

A move to disbar two rights lawyers is the latest threat to mainland criminal defence counsel, writes **Jerome A. Cohen** and **Yu-Jie Chen**

# Don't argue

**T**he current move by the Beijing Judicial Bureau to threaten two human rights lawyers with disbarment is the most recent cause for concern about the future of criminal defence counsel on the mainland.

Just two weeks ago, Tang Jitian and Liu Wei, who have been unable to practise law since last June – when they were among several “rights lawyers” deemed to have failed their annual evaluation – were notified by the bureau that they might be permanently disbarred for allegedly “disrupting courtroom order and interfering with regular litigation process”.

The allegations stem from their April 2009 defence of a member of Falun Gong, the mainland’s most persecuted religious group, who was eventually convicted of “using an evil cult to undermine enforcement of the law”. According to the lawyers, the presiding judge, among many trial irregularities, repeatedly interrupted the defence and refused to hear their contention that Falun Gong was not an “evil cult”, which was the central issue in the case. When the trial was nearly over,

**Relentless repression may be turning the mainland’s criminal lawyers into an endangered species**

the frustrated lawyers, believing they had no way to defend their client under such conditions, submitted a written defence in protest and left the court peacefully.

Last week, the bureau held a hearing to determine whether the two lawyers should be disbarred for disobeying the judge’s prohibition against arguing the nature of Falun Gong and leaving the courtroom before the trial had concluded. The bureau is yet to announce its decision, but the circumstances surrounding the hearing were ominous. The authorities had reportedly pressed the pair’s counsel not to represent them, causing one to drop out. Another was prevented from participating in the hearing. Nor was any supporter, foreign observer or journalist permitted to attend. Police dispersed sympathisers who gathered outside the bureau. Liu and Tang were never allowed copies of the evidence against them.

Permanent disbarment would be an unusually harsh punishment for peaceful courtroom protest by mainland defence lawyers. Until now, as far as we know, disbarment has only been imposed on lawyers convicted of a crime, as in the recent farce of a prosecution against Beijing lawyer Li Zhuang (李莊) in Chongqing (重慶).

It is unclear why the bureau waited a year before initiating the case against Tang and Liu. Because the action coincides with the Ministry of Justice’s April 8 promulgation of two new regulations on the punishment and annual evaluation of the legal profession, it may suggest a new campaign to further stifle not only already embattled defence lawyers but all public-interest lawyers.

Many provisions in the punishment regulation expand the scope of speech punishable under the 2007 Law on Lawyers. Vaguely defined acts, such as instructing/inducing clients to deliver speech interrupting litigation, or instigating/abetting others to disrupt courtroom order, are all punishable with disbarment “when the circumstances are serious”.

The disbarment proceeding against the two lawyers has elicited serious protests from Hong Kong, the United States and other jurisdictions where lawyers and civic groups can freely challenge government measures. Perhaps most significant is the support of the Human Rights Protection Committee of the Taipei Bar Association, since Taiwan shares much of mainland China’s legal history, including the traditional reluctance to tolerate criminal defence lawyers.

Unlike their mainland counterparts, however, today’s Taiwan lawyers are permitted to provide a vigorous defence and have proven able to resist repression, thanks to autonomous bar associations, a robust civil society, free media, an independent judiciary and a democratic government accountable to the public through elections.

During the prosecution of former president Chen Shui-bian for corruption,



Taiwan’s Ministry of Justice failed in its attempt to discipline one of Chen’s defence lawyers for public statements conveying Chen’s attack on the fairness of the judicial process. Later, when the ministry proposed revisions to the Criminal Law that would impose new restrictions on defence lawyers, a furor from the legal profession and civic groups halted the proposal.

On the mainland, lawyers have been less fortunate. Imperial China never allowed the development of criminal defence lawyers. In the 20th century, on the mainland and later in Taiwan, the Chiang Kai-shek regime kept them strictly controlled. The Soviet model of government imported by China’s communists, and still a dominant influence, allows criminal lawyers limited scope. A recent important speech by China’s most powerful legal official, Zhou Yongkang (周永康), seems to indicate that the leadership has no plans to permit them a more significant role. In a long and frank

recognition of the mainland’s growing social conflicts and the importance of devising a fairer system of justice to address them, Zhou, chief of the Communist Party’s central political-legal committee and a Politburo Standing Committee member, stressed the urgency of improving the quality of police, prosecutors, judges and even village officials – but said nothing about lawyers. An uninformed reader might wonder whether criminal lawyers even exist in mainland China.

The government’s relentless repression may be turning the mainland’s criminal lawyers into an endangered species.

**Professor Jerome A. Cohen is co-director of NYU School of Law’s US-Asia Law Institute and adjunct senior fellow for Asia at the Council on Foreign Relations. Yu-Jie Chen is a Taiwan lawyer and research fellow of US-Asia Law Institute. See also [www.usasialaw.org](http://www.usasialaw.org)**