3-11-2019


James E. Moliterno  
*Washington and Lee University School of Law, moliternoj@wlu.edu*

Rongjie Lan  
*Southwestern University of Finance & Economics, Chengdu China*

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James Moliterno*
Lan Rongjie**

ABSTRACT

In times of social upheaval, lawyers can mark the way toward social change. In particular, when lawyers become more aggressive than traditional lawyers in the cause of fighting injustice, they face backlash from multiple sources, including government and their own profession. Such was the case during the U.S. civil rights movement. Unusually aggressive behavior by cause lawyers was met with hostility from their own profession and from government action. Those lawyers, while battered at times with physical violence, bar ethics charges, contempt of court, and state hostility, survived and changed social conditions at the same time they altered the culture of their own profession. Some have blamed them for the so-called civility crisis in the legal profession. A phenomenon with some, but not perfect parallels is happening in China. Activist human rights and criminal defense lawyers have undertaken tactics that are dramatically outside norms of behavior for Chinese lawyers and arguably in violation of law. In general, they face even harsher retribution than American civil rights lawyers did, although the small number of American lawyers who faced violence and near-death in racially-motivated violence could have faced no harsher retaliation. The parallels, while far from completely matching the two circumstances, are worth exploring and considering as the world watches developments in the Chinese justice system.

* Vincent Bradford Professor of Law, Washington & Lee University.
** Lan Rongjie, Southwestern University of Finance & Economics, Chengdu China. Many thanks for excellent research assistance from Zherong Kang, a Washington and Lee student.
Table of Contents

I. Introduction ........................................................................100

II. Who or What Is the “Die-Hard” Chinese Lawyer? ............105

III. Some Post-Revolutionary History ......................................105

1949–2012 ...........................................................................106

China’s Legal Reform 2012–2015 ...........................................109

Amendments in Legislation ................................................110

1. Criminal Procedure Law ...............................................110

2. Administrative Procedure Law .....................................112

Political Commitments ......................................................112

1. Judicial Independence ..................................................114

2. Protecting Lawyers’ Professional Rights ......................115

3. Overturning of Wrongful Convictions ..........................119

IV. The Die-Hard Model ..........................................................122

V. New Methods Used by the Die-Hard Lawyer ......................125

“Disappearances” and Forced Confessions .............................134

VI. Comparisons with the American Civil Rights Cause Lawyer .................................................................153

VII. Concluding Thoughts .......................................................175

I. Introduction

A new breed of lawyer is practicing criminal defense in China.¹ Dubbed the “die-hard lawyer” by the press, but sometimes self-eschewing the label, these new lawyers say they are simply representing their clients zealously, advancing their interests by whatever legitimate means are at hand.² What is being said of

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¹ See Alex Olesen, Meet China’s Swaggering, ‘Diehard’ Criminal Lawyers, FOREIGN POLICY (May 16, 2014), https://foreignpolicy.com/2014/05/16/meet-chinas-swaggering-diehard-criminal-lawyers/ (explaining that a new group of lawyers has developed in China over the last few years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

² See id. (remarking on the new “diehard lawyers faction” in China and what these lawyers believe).
them in the press? What do they say about themselves? How do they compare with the American civil rights era cause lawyer?

Both groups of lawyers have been derided by the traditional elements of their professions; members of both groups were occasionally incarcerated by the government; both groups used previously unused, aggressive methods to challenge the status quo. The aggressive lawyering of the civil rights era cause lawyer eventually became one of several accepted ways of lawyering in the U.S. The long-term effects of developments in China remain to be seen. But there is no question of the stir that has been created by the die-hard lawyer. Like that of the American civil rights era cause lawyer, it is a stir that is being felt at the highest levels of government and established power structures.

3. See id. (noting that these lawyers are being talked about in the press).
4. Interview by Professor James Moliterno with two of the more prominent new breed of Chinese lawyers (July 2014).
5. See infra Section IV (comparing the Chinese die-hard lawyers with U.S. civil rights cause lawyers).
8. See Olesen, supra note 1 (discussing the new phenomenon created by the lawyers in China and the uncertain long-term effects).
9. See id. (referring to an article in a Communist Party journal that complained that die-hard lawyers, “a ‘poisonous cancer’ on society,” were “disrupting social order and undermining public safety”).
10. See id. (“The Chinese government is clearly worried about the so-called diehards’ impact, and is moving to trim it . . . responding with an ‘increasingly repressive policy’ that is trying to rein in the legal profession.”).
Perhaps it seems exaggerated to compare the torture of Chinese human rights lawyers to the hardships of U.S. civil rights lawyers. This is a fair point, and to be sure, we do not suggest the situations are precisely the same. We mean only to compare two core aspects of the two sets of mistreatment that are strikingly similar. Both groups of lawyers have “committed” the same core offense: They are disrupting deeply-entrenched, well-guarded social orders and power structures, and both groups of lawyers are engaging in lawyering conduct that disturbs the norms of traditional lawyer conduct. In these two ways, ways we suggest are significant, the two groups of lawyers have parallel experiences and potential impacts. In this article, we will both compare and contrast the two sets of lawyers.

Although the torture, “disappearance,” and risk endured by aggressive Chinese lawyers undoubtedly outstrips the day-to-day life risks endured by U.S. civil rights lawyers, it bears remembering the fervor and passion with which authorities, especially but not exclusively in the South, endeavored to protect the continued forms of slavery and white supremacy that continued to thrive in the 1940s–1970s (and in some ways until the present). Intent on maintaining a legal system of white supremacy, authorities abandoned all sense of humanity when dealing with the most audacious and the most successful civil rights lawyers. While some such lawyers were run off, some were physically beaten, and a few were bombing and lynching targets. The ferocity of treatment by authorities was sometimes cloaked in the surface civility of a judge’s ruling against an out of state lawyer’s pro hac vice motion, and was sometimes as raw as attempted murder by local law enforcement and the local citizens that the authorities tolerated and with whom they sometimes conspired.

12. See infra Part IV (describing the treatment of U.S. civil rights lawyers).
13. See infra Part IV (describing the unfortunate consequence of being a civil rights lawyer).
14. See infra Part IV (discussing how the effort against civil rights lawyers
When they were charged with a crime, the criminal charge of choice against civil rights lawyers was practicing law without a license or various forms of professional misconduct such as barratry.\textsuperscript{15} These were lawyers, properly licensed in their home states in the North, to be sure, but they were charged with practicing without a Mississippi or Louisiana or Georgia law license.\textsuperscript{16} Then, as now, it is common practice for a lawyer to be temporarily out of his home state representing a client in a state where he lacks a license.\textsuperscript{17} The common practice in litigation settings is to associate with a local lawyer and ask the local court’s permission to represent the lawyer’s client \textit{pro hac vice}.\textsuperscript{18} Such requests are routinely granted, although there is no due process right to be heard on such a request and it can be denied without any cause.\textsuperscript{19} These requests are a normal part of interstate practice, and are rarely denied except when a local judge has some active dispute with the lawyer or the client.\textsuperscript{20} For civil rights

\textsuperscript{15} \textit{See Voices of Civil Rights Lawyers}, supra note 6, at 167–95 (detailing the arrests of John C. Brittain, Armand Derfner, and Richard Sobol for practicing without a license); \textit{see also} NAACP v. Button, 371 U.S. 415, 445 (1963) (Douglas, J., concurring) (“Arkansas, Georgia, Mississippi, South Carolina, and Tennessee passed laws following our 1954 decision [in \textit{Brown v. Board of Education},] which brought within their barratry statutes attorneys paid by an organization such as the N.A.A.C.P and representing litigants without charge.”). Virginia later joined the ranks of those states by enacting similar laws in 1956. \textit{NAACP}, 371 U.S. at 445.

\textsuperscript{16} \textit{See Voices of Civil Rights Lawyers}, supra note 6, at 167–95 (explaining that these lawyers were in good standing in their home states).

\textsuperscript{17} \textit{See} Leis v. Flynt, 439 U.S. 438, 451 (1979) (Stevens, J., dissenting) (“[A]ppearances by out-of-state counsel have been routine throughout the country . . . .”).

\textsuperscript{18} \textit{See Model Rule on Pro Hac Vice Admission} (Am. Bar Ass’n 2016) (providing the current procedure for \textit{pro hac vice} admission).

\textsuperscript{19} \textit{See Leis}, 439 U.S. at 442 (finding that because the right of an out-of-state lawyer to appear \textit{pro hac vice} is not a “cognizable property interest” protected by the Fourteenth Amendment, the Constitution does not obligate state courts to provide procedural due process to lawyers applying for \textit{pro hac vice} admission).

\textsuperscript{20} \textit{See id.} at 451 (Stevens, J., dissenting) (“The custom is so well recognized that . . . there ‘is not the slightest reason to suppose that a qualified lawyer’s \textit{pro hac vice} request will be denied.’” (quoting Spanos v. Skouras Theatres Corp., 364 F.2d 161, 168 (2d. Cir. 1966))).
lawyers, that dispute was their disruption of social order and their challenge to entrenched power structures. In China, human rights lawyers are typically charged with disrupting public order, picking quarrels and causing trouble, or inciting state subversion. In reality, that is also what the U.S. civil rights lawyer was being charged with, but there was (and is) no U.S. law criminalizing such conduct. But unmistakably, the U.S. civil rights lawyer was under attack in the South for disrupting social order and causing trouble, and indeed, as in China, for threatening the status quo power structure.

In the U.S., civil rights lawyers were subject to short jail terms, some beatings, a rifle in the mouth, car bombings, house bombings, and lynch mobs. In China, typically pursuant to the RSDL (Residential Surveillance at a Designated Location) statute, detained lawyers are subject to sleep deprivation, food deprivation, mental anguish on relatives and friends, denial of counsel, mental/emotional torture, and some physical beatings. Many such disappearances ended in forced confessions, broadcast on television and reported in the state print media.

21. See id. at 450 (Stevens, J., dissenting) (“In a series of cases brought in courts throughout the South, out-of-state lawyers [appearing pro hac vice] . . . developed the legal principles which gave rise to the civil rights movement.”).


23. See infra Part IV (describing violent threats and physical assaults civil rights lawyers had to endure).


26. See generally SAFEGUARD DEF., SCRIPTED AND STAGED: BEHIND THE
In both situations, massive state power was brought down on lawyers. One enormous difference: In the U.S., ultimately but often belatedly, federal authority was on side of civil rights lawyer. Not so in China.

II. Who or What Is the “Die-Hard” Chinese Lawyer?

As groundwork for understanding the new breed of more aggressive Chinese lawyer, one must first recognize that Chinese Lawyers Law (the rough equivalent of laws on advocates in European countries or the rules of professional conduct adopted by each of the United States, usually by their state supreme courts) places State interests above those of clients. To be sure, Western lawyers must obey laws and balance their duties to clients with their positions as “officers of the court.” But the understanding in China that the State comes first is made explicit by the Chinese Lawyers Law: “Practice by lawyers shall be subject to supervision of the State, society and the parties concerned.”


27. See infra Section II (comparing the respective government responses to lawyer activism in contemporary China and in America during the civil rights movement).

28. See NAACP v. Button, 371 U.S. 415, 429 (1963) (holding that the activities of the NAACP, its affiliates and legal staff are modes of expression and association protected by the First and Fourteenth Amendments, which Virginia may not prohibit under its power to regulate the legal profession as improper solicitation of legal business).


30. See MODEL RULES OF PROF’L CONDUCT Preamble (AM. BAR ASS’N 2018) (“A lawyer’s responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious.”).

independence of lawyers in the United States is at least implicitly prohibited and replaced by a foundation of State supervision.

III. Some History of Post-Revolutionary Chinese Lawyer Regulation

1949–2012

In 1949, the newly established People’s Republic of China abolished all of the laws under the old Republic of China government, under the spirit of “contempt and criticize the counterrevolutionary law and regulation of the KMT,” contempt and criticize Euro-American-Japanese capitalist anti-people law and regulations.” Beginning in 1950, China experimented with a new lawyer system, modeled after the Soviet system, which made lawyers part of the government employee. Under the strong ideology of class struggle, criminal defense lawyers were seen as defending bad people, which was an abandonment of class warfare. The initial lawyer system was discontinued during the

2018, art. 3.

32. Refers to Kuomintang, the Chinese Nationalist Party, which was defeated in the revolution.


34. Zhang, supra note 33 (describing the historic development of lawyer system in China).

35. See id. (describing the public opinion towards lawyers in China in the 1950s).
“anti-rights movement” in 1957, when many lawyers were criticized as rightists, and some were sent to labor camps.\textsuperscript{36} During the Cultural Revolution (1966–1976), the legal system as a whole was abolished when the “authoritarianism of the mass” replaced the police-prosecutor-court system.\textsuperscript{37} During this period, philosophically, there was no need for courts, judges, prosecutors, and defense lawyers.\textsuperscript{38} The public was encouraged to take matters of loyalty to the Party into their own hands and enforce these norms.\textsuperscript{39} The results included rampant mob confiscation and destruction of property belonging to “landlords,” and the meting out of punishment for perceived offenses against the Chinese Communist Party (CCP or Party) in the name of the revolution. The Red Guards ruled. Formal justice administration by courts and their officers was superfluous.

The lawyer system was reinstated in 1978 when China ended the Cultural Revolution and was on its way toward the Reform and Opening Up.\textsuperscript{40} In April 1979, the National People’s Congress (NPC) set up a special team for drafting regulations on lawyers, and in July, the Criminal Procedural Law was passed and the lawyer’s participation in the legal system was officially established through this law.\textsuperscript{41} In August 1980, the NPC Standing Committee passed the Temporary Regulation on Lawyers.\textsuperscript{42}

The reinstated lawyer system was similar to the one established in the 1950s in which lawyers were “legal professionals

\textsuperscript{36} See id. (describing the impact of anti-rights movement on lawyers and the end of the lawyer system in China).

\textsuperscript{37} See id. (describing the abandonment of the law during the Cultural Revolution).

\textsuperscript{38} See id. (explaining the incompatibility of the western lawyer system to the revolutionary China).

\textsuperscript{39} See id. (explaining that political ideology was more important than the law during the Cultural Revolution).

\textsuperscript{40} See id. (describing the reinstatement of the lawyer system in China).

\textsuperscript{41} See id. (explaining the legislative effort to reinstate the lawyer system in China).

\textsuperscript{42} Xiong Qiuhong (熊秋红), Xin Zhongguo Lüshi Zhidu de Fazhan Licheng ji Zhanwang (新中国律师制度的发展历程及展望) [Lawyer Development History and Expectations of the New China], Zhongguo Faxue (中国法学) [China Legal Science] 15 (1999 Vol. 5).
of the state.” All lawyers worked for the “legal consultancy bureau (法律顾问处),” (later called Lawyer Affair’s Bureau (律师事务所), which is the same word used by private law firms today) which was a government-organized nonprofit organization.

Starting in 1988, the State Council (essentially the central government body) started to experiment with partnership models for law firms where the partners no longer worked for the government and the law firms were no longer in the government budget. This activity was one small part of this period’s general phenomenon in China of slightly opening the economic system while maintaining tight control over political processes. In this period, the Soviet Union first opened the political process, resulting in massive instability, collapse of the Union, its economy, and its control over its satellite states in Eastern and Central Europe. China followed largely an opposite path from that of the Soviet Union.

These new experiments with private lawyering and partnerships were legalized in 1993 when State Council passed the Ministry of Justice Plan for Deepening Lawyer Reform (司法部关于深化律师工作改革的方案). NPC Standing Committee passed the PRC Lawyer’s Law (中华人民共和国律师法) in May 1996, which defined lawyers as “professionals that provide legal services to the society, who have obtained professional license according to law” (依法取得执业证书, 为社会提供法律服务的执业人员) instead of the “legal professional of the state” (国家法律工作者) in the old system. Lawyers became private practitioners instead of government employees.

