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**RURAL DISCONTENT, RULE OF LAW
AND SOCIAL UNREST IN CHINA:
IMPLICATIONS FOR U.S. POLICY**

PANEL II 10:45 – 12:00 A.M.

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CARL MINZNER: All right, I'm very honored to be able to moderate our second panel today. The first panel considered the general nature of citizen protests in China; now we're going to look at both the Chinese responses in the form of judicial reform and the courts in China, as well as the implications of social unrest for the United States.

Let me introduce our first speaker, and that will be Professor Benjamin Liebman. He is an Associate Professor of Law and the director of the Center for Chinese Legal Studies at Columbia Law School. His current research focus is on the role of media in China, as well as of the evolution of Chinese courts and the legal profession.

BEN LIEBMAN: Thanks very much, Carl, and thanks also to Carl for organizing today's events. I think it's a fascinating topic and I think Carl's done a really wonderful job of putting his finger on what's a really crucial development and issue in China that underlies a lot of different policy areas in China.

So, as Carl said, my goal today is to survey some of the most important recent developments in China's courts with a view to examining both what effect rising social instability may be having on the courts and also what roles courts may come to play in addressing the sources of rising unrest. And I'm going to focus on two questions.

First, I'm going to ask whether recent developments in China's courts suggest fundamental shifts in either the authority of the courts or their relationships with other party-state institutions. And second, I'm going to ask what explains the Chinese party-state's tolerance, and I'd argue even encouragement, of courts playing new and expanded roles and, in particular, the expanded use of courts as forums for raising rights-based grievances -- the types of claims that we've been hearing about this morning. And then after talking about these questions, I'll conclude with a few thoughts about what this may mean for governance and social stability in China more generally.

So let me first discuss some of the trends that some in China and the West suggest may show that courts are becoming more important in Chinese society and, perhaps, more authoritative. One measure sometimes used to say the courts in China are more important than in the past is the number of cases that they're handling. Courts in China are certainly handling more cases today than ever before, almost 8 million a year, as Carl mentioned in his presentation. But there are two reasons to doubt that this suggests that courts are fundamentally more important or authoritative, in particular when it comes to resolving the types of social grievances we've been talking about today.

The first is, that as Carl indicated, although the total number of cases right now is the largest it has ever been, the total number of cases handled has actually leveled off and, in some areas, even decreased over the last five to seven years. If you go back and look at the statistics from five to seven years ago, they're surprisingly similar to the total

number of cases being heard – to the statistics for the total number of cases being heard last year are.

This trend suggests that claims that China is experiencing a, “litigation explosion,” may be somewhat overstated. The decrease in caseloads, or at least the lack of increase, is of particular note, given that it has come against the backdrop of continued economic growth and loosening of state controls over individuals’ lives -- variables that have often been assumed to result in more litigation.

The second reason for being skeptical is that any rise in the number of cases may reflect a rise in grievances and disputes more generally, not a shift in the direction of greater use of the courts as opposed to other institutions. So, although at least until recently, mediation by People’s Mediation Committees has been decreasing, claims rates through the letters and visits system, commercial arbitration and labor arbitration are all increasing rapidly.

Thus, even if the courts are handling slightly more cases than five or seven years ago, and even if they’re handling more cases, which they certainly are, than they were handling 25 years ago, they’re not unique in this regard.

The number of cases in the courts is significant and I do think, to some extent, reflects conscious efforts by party-state leaders to steer more disputes into the courts. Courts are also hearing cases of greater range and complexity than in the past, which may also help explain why so many judges complain, at least when they talk to me, of being overworked, even though the total number of cases has not increased much. Actually judges always say they are busy– especially in December, as they’ve got to finish up their cases by the end of the year –

The intent to continue to reform and improve the courts is evident in the two five year reform plans issued by Supreme People’s Court over the past decade. Although I think the more recent plan, which was issued last fall, is somewhat more modest in its aims than the first one six years ago. But what I think is most notable about these plans is that they largely address what we might think of as technical issues, not ways in which the courts can increase their authority in relation to other party state-actors. Increasing the authority of the courts over other institutions is not on the agenda.

Another area where we’ve seen significant change in the courts is in the education level of judges. As of last year, more than half of all judges had university degrees. This is a very impressive accomplishment given that the figure was just six percent only a decade ago. New judges are all required to have university degrees and to pass the bar exam. The exam is actually very difficult; its passage rate is of about 10 percent a year. And older, untrained judges have been forced to retrain or to stop hearing cases.

The Supreme People’s Court is also putting significant efforts into improving the quality of court decisions, pressing lower courts to include legal reasoning as well as

accurate descriptions of facts and evidence in their decisions -- again, something that was often not done in the past.

Now, we should not overstate the immediate consequence of these changes. Many judges still do lack training in law and there are significant problems with legal education in China. Court presidents, generally the most powerful judges in individual courts, still largely lack formal legal education and continue to be primarily political appointees.

But I do think that these changes have the potential to make a difference. Better educated judges and higher quality opinions may make it easier for judges to resist external pressure by relying on legal argument. For example, judges I've interviewed say that they increasingly respond to external influence by laying out legal arguments in response to pressure from party officials, sometimes actually going so far as to give party officials who inquire about a particular case a list of outcomes that might be possible under existing law, literally saying, okay, here is what's legal; you choose what outcome you want. Now, despite these signs of progress, it's also important to remember that intervention continues and continues to be legitimate.

Another change that some in China identify -- and indeed some in the West identify -- as suggesting the courts are becoming more autonomous in China is de-politicization of the courts. And the argument here is that although courts continue to acknowledge party leadership and, of course, the overwhelming majority of judges in China continue to be party members, they've also moved toward defining their own professional roles. Hence, for example, if you look at recent court rhetoric, we see some shift in court rhetoric in more in the direction of speaking in terms of legal rights, rights protections, human rights and a little bit less emphasis on traditional party rhetoric. Increased education standards, it's also sometimes argued, may also suggest a move away from choosing judges primarily based on their political backgrounds.

