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The Fate of China's Rights Lawyers

by Jerome A. Cohen and Eva Pils

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Having contributed several essays on the development of China's judiciary to the FAR EASTERN ECONOMIC REVIEW over the last five years, it is sobering to look back on the fate of those individuals whose plight we discussed. The sufferings of these activists tell us much about the lack of progress to establish the rule of law.

Chen Guangcheng — This blind lay advocate's only ambition had been to help the weakest and neediest among his fellow rural residents to protect themselves against extortion and cruelty. A dirt-poor farmer's child, he campaigned to expose massive official abuses against the families of women who fled forced abortion and sterilization and against those who resisted unlawful "taxes." These activities incurred the wrath of local government and, it became increasingly clear, the central authorities (see Jerome Cohen's November 2005 essay for the review, "China Trips Up Its Barefoot Lawyers").

Mr. Chen has now served over three years of his sentence of four years and three months in harsh prison conditions in Shandong's Linyi City. He is scheduled to be released in late 2010, but he may not live until then. In prison, the blind Mr. Chen has reportedly had to depend on fellow inmates who, at the instigation of his jailers, often refuse to get him food and beat him. Prison authorities have not even allowed him to receive any books for the blind, apparently because of their inability to censor such readings. Mr. Chen has been suffering from severe diarrhea since July 2008. Yet he has not been given any medical examination in over six months, and the prison medication he receives is plainly inadequate. In October, in a rare telephone call, he told his wife that he had lost eight pounds in the past month and badly needed treatment.

The authorities refuse to relent. Mr. Chen's wife Yuan Weijing, who has lived under constant surveillance and restrictions since Mr. Chen's detention, has not been allowed to visit him for many months and has been informed that there is no chance of doing so "certainly not before Chinese New Year," next February. Applications for medical parole have not even elicited an official response. While bracing herself to wait out the expiration of his sentence, Ms. Yuan says, "even if Guangcheng gets out, I am afraid our situation will be fairly dismal." The government, which apparently fears Mr. Chen's post-release activity, seems determined to permanently disable him.

Gao Zhisheng — Another child of poverty, a one-time coal mine worker, soldier, Party member and a self-taught lawyer, Mr. Gao also helped defend the poorest and weakest. Initially he gained official approval for his pro bono work, and in 2001 was voted as one of China's top 10 lawyers. But he soon joined the group of lawyers taking on more sensitive cases such as that of Chen Guangcheng (see Jerome Cohen's October 2006 essay for the review "A Slow March to Legal Reform"). When Mr. Gao began to gain an understanding, at first sporadically, and then in a systematic way, of the extraordinary brutality with which the Chinese state was treating Falun Gong believers, he found himself unable to ignore their suffering. His open letters exposing this brutality, his public withdrawal from the Party in protest and his fearless condemnations of many other everyday abuses, often via overseas Web pages, sealed his fate.

Mr. Gao knew what was coming to him. "Everyone thinks I am stupid," he said. "But what really distinguishes me and them is fear." Among his fiercest critics were some fellow human rights activists who thought his approach was unnecessarily and dangerously provocative. Chen Guangcheng, Hu Jia and many others defended him against these accusations, pointing out that Mr. Gao was only following his conscience in speaking up for the victims of such abuses, and that the ongoing cruelties were a disaster not just for the immediate victims but for the entire country.

Lawyer Gao may now be psychologically as well as physically devastated. But we are still waiting to find out. The surveillance he and his family suffered until his detention and later arrest in September 2006 seems almost insignificant compared to the suffering they have been subjected to since then. While Mr. Gao was under criminal investigation for "inciting subversion," the family had to tolerate state security police moving into their flat and humiliating them daily in ways that especially left Mr. Gao's then 13-year-old daughter emotionally scarred.

After Mr. Gao's surprise "release" on a suspended sentence in December 2006, the situation became worse, as he and the entire family endured constant surveillance and frequent detentions. Characteristically, Mr. Gao continued his activism. Perhaps most offensive to the authorities was his September 2007 letter to the U.S. Congress imploring its support in his struggle to protect his family and help others.