43. See Zhang, supra note 33 (comparing the lawyer system in the 1980s with 1950s).
44. See id. (describing the public service nature of the lawyer in the 1980s).
45. See Xiong, supra at 42 (describing the privatization of lawyers in China).
46. See id. (describing the privatization of the legal profession as part of the market economy reform).
47. See id. (describing the privatization of lawyers in China).
48. See id. at 15 (describing the privatization of lawyers in China).
49. See id. (describing the privatization of lawyers in China).
50. See id. at 16 (describing the privatization of lawyers in China).
China’s Legal Reform 2012–2015

Since Xi Jinping took power as the General Secretary of the Chinese Communist Party in 2012, China has undergone significant legal reform. Revisions in criminal and administrative procedural laws seemed to allow lawyers to play a larger role in the legal process. A range of wrongful criminal convictions were overturned, many after decades, and received huge media attention as the success of the legal reform. Human rights lawyers and activists were at first encouraged by these reforms and many believed they signaled an opening up to a heightened role for lawyers in the justice system.

Ironically, given later events, the apparent reforms during the early period of President Xi’s term may have emboldened human rights lawyers in a way that alarmed the Party. This alarm may have contributed to the 709 Crackdown.


52. See id. (detailing new or revised laws that protect lawyers’ right of practice and rules criminal defense lawyers may use to exclude illegally obtained evidence).

53. See id. (indicating that certain judicial reform initiatives aimed at quelling the miscarriage of justice led to the overturning of wrongful convictions; see also infra Part II.A.2.c (describing some of the wrongful convictions that were overturned).

54. See XINHUA, supra note 51 (explaining how human rights lawyers were encouraged by the reforms).

55. See id. (explaining how the reforms possibly emboldened human rights lawyers).

Amendments in Legislation

1. Criminal Procedure Law

The Criminal Procedure Law went through extensive revision in 2012, aiming to increase the role of trials, judges and lawyers, and thus rid the courts’ reputation as rubber stamps for the state. The revision added five articles (articles 54–58) that purport to preclude the use of evidence obtained through torture.

The new Criminal Procedure Law also encouraged the taking of witness testimony in the courtroom for the first time. In the past, witness testimonies were only presented to the court on paper and judges made decisions purely from the paperwork. Cross-examination of witnesses was rare. The newly revised Article 59 requires that witness testimony must be examined by both sides to be admitted. Newly added Articles 62 and 63 contemplated the protection and compensation for witnesses who appear in court. Newly added Articles 187 and 188 regulated what kind of witnesses must testify (in court) and compulsory attendance measures for witnesses who do not appear in court.


58. See id. (describing the various revisions of articles of the Criminal Procedure Law of the People’s Republic of China).


60. See generally Zhuohao Wang, Why Chinese Witnesses Do Not Testify at Trial in Criminal Proceedings, CHINA MINISTRY OF EDUC.—PROJECT OF HUMAN. AND SOC. SCI. (No. 13YJC820073) (2011) (explaining how testimony was originally presented).

61. See Quanguo Renmin Daibiao Dahui Guanyu Xiugai Zhonghua Renmin Gongheguo Xingshi Susongfa de Jueding, supra note 57 (describing the various revisions of articles of the Criminal Procedure Law of the People’s Republic of China).

62. Id. § 19, art. 59.

63. Id. § 20.
without adequate excuse. Revised Article 192 allowed expert witnesses to testify in trials for the first time. Starting from early 2017, the Supreme People’s Court (SPC) initiated a national campaign to “substantialize criminal trials,” requiring participation of defense lawyers and live witnesses in more criminal trials. Together these revised articles and following reforms described a possible conversion from largely paper trials to trials dominated by live testimony. In practical application, despite the vast revisions and some increase in the use of live testimony, trials today are still largely based on paper.

On paper, the revisions expanded the scope of the defense lawyers’ participation throughout the criminal process. Article 36 was changed so that lawyers may “participate” in the investigation stage, rather than “assist,” as the old law allowed. Lawyers were also allowed to participate in the review of death penalty cases with the Supreme Court. An ambitious reform proposal recently

64. Id. § 71.
65. Id. § 72.
67. See supra notes 57–66 and accompanying text (noting how trial practice has changed).
68. See generally Zhuohao Wang, supra note 60.
69. See Sup. People’s Ct., Zuigao Renmin Fayuan Guanmian Tuijin yi Shenpan wei Zhongxin de Xingshi Susong Zhidu Gaige de Shishi Yijian, supra note 66 (explaining the work defense lawyers would participate in).
71. See China’s New Criminal Procedure Law: Death Penalty Procedures, HUMAN RTS. J. (Apr. 3, 2012), https://www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death_03.html (referring to the amendment to Article 240, which requires the Supreme People’s Court to listen to the opinion of
promulgated aims to provide professional assistance to every criminal defendant, although currently less than 30% of defendants have a lawyer.

2. Administrative Procedure Law

The 2014 Administrative Procedure Law revision changed the case acceptance system of courts from “review system for case docket” (立案审查制) to “registration system of case docket” (立案登记制). The revision means that when plaintiffs file cases in a court, the court will no longer decide whether to accept the case depending on the merits of the case, but the court will accept and register all the cases, or will provide a written explanation of why the case is not accepted within seven days of filing. This change

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made it easier for people to file administrative lawsuits. In the past, courts were reluctant to review administrative lawsuits against the government that they considered too “sensitive.”

The 2014 Administrative Procedure Law revision also added a clause prohibiting administrative agencies from interfering with the courts’ filing of administrative cases and requiring agencies to appear in court for lawsuit hearings.

In February 2018, the Supreme People’s Court released an interpretation document for the Administrative Procedure Law. It removed ten kinds of actions from the jurisdiction of administrative courts. Among them are claims based on actions of public security and state security agencies authorized under the Criminal Procedure Law, which include detention under RSDL.

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79. See id. art. 1.

80. See id.
Political Commitments

1. Judicial Independence

Besides the legislative changes, statements, and regulations from the CCP, in other ways the government suggested the leadership was committed to increasing the role of lawyers and bringing more independence to the courts.

Starting in 2015, the SPC started to set up circuit courts that are separated from local governments and directly report to the SPC in Beijing.81 Within two years, the SPC set up six circuit courts around the country.82 The President of the Second Circuit Court, Hu Yunteng, wrote at the time in Qiu Shi, one of the most influential political commentary magazines published by the CCP, that setting up the circuit courts was aimed to ensure the independence of the judiciary from the influence of local authorities.83

In March 2015, the CCP and State Council jointly issued a regulation on the prevention of and penalties for local government officials intervening in judiciary activities.84 In November of the

81. See Margaret Y.K. Woo, Court Reform with Chinese Characteristics, 27 WASH. INT’L L. J. 242, 263–64 (2017) (discussing the establishment of circuit courts as branches of the Supreme People’s Court to hear inter-regional cases).

82. Id. at 265.

83. See Hu Yunteng (胡云腾), Wei Shenme Yao Sheli Xunhui Fating? (为什么要设立巡回法庭?) [Why Do We Need to Set Up Circuit Courts?], Qiu Shi [求是] (June 15, 2015, 8:00 AM), http://www.qstheory.cn/dukan/qs/2015-06/15/c_1115588377.htm (explaining that the circuit courts were established to separate the judicial system from administrative divisions and to guarantee an independent, fair, and impartial judiciary) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Carl Minzner, Legal Reform in the Xi Jingping Era, 20 ASIA POL. 4, 7 (2015) (“The creation of cross-jurisdictional local courts and procuratorates seeks to cut across existing administrative lines of authority and curb the influence of local officials.”).

same year, and again in February 2016, the CCP’s Central Political and Legal Affairs Commission published a combination of twelve typical examples of prohibited intervention by government officials in judicial activities. These cases include local government officials, judges, prosecutors, and police officers trying to influence cases by exercising their public authority.

The term “judicial independence” in China only means independence from the personal interests of officials or the undue influence of local governments. It does not mean independence from the CCP leadership. The ideological control by the CCP is a foundational aspect of the justice system; at least in matters of interest to the CCP, there is no judicial independence from the interests of the CCP. In fact, the CCP ideological control has been


86. See Cases of Intervention, supra note 85.


88. See id. (explaining that the leadership of the Party, the people’s congresses, and the procuratorate “are generally not considered improper restraints on judicial independence”).

89. See id. (noting that “judges are expected to adhere to the leadership of the Party” and that while “Party interference is less common than local government official interference . . . this distinction is clouded in practice, as most
growing even stronger, even among legal professionals. At a conference with provincial high court presidents in 2017, the SPC’s president, Zhou Qiang, explicitly addressed the importance of ideological work and categorized the western ideas of “constitutional democracy,” “checks and balances,” and “judicial independence” as “wrongful thought.”90 Although it caused a huge backlash from the public, the SPC did not back down from Zhou Qiang’s statement.91 Instead, the SPC published two commentaries three days later supporting the statement, further explaining why the western legal system is not suitable for China and why promoting western ideology is dangerous to the country.92 Despite technical improvements in independence from local key government officials are also Party members”).


THE NEW BREED, “DIE-HARD” CHINESE LAWYER

authorities, ideological control is not going away in the Chinese court system but, instead, is growing even stronger.93

2. Protecting Lawyers’ Professional Rights

Even after the 709 Crackdown, in September 2015, the Supreme People’s Court, the Supreme People’s Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice jointly issued the Regulations on Protecting Lawyers’ Professional Rights According to Law.94 Similar to the added professional rights for lawyers in the Criminal Procedure Law amendment,95 this Regulation is a reiteration of the lawyer’s rights and an implementation guide for the agencies.96 Although the Regulation shows the commitment to protect the lawyers’ rights, violations are still common.97

93. See Forsythe, supra note 91, (describing President Xi Jinping’s demand for obedience from the judiciary).


Several of the lawyers defending the “709 lawyers,” for example, were shown a boilerplate Decision to Reject the Lawyer’s Request to Meet with the Criminal Suspect. Article 9 of the Regulation says that if law enforcement determines that, in cases involving state security, terrorist activity, or significant bribery, allowing a lawyer to meet with the suspect might impair the investigation or leak state secrets, law enforcement may deny the meeting and provide an explanation to the lawyer. These


boilerplate rejection forms do not provide any explanation but simply say that the case is related to state security.\textsuperscript{100} They plainly violate the requirement of the Regulation\textsuperscript{101} Professor Jerome Cohen observed that one of the rejection notices is numbered 1082, which he interprets to mean that the notice is the 1,082nd rejection of the year issued by the Public Security Bureau.\textsuperscript{102} Even if Professor Cohen’s interpretation is incorrect and it was not the 1,082nd rejection, rejecting a lawyer’s attempt to meet with a client is prevalent, and not just in state security cases.\textsuperscript{103}

3. Overturning of Wrongful Convictions

To showcase the country’s determination and success in legal reform, Chinese media highly publicized the overturning of several wrongful convictions.

In the case of Nian Bin, for example, Nian Bin was sentenced to death for poisoning his neighbors.\textsuperscript{104} SPC rejected the death penalty because of insufficient evidence.\textsuperscript{105} Nian Bin was sentenced to death again, and the death penalty was rejected three more times.
The expert witness in this last trial finally found the evidence that fully exonerated Nian Bin. Police evidence showed poison in the water, but the expert witness’s tests found no poison on the teapot. Nian Bin was acquitted after eight years on death row. Nian Bin’s lawyer, Zhang Yansheng, said that the introduction of the expert witness was crucial in proving Nian Bin’s innocence.

In another case, Chen Man was arrested in 1992 for murder and was sentenced to death with a two-year reprieve in 1994. He missed the appeal deadline, but the Procuratorate thought the sentence was too light and appealed for a death sentence without reprieve. The Hainan provincial high court upheld the suspended death sentence in 1999. Chen Man’s family and lawyers continued to appeal and petition to the Hainan high court and Supreme People’s Procuratorate. In 2014, a number of high profile lawyers (some of them may be categorized as die-hard lawyers) had a meeting to discuss Chen Man’s case and a journalist in attendance later published the story. In 2015, the Supreme

106. Id.
108. Id.
109. Id.
110. Id.
112. Id.
113. Id.
114. Id.
115. See Yi Yanyou (易延友), *Chen Man An Shen Yuan Ji* (陈满案申冤记)
People’s Procuratorate took the case and petitioned to the Supreme People’s Court. The case was retried in Zhejiang provincial high court in 2016 and Chen Man was acquitted because the only incriminating evidence was his own testimony and his testimony was self-conflicting. Although Chen Man also told his lawyer that he was tortured in 1992, the torture claim was not addressed in the case.

Two other subjects of highly publicized wrongful conviction cases were not so lucky: Huge Jiletu and Nie Shubin, who posthumously got their convictions overturned, were executed in the 1990s before adoption of the requirement that the SPC had to consider, review, and approve all death penalties.


117. See High People’s Court of Zhejiang Province, Zhejiang Gaoyuan jiu Chenman An Zaishen Wuzui Da Jizhe Wen (浙江高院就陈满案再审无罪答辩者问) [Zhejiang High Court Answers Questions from Journalists on Retrial and Acquittal of Chen Man Case], SINA WEIBO (新浪微博) (Feb. 1, 2016, 10:13 AM), https://weibo.com/p/1001603937651697836422 (explaining that apart from Chen Man’s guilty confession, which was deemed “unstable” and “inconsistent,” there was no other evidence to prove that Chen Man committed the crime) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).


119. Wang Xiaoyu (王篓), Huge Jiletu An Shimo: Bei Qiangbi 9 Nian Hou Ling Yi Nanzi Gongshu Sharen Jingguo (呼格吉勒图案始末：被枪毙9年后另一男
In the latest SPC report during the NPC session in March 2018, the SPC had overturned 39 wrongful convictions, involving 78 people in the last five years.\textsuperscript{120}

Undoubtedly, all of the reform from 2012–2015 contributed to the bold actions of criminal defense and human rights lawyers, all to be dashed by the 709 Crackdown and subsequent repression.

\textbf{IV. The Die-Hard Model}

The “die-hard” lawyer model, though not the moniker, may have started at least as early as 2007 or 2008, but perhaps in truth as early as Tiananmen Square, when some of today’s die-hard lawyers were cutting their social-consciousness teeth as student demonstrators.\textsuperscript{121} Although the die-hard moniker has only been applied to criminal defense lawyers, they are surely the close relative of the slightly earlier-appearing group of Chinese lawyers taking up social causes in the public interest, such as representation of families of victims of the toxic baby formula.


produced by Sanlu Milk Co. in 2008.\textsuperscript{122} Criminal defense matters, sometimes on behalf of organized crime suspects,\textsuperscript{123} may appear unlike the cases against a politically well-connected milk company or cases undertaken by American civil rights lawyers who did criminal representation of protestors and activists, school desegregation, voting rights and all manner of politically-charged cases. But in China, all high-profile criminal prosecutions are political.\textsuperscript{124} The affront implicit in challenging the State's will, even in an otherwise non-politically-charged criminal matter, is a far different phenomenon than an American lawyer fighting hard for her routine criminal defendant client.

In late December 2012, days before the new Chinese Criminal Procedure Law took effect, the Criminal Committee of the Zhejiang Provincial Bar Association issued a series of guidelines titled “Ten Risks of Criminal Defense and Their Solutions.”\textsuperscript{125} One guideline reads: “When disagreeing with the judge during a trial, a lawyer shall state his/her opinions (for the record) and then follow the presiding judge’s order and avoid direct confrontation. When the


\textsuperscript{123} See Olesen, supra note 1 (discussing the representation of a person accused of gang-related crimes in China by a team of so-called “diehard” lawyers).


\textsuperscript{125} Su Hucheng (苏湖城), Liu Shi Congshi Xingshi Bianhu Yewu Shida Fengxianidian ji Caozuo Tishi (律师从事刑事辩护业务十大风险点及操作提示) [Ten Risks of Lawyers Practicing Criminal Defense and Practicing Tips], Hualu (华律) [HUALV.COM] (Feb. 4, 2013), http://www.66law.cn/domainblog/39964.aspx (providing a list of practice tips in anticipation of the implementation of amendments to criminal defense provisions in the Criminal Procedure Law) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).
court violates procedural rules, a lawyer shall file his/her complaints in writing after the trial.”