But arguments that the courts are becoming somewhat less tools of the state and more autonomous actors are undermined by development over the past year. Since January, in particular, we've seen a new campaign in the courts to educate judges in "socialist rule of law theory," something that appears to be intended both to reaffirm courts' loyalty to the party and also to respond to perceived Western influence in the courts. Evidenced, for example, by explicit discussion, both by senior party officials and also senior court officials, of the need to avoid the negative influence of, "Western rule of law theory." And, this is actually partially a response to Kathryn's earlier question. This is very much of bringing the courts in line with the harmonious society campaign and rhetoric.

Now, I don't want to discount the reforms that have been undertaken at the direction of the Supreme People's Court. Some are very important, such as recently announced reforms to procedures in death penalty cases. And others, over time, may prove crucial to constructing courts that are able to apply the law fairly and consistently.

But these reforms do not reflect fundamental changes in the power or authority of China's courts.

In addition, over the past decade, China's courts have encountered significant new challenges. Let me just briefly highlight four of these trends.

The first new challenge is an increase in media pressure. The growth of commercialized media and, more recently, the internet has resulted in extensive coverage of the courts. News of cases spreads quickly and it's difficult for courts to cover up unfair or egregious cases. In many cases, the media play an extremely important role in exposing injustice or in pressuring the courts to behave fairly.

But media coverage also reinforces Communist Party oversight of the courts by encouraging party officials to intervene in cases. Judges say that there is very little they can do to resist media pressure, even when the media are wrong about the substantive law at stake. This is because the media continue to be more influential than the courts, reflecting both their traditional authoritative role as the mouthpieces and eyes and ears of the state and also their ability to represent or create populist attention. Concerns about social stability also mean that officials may intervene in cases simply because the case attracts significant attention regardless of the underlying nature of the case.

Second, courts are also coming under increasing pressure from petitioners and protesters, exactly the kind of people that both Kevin and Carl were discussing this morning. Judges say they're sometimes forced to change decisions or pay petitioners directly in order to assuage protestors, sometimes literally paying people with claims out of court budgets or even out of their pockets. In some courts, Judges are now evaluated in part based on whether their decisions generate petitions or protests without apparent attention to whether such grievances are legitimate.

The influence of protests, again, reflects concern with social stability. Fear of unrest results in pressure on courts to take steps to assuage petitioners, even when such claims lack legal merit. Terminating protests and assuaging popular opinion thus becomes more important than following legal standards.

And here I want to say that I agree with something that both Carl and Kevin suggested this morning, which is the state does not at present have any really effective mechanism for distinguishing between those claims which actually have merit and those claims that lack merit. And this is particularly true when it comes to the courts.

Third, courts continue to decide difficult cases and, in particular, those giving rise to social unrest, by not deciding them. That is, by ignoring them or by refusing to accept cases that are actually permitted under existing law.

Now, this may actually be a completely rational move by the courts. It makes complete sense from the courts' perspective. There's little to gain for the courts by accepting and deciding sensitive cases involving issues such as land expropriation, where

they don't have the final say and they may simply risk angering parties to the case. And one of the things the judges say is, you know, if we handle these cases, all we're going to do is get the protesters who are now going over there coming over here, so why should we deal with these cases? We'd rather not deal with it and let the protesters go somewhere else. But by refusing such cases, courts again appear to be sending a message that they lack authority relative to other state actors and that they want to avoid difficult or potentially sensitive cases.

And the fourth new challenge facing the courts is that we're seeing rising inequality amongst the courts. Major cities have well funded courts with many new judges having graduate degrees, but in the interior, the lack of judges is today a major problem. Put quite simply: those who can pass the bar exam and therefore qualify to be judges simply don't want to remain in rural county courts.

And the risk here, which I think is a significant one, is that a lack of judges in the interior will reinforce popular beliefs that courts are not effective forums for vindicating individual rights and in so doing, will encourage individuals to pursue their grievances through other channels. Inequalities in the courts may also send the message that courts are not applying the law consistently or fairly.

So the common thread linking these four trends, or these four new challenges, is that there are limits to what the courts themselves can do, given the institutional framework in which they operate. Many of these and other problems, including such things as corruption or difficulty in enforcing court decisions – these are both problems that continue to be very major – are the products of courts' close reliance on local governments.

Top-down court reform is not resulting in fundamental changes to the authority of China's courts and rising concern with social unrest is not resulting in pressure to make the courts more powerful. But that doesn't mean there's no significant institutional development. Some of the most important developments are coming from the ground up, from lower courts, not at the behest of the Supreme People's Court. Let me highlight quickly three such trends that I think are particularly noteworthy.

First, lower courts, whether in cities or in rural areas, increasingly look horizontally to other lower courts for guidance when they confront new or difficult legal questions, generally by going online to consult decisions or media reports from elsewhere. This contrasts with past practice, when courts confronting a novel or difficult question had little option but to consult their superiors – and just to give an example, I mean, if you speak to judges, they say, you know, in the past if we had a hard case, we didn't know how to deal with the case; all we could do was pick up the phone and call the appellate court and say, what do we do in this case?

And today, they go to Google – actually not Google, but Baidu -- and they do run a search and they say, look, there are examples out there I can look to. In cases, they will not just look domestically, but in fact in some cases, in particular intellectual property

cases, judges say they'll actually go online now and look overseas to see how similar legal issues are handled elsewhere. This form of what I like to call judicial networking and the development of informal patterns of precedent in the Chinese judicial system may lead to more consistent application of the law, which remains a major problem. It may also encourage the development of professional identity among judges and lead to judges who are more willing and able to resist external pressure. It may also encourage innovation.

And, indeed, the second interesting trend I want to highlight is that some local courts are engaging in significant innovation – in some cases, not just filling the gaps of unclear laws, but also appearing to challenge existing norms that govern court behavior.

Now, most innovation by courts is done in cases where outcomes are actually consistent with the interests of powerful parties. Nevertheless, these cases do suggest that there may be increasing space for ground-up evolution of the courts, with courts' roles increasingly being defined both by lower courts and by litigants use the courts.