A few days later, Mr. Gao was taken away and subjected to unspeakable torture for about two weeks. His tormentors, some of whom he recognized, put burning cigarettes to his eyes until they were "smoked." They used electric rods on his genitals. They pierced his genitals with pins, and they smeared him with excrement. They also told him what he knew only too well—that they had practiced these techniques on Falun Gong believers, for whom he had tried to speak up. Mr. Gao survived the ordeal and, despite police threats to kill him if he publicized it, wrote a harrowing account, copies of which were smuggled out and later translated and published by human rights groups.

In January of this year his family decided they could not bear it any longer. One of the last straws prompting them to flee was the fact that Mr. Gao's daughter, now 16, had been refused admission to high school, and was becoming increasingly disturbed. Since their departure Mr. Gao has been missing, one of an increasing number of victims of China's secret police who have been "disappeared" in the tradition made infamous by Latin American dictatorships. There has been no reliable news of him. The rest of the family reached safety in the U.S. in March, and has since been engaged in fruitless efforts to trace him.

Hu Jia — The most technically savvy, articulate and astute among China's current generation of human rights defenders has, perhaps, been Hu Jia. Mr. Hu's first exposure to political dissidence came from his parents, uncle and grandfather, who had been political prisoners incarcerated for decades as "counter-revolutionaries" or "rightists." His personal initiation happened on the night of June 3, 1989, when he, an excited boy of 15, was among Beijing residents trying to overturn buses to stop the tanks from entering the city centre to crush the student and worker protests around Tiananmen Square. With characteristic stubbornness, Mr. Hu returned to the square a year after the slaughter, wearing his father's suit, to commemorate the event.

Some 10 years later, by then a university graduate well-connected with liberal intellectuals in Beijing, Mr. Hu was establishing himself as an activist in his chosen field, protection of the environment and HIV/AIDS victims. He and Zeng Jinyan, his partner and later wife, soon found that their work also required them to fight official abuses. Mr. Hu gradually expanded his activism, turning himself into a kind of information hub. He was often the first to relay information about a new human rights incident, such as the beating, detention, or torture of fellow activists. In 2006, for instance, he recorded conversations with the daughter of human rights lawyer Gao Zhisheng, in which she told him how she, her mother and brother were harassed by the police. Commenting on this new kind of cyber-activism, he once remarked how fantastic it was that "I can sit in front of my computer in my own flat, in my pajamas, and fight with them."

But they eventually came for him. In December 2007, a few weeks after the birth of Mr. Hu's daughter, he was criminally detained, put through an elaborate trial process (as described in our April 2008 essay in the review, "Hu Jia in China's Legal Labyrinth"), convicted, like Gao Zhisheng, of "inciting subversion," and sentenced to three and a half years in prison. A Buddhist who suffers from a chronic liver condition, Hu Jia, like Chen Guangcheng, has been very seriously affected by prison conditions. His nutrition is apparently inadequate, and he has been denied appropriate medication.

In her latest blog entry, his wife, the extraordinary activist and blogger Zeng Jinyan, writes anxiously about his deteriorating condition, weight loss and inability to recover from even a common cold. The prison has been sufficiently alarmed by the state of his health to perform tests, but neither he nor his wife has been told the results. "Liver cirrhosis in the early stages is a rich man's illness," Ms. Zeng writes wryly. "Its treatment depends on good nutrition, rest and inner calm."

The current frontline

It is impossible to acknowledge here all the praiseworthy "rights lawyers," but certain ones must be mentioned: Jiang Tianyong and Li Heping (see Eva Pils's essay in the June 2008 review, "China's Troubled Legal Profession") were amongst Chen Guangcheng's frustrated support team and were also admirers and colleagues of Gao Zhisheng. Li Fangping defended Hu Jia and many others.

Scholar Teng Biao spoke up for all of them, but is currently tightly restricted. His fellow academic, Xu Zhiyong, was recently arrested on suspicion of "tax offences" related to Gongmeng, the group they had set up and made into one of China's most brilliant human rights advocacy groups. Nor can we forget lawyer Zheng Enchong, the successful housing rights advocate whose work was instrumental in exposing the great Shanghai corruption scandal implicating Chen Liangyu, before serving three years in prison for "providing state secrets" (human rights data) "to a foreign organization" (Human Rights in China); Mr. Zheng still tries to remain active despite de facto house arrest.

