his supporters suddenly appeared, seized the accounts, and ran off with them. This incident led the township leadership and the village party secretary to cancel the upcoming election, thereby allowing the village director to retain his position. It also helped the director win back many of his former backers who had been disappointed with his lack of resolve (Int. 36).

Popular support for direct tactics arises for a number of reasons. Above all, it derives from widespread frustration with the ineffectiveness of mediated contention (Int. 4, 5, 6). Of nearly equal importance, participating in direct rightful resistance, or offering financial or moral support to those who do so, is not as risky as it might seem. Since their ham-fisted involvement in suppressing the 1989 protest movement, China's security forces have become much more concerned with the misuse of force. The police increasingly seek "to minimize popular anger through more moderate policing of protests" (Tanner, 2004: 148) and rely on containment and management rather than deterrence and quick suppression. This shift has meant that many low-key protests are permitted to continue (and crowds allowed to disperse), with little danger to most participants (Tanner, 2004: 148). Moreover, from imperial days to the present, protest leaders have always paid the highest price when collective action backfired, while followers have been protected by their numbers, their relative anonymity, and the authorities' fear of alienating a broad swath of the population. In fact, a common outcome has been arrest and imprisonment of ringleaders followed by concessions on the subject of the protesters' demands (Bianco, 2002; Bernstein and Lü, 2003; O'Brien, 2002: 150). In some senses, taking part in a demonstration is even less dangerous than participating in typical mediated tactics, such as openly identifying oneself by signing or thumb printing a collective letter of complaint. While direct tactics require considerable planning and coordination, and place protest leaders in no small jeopardy, they also often ease the job of amassing and retaining popular support.

WHO INNOVATES?

In many countries, new tactics are associated with new activists (della Porta and Diani, 1999: 189; Jasper, 1997: 231, 241)—with successive "micro-cohorts" (Whittier, 1995: 56) who enter a movement often after working in another movement (Meyer and Whittier, 1994; Voss and Sherman, 2000: 328). Although in rural China we see some of this, particularly among new recruits who took part in mass campaigns during the waning days of the Maoist era, our limited evidence suggests that tactical escalation is mainly the handiwork of seasoned complainants who have learned new tricks as their abilities, resources and commitment have grown. In Hengyang, for instance, all 32 protest leaders on whom we have information had been involved in collective action for at least 8 years, and all of them employed mediated tactics before moving on to direct action (on protest in Hengyang in the late 1980s and early 1990s, see Bernstein and Lü, 2003: 187–89; Yu Jianrong, 2003).

Of course, long-time complainants do not always graduate to direct rightful resistance. Those who do, in Hengyang, have typically been middle-aged or slightly older men who say they feel boxed in, in that they have few other options to improve their economic, social or political position. A number of Hengyang protest leaders who were under 35 years of age simply left the countryside and became migrant workers after a multi-village, collective complaint in 1996 failed to produce any relief. Older complainants (like interviewees 4, 5, and 6) however, could not easily do the same, not least because they often had elderly parents and teenage children to look after. Some of these men had also been migrant workers themselves for a time, but were unwilling to relive the discrimination and exploitation they had experienced (Int. 5). Others had served in the army and found themselves locked out of the village leadership when they returned home (on veterans and rural protest, see O'Brien and Li, 1995: 758; Bernstein and Lü, 2003: 148–49; Yu Jianrong, 2003: 1).[11] After years of fruitless mediated contention, most felt they had no alternative to escalation, unless they were willing to discard their ambitions, their self-respect, and their hopes for a better life (Ints. 4, 5, 6, 8, 19).

[11] Our 1999–2001 survey of 1600 villagers in four counties (two in Jiangxi, one in Jiangsu, and one in Fujian) (Li, 2004: 244) showed that both men and army veterans were considerably overrepresented among rightful resisters. This survey did not distinguish between mediated and direct forms of rightful resistance.