The third interesting trend – and I think slightly more positive trend – is that we've also seen a widening range of what me might think of as rights-based grievances or public grievances being brought into China's courts. Hence, we see such things like class actions, public interest litigation on topics such as environmental rights and women's rights, with some lawyers in China now very much speaking the language of American-style impact litigation, administrative litigation, even some constitutional claims being filed in court.

Many such claims are unsuccessful, unresolved or go unenforced. And when such claims succeed, it's generally not because the courts actually issue a decision that's then enforced or followed, it's, rather, because they attract media, public, and hence leadership attention. But the fact that these claims are actually being brought at all is striking. The combination of class actions, impact litigation, contingency fees and administrative litigation, is rare in democratic systems, much less in authoritarian ones.

Thus, courts do appear to be undertaking new roles or in some cases are being pushed into such new roles. One result is that although court power is not necessarily growing, courts are increasingly coming into conflict with other state actors, the media, procuratorates, People's Congresses and administrative departments.

So let me now turn back to the two questions I raised at the start. First, I think my discussion makes clear my response to my first question, which is, I don't think we're seeing fundamental changes to the authority of the courts. This is not surprising. Increasing court autonomy or authority is not something that the courts can do on their own.

But the answer to my second question – why have courts been allowed to develop even limited new roles – is, I think, less apparent. One common explanation is that courts are necessary for economic development in attracting foreign investment.

Although this may be a factor, and certainly going forward I think it's going to be increasingly important, China's economic development has been remarkable for progressing despite not having strong legal institutions. So let me suggest three alternative explanations.

First, courts are one of many state institutions serving as a steam valve on a widening range of complaints. Permitting complaints to be raised, whether through class actions, administrative litigation, or just ordinary cases is better than having them not raised, or raised on the streets. Courts are certainly not unique in the role, but by developing greater capacity to resolve such claims, they're serving state interests in social stability and legitimacy.

But concerns with social stability also explain some of the inconsistency of court reform – why, for example, China's leaders had emphasized the need to boost the role of courts while at the same time tolerating and encouraging a range of parties interfering in the courts.

And my second explanation is that the roles the Chinese courts are playing also reflect the development of institutionalization and institutional competition in China. Political scientists have noted the importance of institutionalization as a means of explaining the legitimacy and resilience of the Chinese regimes since Tiananmen Square. To this I'd add that the rise of institutional competition appears to be a means of furthering regime legitimacy.

The party-state's goal, I think, is to encourage a range of state actors to play oversight roles over each other, including the courts, the procuratorates, the media, People's Congresses and party discipline commissions -- just to name some of them. Thus greater transparency is encouraged, but within the limits of party oversight and primarily by official actors. This controlled transparency allows wrongdoing to be addressed, without fostering non-state checks on official action. Put differently, allowing a widening range of grievances to be brought by individuals and organizations may also be an effective means of asserting state control.

There is, however, also a third possible explanation for these developments and that's that ground up development of the courts may also be a source of judicial power, or that the ability of judges to network horizontally may also, over time, lead to greater authority and autonomy of the courts. Put differently, this trajectory of court development may not be entirely determined or controlled by central authorities.

So, what does this mean for how we understand rising social instability in China and for how we, outside of China, understand the evolution of the Chinese legal system? Four quick points in conclusion.

First, I think there's a risk in recent developments for the Chinese government. The state has actually done a very good job of boosting knowledge of law and raising awareness of legal rights. But there's a risk that they've fostered expectations with

regard to the legal system that can not be met, at least not at present. This may result in greater frustration with the system and may encourage those with grievances to pursue their claims outside of the formal system, both through other state mechanisms, but also on the streets.

Second, I think those looking – both in China and in the U.S. – those looking to China’s courts to agents of political change are likely to be disappointed. Despite significant improvements, courts remain largely reactive institutions. In the short term, at least, the question will continue to be what courts can do to further develop their abilities to serve as neutral and efficient decision makers in routine private cases.

Third, I think the central question remains whether China’s courts can develop into fair adjudicators of individual rights and checks on state action without inevitably being seen as challenging the political system. I think one of the reasons courts have been allowed to do what they’ve done so far is they’re simply not seen as a political threat at all to central leadership. Put differently, can technically competent and fair courts be established in a system where courts remain subservient to the party or will the development of a more professionalized judiciary inevitably to courts that challenge party authority?

I think we don’t yet have a clear answer to this question. The first two explanations I gave for why courts may want and tolerate a greater role for the courts – that is, curbing unrest and fostering institutional competition – suggest that it may in the state’s interest to develop competent, fair courts. But the third explanation – that courts themselves may be developing, that ground-up development of the courts may itself be a source of judicial power – I think may cut the other way. As courts continue to develop horizontally, and judges develop professional identities as judges, we may also see greater aspirations from the courts to assume increased roles and thus greater conflicts with other party state institutions.

Finally, I think the most important recent development involving China’s courts is that their roles are contested. Their positions are no longer defined by top-down pronouncements and we’re seeing a wide-ranging debate about the proper role of courts within China. Over time, expanding debate about the proper role of courts may itself be more important than the details of particular reforms.

So, thank you and I look forward to our discussion.

(Applause.)

MR. MINZNER: And thank you, Ben.

Our second panelist for today is Dr. Scot Tanner, who joined the RAND Corporation as a senior political scientist in September 2003. Before that he served for 13 years as professor of East Asian politics at Western Michigan University. He’s

written extensively on a range of topics on Chinese and East Asian politics, including political unrest in China as well as China's internal security forces.

So, please welcome Dr. Scot Tanner.

MURRAY SCOT TANNER: Let me add my voice to the other panelists today in thanking Carl very much for bringing these people together and I would also echo what Kevin O'Brien said earlier, that if I had an opportunity to hear a group of people talk about these issues of unrest in China, the three other panelists here are exactly the three people who I would most want to hear discuss this issue. I only regret that your co-author Li Lianjiang can't be on hand to join us today.