On its surface, this admonition sounds little different from the American Bar Association’s Model Rule instructing lawyers to obey even erroneous orders of judges. But the cultural and systemic differences between China and the United States make the instructions quite different.

Obviously the Zhejiang Bar Association guidelines are trying to protect defense lawyers from risky practice. However, after the guidelines were posted online, surprisingly serious attacks came from other members of the defense bar—members of the new breed of co-called “die-hard” criminal defense lawyers. One defense lawyer, who often takes hard lines against the court, mocked the proposed guideline that defense lawyers should “defend[,] clients with bended knees, instead of straight legs.” This group of die-hard lawyers repeatedly quoted the famous saying: “[T]he only thing necessary for the triumph of evil is for good men to do nothing!” In other words, avoiding confrontation with a corrupt judge is nothing but encouraging that judge to do more evil. When facing a corrupt judge, in contrast, these die-hard lawyers not only lodge objections at court, but also resort to live social media activity, disciplinary complaints and street demonstrations to challenge the court. Two lawyers even handed a bag of sweet potatoes to the president of a high court, suggesting that if the president does not protect the people, he should go home and sell sweet potatoes (a traditional Chinese saying).

126. Id.

127. See Model Rules of Prof’l Conduct 3.4(c), 3.5(d) (AM. BAR ASS’N 2016) (“A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists”; “A lawyer shall not . . . engage in conduct intended to disrupt a tribunal.”).

128. See Su Hucheng, supra note 125 (providing a list of ten risks associated with criminal defense practice).

129. See Gagging the Lawyers, supra note 121, at 7 (“So-called diehard lawyers actively used the social media and street theater to activate supporters and expose problems in defending their clients.”).

130. Li Meng (李蒙), Sike shi Yizhong Paibie Haishi Yizhong Fangfa? (死磕是一种派别还是一种方法) [Is Sike a Faction or a Method?], Minzhu Yu Fazhi (民主与法制) [DEMOCRACY AND RULE OF L.] Vol. 17, 2014.
In one sense, die-hard lawyers are simply more intense than their traditional Chinese counterparts. A traditional Chinese defense lawyer manages the defense-side evidence and makes technical legal arguments. A somewhat more aggressive form of traditional lawyer deeply and intensely analyzes the civil law articles and makes incisive arguments about their application to the defendant. But both traditional defense lawyers and their slightly more probing, technical compatriots yield when it becomes clear that the judge cannot or will not accept their arguments, sometimes with the tacit understanding that the judge is being controlled by forces outside the courtroom.

The die-hard lawyer is certainly more aggressive in the first instance. He or she does all that the technically-oriented traditional lawyer does, but also vigorously pursues arguments about the legality of the prosecution’s evidence and methods. The die-hard lawyer challenges judges’ rulings on evidence admission and procedural rights and does so vociferously. And the die-hard lawyer does so even after it is clear that the judge will not be permitted by others to rule in the defense’s favor. But in addition to being more aggressive and more persistent, the die-hard lawyer


132. See CECC, Judicial Independence in the PRC, https://www.cecc.gov/judicial-independence-in-the-prc (last visited Nov. 28, 2018) (“China’s judiciary continues to be subject to a variety of internal and external controls that significantly limit its ability to engage in independent decision making.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

133. See Ye Zhusheng (叶竹盛), Sike Pai Lüshi (死磕派律师) [Die-hard sect], RENMIN WENZHAI (人民文摘) [PEOPLE’S DIGEST] (describing lawyer Chi Yusheng’s fierce and emotional protest against the presiding judge for interfering with the illegal evidence exemption procedure in the Li Qinghong case).

134. See id. (discussing the various pressures affecting judicial decisions).
uses tactics that are outside the walls of the courtroom and its procedures.\textsuperscript{135}

In particular, the die-hard lawyer uses social media as a tool of advocacy.\textsuperscript{136} During the Li Qinghong trial, an “all-star team” of defense lawyers blanketed the Chinese social media with news of the proceedings, commenting on everything from errors in the indictments to the disparate volume of the defense and prosecution microphones.\textsuperscript{137} The media work was so intense that Weibo—a Chinese version of Facebook and Twitter—updates were being sent live from the courtroom by defense lawyers, and large segments of the population were riveted to the news.

[L]awyers’ online activities can be traced back to the influential case of Li Zhuang, a lawyer falsely prosecuted with perjury in Chongqing, in 2010. While the voices of the official media framing and blaming Li were dominating public opinion, the defense had no choice but to tell the other side of the story via social media.\textsuperscript{138}

Such use of media to offset public information that cuts against a defendant may cause some to think of Model Rule 3.6\textsuperscript{139} and Gentile v. State Bar of Nevada,\textsuperscript{140} the Supreme Court case that trimmed the rough edges from the earlier version of the Model Rule and established the propriety of self-defense use of public

\begin{footnotesize}
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\item \textsuperscript{135} See Gagging the Lawyers, supra note 121, at 7 (“So-called diehard lawyers actively used the social media and street theater to activate supporters and expose problems in defending their clients.”)
\item \textsuperscript{136} See id. (“Through social media, activist lawyers could create instant crowds to rush to a courthouse or defend a lawyer being harassed by police.”)
\item \textsuperscript{137} Zhang Xueran, China’s All Star Legal Team Pleas for Defendants’ Right on Social Media, TEA LEAF NATION (July 25, 2012).
\item \textsuperscript{138} Id.
\item \textsuperscript{139} See Model Rules of Prof’l Conduct 3.6 (Am. Bar Ass’n 2018) (providing restraints on a lawyer’s ability to make extrajudicial statements regarding an investigation or litigation in which he or she is participating or has participated).
\item \textsuperscript{140} See Gentile v. Nev. State Bar, 501 U.S. 1030, 1048 (1991) (finding a Nevada Supreme Court Rule prohibiting a lawyer from making extrajudicial statements to the press he knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding, but allowing him to state without elaboration the general nature of the defense, is void for vagueness).
\end{itemize}
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statements, especially those meant to counter negative media reports about the defendant.\textsuperscript{141} But that quick leap would be mistaken. The U.S. law on the subject is an effort to balance free speech with fair trial, and specifically to protect the jury pool from undue factual contamination regarding celebrated cases, while respecting free speech rights of lawyers and media.\textsuperscript{142} By contrast, the Chinese use of this balancing concept has nothing to do with non-existent jury pools and ensuring an impartial fact-finder. Instead, the Chinese use of social media by defense lawyers is an effort to combat raw power of those in control of the justice system, both judges and so-called “higher-ups,” CCP officials who can control judges’ decisions.\textsuperscript{143}

This use of social media, designed to create public pressure and possible embarrassment of “higher ups” seems odd to some Americans, simply because such a technique would be so unlikely of success in influencing a U.S. judge. Ironically, it is the lack of judicial independence in China that makes the technique viable.

\textsuperscript{141} See id. at 1056 (noting that rules restricting speech of criminal defense attorneys must be scrutinized when, in comparison, “[t]he police, the prosecution, other government officials, and the community at large hold innumerable avenues for the dissemination of information adverse to a criminal defendant”).

\textsuperscript{142} See Model Rules of Prof’l Conduct 3.6 cmt. 1 (AM. BAR ASS’N 2018) (“It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression.”).

Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved . . . . On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves.

\textit{Id.}

\textsuperscript{143} See Oleson, supra note 1 (noting die-hard lawyers’ extensive use of social media to advocate for their clients and their combative posture towards corrupt Party officials, the police and judges who have abused their power); see also Nathan Vanderklipe, Thwarted by China’s Courts, ‘Diehard’ Lawyers ‘Fight to the Death’ for Justice, GLOBE AND MAIL (Apr. 27, 2017), https://www.theglobeandmail.com/news/world/thwarted-by-chinas-courts-diehard-lawyers-fight-to-the-death-for-justice/article34830997/ (noting the influence of local authorities on courtroom decisions, which leaves judges in China with “very little independent authority”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).
The well-founded expectation of Chinese criminal defense lawyers in high profile cases is that judges are told what to do by people often referred to as “higher ups.” These higher ups are party officials whose will is being done by local judges and prosecutors. Such orders from government officials were referred to as “telephone justice” in Central and Eastern Europe during communist times. Such orders, while not entirely unheard-of in an independent court system, are both rare and, we would expect, ineffectual. In such an independent court system, nothing much would be gained in an individual case by generating public opinion. But the taste of the Chinese public seems to have been whetted for news of injustice, and the “higher ups,” while they wield mostly unchecked power, do care about stirring the public ire. This is just the trend and tendency that is being banked on by the die-hard lawyer in the use of social media. The same phenomenon allows, but does not ensure, that they will stay out of jail themselves.

These methods are far outside the norm for Chinese lawyers. The methods themselves are used to advance both client interests and to expose flaws in the Chinese criminal justice system. Both the use of the methods and the goal of advancing a

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145. See id. (discussing higher-up officials who put pressure on judges and courts to influence the outcome of a case).

146. See Volha Kananovich, ‘Execute Not Pardon’: The Pussy Riot Case, Political Speech, and Blasphemy in Russian Law, 20 COMM. L. & POL’Y 311, 395 (discussing the practice of “telephone law” in Russia in which “outcomes of cases allegedly [came] from orders issued over the phone by those with political power rather than through the application of law”).

147. See Vanderklippe, supra note 143 (discussing a two-year campaign of the Chinese government to arrest, detain, and intimidate die-hard lawyers as a way of keeping them out of the media).

148. See id. (“[S]ome Chinese lawyers have turned to other means to defend their clients, leveraging the power of social media and the occasional willingness of political authorities to bend to public pressure.”).

149. See id. (“Such tactics have been controversial, and diehard lawyers have been denounced in state media as ‘commandos’ and ‘activists’ who . . . have wild intentions to challenge and change the law . . . .”).

150. See id. (“But I’m very sympathetic to why [die-hard lawyers] did it. It’s
THE NEW BREED, “DIE-HARD” CHINESE LAWYER

lawyer’s cause have drawn harsh rebuke from the Chinese legal profession and from the state.\textsuperscript{151}

The current term, die-hard lawyer appears to have originated in connection with a high-profile criminal defense in 2012.\textsuperscript{152}

[T]he term originated from a discussion . . . in Guiyang, the capital of Southern China’s Guizhou province, in July 2012. Yang [Xuelin, who identifies himself as a diehard lawyer on his Weibo page] and a colleague named Chi Susheng were part of a team of lawyers from around China who had come to the city to defend a former property tycoon accused of gang-related crimes. Over lunch on the first day of the trial, Chi complained the trial was already not going well. It was riddled with procedural problems, she said, and the team was going to have to “firmly fight to the bitter end,” using the northern slang term sike—which roughly means to fight to the bitter end, or to die hard.\textsuperscript{153}

The name stuck and has become a sensitive topic in China.\textsuperscript{154}

What identifies a die-hard lawyer?

If there were a checklist for China’s “diehard lawyers faction” it would probably read something like this: Must be combative, dramatic, and have a flair for social media; must not be intimidated by authority; and must be willing to spend time under house arrest or in jail.\textsuperscript{155}

It sounds like some U.S. civil rights cause lawyers, such as Bill Kunstler, for example, would qualify.\textsuperscript{156}

\textsuperscript{151} See id. (discussing a campaign by the Chinese government to intimidate and jail die-hard lawyers and the denouncement of die-hard lawyers by the Chinese media).

\textsuperscript{152} See Olesen, supra note 1 (“Beijing lawyer Yang Xuelin, who identifies himself . . . as a “diehard,” told Communist Party mouthpiece newspaper People’s Daily that the term originated from a discussion with [fellow lawyer Chi Susheng] . . . in July 2012.”).

\textsuperscript{153} Id.

\textsuperscript{154} See Vanderklippe, supra note 143 (“The term, and the methods it evokes, have become dangerous in a country that has actively targeted lawyers.”).

\textsuperscript{155} Olesen, supra note 1.

\textsuperscript{156} See infra Part IV (describing the career of civil rights lawyer William Kunstler).
Yang Jianlin wrote that the prerequisites of sike include: 1) the prosecution obviously broke the law, 2) the client had already decided to sike and requested the lawyer to sike, and 3) there were no other legal remedy besides sike. The sike methods, Yang summarized, include: 1) strictly adhering to the text of the law, 2) the use of social media, 3) the use of the internal complaint system, 4) behavioral art, such as giving a sweet potato to the judge.

Yang also said that sike only applies to criminal cases where the power of the government and power of the defendant are imbalanced. It is not appropriate to use the sike method in civil cases. In addition, Yang thinks lawyers should only sike on procedures and not substance issues because the only reason that caused lawyers to sike is the illegality of the procedure rather than the dispute of substance.

The die-hard lawyer seems less concerned about the particular client than the cause, and the cause is the advancement of justice and the rule of law in the Chinese criminal justice system. They care about procedural matters and about fundamental criminal defense rights. They care about the accurate application of the


158. See id. (identifying the die-hards’ approach to statutory interpretation, their use of social media, and their dramatic display of advocacy); id. (“The most famous performance art is Yang Jinzhu and Li Jinxing’s ‘send sweet potato’ to the Fujian High Court.”).

159. See id. (“It is precisely because some public authorities have deliberately deprived the accused and defenders of their litigation rights with their own strengths [that] the lawyers forced to die have to die.”).

160. See id. (“It can be seen that sike is not applicable to civil cases.”).

161. See id. (“As long as the procedure of the case-handling agency is lawful, it is also possible for the lawyer to achieve the purpose of defense.”).

162. See Vanderklippe, supra note 143 (describing the inability of lawyers to find justice in the courtroom as the reason why die-hard lawyers began using radical means of client advocacy).

163. See id. (“Whenever there is a little procedural problem [die-hard lawyers] will just fight to the death.”); see also Yang Xuelin, supra note 157 (describing die-hard lawyers’ focus on procedural issues); Ye Zhusheng (叶竹盛), Sike Pai...
THE NEW BREED, “DIE-HARD” CHINESE LAWYER

written law, as opposed to the law-of-the-moment as determined by the wishes of the State.\(^{164}\) And the State is paying attention.\(^{165}\)

They take cases where legal rights are being flouted, regardless of the client. Their opponent is the court establishment, namely the police[, the prosecution,] and even the judge. This adversarial stance has caught the attention of China’s second highest justice. “We are now seeing a very strange phenomenon,” wrote Shen Deyong, the executive vice-president of the Supreme People’s Court, China’s highest court, in a May 2013 essay published in the Communist Party-run People’s Court Daily. “[Defense] lawyers are not in a confrontation with prosecutors, but instead are having confrontations with the presiding judge in the case,” he complained.\(^{166}\)

The State prefers that lawyers be technically-sound practitioners who understand that their place is not to challenge the will of the State.\(^{167}\) Chinese authorities strongly prefer that

\(^{164}\) See Vanderklippe, supra note 143 (“In the courthouse, they stick to the law to the extreme.”); see also Yang Xuelin, supra note 157 (describing die-hard lawyers’ insistence on the judiciary’s strict adherence to the law as written).

\(^{165}\) See Olesen, supra note 1 (“[T]he government is responding to the die-hard’s impact with an ‘increasingly repressive policy’ that is trying to rein in the legal profession.”); see also Alex W. Palmer, ‘Flee at Once: China’s Besieged Human Rights Lawyers, N.Y. TIMES MAGAZINE (July 25, 2017), https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html (describing the “709 Crackdown” on July 9, 2015, during which “more than 300 rights lawyers and activists from across [China] were targeted, with 27 forbidden to leave the country, 255 temporarily detained or forcibly questioned and 28 held in government custody”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

\(^{166}\) Olesen, supra note 1.

\(^{167}\) See Olesen, supra note 1 (“These activist lawyers, who have wild intentions to challenge and change the law, have deviated from what their jobs are supposed to entail . . . .” (quoting Shan Renping, Opinion, Legal Activists Must Also Respect Rule of Law, GLOBAL TIMES (May 8, 2014), http://www.globaltimes.cn/content/859107.shtml (on file with the Washington & Lee Journal of Civil Rights & Social Justice)).
“lawyers behave like dentists.”