Personal, psychological factors also help explain why some veteran complainants have adopted direct tactics. Most of the innovators we have encountered are unusually assertive and self-confident characters, who, for example, enjoyed telling anyone who would listen how much pride they took in fighting wrongdoing. Along these lines, one activist in Hengyang said "I have been combative since I was young and have no tolerance for injustice and evil" (Int. 8). Another protest leader from Hengyang was proud to announce that he "had been rebelling against abusive cadres since Mao Zedong was still ruling China" (Int. 6).[12] Indeed, several rural organizers even compared themselves to vaunted Party martyrs and vowed that they would rather die than knuckle under to unjust and corrupt local officials (Ints. 13, 19, 21; also Int. 36; Duan Xianju,et al., 2000). One activist from Lianyuan county, Hunan went so far as to allude to the famous Qin dynasty rebels Chen Sheng and Wu Guang by claiming that "kings and generals are not born to be kings and generals" (Duan Xianju et al., 2000). These die-hards not only refuse to retreat, they also have no use for tactics that have repeatedly shown themselves to be inadequate. For protest leaders with such hard-charging personalities, disenchantment with mediated contention only feeds their indignation, brinksmanship, and dreams of grandeur while boosting their commitment to find a way to do whatever it takes to prevail.

That many rightful resisters possess strong personalities and no lack of self-esteem also means that they are likely to find it humiliating to let their supporters down. Tactical innovators in rural China are typically highly attuned to questions of dignity and "face" and believe (often correctly!) that they will be mocked as cowards if they back down after a few setbacks (Yu Jianrong, 2001: 568).[13] This is especially true when protest leaders have openly vowed to defend their neighbors to the end and have repeatedly solicited contributions from the public to lodge complaints. As time goes by, they often feel growing pressure to find a way, any way, to deliver at least a portion of what they have promised. They wish to show that they have the mettle to stand up to the authorities for as long as it takes and to demonstrate that their many acts of defiance will ultimately have a payoff.

Lastly, architects of direct rightful resistance seem to possess an abiding faith in the Center's desire (if not capacity) to halt policy violations. They appreciate better than most that officials up to the province level are unlikely to redress popular grievances (Ints. 4, 21, 36), yet they continue to say that some leaders at the Center truly wish to end misimplementation of beneficial measures (see Guo, 2001: 435–37; Li, 2004). In the words of a protest leader from Fujian, "central leaders share a common interest with people like me, at least to the extent that they agree that what I'm struggling against also undermines Party rule" (Int. 37). Similarly, although an activist from Shandong repeatedly dodged questions about whether he genuinely trusted the Center, he insisted that so long as China's President wished to stay in power, he would need people like him to help control wayward local officials (Int. 36; also Int. 46). For such individuals, declining trust in the Center's capacity does not cause a lapse into passivity; instead, it strengthens their resolve and encourages them to step up their efforts to assist a besieged and weakened Center.

SOME IMPLICATIONS

Rightful resistance has evolved in rural China. Some long-time activists, seeing few alternatives and too proud to accept defeat, have turned to more confrontational forms of contention. Instead of counting on higher-level patrons to address their claims, rightful resisters and their followers have increasingly come to demand justice on the spot. In an attempt to halt policy violations, they have transformed tiny openings into opportunities to deploy new, more disruptive tactics, such as publicizing policies, demanding dialogs, and face-to-face defiance. In the course of doing so, they have exploited the spread of communications and information technologies, including mobile phones, photocopying, and computerized printing. Direct tactics, to this point, have generally not overstepped the Center's sufferance (so long as protest leaders and their followers stop short of violence and clearly illegal acts), and they almost always meet with popular acclaim, as rightful resisters persist, win occasional victories, and keep trumpeting their willingness to sacrifice all for the interests of the Party and the people.

These developments have several broader implications for research on contentious politics. Tactical escalation, it should be noted, has brought about what McAdam,

[12] On "insolent" protest leaders, see Guo, 2001: 432. On their persistence and reputation for courage, see Bernstein, 2003: 13.

[13] For rumors that he had been bribed by a county government leading an activist to begin a campaign of publicizing fee-reduction policies, see Johnson 2004: 57–58.