I've been asked to go beyond the domestic politics of this and look at the China's unrest and its impact on China's international behavior and on U.S.-China relations. In other words, aside from any interest we might have in what goes on in China generally, why should we, in the United States, care about unrest in China?

The fact is that a lot of people in the United States, and increasingly in this town, do care about this and, to the extent that I'm at all identified as someone who follows this topic, I get a heck of a lot of questions in this town, particularly from government people, about issues of unrest and governance problems in China. And these are driven, in part, by a strong conviction, and I believe it's a correct one, that U.S. interests are going to be powerfully affected by social instability in China and, more importantly, that U.S. interests are going to be powerfully affected by how China responds to instability in China and, even more important than that, they're going to be affected by how the United States and the rest of the world respond to China's response to unrest in China.

This question really has to be grappled with and it's not being confronted very much in the publications that are being done on this topic. But despite its importance, this question is extremely hard to answer because it requires confronting a number of things. First of all, it requires confronting our lack of solid empirical evidence about the trends in unrest in China – notwithstanding the fact that, you know, we have gotten a fair number of statistics from China about this and those who've studied other countries know that actually getting the internal police statistics on unrest in an authoritarian regime is darn near unprecedented. The Soviet Union's been gone for nigh on 15 full years now and we don't have the old KGB stats on unrest. Those archives haven't been opened yet, that I'm aware of.

Nevertheless, we don't know enough about the trends to make generalizations about a number of issues related to China's international behavior and how it's affected by unrest. We don't know enough about how the party leadership perceives the impact of unrest on its interests or on how China's relationships with other countries are affected by this.

Furthermore, addressing this question of the impact of unrest on China's international behavior forces us to confront three or four of the most enduringly difficult

questions in the study of comparative politics, international politics and foreign policy. To wit: under what circumstances does social unrest threaten or not threaten the stability of an authoritarian regime? Is there any systematic impact of domestic, social or regime instability on the foreign policy of a country and, if so, what is it? The field of international relations over 50 years has given us very little insight on that very important question.

And, finally, what are the U.S. stakes in China's domestic stability and instability and what, if anything, can the U.S. do to effectively respond to instability or repression of instability by China? Can we effect what China does? These are three powerful questions about which we know very little and we have to address them to look at this broader topic.

Unfortunately, a number of the most widely expressed viewpoints about the impact of Chinese unrest on its foreign policy that are being argued today in the media and, particularly, in the policy community in this town are, I think, rather badly oversimplified, draw on some very oversimplified and deductivist arguments about international relations and countries' behavior. And they don't adequately take account of a very complex picture that we see in how China deals with unrest and how that affects its foreign policy.

About the most I can hope to do today is to raise some of these issues and to try to identify and challenge what I consider to be some of the more oversimplified and deductivist arguments. I'm going to briefly touch on a number of issues.

First of all, how does unrest affect China's international strategy and, in particular, its possibility for military aggressiveness? Related to that, how does it affect China's relations with Taiwan or with its other border countries such as North Korea or Central Asia? What is the impact, if any, of unrest on China's military modernization? How does unrest affect China's international economic relations or its efforts to promote, or its willingness to promote, political and legal reforms? And finally, what does all of this mean for U.S. engagement of China, particularly China's legal system and its law enforcement system?

As I've argued in a number of articles and reports, instability, or China's fear of it more specifically, has an impact on China's international affairs that are something like a systemic illness that has few obvious outward symptoms. And for Beijing, it complicates and raises the stakes behind an enormous array of issues.

So turning to a couple of those, very briefly, first of all, one of the ones that has gotten the most attention has been the question of whether or not unrest, or fear of unrest, is going to make China more aggressive internationally, especially vis-à-vis Taiwan or Japan, or is possible that unrest would make China more risk averse?

Behind a lot of this is the so-called diversionary war hypothesis. A number of Western observers have expressed a concern that a Chinese Communist leadership that

faced severe unrest would try to divert attention from its domestic instability and its declining legitimacy by lashing out, by trying to mobilize nationalism and unity, by fomenting crises or by overreacting to disputes with its neighbors, or even risking more bellicose actions. It's possible to imagine an almost limitless number of hypothetical scenarios through which a weakened China might choose to risk a more aggressive foreign policy and some of these are much more dangerous to U.S. interests than others.

I think the most dangerous hypothetical that a number of people have raised is the possibility that Beijing might gamble on trying to increase its legitimacy or rescue its challenged legitimacy by risking a crisis with Taiwan or with another country, perhaps Japan, and the result of this might end up being an inadvertent military conflict. The analogies that always trotted out are either late imperial Russia or late authoritarian Argentina and its invasion of the Falklands.

One of the things that's striking about this assumption that an unstable China might turn out to be more aggressive is the astonishing number of people who, in the same breath, will also argue that a China that is becoming militarily more powerful, more authoritarian, getting better control over society, will also be a China that will be more aggressive toward the outside world. So, a weak China will become more desperate and aggressive. A stronger China will become more assertive and aggressive. And it's really amazing the number of people you can read who will argue both within about a paragraph and a half of each other.

But a review of Beijing's history suggests that it's actually had a very mixed record of resorting to, what we might call, diversionary crises or wars. We can, without question, point to one or two reasonably clear examples of Beijing using military crises to serve domestic ends. And clearly, the most certain example of that, given the evidence we have, is probably the March 1969 border clashes with the Soviet Union, which was launched among the violent leadership struggles of China's Cultural Revolution. Beijing clearly instigated this crisis and despite the serious gaps in our knowledge of this field, the research by our late colleague Tom Robinson and by Lyle Goldstein and others makes it relatively clear that either Mao or his defense minister, Lin Biao, initiated the crises, in part to strengthen their hand against their domestic rivals.

But, looking elsewhere in China's post '49 history, we see much less threatening versions of this. Tom Christiansen, for example, has argued that in the late '50s China used the crisis over the Taiwan straits to spur its domestic unity, to repress dissent and to mobilize patriotic support for subsequent Great Leap Forward economic campaigns. But, Tom's books have not tried to make the point that in response to a worry about unrest, China decided that it needed to lash out against one of its neighbors.