“In other words, the government thinks attorneys should be ‘good technicians and not involve themselves in cases of political-legal injustice.’” But it appears that crackdowns against activist lawyers are only breeding new activist lawyers and gaining them a public following. The Chinese Law on Lawyers stipulates that a “lawyer must accept the supervision of the state . . . .” The die-hard lawyers are treading in new territory, and are not accepting the raw supervision of the state. They place client and system reform interests above those of the CCP. They are not necessarily seeking the destruction of China, as the CCP would charge; instead, they seek what they believe would be a better China, one more open to dissent and free speech rights.

Stories of harassment and even physical violence against activist lawyers have become frequent. Threats, subtle and

168. Id.
169. Id.
170. See id. (“[T]he crackdowns . . . are only growing the ranks of ‘angry lawyers’ in China, causing more to take up rights-related cases.”).
172. See Palmer, supra note 165 (“[T]he rights lawyers were zealous, outspoken and willing to challenge the government in ways their predecessors would not have dared.”).
174. See Palmer, supra note 165 (describing the treatment Chinese human rights lawyers due to their controversial advocacy); see also Gagging the Lawyers: China’s Crackdown on Human Rights Lawyers and Implications for U.S.-China Relations: Hearing Before the Cong.-Exec. Comm’n on China, 115th Cong. 10 (2017) (statement of Teng Biao, Chinese Human Rights Lawyer, Visiting Scholar, Institute for Advanced Study, and Co-Founder, the Open Constitution Initiative and China Human Rights Accountability Center) [hereinafter Statement of Teng Biao] (“[In the 709 crackdown, d]ozens of lawyers were severely tortured, including beatings, electric shocks, sleep deprivation, death threats, months or years of solitary confinement, so on and so on.”).
THE NEW BREED, “DIE-HARD” CHINESE LAWYER

133

...t, physical beatings, and even “disappearance” have occurred.\textsuperscript{175} Cao Shunli, for example, was an activist who died in detention after being denied medical treatment.\textsuperscript{176}

The 709 Crackdown did not end the die-hard model in the courtroom today. In December 2017, the defense lawyer in a highly publicized arson case in Hangzhou staged a walk-out from the court because he demanded the case to be tried in another province to avoid pressure from the public and outside influence.\textsuperscript{177} Despite the lawyers being rounded-up during the 709 Crackdown, the more commonly known die-hard lawyers often stay away from political cases, and only focus on criminal cases where abuses of power are observed and potential wrongful convictions are on the edge.\textsuperscript{178}

Those lawyers forced to disappear are all rights lawyers, while regular die-hard lawyers are mostly safe from criminal prosecution.\textsuperscript{179} However, two best known die-hard lawyers, Yang Jingzhu and Li Jingxing, were both disciplined by the bar, and Yang was recently disbarred after criticizing authorities with obscene language and disturbing the courtroom.\textsuperscript{180}

\textsuperscript{175} See Palmer, supra note 165 (discussing the disappearance of lawyers and activists after the 709 crackdown and the use of “residential surveillance in a designated location” under the Chinese criminal code).


\textsuperscript{179} See id. (noting that the increased provocation of the government has caused die-hard lawyers to take up more “rights-related cases”).

\textsuperscript{180} See War on Human Rights Lawyers Continues: Up to 16 More Lawyers in
“Disappearances” and Forced Confessions

In 2011, 2014, and then most intensely since July 2015, aggressive lawyers representing criminal defendants and human rights activists have been abused by the State. The State versions of events is that some lawyers have become criminals and needed to be taught a lesson about proper lawyer activity in China. For the most part, the crimes committed by these lawyers are for stirring up trouble, picking quarrels, and inciting subversion, which for the most part have no analog in US criminal law. So, in one sense, the State is correct that these lawyers are violating criminal law, but the laws and the conduct that violates them would not be recognizable to Westerners as criminal.

181. See Palmer, supra note 165 (describing the Chinese government’s treatment of rights lawyers and activists over the past few decades, which culminating in the 2015 Crackdown); see also Statement of Teng Biao, supra note 174 (describing his 2011 detainment in a “black jail” for 70 days due to his work as a human rights lawyer); Gagging the Lawyers: China’s Crackdown on Human Rights Lawyers and Implications for U.S.-China Relations: Hearing Before the Cong.-Exec. Comm’n on China, 115th Cong. 12 (2017) (statement of Xia Chongyu, Son of Imprisoned Human Rights Lawyer Xia Lin and a Student at Liberty University) [hereinafter Statement of Xia Chongyu] (describing the 2014 abduction of his father due to his involvement in politically sensitive cases as a human rights lawyer).

182. See Olesen, supra note 178 (describing die hard lawyers as being seen as an enemy of China).

Since Xi Jinping took power, combating Western influence has
been one of his key goals. In June 2013, a documentary made by
China’s National Defense University went viral on the Internet,
alleging the United States was trying to sabotage the Chinese
regime through the use of social media and non-governmental
organizations. Scholars have noticed that releasing such videos
are common before a Party Congress or the National People’s
Congress (NPC), to get a sense of public reaction.

The Party Congress that followed in November 2013
announced a series of reform plans, including legal reform. The
NPC has since passed a series of laws regulating foreign influence
in the country. In August 2014, the NPC started to revise the old
State Security Law, which was eventually broken into two laws,
the Anti-Spy Law, which became effective November 1, 2014, and
the new State Security Law, which became effective July 1,

184. See Robert D. Blackwill & Kurt M. Campbell, Council on Foreign
    Relations, Xi Jinping on the Global Stage: Chinese Foreign Policy Under a
    Powerful But Exposed Leader 8 (2016) (explaining that Xi is “deeply suspicious
    of Western values and intentions” and has “commissioned studies on that subject
    and forced cadres to watch documentaries on the dangers of Western cultural
    influence”).

185. See generally Jiaoliang Wusheng (较量无声) [Silent Struggle] (National
    Defense University of People’s Liberation Army, Jiaoliang Wusheng (较量无声)
    [Silent Struggle], YouTube (Nov. 15, 2013), https://www.youtube.com/watch?v=iUjkSJxDcw (on file with the Washington &
    Lee Journal of Civil Rights & Social Justice); see also Huang Jingjing ‘Silent
    Contest’ Silenced, GLOBAL TIMES (Nov. 17, 2013, 7:23:01 PM),
    http://www.globaltimes.cn/content/825489.shtml (describing the release and
    content of the documentary) (on file with the Washington & Lee Journal of Civil
    Rights & Social Justice).

186. See Wang Peng (王鹏), Letter to the Editor, Cong Jiao Liang Wu Sheng
    Kan Zhongmei Guanxi de Shanbian (从《较量无声》看中美关系的嬗变) [Looking
    at Sino-U.S. Relations Through Silent Struggle], FIN. TIMES CHINESE, Nov. 12,
    2013, http://www.ftchinese.com/story/001053398?print=y (on file with the

187. See J. M., Reform in China: The Party’s New Blueprint, ECONOMIST:
    ANALECTS (Nov. 16, 2013) https://www.economist.com/analects/2013/11/16/the-
    party’s-new-blueprint (noting some of the reforms adopted at the Communist
    Party’s Third Plenum) (on file with the Washington & Lee Journal of Civil Rights
    & Social Justice).
The NPC started reviewing the Foreign NGO Law December 2014. After several rounds of public comments, the law was passed in April 2016 and became effective January 1, 2017.

When the Chinese Communist Party perceives a threat to the regime, it acts to suppress that threat. Before the July 2015 crackdown, there was an earlier wave of arrests in 2011, following the Arab Spring, in which some lawyers (such as Teng Biao) encouraged people to protest in the street. The Arab Spring was
probably the time when CCP really started to worry that foreign influence could topple the regime. The propaganda videos released after the 2015 crackdown also bluntly used the hashtag “beware of color revolution.” The term “color revolutions” described the post-Soviet revolutions in Eastern Europe such as Georgia’s Rose Revolution and Ukraine’s Orange Revolution. Under this overall theme, lawyers might be treated differently under different administrations, but the overall direction of repression and control by the state is the same. There were more physical beatings in the 2011 arrests than during the 709 Crackdown, and in Gao Zhisheng’s autobiography, he explains that he was held extra-judicially in secret prisons before 2011 and was later detained in a more legalized manner (residential surveillance) after Xi took power.

During the Arab Spring, some Chinese scholars expected that a similar wave may spread to other authoritarian regimes such as China. The movement did not spread in China, but an isolated

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192. See id. (explaining how the uprisings, social injustice and political tensions threatened the CCP rule).
194. See THOMAS LUM & HANNAH FISCHER, CONG. RES. SERV., RL34729, HUMAN RIGHTS IN CHINA: TRENDS AND POLICY IMPLICATIONS 2 (2009) (explaining the fear that the combination of China’s foreign “democracy assistance” and the involvement of international NGOs could bring about a “color revolution”).
196. See Fallows, supra note 191 (explaining that “Jasmine” protests emerged
“Jasmine Revolution” walk took place in Beijing’s busy commercial street Wangfujing in February 2011. Video of U.S. Ambassador Jon Huntsman on the scene was circulated on the internet and many Chinese nationalists were angered by the foreigner’s intention to interfere with the stability of the country. After the Wangfujing incident, many dissidents and lawyers were arrested. Those who were under investigation included Ai Weiwei, Jiang Tianyong, Li Heping, and Teng Biao. Jiang Tianyong recounted the interrogator asking him, “Do you really think you can successfully take over the regime and interrogate us in the future?” None of the lawyers or activists were criminally charged at the time. Many of them, such as Jiang Tianyong and Li Heping, were arrested again and convicted of crimes during the 2015 crackdown.

“to extend the spirit of the Arab Spring protests to several major Chinese cities”); see also Ying Chen, Is Arab Spring Coming to China? The Missing Piece of the Puzzle, J. OF INT’L AFF., Nov. 5, 2013, https://jia.sipa.columbia.edu/online-articles/arab-spring-coming-china-missing-piece-puzzle (“Similar to the factors underlying the Arab Spring, social drivers of popular discontent in China are many . . . [t]hese factors have created accumulated tensions in China, fueling a growing problem of social instability.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

197. Fallows, supra note 191.

198. See id. (explaining that Senator Hunstman’s appearance at the event was damaging and referencing a video of the event where a Chinese man can be yelling at Senator Huntsman, “You want chaos for China, don’t you?”); see also Shane2406, U.S. Ambassador Jon Huntsman Spotted at Wangfujing Protest in Beijing, YOUTUBE (Nov. 22, 2011), https://www.youtube.com/watch?v=0_dNNLeaw1s (showing Senator Huntsman at the Wangfujing incident) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

199. See Fallows, supra note 191 (explaining that the Chinese government responded to the “Jasmine” protests by putting pressure on Chinese citizens involved in politics).


The state security apparatus was also using different strategies on different people. In terms of foreigner versus Chinese, the state portrays itself as protecting the Chinese against subversive foreign powers. In terms of older, more experienced lawyers versus their younger and junior associates, the state played the role of a “protector” that prevented the naïve youngsters from stepping into the wrong direction in following the influence of a more experienced lawyer or mentor.

In January 2016, China arrested Peter Dahlin, a Swedish legal NGO worker who had sponsored Fengrui Law Firm’s work. In the news article, Peter Dahlin was accused of not properly registering his activities in China, avoiding financial supervision, receiving sponsorship from seven different foreign NGOs, and hyping up negative news and agitating conflicts against the government. He was released and expelled from China after he made a confession that was broadcasted on the television.

Li Heping’s 24-year-old associate Zhao Wei was detained for a year and released on parole with a letter confessing that she was being manipulated as a “chess piece” and denounced Li Heping’s work of “subversion.” In her letter, she described her dream of...

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203. Id.


205. Tom Phillips, China to Release Human Rights Worker Zhao Wi on Bail After a Year of Detention, GUARDIAN (July 7, 2016); see Zhao Wei (@考拉就是考拉), Zhi Pengyoumen de Yifeng Xin (致朋友们的一封信) [A Letter to Friends], SINA WEIBO (July 7, 2016, 8:07 PM).
bringing positive change to the society and how her dream was manipulated by the rights lawyers. She regretted her naivety and vowed to start a new life.

The same protection mentality can be found in various official public service messages. In a poster made by Beijing State Security Bureau, posted at the entrances of some busy subway stations, a man had his head down, face covered by the hands. The big caption reads “you can turn back!” and, referencing article 28 of the Anti-Spy Law, suggests that if you were being recruited or coerced into spying against or subverting China, you may turn yourself in and be exonerated from criminal liability if you show remorse.

The state security also uses different tactics while detaining different people. Following his detention and torture, Gao Zhisheng recounted a conversation with a sympathetic police officer who told him that he was tortured because he was willing to make concessions after being tortured and that Liu Xiaobo was never tortured because the police knew torture would not work on Liu.

In May 2014, “Pu Zhiqiang, a Beijing-based civil rights lawyer, was detained by Beijing police . . . on the charge of provoking troubles . . . “ Later, in 2016, Pu was disbarred and jailed for “crossing the line” between lawyer and activist by daring to attend twenty-fifth anniversary Tiananmen Square commemorative events. Indeed the events commemorated his own actions


206. A Letter to friends, supra note 205.
207. Id.
208. See Poster from Beijing State Security Bureau (on file with author).
209. Id.
210. See GAO, supra note 195, at 118.
212. Id.
because he was there on June 4, 1989. Because a person cannot be a lawyer if he or she has a serious criminal conviction, Pu’s convictions made his disbarment inevitable.

Pu Zhiqiang (浦志强) was convicted of “inciting ethnic hatred” (煽动民族仇恨) and “picking quarrels and provoking trouble” (寻衅滋事) in December 2015 and was sentenced to a three-year suspended sentence. He had already been confined for about nineteen months at the time of his conviction.

The only evidence against Pu were seven social media posts that Pu wrote on Weibo between 2011 and 2014. To Western eyes, his social media posts are ordinary comment and criticism of government actions and policies. He was arrested in May 6, 2014, three days after he had a meeting commemorating the June 4th Anniversary of Tiananmen Square. Several other participants were also arrested. Pu was initially investigated under the charges of “picking quarrels and provoking trouble” (寻衅滋事) and “illegally obtaining personal information” (非法获取公民个人信息)

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213. Id.
216. See id.
219. Id.
He was later additionally charged with “inciting subversion of the state” (煽动分裂国家罪) and “inciting ethnic hatred and ethnic discrimination” (煽动民族仇恨、民族歧视罪). The latter charge stemmed from his social media posts in support of the Uyghars, a predominantly Muslim population living mostly in the Xinjiang Autonomous Region of China. The post criticized the Chinese government treatment of the Uyghars.

Pu Zhiqiang was detained for more than a year before the criminal charges were brought against him. The prosecutor and police used all the extensions available under the Criminal Procedure Law to detain him without formal charges. The Beijing No. 2 Intermediate Court extended the time before the trial period twice, adding an additional six months.

Pu Zhiqiang had participated in the hunger strike in Tiananmen Square in 1989 when he was a law student at China University of Politics and Law (CUPL). He obtained his lawyer’s license in 1995 and started to practice law in 1997. Since 2009, Pu had worked on several high-profile cases including Tan Zuoren case, Ren Jiayu’s Reeducation through Labor case, Ai Weiwei tax...
case, and Tang Hui’s Reeducation through Labor case.\textsuperscript{229} (Re-education through labor was abolished under Xi Jinping’s legal reform in 2014.)\textsuperscript{230}

Lawyers such as Pu seem to be the forerunners of today’s die-hard criminal defense lawyers. An editorial explains:

The problem is some of them have deliberately crossed the bottom line of the rule of law. It was reported that Pu was detained after he attended an anniversary event to commemorate the June 4th incident [Tiananmen Square resistance]. Whether there is a connection has not been officially confirmed, but it is obvious that such an event, which is related to the most sensitive political issue in China, has clearly crossed the red line of law.\textsuperscript{231}

The problem, of course, is that the word “law” has two distinct meanings in China.\textsuperscript{232} On one hand, it is the words of the law-makers written in official codes.\textsuperscript{233} But “law” also appears to mean whatever is today’s will of those in power.\textsuperscript{234} It is this latter sense in which Pu clearly crossed the line, and Chinese activists and scholars are sensitive every day to where that line may be. The

\textsuperscript{229} Id.
\textsuperscript{231} Shan Renping, supra note 211.
\textsuperscript{233} See id. (explaining that “rule of law” implies fairness and predictable application and constrains the power of political leaders by laws and regulations).
\textsuperscript{234} See id. (“Rule by law’ would include, for example, rule under Hitler’s Nuremberg Laws (Nürnberger Gesetze), which were neither fair nor predictably applied.”).
accuracy of their perceptions and judgments in this regard is what keeps them out of jail.

