

Mainland rights lawyers are risking careers, liberty and even their lives by taking 'sensitive' cases, writes **Jerome A. Cohen**

Rough justice

In 1977, Victor H. Li published a stimulating book titled *Law Without Lawyers*. China's communists, he suggested, because of their country's distinctive tradition and culture, might blaze a new trail towards modernisation, one that, unlike their former Soviet model, had little need for lawyers. Yet Deng Xiaoping (鄧小平) and his colleagues soon demonstrated that they thought otherwise.

After Mao's Zedong's (毛澤東) death ended the chaos of the Cultural Revolution, China's new leaders altered the Soviet model for economic development, but resurrected its political-legal system, including its reliance on "socialist lawyers".

Indeed, during the past three decades, the post-Mao leadership has increasingly expanded the roles of lawyers to help settle disputes, promote the evolving "socialist market economy", foster international business co-operation and legitimate the punishment of serious offenders.

In principle, contemporary Chinese lawyers are no longer Soviet-style "state legal workers" but independent professionals tasked with protecting

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citizens, including those at odds with the state. But, while their numbers, education and responsibilities have burgeoned, Chinese lawyers, like their Soviet predecessors, suffer many restraints.

The Law on Lawyers amended in 2007 seemed to promise greater autonomy to human rights lawyers. Yet their plight has actually worsened in the 20 months since the 17th Communist Party Congress. The reconfirmed leadership of Hu Jintao (胡錦濤) and Wen Jiabao (溫家寶) placed veteran party officials, without legal education or experience but with a strong police background, in charge of the Ministry of Justice and the courts, as well as the Central Party Political-Legal Committee that instructs all legal institutions. These new appointees seem determined to eviscerate the country's "rights lawyers", who constitute a tiny fraction – perhaps 1 per cent – of mainland China's almost 150,000 licensed lawyers.

Local officials under the Ministry of

Justice, and the local lawyers associations they control, quietly press activist lawyers not to participate in a broad range of "sensitive" matters or at least to follow their "guidance".

Such cases include not only criminal prosecutions of alleged Tibetan or Uyghur "separatists", democracy organisers and Falun Gong or "house church" worshippers, but also claims against the government for many kinds of misconduct and corruption, birth control abuses and forced eviction and relocation.

Even civil cases involving land transactions, environmental controversies, labour disputes, compensation for tainted milk and earthquake victims are off limits or controlled.

The refusal to allow famous lawyer Mo Shaoping (莫少平) to defend intellectual Liu Xiaobo (劉曉波) against criminal charges arising from Charter 08's call for political reform is only the best-known recent example of this interference.

Lawyers who fail to heed such "advice" suffer many sanctions. Their licence to practise law is frequently suspended or, as in many current instances, their local lawyers' association simply fails to give the endorsement required for annual licence renewal. Their law firms are coerced to dismiss them or risk being closed, as some have been, and party organisations within law firms have been reinforced.

Often, ex-lawyers who remain undeterred from assisting controversial clients are prosecuted and sent to prison by authorities who stretch the vague language of criminal law to cover their actions. Unfrocked Beijing lawyer Gao Zhisheng was finally convicted of "inciting subversion" after being detained incommunicado for months. Former Shanghai lawyer Zheng Enchong served three years for "sending abroad state secrets". Shenzhen lawyer Liu Yao's four-year sentence for "destroying property" was only reduced after an extraordinary petition from more than 500 lawyers persuaded the authorities to end his 16-month detention.

In each case, conviction means permanent disbarment and loss of livelihood. Even self-taught "barefoot lawyers", who are not licensed but play an important role in the countryside, have been given long prison terms on trumped-up charges, as in the case of the courageous blind activist, Chen Guangcheng.

Perhaps most troubling is the frequent, physical intimidation of "rights lawyers". Today is the 155th day since Mr Gao's "disappearance". His torture while previously detained makes many fear that he is now dead, although the government



ridiculously claims he is free on probation. Many lawyers, while seeking to meet their clients, have been beaten by police and their thugs. The well-known professor/activist Teng Biao not only lost his licence to practise law but was also kidnapped and threatened by police. I can testify from various personal experiences that many rights lawyers are closely monitored and restricted in their movements.

Since release from prison, Mr Zheng's life has been a nightmare of incessant summoning for questioning, illegal house

arrest and casual police beatings, in addition to harassment of his wife and daughter. When six policemen barred me from visiting him and I asked for their legal authority, they merely kept repeating "We are police". A sequel to Victor Li's book might appropriately be titled *Lawlessness Without Lawyers*.

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