Systematic efforts to look at the evidence of this, such as those by Iain Johnston, who've looked at the correlation between China's military disputes and domestic instability from 1949 to 1992, find that, in fact, during times of domestic turmoil, China has been much less likely to get involved in military disputes, not more.

Nevertheless, we need to do a great deal more research about what the relationship between instability and possible international aggression might be with regard to China. We need to think about this more seriously and systematically than the sort of off-the-cuff diversionary war hypotheses that have been put forward. And, we need to start putting down some serious indicators that we might wish to look for to make us recognize if China were becoming more aggressive. My bottom line, though, is that the historical evidence on this does not suggest a China that largely tends to get more hostile when it gets more unstable.

A more plausible scenario than this, however, is might be one in which a China that feels its stability is threatened and its legitimacy relies exclusively on nationalism, starts to feel that it has less room for diplomatic maneuver, that is has less ability to make concessions to other countries that might be interpreted by some within its population as concessions on nationalism. The domestic consequences of a failure to stand up for Chinese nationalism could prove fatal for such a regime.

For example, if Taiwan were to take advantage of mainland instability or weakness to further press its claim to independence, Beijing might feel that it were under something like a life or death pressure to respond. Many Chinese foreign affairs experts I've spoken to privately claim that they're government sincerely fears that it could face massive popular unrest or even violent overthrow if permitted Taiwan to establish de jure independence.

But this nevertheless posits a Chinese government that is extremely risk acceptant. That would be willing to undertake military maneuvers in face of the fact that, were it to fail in trying to retake Taiwan, that in itself would surely spell the end of the Chinese Communist regime. And, I have yet to see any evidence that this level of risk acceptance is present within the leadership.

A related question concerns how China handles unrest that is driven by domestic nationalism. Does China feel compelled – what's that going to say? That's going to say five minutes. Okay. I'll move on. I was going to raise the issue of how China has handled unrest related to nationalism recently.

A number of people have argued that with regard to the spring 2005 anti-Japanese protests, that this demonstrated China's ability to smoothly control and close down and, indeed, some literally argued, even stage managed nationalist protests when it could advantage or disadvantage China's key international relations. Frankly, just in a quick sentence, I disagree with that viewpoint. I don't take that interpretation of the spring of 2005. I frankly think that China got lucky in this regard. I think China got lucky on the timing of Japan's willingness to publicly restate its past World War II apologies right on the eve of what was clearly going to be a third serious weekend of protest, and the fact that Japan was willing to do that when it did, allowed China to move, to slow down and put a lid on protest without looking like it was caving into or defending unrepentant Japanese nationalism.

Fear of unrest, much more clearly, has added a strong element of caution to China's relations with countries along its border, particularly ones that are along borders that are prone to protest. One clear example of this was what I would regard as China's overreaction to instability in the spring of 2005 in Kyrgyzstan and Uzbekistan; in particular, the overthrow of the Kyrgyz government.

A number of us in the spring of 2005 were approached Chinese international relations experts who asked us quite frankly whether the Kyrgyz revolt was somehow related to what they thought was a shift in U.S. policy away from counter-terrorism and toward the promotion of democracy. In that regard, I think they overstated the content of President Bush's second inaugural address. And, there was clear worry that the U.S. was somehow behind this and that this was somehow focused on China.

A more powerful example of how unrest has shaped China's caution with its border regions has been its handling of the North Korean nuclear dispute. China's northeastern three provinces have been, by far, the ones that have the highest levels of unrest in the country and particularly Liaoning. From the late 1990's the last couple of years, China has also become increasingly fearful that instability and social problems in North Korea could interact with and exacerbate the problems in China's own northwestern region, not just instability, but drug running, counterfeiting, refugee flows, problems of ethnic nationalism.

And this fact means that, in the end, China's preference ordering about the outcome of how to handle North Korea and the United States' preference ordering are just not the same. There's no disputing that China would much prefer not to see a North Korea armed with nuclear weapons. This terrifies any Chinese analyst I've ever spoke with about that. They're not even convinced that the North Koreans wouldn't use the weapons against them some day, or at least threaten to do so. Nevertheless, the fear of what instability could mean for exacerbating instability in China's northeast has created serious problems for them and has simply made them feel very fearful of trying to push North Korea too far and pressure them too much.

How would unrest or fear of unrest affect China's engagement of the international economy? A number of issues, but in particular, I think what we have to say is that, on a wide variety of issues, whether it's currency exchange, whether it's banking reform, whether it's implementation of WTO agreements or intellectual property agreements, China's fear of unrest imposes a negotiating asymmetry upon U.S.-China trade and economic relations. Issues that are economic logrolling and horse trading for us are intimately related to maintaining employment keeping unrest down, as far as China is concerned. And so I think that creates a very serious problem in trying to get China to deal with a number of its – getting China to live up to a number of its commitments.

China has been very – China's polices have paid particular attention to which industries are most likely to be hurt by WTO accession and tried to anticipate where they were going to face further unrest as a result.

China's fear of unrest has also greatly undermined its willingness to undertake, as a number of panelists have pointed out here, needed economic, political and governance reforms, and these in turn affect a number of U.S. interests. The United States would benefit greatly from China increasing the transparency of its government, improving rule by law, stemming corruption, trying to improve its ability to live up to the contracts it signs with foreigners. Nevertheless, fear of unrest makes it less likely that they're going to undertake this and it makes it, therefore, difficult for the United States to be certain the degree to which China's going to be able to live up to these commitments.

Finally, the U.S. now needs to think about how its going to respond in the event that of future Chinese violent repression of unrest, large scale violent – and how to manage the unavoidable – and also, related to that, how to manage the unavoidable dilemmas created by the increase in law enforcement ties between the United States and China.