In July 2015, a significant round-up and detention of aggressive Chinese lawyers, dubbed the 709 Crackdown, occurred.\(^{235}\) This round-up and detention significantly increased the tension between the state and the activist lawyers, and so far, despite serious risk to themselves, the lawyers are not backing down.\(^{236}\) The rights lawyers rounded up included both aggressive criminal defense lawyers and lawyers who have represented unpopular clients in assertive civil rights cases. Some of the lawyers’ whereabouts still remain unknown and nearly all were denied the opportunity to meet with their own lawyers. In one instance, the client of one of the detained lawyers made a request for information regarding his lawyer’s whereabouts, but no response or information was forthcoming. Family members of some of the lawyers have been detained and questioned. Some of those detained have been warned against inquiring further about their loved ones. Other lawyers who were detained and released have been warned against pursuing the whereabouts of the still-detained lawyers.

This detention, even without criminal charge, is made possible by a provision of the Criminal Procedure Code, Residential Surveillance in a Designated Location (RSDL).\(^{237}\) Despite the use...
of the word “residential,” nothing about this status resembles a house arrest. Instead, the detainee is typically kidnapped without warning, placed in a police car with a bag over the detainee’s head and taken to an unspecified location. Unless charges are brought or the status renewed, the detention can last six months. Typically, neither family nor the detainee’s lawyer are told about the detainee’s whereabouts. Thus, the term “disappeared” has been applied to this status of detention.238

During the RSDL detention, food deprivation, sleep deprivation, intense interrogation, threats to family, and occasional physical violence mark the experience of the disappeared person.239

One goal appears to be to dissuade and intimidate the detainee and others from engaging in the aggressive lawyering that brought on the detention in the first place. A second goal is to extract a guilty plea, resulting in the disbarment of the lawyer, and a video confession to be publicly broadcast and written about in state print media.240 The video confessions are often bizarre, staged events. The confessions are tightly scripted, rehearsed and done in many

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239. See supra note 238.

takes to get the desired effect. In the confessions, the detainees make statements that are entirely out of character and appear obviously to be nothing more than the price of release, along with the criminal conviction that follows.

State media has reported extensively on the confessions of the detained lawyers. Among the chief targets of the crackdown, Zhou Shifeng, was the lawyer who represented families of victims of the toxic baby formula produced by Sanlu Milk Co. in 2008. Media reports his confession to the charges leveled against himself and his firm, charges “ranging from hyping up legal cases to spreading smears against China’s legal system.” The publicized confessions that precede any hearings or taking of evidence by a court have been a common feature of previous crackdowns against dissidents. To date, the public confessions seem not to have dampened the spirits of the rights lawyers.

In August 2016, four activists who were among those rounded up in July 2015 were sentenced for the crime of subverting state power. Beijing lawyer Zhou Shifeng was among the four and was

241. See id.
said to have influenced the others toward Western-style, open protest against Chinese law. Two of the other three were said to have operated an “illegal church.” The cases of the four, Zhou Shifeng (周世锋), Hu Shigen (胡石根), Zhai Yanmin (翟岩民), and Gou Hongguo (勾洪国) were tried together in Tianjin Intermediate Court. They were all convicted of “subversion of the state” and all promised not to appeal. Zhou Shifeng was sentenced to seven years in prison under “subversion of the state” in Tianjin. Hu Shigen was sentenced for seven years and six months on August 3, 2016. Zhai Yanmin was sentenced for three

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247. See Zhou Shifeng Bei Rending Fan Dianfu Guojia Zhengquan Zui: Yishen Panchu Youqituxing 7 Nian (周世锋被认定犯颠覆国家政权罪: 一审判处有期徒刑7年) [Zhou Shifeng Was Convicted of Subversion of the State Regime; First Trial Sentenced for 7 Years], CCTV News (Aug. 4, 2016), http://tv.cctv.com/2016/08/04/VIDEWgZmFo4IG2QKjJnCZfJ5160804.shtml (showing Zhou confessing his wrongdoing, praising the fairness of the court, and promising to “never appeal” the court’s decision) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

248. Hu Shigen Bei Pan Youqituxing Qinian Liugeyue (胡石根被判有期徒刑七 年六个月) [Hu Shigen Was Sentenced for Seven Years and Six Months], XINHUA WANG (新华网) [XINHUA.NET] (Aug. 3, 2016), https://weibo.com/t/article/p/show?id=230935100044400435249795192&u=5031100920&m=4004364224066745&cu=5031100920&ru=2997829562&rmp=4004359865822737 (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see Hu Shigen Dianfu Guojia Zhengquan An Yishen Xuanpan, Hu Shigen Huoxing Qinian Ban, Dongting Biaoshi Bu Shangsu (胡石根颠覆国家政权案一审宣判 胡石根获刑七年半 当庭表示不上诉) [Hu Shigen Subversion of State Regime Case First Trial, Hu Shigen Sentenced to Seven and a Half Years, Pledged Not to Appeal in Court], CCTV News (Aug. 3, 2016), http://tv.cctv.com/2016/08/03/VIDEzubE11c91cZ1Ny8PDq1160803.shtml (showing Hu sentenced with the most severe punishment because he was the leader of the group and a repeated offender of “subversion”; also shows his confession and promise not the appeal) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).
years with four more years suspended. Gou Hongguo was sentenced to three years in prison with a three year suspension on August 5, 2016.

Some US Embassy staff went to the Tianjin court on their diplomatic car. State security filmed the US diplomats and the diplomatic car and made a video mocking US involvement. The Ministry of Public Security posted the video on its Weibo account and generated a wave of nationalist reaction on the social media.

249. See Zhai Yanmin Dianfu Guojia Zhengquan An Yishen Xuanpan: Zhai Yanmin bei Pan Youqituxing Sannian, Huanxing Sinian ([zhai yanmin subversion of state regime case sentenced: zhai yanmin sentenced to three years, with suspension of four years], CCTV News (Aug. 3, 2016), http://tv.cctv.com/2016/08/03/VIDEUoXxaPM3uivvQJEPO474160803.shtml (showing zhai’s confession, especially about his participation of an underground church involving rights lawyers, organized by hu shigen) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).


In its editorial, the state newspaper said:

Lawyers advocate for the law. But a few of them went to the other side of the law, and at one time won a certain degree of response on the Internet. This reflects how seriously the Western ideology has been infiltrating the country. Confronting the country’s basic political system, and inciting people to resist the country’s laws, the lawyers believed they were acting through freedom of expression. It is ridiculous. 252

The various defendants made uncharacteristic statements as part of their confessions to the charges, apparently reducing their sentences. Gou Hongguo pleaded guilty to subverting state power by “collude[ing] with a group of religious people, petitioners, lawyers and legal administrators to agitate in controversial cases and incite public hatred against the State . . . ” 253 Guo said at his sentencing: “I’m grateful to the government for saving me and resolve not to participate in any criminal activities and will make a clean break with all those anti-government forces.” 254 Hu Shigen, former college professor from Beijing and head of the illegal church, said the “trial was fair and just” and thanked the authorities for making sure he was properly treated for his “diseases.” 255 Hu had “teamed up with some lawyers to embarrass the government” and promote a “peaceful transformation overthrow of the government leadership.” 256 These were the very lawyers, several like Zhou from the Fengrui law firm, who engaged in the aggressive tactics of the new breed of Chinese lawyer.

Another Fengrui lawyer, Wang Yu 王宇, slated to receive a human rights award from the American Bar Association, was “released on parole awaiting trial” 取保候审 on July 22, 2016 after a six-month detention. 257 Her statement 258 accompanying her

252. China Justified in Punishing Subversion, supra note 245.
253. Id.
254. Id.
255. See Subversion of State, supra note 245, at 5.
256. Id.
257. See generally The People’s Republic of the Disappeared, supra note 238, at 65–84 (describing more of Wang Yu’s personal story, including the detention details and threats to her son).
258. See (王宇) [Wang Yu], Wo Weishenme Zai Dianshi Shang Renzui (我为什
release said that the ABA was using her to publicly smear the Chinese legal system. She publicly vowed to refuse to accept any such awards. “I am Chinese. I love my homeland. I’m not going to accept the award issued by foreigners. Similar to other smear videos, the Communist Party League posted a video mocking the ABA giving an award to a chair (referring to the Nobel Peace Prize to Liu Xiaobo in 2010, when Liu was serving a prison sentence in China and the Nobel Prize ceremony reserved an empty chair on the podium honoring Liu).

The crackdown against such lawyers has persisted. Most recently, Yu Wensheng (余文生) was arrested on January 19, 2018 for circulating an open letter calling for amending the constitution. Since his arrest, Yu’s wife Xu Yan had been

259. See CHINESE HUMAN RIGHTS DEFENDERS, supra note 245, at 5.
260. Id.
advocating for Yu’s release and met with several foreign media and embassies. Xu was detained by the police for several hours on April 1 and was told not to speak up about the case. Yu Wensheng was formally charged for “inciting subversion of the state” [煽动颠覆国家政权罪] and “obstruction of public service” [妨碍公务罪].

Yu’s lawyer license was revoked by the Beijing Justice Bureau on January 15, 2018. The official reason was that Yu was unemployed by any law firms for more than six months, a technical requirement of the Chinese Lawyer Law. Yu said the government forced his former employer to discharge him and threatened other law firms not to hire him. He was also not able to register his own law firm because of obstacles from the government.

Before his arrest, Yu Wensheng recorded a video claiming that he would not give up his right to choose his own attorney unless tortured.

Yu Wensheng was one of the lawyers hired by Wang Quanzhang’s wife, Li Wenzu, to defend Wang’s case, but he was not able to meet with Wang (none of the 709 lawyers were able to meet with lawyers hired by their families). Wang Quanzhang is still being detained today after more than a thousand days of


265. See id.

266. See id.

267. See id.

detention without a trial.\textsuperscript{269} Wang’s wife is still advocating for Wang’s release.\textsuperscript{270}

Yu Wensheng was originally detained in 2014 for supporting Hong Kong’s pro-democratic “Occupy Central” protest.\textsuperscript{271} He was not formally charged with a crime in 2014.

Being an activist lawyer in China is not a safe activity. The numbers of such lawyers appears to be growing and despite the jailings and physical violence, they stayed determined in their work.

What most impedes our work, though, is the revocation of our licenses to practice law. China’s cities and provinces have “lawyers’ associations” that appear to be modeled after the bar associations of Western countries, and these groups decide annually who is qualified to practice law. This is a good example of where pretense and reality diverge in China’s legal world. The lawyers’ associations are, in fact, puppets of the government whenever a political question arises. Last year my license to practice law was revoked.\textsuperscript{272}

The battle has been joined between the die-hard lawyers and the state. “These activist lawyers, who have wild intentions to challenge and change the law, have deviated from what their jobs are supposed to entail,” a state-oriented editorial said.\textsuperscript{273}


\textsuperscript{271} Changyi Xiuxian Beizhua, \textit{supra} note 264.

\textsuperscript{272} See Teng, \textit{supra} note 6.

\textsuperscript{273} Shan Renping, \textit{supra} note 211.
editorial leveled a warning at the group, who must “realize that they are not commandos or the authoritative forces behind improvements to rule of law in China.”274 Such challenges seem only to further embolden the die-hards and their followers.

VI. Comparisons with the American Civil Rights Cause Lawyer

Beginning roughly seventy years ago, a new breed of lawyer was born in the United States.275 These lawyers cared about the “cause” as much or sometimes more than did their clients.276 These lawyers viewed their role as more than that of a traditional lawyer who represented, but was separate from, their clients.277 These lawyers threatened well-guarded social orders,278 as did the Chinese die-hards. They faced intense government and bar association repression and reproach.279 Their work largely started in the South, in the effort to press toward racial equality,280 and spread to causes opposing the Vietnam War,281 discrimination against women,282 mistreatment of the institutionalized, and organization of workers, tenants and consumers283.

274. Id.
276. Id.
277. Id.
278. Id.
280. See MACK, supra note 275, at 3–6 (describing the aim of civil rights lawyers, such as Thurgood Marshall, and their efforts to evoke changes in American race relations).
283. See Marion Crain & Ken Matheny, Labor’s Identity Crisis, 89 CALIF. L. REV. 1767, 1834 (2001) (identifying workers’ rights as a category to be included in the civil rights discussion).
Like their Die-Hard counterparts, these lawyers were subjected to threats, depravations, violence, and near-death. The methods were different, to be sure. There was no RDSL, and civil rights lawyers who were arrested were largely permitted contact with their own lawyers and family. But at times, the intensity of reaction to their threat to social order was no less than the reaction has been to the die-hard lawyer. Consider a few examples.

Following somewhat surprising success in defending Black defendants following racial violence in 1946 Tennessee, Thurgood Marshall was driving back to Nashville with three colleagues. On the road, their car was confronted by a car occupied by police and another occupied by local White citizens. The police stopped Marshall’s car and insisted that they must search for illegal alcohol or other contraband. None was present. Nonetheless, the police placed Marshall in the backseat of their car between two officers. They said he was to be returned to town to come before

284. See Sarah H. Brown, STANDING AGAINST DRAGONS: THREE SOUTHERN LAWYERS IN AN ERA OF FEAR 236 (1998) (describing a white civil rights lawyer who was evicted from his office building and chased with a shotgun due to his involvement in civil rights cases and association with the Committee to Assist Southern Lawyers).

285. See Kenneth T. Andrews, Lawyers and Embedded Legal Activity in the Southern Civil Rights Movement, UNIV. OF DENVER L. & POLY (Dec. 07, 2017), https://doi.org/10.1111/lapo.12096 (discussing the need for civil rights lawyers in the South to have access to field offices for assistance when confronted with local authorities).

286. See CHARLES L. ZELDEN, THURGOOD MARSHALL: RACE, RIGHTS, AND THE STRUGGLE FOR A MORE PERFECT UNION 40 (Paul Finkelman et al. eds., 2013) (“One of Marshall’s closest brushes with death came in November 1946 in Maury County, Tennessee . . . [when] Marshall was driving back to Nashville with two other lawyers.”).

287. See id. (“Suddenly, three police cars stopped their car.”).

288. See JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 131 (1998) (“[The police] announced they had a warrant to search for illegal whiskey.”).

289. See ZELDEN, supra note 286, at 40 (“No alcohol was found and the three lawyers drove off.”).

a judge on a drunk driving charge. Marshall had not been drinking on that occasion. The police told his colleagues to continue driving to Nashville.

They began to drive, but had second thoughts and turned to follow the police. Instead of proceeding into town, the police car turned onto a dirt road that would end near a river. The colleagues followed. The police car stopped near the river where a lynching mob was waiting, surely meant for Marshall. When the colleagues pulled in behind the police car, the police told them to leave. They refused. In any event, even if they had turned and left, unless the police were now willing to turn them all over to the mob to be killed, the colleagues would be witnesses to the existence of the lynching mob and the police collaboration with it. Instead of

("Marshall... was soon separated from the two attorneys and the journalist driving with him and ordered into the back seat of an unmarked vehicle.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

291. See ZELDEN, supra note 286, at 41 ("Finally, the police returned to town and told Marshall to cross the street unaccompanied to the magistrate's office.").