Tarrow, and Tilly (2001: 144–58) call "object shift," in two different senses. On the one hand, the focus of rightful resistance has shifted downwards, since direct contention is usually aimed at lower level officials than mediated contention. Local adversaries are confronted not bypassed. Protesters give up on high-level patrons and take matters into their own hands. On the other hand, rightful resisters sometimes turn on their ineffectual (or two-faced) advocates at higher levels and attack them. Consider this example from Hengyang: after a protest organizer's wife (Int. 38) was beaten by township cadres and several hired toughs, another activist (Int. 5) led a delegation of villagers to the county to insist that the perpetrators be punished. At this point, the protesters were employing mediated tactics because they treated the county as a potential ally against their township foes. But when the county head summarily rejected their demands, the activists decided that the county was in truth a backstage supporter of their antagonists. Instead of proceeding up a level to the city government (which they still considered an ally), they decided they would challenge the county itself by setting up a human blockade on a county highway. As their perception of the county's stance changed, their tactics had morphed from mediated contention (aimed at the county, by appealing to it for help) to direct action (against the county, by blocking the county road). So far, direct contention has mostly targeted township and village cadres; this episode shows it can move up the hierarchy, with potentially explosive consequences (for another example, see Li, 2001: 1–2).

The "addressees" (Szabo, 1996) of contention have changed in another important way. In rural China, the audience for collective action is broadening well beyond fair-weather friends in officialdom. Rightful resisters now regularly turn to another third party—the public. The strategic dilemma that researchers have observed in the West (della Porta and Diani, 1999: 182–83; Jasper, 2004: 9, 13; Rochon, 1988) can easily be overstated in the Chinese countryside, where radicalism typically attracts support rather than chases it away. Many of our interviewees in fact believe that protest organizers should have acted earlier and even more dramatically (e.g., Ints. 25, 45). This is a good reminder that tactical escalation is often as much about building a protest subculture as winning battles (see Jasper, 1997: 237) and that we need to peer deep inside protest groups to understand how internal solidarity is built and collective identities form (see della Porta and Diani, 1999: 181–82). This implies more attention to recruitment and leader-group dynamics, and further consideration of the ways in which tactical choices can "widen the circle of those psychologically prepared for mobilization" (see Rochon, 1998: 162), play a role in knitting a group together, and "reinforce affective ties among protesters" (Jasper, 1997: 237).

The evolution of rightful resistance also suggests how political opportunities can figure in tactical escalation. Yes, some sympathetic officials have provided rightful resisters information about beneficial policies and assurances that it is safe and advisable to go beyond lodging complaints (on expanding opportunities and tactical innovation, see McAdam, 1983: 737; Minkoff, 1999: Szabo, 1996). But far more significant than new openings has been the inability of protesters to locate allies who will stick with them to the end. Activists have learned that they must rely on themselves and their constituency more, both for protection and to prevail. Their advocates at higher levels have often shown themselves to be virtual allies at best, and this has altered the costs and benefits of different forms of contention. Seen in this light, whether opportunities have expanded or contracted depends on the tactics under consideration. Tactical escalation in rural China thus hinges less on whether the system is open or closed (cf. Kitschelt, 1986: 66) than on which doors are opening and closing. It has not been an improving political opportunity structure[14] but a shifting one that has undermined mediated rightful resistance and promoted direct rightful resistance.

At the same time, tactical innovation requires that skillful activists seizeavailable opportunities (Jasper, 1997; McAdam, 1983: 737).[15] Protest leaders may understand or misunderstand their situation, and then devise brilliant or foolish moves.[16] In the Chinese countryside, a growing realization that most of their anticipated allies are

[14] For definitions of "political opportunity structure" that underscore political openings, rifts among elites, elite allies, and the state's capacity for repression, see McAdam, 1996: 27 and Tarrow,1998: 71.

[15] On political opportunity structures as "a system of permissive incentives rather than of firm constraints," see Rochon, 1998: 203.

[16] Tactics are also chosen partly for psychological, cultural, and biographical reasons. They express moral visions and identities. Activists may find some certain tactics enjoyable and others dull. Protest leaders may have their self-image tied up in being at the cutting edge. For these and other reasons, tactical choices can diverge from what an opportunity structure would predict. See Jasper, 1997: 244–45, 301, 320.

missing in action has demoralized less committed activists and encouraged more assertive protesters to search for new, more effective tactics. After repeated failures, some rightful resisters have developed a new (perhaps more realistic) appreciation of the political opportunity structure, and have adjusted their tactics accordingly. Crises, turbulence and shocks (brought on mainly by defeats), and the response of activists to them has precipitated tactical escalation (see Beckwith, 2000; Voss and Sherman, 2000: 341). Through a long and bumpy process of experimentation, protesters in different locations have groped their way from mediated to direct contention.