On the first point, it's increasingly clear that there's a very serious disconnect and an implementation problem between the much more sophisticated and restrained policing strategies for dealing with unrest that have been put forward by the Ministry of Public Security over the last six to seven years. And, on the other hand, the very brutal tactics that have been carried out by a number of local party leaders and security officials who are supposed to be trying to deal with unrest in more sophisticated ways. The Dongzhou killings of last year, the rise in the use of thugs to deal with protesters are obvious examples.

But as Kevin has correctly pointed out, there is a growing assertiveness and willingness to resist in Chinese society that has been just fascinatingly and dramatically underscored in recent days by the kidnappings of officials in Dongzhou, where these killings were committed last year. These people don't seem to be taking the hint from the government.

I think it is only prudent for us to conclude that angry popular responses to unrest – angry popular responses, pardon me, to repression or the ham handed misuse of force by China's police will at some point in the future produce another widespread revolt and another possible tragedy, though almost certainly something very different from Tiananmen. We have to start thinking now about how we might respond to that.

And a final related issue is that we have a rising law enforcement cooperation with China, something that we cannot avoid given the interrelationships between our countries, the need to cooperate on drug abuse, on organized crime, on counterterrorism, a wide variety of issues. Many of you may have seen the report on Lou Dobbs' program about a week or so ago about this.

Inevitably, this is going to create potentially difficult problems for the United States if and when China uses these forces in a more violent way. And the United States has not undertaken a serious public debate on how this policy of law enforcement

cooperation needs to be carried out. We need to do that. We need to do it openly and not in some ad hoc fashion.

Thank you very much for your time.

(Applause.)

MR. MINZNER: Thanks very much both to Ben and to Scot, and I would just like to open the floor up to questions. Could you please identify yourself, state your affiliation, and then ask your question.

Q: Yes, I'm Tom Reckford with the World Affairs Council and I have a question for Scot. I wonder if you could elaborate a bit on those demonstrations and protests against the Japanese government that happened in 2005. What really caused it? How much of the protests were the result of the government decisions in China? And would you expect further protests of this kind, say, if there was a collision between a Chinese ship and a Japanese ship in the next year or two?

MR. TANNER: Well, I think the first thing here is that a note of modesty is in order. Anybody who has tried to get to the bottom of how those protests began has discovered that this is an extraordinarily complicated case – extraordinarily complicated case.

I was personally very impressed by the strong organizing role that seemed to be played by people attached to this large number of, oh, World War II victims-related think tanks in places like Nanjing – you know, not quite civil society; groups that are nevertheless affiliated with the government but seem to be able to play an autonomous and active role in promoting these types of protests.

But exactly what the relationship was among organizers, among street-level protesters who followed them, among the police is very, very difficult to say. I just remember being stunned to discover one Friday evening, as I was reading my e-mail, that word was already out on the internet that there was going to be a protest in Hidyian (ph) in about four hours in Beijing. And sitting there at my computer in Rockville, I knew about it. And it went ahead anyway, and when the protesters got there, there were police there to essentially manage where they went, control a little bit of what they did, but not to stop them from carrying it out. And this was, formally at least, an illegal protest. That is a striking thing.

So it shows the difficulty of trying to manage these relationships among local lower-level government officials, among protesters, among the center. To suggest that Beijing can tightly control this or can stage-manage it kind of defies the evidence that's available and the possibility of this getting out of control I think is very dangerous.

MR. MINZNER: Let me collect one or two different questions.

Q: My name is Dr. Pi (ph). I am from Bridging Nations. I have a question regarding the party structure.

Like you are saying, there is a dissent likely to be and it exists in the general population. Can you give us some idea exactly what is happening inside the party, because that is very classically how the major changes that happen in the communist system is what happens inside the party system. So are there a lot of factions? Is some kind of power struggle going on? Is there major differences between the leaders? Some insight will be useful.

MR. MINZNER: Let me take one or two more questions. Perhaps over here on this side?

Q: Thank you. My name is Maryanne Kivlehan from the CNA Corporation. First, I wanted to thank all of the presenters for some excellent and insightful presentations. I really have learned a lot. And thank you to all who arranged this panel.

This is truly an important issue and one that needs to be followed more carefully. And my question is, for those of us seeking to do so, what sources are there out there, either in Chinese or in English, that you've found to be especially useful for tracking social unrest in China?

MR. MINZNER: Okay. Maybe one more question here. Somebody over – yes?

Q: Dan Tobin with the Defense Department. I want to ask a question about statistics, and that is, there was recently a Washington Post story which a bunch probably saw that the government was claiming that in first nine months of this year, that the number of protests was down to 17,900, of which they claim is a 22.1 percent drop from the previous year. That doesn't even seem to match up with the 2004 statistics because it would have had to drop drastically in 2005 to get to that point.

So, I'm just kind of interested in who do you think is – what's sort of driving the release of these statistics? How accurate does the Chinese government think they are? Is it that local guys are fudging them and that's going all the way up? Just kind of getting at what's motivating the release of these numbers and where they're coming from and what's the motivation for releasing them?

MR. MINZNER: All right, we'll let our panelists answer.

MR. LIEBMAN: So, let me start with the third one first– and I think Scot and Carl may actually want to come on to this as well.

I mean, the statistics are a mess, as Carl said this morning. They're not that reliable at all. When they say they're going to reduce the number of protests, guess what? The statistics are going to show that.

I don't think Carl mentioned this, but didn't they also redefine group disturbance? They said things like, well, a mass protest consists of a certain number of people. I think they actually redefined the number of people required to constitute a mass protest. If you increase the number required, then of course it's going to decrease the number of incidents.

In the courts you see this very clearly where, the number of letters and visits to the courts – that is, protest petitions filed not through cases but actually just to the courts – have gone down by about a half since three years ago, which is also the year when the Supreme People's Court said, we need to do a better job of reducing complaints about the courts. And if you talk to judges, they're very open about this. I mean, they would say things like, well, you know, in the past we used to count a letter – in the past we used to count anyone who came with a complaint as a complaint. Now we only count it count it as a complaint if the case has already been adjudicated and completed. So if it's a complaint about on ongoing case, we don't count it as a complaint.