292. See id. (describing Marshall's interaction with the magistrate judge in which he told the judge he was not drunk).

293. See id. ("Though the police told his companions to drive on down the road, they bravely followed the police car with Marshall in it.").

294. Id.

295. See Cassie, supra note 290 ("Marshall later recounted that he hadn't been scared until the car he was in turned from the unpaved road toward the water... ").

296. See id. ("Marshall was later saved only because fellow NAACP lawyer Alexander Looby whipped a U-turn after seeing the car carrying Marshall—supposedly headed to Columbia to face a judge with drunk driving—veer off the main road.").

297. See id. ("The mob got me one night... and they were taking me down to the river where all of the white people were waiting to do a little bit of lynching," (internal quotation marks omitted)).

298. See ZELDEN, supra note 286, at 40 ("Though the police told his companions to drive on down the road, they bravely followed the police car with Marshall in it.")

299. Id.

300. See Cassie, supra note 290 ("The mob got me one night... and they were taking me down to the river where all of the white people were waiting to do a little bit of lynching." (internal quotation marks omitted)).
leaving Marshall with the mob, presumably as planned, the police drove back to the main road and into town where they presented Marshall to the local judge.\footnote{301}{See Williams, supra note 288, at 140 (“[The police] ordered Marshall out of the car and told him to go to the judge’s chamber on the second floor of the courthouse by himself.”)} The judge declared that Marshall had not been drinking and set him free from the police custody.\footnote{302}{See id. at 132 (“[Marshall] protested that he hadn’t had a drink in several days.”)} Marshall, later to litigate \textit{Brown v. Board}, and still later to become the first Black Justice of the Supreme Court of the United States,\footnote{303}{See id. at 4–5 (identifying Marshall’s involvement in \textit{Brown v. Board of Education} and his appointment as the first African-American Supreme Court Justice).} was as close to being murdered as he could be that day. If not for the actions of his colleagues, the course of history and his influence on it would have been dramatically altered.

One of Marshall’s colleagues that very day was Alexander Looby,\footnote{304}{See Cassie, supra note 290 (“Marshall was later saved only because fellow NAACP lawyer Alexander Looby whipped a U-turn after seeing the car carrying Marshall . . . veer off the main road.”).} arguably the most successful civil rights lawyer in Tennessee. He went on from that day with Marshall in 1946 to file the first desegregation suit against the Nashville public schools.\footnote{305}{See Dorothy Granberry, \textit{Looby, Z. Alexander (1899–1972), The BLACK PAST: REMEMBERED AND RECLAIMED}, http://www.blackpast.org/aah/looby-z-alexander-1899-1972 (last visited Sept. 17, 2018) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).} When the student sit-ins began in Nashville in 1960 he became their first attorney, an action that resulted in violent response against him.\footnote{306}{Id.} Fourteen years after Looby and his colleagues probably saved Marshall’s life, on April 19, 1960, his house was bombed and almost entirely demolished, as well as shattering neighbors’ doors and windows.\footnote{307}{Blast Wrecks Home of Nashville Negro Lawyer, OSHKOSH NORTHWESTERN (Apr. 19, 1960), https://www.newspapers.com/clip/14347170/blast_wrecks_home_of_nashville_negro/ (on file with the Washington & Lee Journal of Civil Rights & Social Justice).} Fortunately, he and his wife were
asleep in a back room of the house and escaped the serious injuries undoubtedly intended.\textsuperscript{308}

Some five years later, a promising young lawyer who was threatening the social order in Charlotte, North Carolina, Julius Chambers, also narrowly avoided violent death.\textsuperscript{309} Chambers had filed the school desegregation claims on behalf of parents in Mecklenberg County, North Carolina, in what would eventually become the landmark case of \textit{Swann v. Mecklenberg County}, upholding the use of busing to desegregate schools.\textsuperscript{310} While making a speech at a church not long after he had filed those claims, his car was bombed.\textsuperscript{311} He and others went outside, inspected the damage, and he returned to finish his speech.\textsuperscript{312} Undeterred, he filed more than 50 school desegregation complaints and was also known for threatening the racial order attached to perhaps an even more sacredly guarded activity: Football.\textsuperscript{313} Chambers had filed a claim on behalf of a record-setting Black high school football player who could not be chosen for a local all-star game because of his race.\textsuperscript{314}

Marshall, Looby, and Chambers were not alone in being violently terrorized by authorities and the locals with whom they conspired.\textsuperscript{315} David Lipman had a rifle put his mouth for

\textsuperscript{308} Id.


\textsuperscript{310} See \textit{Swann v. Charlotte-Mecklenburg Bd. of Educ.}, 402 U.S. 1 (1971) (holding that the busing of students is included in the scope of school authorities’ duties to eliminate racial segregation in public schools as mandated by the United States Supreme Court).

\textsuperscript{311} Morrill, \textit{supra} note 309.

\textsuperscript{312} Id.

\textsuperscript{313} Id.


monitoring an election in Mississippi, others were punched or beaten, and many jailed for “practicing law without a license,” a crime that under normal circumstances would never produce arrest and jail, particularly when the defendant was indeed a lawyer in good standing in a state other than the arresting venue.

Especially in school desegregation cases, these new lawyers drew the ire and reproach of traditional lawyers and the organized bar. Following Brown, a strategy of fending off its mandate emerged in the South, alternately called The Southern Manifesto or Massive Resistance. The strategy was formulated by no less than two United States Senators, one each from South Carolina and Virginia. It was carried out by countless state and local government officials. A central theme of this strategy was to resist desegregation on the local level despite the Brown mandate, forcing an almost county-by-county enforcement by desegregation activists. The only path to the enforcement of Brown was for NAACP and other activist lawyers to go to community gatherings in small towns to discuss the possibilities for a local desegregation lawsuit. Coming out from behind their desks to meet prospective clients, these lawyers offended traditional sensibilities, not to mention the politics and social preferences of traditional lawyers, especially southern white lawyers. They

316. Id.
317. Id. at ch. 5.
318. Id.
320. See id. at 63.
322. See Roy Wilkins, The Role of the NAACP, 2 Social Probs. 201, 203 (1955) (discussing the intention of the NAACP to make its legal services available to parents of African American school children).
323. See Moliterno, supra note 279, at 739 (“Together, [civil rights lawyers] collective fault in the eyes of the organized, traditional strength-center of the bar was the disruption to the legal, social, and cultural status quo that their work
were doing what their clients needed, they were pursuing a cause, and they used means that were more aggressive and outside common lawyer practice. The backlash was intense, with bar associations and government authorities accusing these lawyers of unethical conduct: solicitation of clients, stirring up litigation, and the like, all in violation of newly-modified-to-the-task barratry and champerty laws. Like today’s die-hard Chinese lawyers who are using social media to reach outside the traditional lawyer-advocacy-in-court mode, these lawyers were breaking molds that produced negative, sometimes angry response from government and their profession.

Harassment of Southern lawyers who represented civil rights workers was fierce. A very few white Southern lawyers were willing to represent civil rights workers in the deep South. Among the few who did, at least one was disbarred in Mississippi. A Black lawyer representing school desegregation plaintiffs in Mississippi was harassed by a federal district judge regarding his professionalism, threatened with findings of professional misconduct, and interrogated long enough to fill 118 pages of transcript. The harassment continued until the court of appeals said that the district judge was creating “humiliation, anxiety, and possible intimidation of a reputable member of the bar.” The claims against the lawyer were entirely baseless. “All promised.”

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324. See Jerold S. Auerbach, Unequal Justice 264–65 (1976) (“Few dared to defend advocates of racial equality. Daring was costly: [I]t prompted harassment by courts, legislatures, vigilantes, and fellow professionals . . . .”).
325. See Zhang, supra note 137.
326. See Moliterno supra note 279, at 742.
327. See id.
328. See Auerbach, supra note 324, at 264–65; see also id. at 264 (describing the disbarment of a Mississippi civil rights lawyer for his representation of a civil rights advocate).
329. In re Brown, 346 F.2d 903, 905–08 (5th Cir. 1965) (suggesting that a civil rights lawyer, whose professional conduct had never before been questioned, was cited for contempt of court due to his engagement in litigation seeking desegregation of certain Mississippi schools).
330. See id. (establishing that pages thirty-nine through 157 of the Court’s record documented the harassment of a Mississippi civil rights lawyer by a federal
of the testimony taken in this matter . . . completely exonerates Brown from any improper conduct."331

Once Northern lawyers began to undertake representation and organization of Southern civil rights clients and causes, new forms of professional harassment emerged.

Among the lawyers whose work acted as a lightning rod for organized bar criticism was William Kunstler.332 Kunstler’s identification with his activist clientele broke sharply with traditional lawyer norms of professional separation from clients and earned him a folk hero status among law students and young lawyers.333 Kunstler went from representing civil rights workers including Mississippi Freedom Riders334 and other protesters in the South, to Black Panthers,335 to the Chicago Seven.336 Kunstler was not a large firm, New York lawyer who took up civil rights causes.337 His early practice in the 1950s was characterized by undistinguished representation in will, domestic relations, and real estate closing matters, with one ironic exception: referred by classmate Roy Cohn, Kunstler drafted a will for the soon-to-be-infamous Joseph McCarthy.338

district court judge due to his engagement in litigation seeking desegregation of certain Mississippi schools).

331. Id. at 909–10.
332. See Moliterno, supra note 279, at 744.
334. See Jerry Schwartz, ‘Chicago 7’ Attorney William Kunstler Still Champion of the Political Underdog, L.A. TIMES, Apr. 5, 1987 (“Then, in 1961, the ACLU asked [Kunstler] to go to Mississippi to assist local lawyers representing the Congress of Racial Equality’s freedom riders.” (internal quotation marks omitted)).
335. See Navasky, supra note 333.
336. See Schwartz, supra note 334 (“But to many, [Kunstler] is linked forever with the Chicago 7 conspiracy trial . . . ”).
337. See DAVID J. LANGUM, WILLIAM M. KUNSTLER: THE MOST HATED LAWYER IN AMERICA 44 (1999) (describing Kunstler’s early years of legal practice during which he and his brother established Kunstler & Kunstler, “a rather ordinary practice” on Fifth Avenue in New York City).
338. See id. at 44–45.
As a traveling civil rights activist lawyer, Kunstler needed pro hac vice admission in various courts to represent his clients, which was not always freely given. Interestingly, Kuntsler regarded himself as a modern-day, “itinerant lawyer in the colonial tradition.” The image of Lincoln, riding circuit with his colleagues from rotating court-day to court-day is not one that traditional lawyers would have attached to Kunstler. And to be sure, the political nature of their practices bears no comparison whatever. But in another sense, the comparison to a 17th or 18th century lawyer traveling from court to court to meet his clients and represent them, is apt. The mode of transportation and its speed and capacity had changed dramatically, but it was true that Kunstler seemed to be everywhere, especially throughout the South in the 1960s. Between the time of colonial lawyers and later Lincoln’s circuit-riding and Kunstler’s traveling civil rights lawyer show, UPL (unauthorized practice of law) restrictions on cross-border law practice had become far more stringent.

The Chicago Seven representation won him national attention and, in some circles, derision. The circus nature of the Chicago trial, and especially Kunstler’s openly hostile, two-way war with Judge Julius Hoffman, produced four years’ worth of contempt citations which were later reversed by the Seventh Circuit.

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339. See Kunstler Upheld by Appeals Court, N.Y. TIMES MAG., May 19, 1973, at 34 (describing a district court’s refusal to admit Kunstler. Kunstler needed permission to represent a client in prison for refusing induction, having been transferred because of participation in a prison protest led by Rev. Daniel Berrigan).

340. LANGUM, supra note 337 at 65.


342. Compare Edward F. Sherman, The Right to Representation by Out-of-State Attorneys in Civil Rights Cases, in ARTICLES BY MAUER FACULTY 65 (1968) (discussing the shift away from the lenient attitude of southern courts towards out-of-state attorneys towards a more stringent outlook), with Pro Hac Vice Admission Rules (ABA 2016) (providing the current requirements for pro hac vice admission by state).

343. See Schwartz, supra note 334 (“But to many, [Kunstler] is linked forever with the Chicago 7 conspiracy trial . . . ”).

344. See In re Dellinger, 461 F.2d 389 (7th Cir. 1972) (reversing the district
bar reaction to his ferocious representation in Chicago was strikingly swift. The Association of the Bar of the City of New York so anxiously awaited the opportunity to discipline Kunstler that it began proceedings before the Chicago Seven trial had ended, violating its own rules of procedure.

In the end, confession came, as some elements within the organized bar realized that repressive mistakes had been made, especially in the context of efforts to chill zealous representation of the so-called “new left.” The bar had “misconstrued . . . the dimensions and causes of courtroom disorders . . . confus[ing] zeal in the defense of clients with revolution . . . [in its movement to] intimidate defense counsel.” Like the Die-Hard lawyer, Kunstler challenged the government orthodoxy and he paid a price for it.

As they had to Kunstler, responding to outsiders with law practice restrictions was a key measure for southern lawyer-dominated legislatures. Five southern states enacted harsher restrictions on client getting, unauthorized practice, and community organizing activities, in an effort to prevent outside lawyers (especially NAACP lawyers) from organizing and recruiting plaintiffs for school desegregation cases that would force compliance with Brown v. Board. The Virginia bar’s efforts to keep outside lawyers outside resulted in the Supreme Court’s entry into the fray in NAACP v. Button.

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345. See Tom Goldstein, Bar Group Withdraws Charges Against Kunstler, N.Y. Times Magazine 34 (Feb. 21, 1974) (discussing the grievance committee’s departure from standard policy of “waiting until all appeals have been heard before bringing disciplinary action”).

346. See id. (same).

347. Id.


349. See Edward F. Sherman, The Right to Representation by Out-of-State Attorneys in Civil Rights Cases, in ARTICLES BY MAUER FACULTY 65 (1968) (“[A]fter the large demonstrations and mass arrest subsided and civil rights law practice in the South shifted from defense to affirmative suits, the lenient attitude of southern courts towards out-of-state attorneys began to change.”).

Legal Defense Fund (LDF) had chapters in Virginia. Through these chapters, Virginia residents were informed of the possibility of pursuing school desegregation suits by retaining NAACP and LDF lawyers. Lawyers affiliated with the NAACP were paid a per diem during such representation, but often without any other form of compensation. The Virginia State Bar proceeded against these lawyers and the NAACP on the ground that their conduct amounted to inappropriate solicitation of business and, in particular, that the NAACP, which was not a party to the various school desegregation litigation, had unlawfully interjected itself into litigated matters by soliciting plaintiffs and supplying lawyers. The Virginia courts held that the NAACP lawyers had acted unethically. The Virginia courts asserted that the statutes’ purpose was to uphold high standards of the legal profession by “strengthen[ing] the existing statutes to further control the evils of solicitation of legal . . . [s]olicitation of legal business has been considered and declared from the very beginning of the legal profession to be unethical and unprofessional conduct.” Eliminating the activities of the NAACP at that juncture would likely have spelled an end to school desegregation in Virginia for the foreseeable future. The Supreme Court reversed the Virginia courts’ treatment of the issue, holding that such an application of the solicitation rules violated expression and association rights under the First and Fourteenth amendments.

351. See id. at 421 (discussing the involvement of Defense Fund lawyers in litigation in Virginia).
352. Id.
353. See id. at 420–21 (describing the payment of Defense Fund lawyers by the Virginia Conference as “a per diem fee not to exceed [sixty dollars], plus out-of-pocket expenses”).
354. See id. at 419 (analyzing whether solicitation of clients by the Defense Fund and the NAACP was unethical and in violation of Chapter 33 of the Virginia Code).
355. See NAACP v. Harrison, 202 Va. 142, 155, 116 S.E.2d 55, 66 (1960) (holding that the actions of the NAACP constituted “fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability”).
356. Id. at 154.
357. See NAACP v. Button, 371 U.S. 415, 444 (1963) (“We conclude that although the petitioner has amply shown that its activities fall within the First
Both federal courts and the executive branch in some ways protected the civil rights lawyer from mistreatment at the hands of state and local officials. In this respect, the Chinese Die-Hard lawyer is markedly different.