Troublingly, all these rights defenders are now under great pressure. This is due to the fact that, since Chen Guangcheng, Gao Zhisheng and Hu Jia were successively silenced by the government, there has been a more systematic campaign against the Beijing-centered rule of law and human rights movement, targeting not only individuals but also the movement's groups and strategies. This campaign appears to have been a reaction by the regime to a series of events that since early 2008 has brought the movement and its human rights lawyers to greater public attention, much of it favorable.

These events were not only widely reported, but also clearly helped the lawyers make their cases with a domestic audience, because the public's sympathies were on their side. And in contrast to earlier prominent cases such as that of Sun Zhigang in 2003, in which human rights lawyers and a media campaign persuaded the State Council to revoke an invidious and unconstitutional regulation, in none of these new incidents did the government's response cast it in a particularly benign light.

The Chinese public sympathised with parents seeking to hold construction and education officials responsible for the shoddy school buildings that had led to the preventable deaths of perhaps thousands of schoolchildren in the May 2008 Sichuan earthquake. Public opinion was also naturally on the side of the parents of brick kiln child laborers, children poisoned by tainted milk powder, and victims of child abductions. Lawyers who tried to help them were seen to be useful. A surprisingly broad swathe of people even understood the importance of independent criminal defense in cases such as that of the police-killer Yang Jia, an unemployed migrant and petitioner whose experience of police harassment resonated widely. And the case of the waitress Deng Yujiao, who stabbed an official in an attempt to fend off his sexual assault, also generated support for defense against arbitrary actions.

The general plight of tens of thousands of petitioners unsuccessfully seeking justice from the authorities for a range of grievances—and the government's frequently crude responses symbolized by "black jails"—also have become a topic of increasing domestic discussion. Petitioners and their advocates were handed a public relations coup when, earlier this year, a professor at Peking University claimed, absurdly, that at least 99% of petitioners were mentally disturbed and should be locked up for their own good. Increasingly, lawyers helping to defend ordinary citizens against the government are featured in domestic media reports, even though such portrayals were often muted.

Following their professional ethics, some human rights lawyers offered to take up highly controversial cases, defying not only orders by the Ministry of Justice to refrain from doing so but also popular scorn. After the unrest in Tibet in March 2008, 18 courageous lawyers made an offer to defend alleged rioters publicly on an overseas Web site, and lawyers Jiang Tianyong and Li Fangping succeeded in actually resonating on Tibetan "Tibet's Buddha." But when unrest broke out in Xinjiang in July, there was an immediate blanket announcement by the government that the criminal defense of anyone charged in this context would be organized in a "unified" way.

While the efforts of Chinese lawyers in their local cities to introduce a more democratic mode of governance in their local lawyers' associations made some modest progress in 2009, they were finally squelched, leading to an unprecedented number of lawyers at least temporarily losing their right to practice by failing to obtain necessary approvals during the annual re-registration process. These defrocked lawyers are pursuing administrative and judicial remedies, but experience suggests that lawyers who have been screened out because they have fallen from political grace encounter enormous obstacles. One early victim of this technique, the dynamic Li Enbum, who had successfully campaigned against the Henan Lawyers' Association's levy of unfairly high fees in 2001, has yet to receive renewed authorization to practice.

Among the lawyers who were denied official confirmation of their license to practice in this year's round by the judicial authorities are Beijing human rights lawyers Li Heping, Li Xiongbing and Jiang Tianyong. A few days ago, the two Lis finally passed the annual examination of lawyers, but Mr. Jiang did not; and as usual, everyone is left to speculate why the authorities singled him out for this punitive measure. As it happens, these three lawyers are childhood friends who attended the same high school in rural Henan and have shared a belief in the rule of law as well as an evolving faith in Christianity.

As we can testify from personal contacts with them, they have long been subjected to repeated harassment that also affects their families. For instance, on June 5 the authorities "persuaded" Li Xiongbing's landlord to evict him, after he refused to take their advice not to participate in human rights cases. On Nov. 19, Jiang Tianyong was detained and harassed by the police on spurious charges. The police even interrogated Mr. Jiang's seven-year-old daughter and threw his protesting wife to the ground.

Today, China's human rights lawyers are battered but as yet unbowed. Those who managed to regain their licenses remain closely watched and are frequently under house arrest. "Obviously," one of these rights defenders said in a recent conversation, "if they want to, they can just lock all of us up. It would be no problem for them."

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