So, yes, there are all kinds of ways of fudging the statistics. And the interesting question we all write about is – you know, we always say they're all problematic, but what can we do about it? I think you certainly have to have skepticism, but I think there also are some trends we can see – for example, the litigation numbers, which I think do reflect a trend which is correlated when you actually do interviews on the ground. But certainly you're right to be skeptical about this data, and certainly the policy directives coming out of the center can have a direct effect on what the numbers are. If the center wants the numbers to go down, they're going to go down.

On the second question: sources. I think that the great challenge right now is that there's almost too much information out there, and if you spent your life trying to read every legal report about China, it's a huge problem. There's a huge amount of information out there. And it's not just that – I would say Chinese media, but not just media; I mean, increasing the amount of stuff that gets written about in blogs or in, discussion groups and emailed around. I must get – I don't even know where these come from – 10 or 15 emails a day from people in China about various grievances and things like that. It's a huge amount.

So, there is quite a lot of information out there, but I still think that, actually, on the ground – sort of the research that Kevin's doing, talking to people on the ground – that type of stuff still is extremely important because often –, obviously, the media in China is only going report part of what's going on.

And then, third – and maybe I should turn to the political scientist for the first question, which is, whether we're seeing factions or divisions within the party itself and is there disagreement? I don't know if, Scot, you want to speak to that one or to other ones?

MR. TANNER: Well, taking on that question first, no, we haven't yet seen the sorts of signs of serious public division on the handling of protests today that, for example, were much more common in the middle to late 1980s.

That said, there's something I have been seeing a bit lately that I think is interesting and rather telling about what could happen with protest and leadership politics. In the last several years it's become increasingly common for leaders in particular issue areas or leaders in particular localities to point to protest in their area as a sign that some area, some issue, some topic that concerns them is not getting nearly attention by the central government. Let me give you a couple of examples.

One of the major published sources – Maryanne, this is as much as you're going to get on the issue of sources in public. (Chuckles.) One of the interesting major issues, other than police literature, on unrest recently has been publications of the national and provincial branches of the All-China Federation of Trade Unions. Why? Because trade union leaders are frequently invoking the high level of labor protest in their area as proof that the central government is not paying enough attention to workers' needs.

It's almost like they're using that to lobby with. Help me out with the name here, those of you who follow these things. The deputy director of the state environmental protection agency who –

MS. : (Off mike.)

MR. TANNER: Yeah. Okay. He recently spoke in some detail about the rise in environmental-related protest, and he gave some statistics on how fast it's going up and all that. And I interpreted that as him making a very subtle form of little threat to the central leadership: If you don't deal with the issues that are concerned to my bureaucracy, look what could happen. That's a long cry from the type of dispute over how to handle protesters that brought down Hu Yaobang or brought down Zhao Ziyang, but it beginning to show senior leaders playing games with protests as forms of political leverage on issues that are of concern to them. And I find that an intriguing sign of how the politics of this could play out at the center.

Just very briefly responding to that: In fact, a number of provinces and central officials have been claiming that in 2005, 2006 protests came down often by really dramatic amounts in some areas. I think the reason a lot of people missed this is because of what I have now started calling the statistic that will not die, which is the 87,000 figure that a lot of people misread as being the number of mass incidents – (Chinese phrase) – in 2005. It wasn't. Carl nailed it, which makes about three people I know who have publicly gotten this right. Carl nailed it in his preparatory remarks.

The available information suggests that the officially reported unrest figures came down quite dramatically in 2005 and again in 2006. And, you know, do I believe that that really reflects what's going on? I'll simply say this: Provincial leaders and security officials are not acting like people who have just pulled off a 75-percent decrease in

unrest, which should be cause for celebration and optimism about their ability to control social order. I'm not getting that optimism from them, so I think you may want to put those two-year statistics in the same category with the dramatic downturn in crime that occurred in the first year and a half of any Stern Blows anti-crime campaign.

MR. MINZNER: All right. Take a few more questions. Over here.

Q: I'm Dennis Halpin from International Relations. We were at a staff delegation out in Oumchi (ph) in May, and while we were they picked and beat up Rabia Kadir's (ph) children I guess by Casablanca. They thought, you know, violence would impress the Americans. But my question is, when you're out there – we had a shorter trip; we had to cancel our Kashgar part because of what happened – but you hear all this about Islamic radicalism in Central Asia – I mean, from the local Chinese and the Chinese in Beijing you hear about terrorism, you hear about drug running. So, I mean, what percent do you think that is a real concern and what percent is this a smokescreen?

And then, the second part of that is how able have the Chinese been able to use September 11th and the war on terrorism? I mean, we declared that – was it East Turkistan Islamic Movement – is it ETIM? Was that what it was called? After 9/11, we declared that Uighur group a terrorist group, which made the Chinese government very happy. And how much are they playing Washington like a fiddle on these issues of internal unrest in their west Xinjiang Province?

MR. MINZNER: Let's take one or two more questions here. Bert?

Q: Thanks. Ben, I'm interested in the legal development there that – and I guess that there's a paper by Frank Upham at NYU on the dean of the Beijing Law School's analysis of rural law, that law as it's written and codified so far, a raise may be incapable of dealing with the complexity of forces about what really is fair in that society. And so that it's hard just to come in and say, well, a legal system's expansion by – with its reliance on words and meanings of words and their interpretation by other courts, may be either too advanced or, sort of, too narrow for the kinds of problems of dispute resolution that the Chinese face. I'd be very interested to hear what you think about line of thinking.

MR. MINZNER: Let me see if there's one more question. Is there anybody else that I've missed who – oh, in the back there?

Q: Thanks. Natalie Lichtenstein. I'm a lawyer with the World Bank and I'll follow up on Bert's question.

Given what someone – I think it was Kevin – was talking about, this sort of heaven is high and far away theory that there's even only one public security official maybe in the village or at the township level, I'm interested in the question of, from the bottom up, an access to justice. Even if the courts were functioning perfectly – which they're not and they never do in any country – how far down the system does the court

system really go? I mean, is the county level the lowest level? What's the realistic relationship between the villagers who you're talking about in terms of social protest and the court system, however far away it might be? And what are your views, if you want to share any of them, on the institutions that are in there instead?