David Mays was an example of a moderate segregationist lawyer, whose views of civil rights lawyers would today be regarded as extreme. Mays was congratulated and thanked repeatedly for his Gray Commission role at a 1955 Virginia State Bar meeting, the same meeting at which the organization adopted a resolution condemning the Supreme Court for its invasion of states’ rights in Brown.

Mays, the moderate who was praised by his fellow lawyers for stabilizing the radical segregationists, referred to W. Hale Thompson of Newport News as that “unbelievably arrogant . . . nigger lawyer.” Thompson had dared to suggest in a Gray Commission public hearing that “Thomas Jefferson, James Madison and Patrick Henry would be ashamed of some members of the [Virginia] General Assembly.”

When Mays described the pleasure of having two former FBI men play surreptitiously-made recordings of NAACP lawyer conversations with plaintiffs in the Prince Edward County case and the Charlottesville case, he made no mention of whether he

Amendment’s protections, the State has failed to advance any substantial regulatory interest . . . which can justify the broad prohibitions which it has imposed.”). Other “association” cases followed, arising largely from a new ethos of cause or issue lawyering that accompanied the first federally funded legal aid programs.


359. See id. at 62 (discussing the praise that Mays’ peers gave him pertaining to his views on segregation and with the Gray Commission of 1954).

360. See id. (“Many lawyers have made it clear to me that they look upon me as the stabilizing influence that has prevented a stacked commission from taking radical action” (internal quotation marks omitted)).

361. See id. at 85–86 (suggesting that Mays was referring to W. Hale Thompson when he referred to a speaker at a Gray Commission public hearing as “one nigger lawyer [who] was unbelievably arrogant.”).

362. Id.
was listening to an intrusion on the lawyer-client relationship.\textsuperscript{363} Instead he said, “These may prove very helpful in probable proceedings by the [Virginia State Bar] against Oliver Hill [a preeminent school desegregation lawyer] and possibly others.” No evidence appears to exist that Hill was ever charged, but his colleague Samuel Tucker was repeatedly brought before bar authorities and charged with misconduct.\textsuperscript{364} Mays openly favored the bills introduced by Charles Fenwick and Harrison Mann, which he thought was meant to “harass the NAACP.”\textsuperscript{365}

In correspondence with Sidney Carleton, a former President of the Mississippi State Bar, ABA President Lewis Powell, long regarded as a voice of moderation in the profession and later on the Supreme Court, registered his views on Northern lawyers who represented Southern Blacks. Carleton, in an angry response to National Lawyers Guild (NLG) representation in Mississippi, said:

\begin{quote}
[T]here has never been a time when the lawyers of the state of Mississippi have not stood ready, willing, and able to represent those in need of legal representation. It has not, however, been the policy of either the Mississippi State Bar nor of its members to violate public policy or to engage in the unethical practices or to become accessories before the fact by agreeing in advance to represent persons in criminal proceedings arising from contemplated actions not then having occurred.\textsuperscript{366}
\end{quote}

Powell replied to Carleton with praise for the Mississippi Bar, in language that implies negative views of NAACP and NLG lawyers who had organized the school desegregation plaintiffs such as those at issue in \textit{Button}:

\begin{itemize}
\item \textsuperscript{363} See id. at 191 (describing two former FBI agents playing recordings of conversations with plaintiffs in the Prince Edward County and Charlottesville NCAAP cases).
\item \textsuperscript{364} See id. at 191; see also interview with Senator Harry L. Marsh III, http://www.library.vcu.edu/jbc/speccoll/civilrights/marsh01.html (on file with the Washington & Lee Journal of Civil Rights & Social Justice); S.J. Ackerman, \textit{The Trials of S.W. Tucker}, WASH. POST, June 11, 2000, at W14.
\item \textsuperscript{365} MAYS, supra note 358, at 158.
\item \textsuperscript{366} Letter from C. Sidney Carlton, Partner, Carleton & Henderson, to Ernest Goodman, President, National Lawyers Guild (Aug. 6, 1964) (on file in Lewis F. Powell, Jr. Archives, Washington & Lee University School of Law Library, General Correspondence during Presidency, Box 76).
\end{itemize}
My own view is that your bar took a fine step in its recent resolution on this subject. I think all of the southern bars should do the same thing, and follow them up with actual representation of Negroes—not to foment litigation but to defend those accused of crime. This is the best way I know to keep northerners from 'invading' the southern states. I am afraid nothing can keep some of the radicals from defaming the South generally without the slightest recognition that lawlessness in the northern cities is on a larger scale.367

Powell’s and Carleton’s remarks echo the resistance of the Chinese authority to the undermining ideas and interference of foreigners. Western interference and dangerous influence, including an ABA Human Rights award issued to Wang Yu, threaten the Chinese authority. For Southern lawyer-leaders, the foreign influence to be resisted came from the “invasion” of Northern lawyers and organizations.

Meanwhile, labor unions endeavored to provide counsel to their members, and federally-funded legal aid lawyers organized tenants and farm workers and represented entire classes of welfare recipients, institutional inmates and others. Still other lawyers sought to represent middle class clients at lower cost, using office automation and high client-volume generated by bar-prohibited advertising.

In every instance the profession objected. In part, to be sure, the objections were motivated by opposition to the causes advanced by the new style of lawyer, but the objections were also to the new style of lawyering itself. To the traditional, one-client-at-a-time lawyer, whose clients found the lawyer through word of mouth in clubs and churches and social organizations rather than through advertising, this aggressive new style of lawyering was unprofessional, distasteful and demeaning to the profession generally. For these traditional lawyers, who not coincidentally represented corporate interests, cause lawyering was not proper lawyering at all, and it had to be stopped. Cause lawyers identified not exclusively with the private interests of clients, but to a great degree with the cause missions of the lawyers themselves. Cause lawyers pursued reform or closure of substandard prisons, jails and mental health facilities; they organized tenants, farm workers, and public assistance recipients; they identified specific laws and

367. Id.
worked toward their reform. Like the Chinese die-hard lawyer whose goal is to reform the criminal justice system or the human rights policies of the state, the client was in some ways a vehicle for the reform work of the lawyer. And for both, traditional lawyers and the state itself objected vociferously.

The profession’s impression of this new form of lawyering was accurate. Attorney General Nicholas deB. Katzenbach called for “new techniques, new services, and new forms of intra-professional cooperation to . . . analyze the rights of welfare recipients, of installment purchasers, of people affected by slum housing, crime and despair.”368 “There are signs, too,” he noted, “that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.”369 Charles Hamilton Houston viewed the mission of the Howard Law School, to which he brought respectability and accreditation, as the creation of “social engineers” capable of making real the teachings of sociological jurisprudence that emerged during the first half of the twentieth century.370 It was to be a cause-lawyer school. Neither Katzenbach’s nor Houston’s vision of lawyering meshed with the profession’s status-quo, and it met resistance from the organized bar as a result. Lawyers who were as fully committed to their clients’ cause as were their clients threatened to disrupt the classical image of lawyers as being entirely independent and separate from their clients’ goals.371

In China, many of the detained human rights advocates and their lawyers were champions of the peaceful transition theory, under which advocates believed that the moves toward market economy in China would pave the way for non-violent reform of the political system and elimination of the CCP’s strangle-hold on

368. Id. at ch. 5.
371. See generally GAO ZHISHENG, supra note 195.
This theory invoked fear among CCP leadership, likening it to the color revolutions and the Arab Spring uprisings. The CCP reaction compares with the fears of US corporate and political power structures that cause lawyers’ empowerment of workers, tenants, and the poor were essentially subversive of the status quo.

Fierce criticism of poverty lawyers and civil rights activist lawyers came from the highest levels of judicial, government and bar leadership. Ronald Reagan was “openly hostile to legal services lawyers,” first as Governor of California and later as President of the United States. Warren Burger, in his pleas for civility, gave substantial blame for the impending downfall of the profession to lawyers in political trials, or as Burger called them, the “new litigation.” He encouraged the legal profession to apply “rigorous powers of discipline” to the misbehaving lawyers by either the judicial or bar enforcement systems. Failure to do so, he warned, would allow “the jungle [to] clos[e] in on us.” Bar leaders and commentators followed the Chief Justice’s lead.

As ABA President, Powell was a vocal condemnor of civil disobedience, repeatedly decrying the actions of sit-in

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372. See generally id.
373. HOUSEMAN & PERLE, supra note 7, 29–33.
374. See Burger Speaks and Kunstler ‘Counters’, N.Y. TIMES 25 (Sept. 18, 1971) (noting that at the dedication of the Georgetown Law School building in 1971, a most striking contrast was framed by Chief Justice Burger’s dedication speech and William Kunstler’s “counterdedication” speech—Kunstler and others delivered their student-organized counterdedication speeches from the bed of a pick-up truck parked outside the building).
376. Id. (quoting and excerpting from Chief Justice Burger’s speech).
377. Id. (quoting and excerpting from Chief Justice Burger’s speech).
demonstrators' and Freedom Riders' testing of discriminatory laws regulating racial treatment in the South.\footnote{379}

We have witnessed, over the past decade, the development of a heresy that could threaten the foundations of our system of government under law. This is the doctrine that each person may determine for himself what laws are “just,” and that laws and court orders are to be obeyed only so long as this seems ‘just’ to the individuals or groups concerned . . . . In 1965 many people believed that civil disobedience of orders and laws deemed to be unjust is a legitimate means of asserting rights and attaining objectives. Indeed, it is not too much to say that this form of civil disobedience—and its own unique tactics of demonstrations, sit-ins, lie-downs and mob pressure—has become the principal weapon of certain minority and dissident groups . . . . But our Constitution and tradition contemplate the orderly assertion of these rights.\footnote{380}

He did not mention states and state bar associations that were resisting the \textit{Brown} mandate, ostensibly because they were of the view that it was unjust.

Professional opposition and harassment of legal aid lawyers proceeded in part on the ground that state bars and powerful institutional interests saw their economic and political interests threatened by the lawsuits and legislative lobbying being done by cause lawyers on behalf of their clients.\footnote{381}

State and local bar associations in California, Texas, Florida, Pennsylvania and Washington, D.C. unsuccessfully sued the Office of Economic Opportunity (OEO), claiming it was violating ethical canons.\footnote{382} They claimed that legal services lawyers were engaged

\footnote{379. See, e.g., Lewis F. Powell, Jr., President, Am. Bar Ass’n, The President’s Annual Address: The State of Legal Profession, Address at the Assembly of the American Bar Association (Aug. 9, 1965), \textit{in} 51 A.B.A. J. 821, 827 (1965) (calling civil disobedience “a dangerous trend”); see also, e.g., \textit{John C. Jeffries, Jr., Justice Lewis F. Powell, Jr.} 210–11 (Charles Scribner’s Sons, NY, 1994).


381. See Harry P. Stumpf, \textit{Law and Poverty: A Political Perspective}, 3 Wis. L. Rev. 694, 708–09 (1968) (“Opposition to federally funded legal services has been voiced on economic, professional, and ideological grounds. To the marginal (often solo) private practitioner, legal services may represent a threat to his livelihood. To the well-established lawyer the program is often seen as socialistic and unnecessary.”).

382. See \textit{Earl Johnson, Jr., Justice and Reform: The Formative Years of...
in unauthorized practice and were unlawfully soliciting clients.\textsuperscript{383} In doing so, they were largely reacting to the new, aggressive style of lawyering. These lawyers did not wait in their offices for clients to come; instead they sought clients to pursue the lawyers’ causes. These lawyers did not pursue ordinary contract, commercial, tort and property claims. Instead, they sought social reform. They worked toward closing inhumane prisons and mental institutions, they organized tenants and farm workers, they worked to reform public assistance laws, and establish enhanced rights for criminal defendants. All of this drew the ire of the established power structures, both corporate and legal. In this way, US civil rights lawyers do resemble Chinese die-hard and human rights lawyers: both groups broke ranks with the traditional lawyering methods and practices of their predecessors.

Perhaps the most vociferous fight between legal aid lawyers and a coalition of business and government interests was spawned by the California Rural Legal Assistance (CRLA) organization and representation of farm workers.\textsuperscript{384} CRLA moved in a variety of ways to increase wages for farm workers and demand government services for them.\textsuperscript{385} These lawsuits drew the ire and outrage of then Governor Ronald Reagan and Senator George Murphy, speaking and acting on behalf of the California agribusiness.
industry.\textsuperscript{386} At the time, state governors had the power to veto funding for their state's federally funded legal aid programs, but that veto could be over-ridden by the OEO Director.\textsuperscript{387} Only once was a California governor's veto sustained: In 1970, Governor Ronald Reagan vetoed the funding and the veto was sustained by then-OEO Director Donald Rumsfeld.\textsuperscript{388} Unsuccessful efforts by Murphy would have placed full control of legal services programs in the hands of governors, localizing control to suppress locally unpopular legal aid activities, and would have prohibited legal aid suits against the government.\textsuperscript{389} The latter effort was a part of a national affront to the successes of legal aid lawyers in various government-defendant matters, especially in the arena of welfare reform.\textsuperscript{390}

In some instances, courts refused to certify legal aid organizations whose community organizing went beyond traditional law service bounds.\textsuperscript{391} A New York Appellate Division objected to certifying more than one legal services provider for a particular county, for fear of their “unseemly[] competition” for representation of non-paying clients, and out of worry that the

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\textsuperscript{386} \textit{Auerbach, supra} note 324, at 274–75; Fred J. Hiestand, \textit{The Politics of Poverty Law, in With Justice for Some: An Indictment of the Law} 160, 160–89 (Bruce Wasserstein & Mark J. Green eds., 1970); see John D. Robb, \textit{Controversial Cases and the Legal Services Program}, 56 A.B.A.J. 329, 329 (1970); see also \textit{Auerbach, supra} note 328, at 274–75 (noting that Senator Murphy's remarks indicated the intent to prevent legal services programs from bringing cases against governmental agencies and officials and from engaging in test cases).

\textsuperscript{387} \textit{See Houseman & Perle, supra} note 7, at 4.

\textsuperscript{388} \textit{See Hiestand, supra} note 386, at 182.

\textsuperscript{389} \textit{See Robb, supra} note 386, at 329–30 (noting that the Senate did not pass a 1967 version of the Murphy amendment that would have precluded suits against government agencies, and that the 1969 version was "a reaction at the national level that surfaced in a number of communities").

\textsuperscript{390} \textit{See, e.g., King v. Smith, 392 U.S. 309, 333 (1968) (concluding that Alabama breached its federally imposed obligation to furnish federal assistance to families with dependent children by preventing otherwise eligible children from aid if the mother cohabits with a man not obligated to support the children); see also Shapiro v. Thompson, 394 U.S. 618, 637–42 (1969) (deciding that statutory prohibitions of welfare benefits to residents of less than a year is unconstitutional).}

\textsuperscript{391} \textit{See, e.g., In re Cmty. Action for Legal Servs., Inc., 274 N.Y.S.2d 779, 786 (App. Div. 1966).}
\end{flushleft}
court could not maintain minimum standards of conduct. The court also expressed concern about the applicants' mixing of community action goals and legal service.

Along with labor union lawyers, federally funded legal aid lawyers were a significant part of the new style of lawyering, cause or group lawyering, that did not go unchallenged by the organized bar and, acting through the bar, powerful economic interests. The standard one-client-at-a-time model of lawyering did not suit the goals of legal aid lawyers and union lawyers. Their strength lay in collective action that allowed a marshaling of modest resources in pursuit of a cause. The standard bar obstruction first took the form of unauthorized practice restrictions and later advertising and solicitation rules.

Having failed in its efforts to restrict the activities of school desegregation lawyers, the Virginia State Bar worked to stifle opportunities for labor unions to provide counsel to their members. And the Illinois Bar initially prevented the United Mine Workers from hiring inside, house counsel. Each of these efforts was rejected by a Supreme Court whose decisions fostered the accumulation of power through collective legal action. “Collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.” The Court’s rejection of the bar’s insistence on the traditional one lawyer-one client notion of lawyering laid the legal

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392. See id. (expressing concern over the court and agencies being able to effectively supervise multiple legal assistance corporations in one area).

393. See id. (expressing concern over the court and agencies being able to effectively supervise multiple legal assistance corporations in one area).

394. See NAACP v. Button, 371 U.S. 415, 428–29 (1963) (holding that the activities of the NAACP and its legal staff are “modes of expression and association protected by the First and Fourteenth Amendments which Virginia may not prohibit . . . as improper solicitation of legal business . . . ”).

395. See Bhd. of R.R. Trainmen v. Virginia, 377 U.S. 1, 8 (1964) (holding that the First and Fourteenth Amendments protect the rights of labor organization members “to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers”).

396. See UMW v. Ill. State Bar Ass’n, 389 U.S. 217, 218 (1967) (noting that the Bar had claimed that when UMW hired inside, house counsel, this employment amounted to the unauthorized practice of law).

THE NEW BREED, “DIE-HARD” CHINESE LAWYER

groundwork for legal aid lawyers’ representation of causes, groups, and social issues, rather than individual clients. This sort of representation presented the shocking circumstance for powerful economic interests and government agencies, not used to having to deal with poor people on so nearly an equal footing. As the lawyer in charge of OEO programs in California put it, “What we have created in CRLA [California Rural Legal Assistance] is an economic leverage equal to that of large corporations. Clearly that should not be.”

The mere concept of such power residing in poor people and their lawyers seemed foreign, dangerous and subversive to the legal profession.

Lawyers representing causes could not simply wait in their offices for the causes to arrive in the personage of an eligible client. While Attorney General, Nicholas Katzenbach tried to deter bar application of advertising and solicitation restrictions against poverty lawyers when he announced that lawyers should “go out to the poor rather than wait . . . to be reduced to inaction by ethical prohibitions is to let the canons . . . serve the cause of injustice.”

Katzenbach was an officer of the federal executive branch, which along with the federal courts, supported the cause lawyer. The Chinese Die-Hard lawyer has no such champion in the Chinese state apparatus.

An uneasy measure of conditional cooperation regarding federally-funded legal aid eventually emerged from the organized bar at the national level. Even as the ABA began to co-operate

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398. Auerbach, supra note 324, at 274.

399. Nicholas deB. Katzenbach, Atty Gen., U.S. Dep’t of Justice, Address at the National Conference on Law and Poverty 3 (June 24, 1965).

400. See Michal R. Belknap, Civil Rights During the Kennedy Administration, 23 Law & Soc’y Rev. 921, 921 (1989) (stating that the Kennedy administration laid the ground work for the Johnson administrations ultimate passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965); see also Steven J. Simmons, Earl Warren, the Warren Court and Civil Liberties, 2 Pepp. L. Rev. 1, 3 (1975) (stating that protection of civil liberties, particularly for African Americans was a common thread of the Warren Court).

401. See Houseman & Perle, supra note 7 (discussing that in later years and controversies, the ABA grew to be almost unerringly supportive of legal services programs, fighting against, for example, President Reagan’s proposal to zero-fund the Legal Services Corporation in 1980.); see also id. at 30 (“[B]eginning in the early 1980s, a significant effort was made by the ABA and LSC to involve private
with federally funded legal services, its best and most able spokespersons continued to put an unduly positive face on the organization’s prior record of opposing meaningful legal services for the poor. William McCalpin, who was truly instrumental in shaping the ABA’s more enlightened position on legal services, prefaced his strong advocacy for support of legal services by imagining an ABA previously unaware of the legal needs of the poor: “[R]ecently we have begun to be aware of the possible legal needs of 40,000,000 disadvantaged citizens . . . .” The prior month’s issue of the same ABA Journal featured an article by Marvin Frankel that began with a statement more reflective of reality outside the walls erected by the ABA: “It is no new discovery that the promise of equal justice is a hollow one for people too poor to retain counsel.”

The ABA supported the new federal legal services program, provided that those services were “performed by lawyers in accordance with ethical standards of the legal profession.” Legal aid lawyers, like any lawyers in other fields, were expected to comply with normal ethical rules. However, courts had not yet reformed the rules regarding solicitation, and consequently legal attorneys in the delivery of civil legal services. While the organized bar was generally supportive of LSC, certain segments of the legal profession remained unfamiliar with legal services practice, felt threatened by legal services advocacy, and, in some instances, were hostile to LSC’s mission.


403. Marvin E. Frankel, Experiments in Serving the Indigent, 51 A.B.A.J. 460, 460 (1965) (hoping against some of the early evidence that the ABA would allow new, OEO funded legal services offices to be established rather than merely pressing for additional funding for the traditional legal aids under the supervision of NLADA); interview by Olavi Maru with F. William McCalpin, Aug. 22, 1975, http://www.abf-sociolegal.org/oralhistory/mccalpin.html, Tape MCA-1-B (noting that ironically, some years later in an oral history of his ABA involvement, McCalpin himself described the unfortunate, introspection practiced by the ABA in dealing with difficult issues) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

404. McCalpin, supra note 402, at 551 (quoting Richard Pious, Congress, the Organized Bar, and the Legal Services Program, 1972 Wis. L. Rev. 418, 420–21 (1972)) (discussing the political background for the ABA House of Delegates Resolution).

405. See In re Primus, 436 U.S. 412, 423–25 (1978) (stating that the
aid and cause lawyers engaged in community organizing were subject to continued harassment by bar authorities for direct solicitation of clients.\textsuperscript{406}

\textit{VII. Concluding Thoughts}

Fifty to seventy years later, some wounds of the war on civil rights lawyers remain, but such lawyering is no longer so far outside the mainstream. Although this reality continues to distress some with long memories of what they consider more civil times, there is no doubt that the more aggressive style of lawyering created by the cause lawyers of the 1960s and 1970s is a part of today’s American legal profession.

How will Chinese lawyering look in fifty to seventy years? No one can be sure. Nonetheless, the reaction to the July 2015 round-up and detention of rights lawyers offers some clues and some parallels with the experience of American civil rights lawyers.

This round-up and detention significantly increased the tension between the state and the activist lawyers, and so far, despite serious risk to themselves, the lawyers are not backing down.\textsuperscript{407} Despite being warned against continued aggressive activity, current trends indicate that the state pressure appears to be having the opposite effect, with more lawyers answering the call


\textsuperscript{407} See Andrew Jacobs and Chris Buckley, \textit{China Targeting Rights Lawyers in a Crackdown}, \textit{N.Y. TIMES} (July 22, 2015), http://www.nytimes.com/2015/07/23/world/asia/china-crackdown-human-rights-lawyers.html ("Despite the intense police pressure, and the previous imprisonment of lawyers... dozens have organized petitions denounced the detentions and volunteered to defend those held by the police.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).
of staunch criminal defense and human rights lawyering.\textsuperscript{408} Despite the intense and politically repressive environment, more lawyers are joining the ranks of the die-hard segment.\textsuperscript{409}

Yu Wengsheng, a commercial lawyer in Hong Kong, is typical of these newly minted activists. When Yu’s client was arrested for involvement in the annual Hong Kong turn-back day protests—demanding more self-government and democratic selection processes in Hong Kong—Yu attempted to visit his client in detention.\textsuperscript{410} Yu felt outraged when he was prohibited from seeing his client, given his long background of ordinary commercial work and the absence of any previous criminal defense or activist work.\textsuperscript{411} Yu organized his own protests outside the jail on behalf of his client, and was promptly arrested himself.\textsuperscript{412} Now, Yu says, “I used to think being a lawyer was just a tool to make money . . . . But now I believe we have a greater mission to change a broken system. The crackdown is fierce, but we rights lawyers will fight back.”\textsuperscript{413}

Indeed, as Yu said, “the crackdown is fierce.”\textsuperscript{414} “This mass crackdown on lawyers is the broadest in terms of location, and clearly coordinated because of the timing of the initial crackdown,” said Sharon Hom, executive director of Human Rights in China.\textsuperscript{415}

\textsuperscript{408} See Abby Seiff, \textit{China’s Latest Crackdown on Lawyers is Unprecedented, Human Rights Monitors Say}, A.B.A.J. (Feb. 1, 2016, 12:10 AM), http://www.abajournal.com/magazine/article/chinas_latest_crackdown_on_lawyers_is_unprecedented_human_rights_monitors/news/article/do_you_volunteer_on_a_regular_basis/?utm_campaign=sidebar (“[t]here was a broad expectation that it would have a very, very bad chilling effect . . . [w]hat happened was the movement grew. More and more lawyers were joining these groups . . . holding meetings . . . and taking on cases together with more experienced human rights lawyers.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

\textsuperscript{409} See \textit{id.} (“A decade ago, there were a few dozen rights lawyers there. Today, there are hundreds.”).

\textsuperscript{410} Jacobs & Buckley, \textit{supra} note 407.

\textsuperscript{411} \textit{Id.}

\textsuperscript{412} \textit{Id.}

\textsuperscript{413} \textit{Id.}

\textsuperscript{414} \textit{Id.}

\textsuperscript{415} Seiff, \textit{supra} note 408.
“It included more than 23 provinces. It was a combination of detentions, disappearances and targeting family members, together with a very clear propaganda smear campaign in the *People’s Daily*. This is clearly a mass attack on lawyers that’s misusing legal process, using propaganda and then bringing back the collective punishment of China’s past by targeting the families.”  

The attack consists not only of the 2015 round-up of more than 200 lawyers, law firm staff, human rights activists, and family members, two of whom probably remain in detention in 2018, but of a state media blitz smearing the detained lawyers. State media outlets such as Xinhua and others have painted the rights lawyers in terms reminiscent of the complaints about the conduct of American civil rights lawyers. The state media reports the
accusations against the lawyers as “stirring up” trouble, and of supporting protests on behalf of the lawyers’ clients, echoing Southern states use of a barratry and champerty statutes to deter American civil rights lawyer from stirring up litigation, and of participating in civil rights protests to aid their clients. The Chinese lawyers stand accused of “seriously interfering with normal judicial activities and disrupting social order.” The likeness to the accusations against US civil rights lawyers is striking.

A further sign that Chinese authorities may actually be creating more cause lawyers rather than deterring them is a petition movement begun by a group of prominent lawyers in response to a 2015 crackdown that led to the detention of 200 lawyers and activists. The petition denounces the “intimidating harassment” of authorities against lawyers. The petition calls on the Chinese government to “respect the constitutional rights” of the detained lawyers, as well as an end to the raids on law offices and a fair and transparent judicial process for the detained lawyers. The petition, which was signed by over 1,000 people, states that “[o]nly when lawyers’ professional duty and rights are respected can the rule of law as understood in the civilised world take root in Mainland China,” Within China, only in Hong Kong could such a petition drive take root and grow. But for all of the economic benefits that have inured to China from the return of

behavior as ‘very close to blackmailing.’”)

420. Id.
421. See Wayne Rhine, Barratry—A Comparative Analysis of Recent Barratry Statutes, 14 Depaul L. Rev. 146, 147 (1964 (describing Southern states efforts to strengthen their barratry statutes as a legal weapon against civil right litigation).
422. Detained Chinese Lawyers Admit Guilt in Disorder Charges: State Media, supra note 419.
424. See id.
425. Id.
426. Id.
Hong Kong, the social upheaval wrought by the island’s long-British-ruled inhabitants may cost the Party dearly.

The American social upheaval of the 1960s, topped off by Watergate in the early 1970s, produces a generation of lawyers who were far more devoted to social justice than their predecessors. Along with Ford Foundation funding, the greatest impetus for the development of law school clinical programs focused on social justice was student demand. The clinical legal education movement has begun in China during the last decade, and appears connected with heightened levels of student interest in social justice. Like their American cause lawyer counterparts of fifty to seventy years ago, the new breed of die-hard lawyer may be marking a way forward for their legal profession.

427. See Laura G. Holland, Invading the Ivory Tower: The History of Clinical Legal Education at Yale Law School, 49 J. LEGAL EDUC. 504, 514 (1999) (“The social and political movements of the 1960s called lawyers to become activist reformers. Law students heard the same call and sought out work that would make their theoretical study of law relevant to the social struggle that was going on outside the walls of the law school.”).

428. See Stephen Wizner, The Law School Clinic: Legal Education in the Interests of Justice, 70 FORDHAM L. REV. 1929, 1933 (2002) (“But it was not until the late 1960s that clinical legal education received financial support and found an effective advocate in the person of William Pincus, a Vice-President of the Ford Foundation who was responsible for the Foundation’s anti-poverty initiatives.”).

429. See Ralph S. Tyler & Robert S. Catz, The Contradictions of Clinical Legal Education, 29 CLEV. ST. L. REV. 693, 695 (1980) (“Not until the mid-1960’s, in response then to societal pressures, student demand, and educational commitment, was the innovation of Langdell’s case method extended from the study of decided cases to student work on actual and undecided cases.”).

In two remarkable ways, the Die-Hard lawyer and the U.S. civil rights lawyer are cut from the same cloth. First, both groups have been persecuted for challenging deeply-engrained social order and power structures. And second, both groups have offended traditional professional norms of behavior, engendering the approbation from professional and state officials.

The current mood of the possibility of legal change by cause lawyer is grim. Although there has surely been an increase in the number of human rights-oriented lawyers in China since 2012, and even since the 709 Crackdown, there is evidence that the ramped-up suppression and harassment by the state is wearing down the resolve of long-time activist lawyers. On a recent proposal to limit the number of times a non-Beijing licensed car may enter Beijing, a lawyer commented on his social media that, “if this policy came out 9 years ago, I might organize meetings, write ‘public interest petitions,’ and call for constitutionality and legality review; 6 years ago, I might write articles, receive interviews, and propose suggestions; 3 years ago, I might grumble a little; now, I only want to watch them silently.”

Despite these striking similarities, the two groups exist in powerfully different legal environments. By law, the Chinese lawyer’s number one professional duty is to the state, while the US lawyer’s independence from state influence is legendary. Further, for the US civil rights lawyer, the highest authority, often belatedly, supported the lawyer’s reform work. The federal


432. Confidential post to listserv on file with author.

433. See Leland Benton, From Socialist Ethics to Legal Ethics: Legal Ethics, Professional Conduct, and the Chinese Legal Profession, 28(a) PAC. BASIN L.J. 210, 212 (2011) (“The Constitution, whose emanations permeate the legal system and which all lawyers are bound to uphold, lays heavy emphasis on the obligations of individual citizens to the state and the Party.”).

434. See Belknap, supra note 400 (describing federal government’s role in advancing civil rights during the Kennedy administration).
courts and to some extent the executive branch stepped in at crucial junctures to thwart the repressive state and local regimes. There will be no such support from higher authority in China.

In the end, the spirit of reform and justice-seeking connects the US civil rights lawyer with the Chinese Die-Hard lawyer. But the surrounding legal structures make the mission of the Die-Hard lawyer far more daunting than that of his US counterpart.\textsuperscript{435} The challenges faced by US civil rights lawyers were stiff. And without question, the US civil rights struggle persists today and many injustices remain. Indeed, during the presidency of Donald Trump, civil rights are under renewed and vigorous attacks.\textsuperscript{436} Lawyers, in the spirit of their 1940s–70s forerunners, have fought back and played significant roles in resisting these renewed attacks. Importantly, because of the work of their forerunners, US lawyers today can use the aggressive methods and represent causes with little or no professional or legal consequences. As difficult and at times seemingly hopeless was the US civil rights lawyer’s mission, and as much as that mission continues some seventy years after it began in earnest, the mission of the Chinese Die-Hard lawyer is infinitely more difficult.\textsuperscript{437}

\textsuperscript{435} See \textit{id.} ("The Chinese legal system is often characterized by the strong influence of the Communist Party and informality in both the law and legal process.").


\textsuperscript{437} Although this article is a joint effort of the two authors, Prof. Lan does not agree with the characterization of those Chinese rights lawyers as “die-hard” lawyers, nor does he contribute to drafting the related part.