MR. MINZNER: Okay, let's let our panelists answer those. Do you want to go first?

MR. TANNER: First of all, Dennis, thanks for joining us today.

Based on the limited number of sources I have access to regarding this, yes, sure, China redefined a good deal of independence or pro-autonomy behavior as terrorism, almost certainly for political purposes. I think one the best indicators I ever ran across was about two, three years after 9/11 I went back and looked through the tables of contents of an enormous number of police journals in China. And in the three, four years leading up to 9/11 I think I could count on my right hand the number of articles about the threat of terrorism in Chinese society.

It was very clearly just a couple of months after 9/11 that Konbu Chui (ph) began to appear in a lot of these articles and began being called by that name. And then, of course, they linked it together, as they always do, with two other things: with extremism and Konbu Chui, Ji Duanjui (ph), Funlyet (ph) separatism. The three are always treated as one unit for rhetorical purposes, which is clearly an effort to treat efforts of greater autonomy or independence as intrinsically violent. And clearly, that was part of it.

That said, yeah, absolutely, China does face some genuine problems in this regard. In 1990 – was it six? – a bus blew up in Shidan (ph) in Beijing. That, I think, is terrorism by any other name and has to be recognized as such. But, have the Chinese tried to take advantage of this for our purposes since 9/11? Yes, of course.

MR. LIEBMAN: I could spend a semester answering your question. I'm smiling because I actually about two weeks ago had dinner with professors Upham and Zhu Suli and although they have clashed fiercely in writing, they had never met each other. So my role was to bring them together and to fight it out at the dinner table.

But just to go back, I mean, to flesh out the argument – Zhu Suli, the dean of – Peking University law School's argument is two-fold. One: law, can't really give people what they want. You know, they want an apology going back to – it will be the second time that movie Qiu Ju is mentioned today. The law can't give them what they want. They want face. They want an apology. But also, second: the language of this book, "Sending Law to the Countryside," is that these formal legal institutions don't work. If you take a Beijing lawyer and send them to the countryside, they won't have a clue what to do. And so I guess I would say I agree with part two but maybe not part one.

It's very controversial in China. Many in China have fiercely criticized Zhu Suli, not so much for saying, , don't blindly follow Western law – many people would agree with that – but for saying, you're being a little bit condescending towards ordinary Chinese people's ability to recognize and understand law.

And I think one of the most interesting developments in the Chinese legal system – it goes back to something that I mentioned in my remarks – is that I think that actually the central party seems actually perhaps to be a bit surprised by how successful they have been in educating people about law, and that these ordinary people who we might think don't understand law and don't actually really want what law can give them, actually are turning into very adept users of formal legal argument and legal language. The number of cases in which people, self-taught, use the formal legal arguments to actually support their claims is huge. And Kevin mentioned this this morning as well.

So that I actually think that in some cases, they've created these legal structures and, in fact, people are doing a pretty good job of learning about them and using them. And, yes, there are cases in which law can't give people what they want and, in fact, a lot of the social protest about the courts really does go to cases exactly along these lines. Cases in which – just to give an example of a case I've heard about recently in China – the classic example of the type of thing that results in social protest – very simple case. A traffic accident: plaintiff sues defendant; defendant loses, plaintiff wins. Defendant has no money and absconds so the person starts lying down in front of the party secretary's car every day saying, listen, I won an award of 3,000 renminbi; the court didn't give me any money, and just protest and protest and protest and escalates, and finally the party secretary calls up the court and says, just pay them – and the court pays them.

And so this is part of that. And the courts', I think, response to that argument would be, the problem is we need the political people to back us up to explain why, even when you have a decision, it may actually not be our fault that you're not getting paid.

So, I think one the challenges for the courts right now is actually really doing a better job of both explaining why the law may lead to unjust outcomes in some cases, but also getting political backing to support their decisions. They don't have number two right now, which is what leads to some of the social protests.

On the personnel side, though – and this ties into Natalie's question – I actually agree with Zhu Suli. To some degree, the central authorities, and particularly the Ministry of Justice, have perhaps over-relied on Western models here, and the classic example would be legal aid, where they've really now tried to move – they seem to believe that what they really need are more and more lawyers going into the countryside, and I actually think some of the indigenous institutions, some of the para-professionals who are already there, may be much better equipped to deal with some of the local problems than are lawyers coming in from Beijing. Now, in some cases it actually is quite useful to have lawyers from outside. And this is something else Zhu Suli has said, and I think he's right about it.

So just quickly on Natalie's point: I actually think that courts do reach pretty far down now. That is, if you look at – I've just started project looking at ordinary personal injury cases in one rural county court in China. And if you look at it, I mean, a lot of sort of day to day ordinary grievances -- , traffic accidents are the best example, but workplace stuff, neighborly disputes – I mean, a lot of this is actually winding its way into courts. The state's not always happy about it. I mean, they're actually trying now to sort of emphasize mediation and say, you don't have to go to court; you can go to the mediation committees.

But I think for a lot of people who feel they have suffered wrong in China, it's not a question of choosing the courts as opposed to something else. As Kevin said, they pursue everything at once if they've been aggrieved and they'll pursue their claims through many, many different institutions.

And just a final point on this is actually we've seen an interesting trend in the courts on this. I mean, there was a period in the '80s and '90s in which they established paichu fating – in effect what are called people's tribunals, which are technically branches of the county courts – county courts are the lowest level of courts – out in the countryside. And then in the late '90s, they said, well, we don't need these anymore. You know, we've got roads. We've got better development. We're going to get rid of them. And now they've started reopening them again. We need to reach out again to rural areas, I think in part to try and defuse some of the protest we've been hearing about today.

MR. MINZNER: All right, I think we're going to have to stop here for today, but thanks. I want to thank all of our panelists, as well as our audience, for these very interesting questions and answers – quite appreciated.

(End of session.)