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## JUDICIAL PSYCHIATRY IN CHINA AND ITS POLITICAL ABUSES

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In the Soviet Union today, whoever takes a proletarian standpoint, upholds Marxism-Leninism, and dares to speak out and resist is...arrested and imprisoned, or declared 'mentally ill' and thrown into 'lunatic asylums.'

— People's Daily, 1964<sup>1</sup>

The content of Zhu's "theories" was conceptually chaotic...  
[They were] a form of "political delusion," a pathological mental disorder...

— Chinese forensic-psychiatric case report, March 1987

Without a correct political standpoint, one has no soul.

— Mao Zedong

## I. INTRODUCTION

During the 1970s and 1980s, reports that the security authorities in the Soviet Union were incarcerating substantial numbers of dissidents in mental asylums aroused widespread concern in the West. As the quantity and reliability of the documentary evidence and victim testimonies steadily increased, the issue of politically directed psychiatry in the Soviet Union quickly became, along with political imprisonment and the refusal of the authorities to allow Soviet Jews to emigrate, a third principal item of human rights contention in Soviet-Western relations. By January 1983, a protracted campaign by Western psychiatric professional bodies and international human rights organizations led to a decision by the Soviet All-Union Society of Psychiatrists and Neuropathologists to withdraw from the World Psychiatric Association in order to avoid almost certain expulsion.<sup>2</sup> It was not readmitted to the body until 1989, after several years of *perestroika* and

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1. See "On Khrushchev's Phony Communism and its World Historical Lessons" (Ninth Letter to the Soviets), RENMIN RIBAO [PEOPLE'S DAILY], July 14, 1964. This important article, a fifty-page "Open Letter" sent by the Chinese Communist Party leadership to the Central Committee of the Communist Party of the USSR, signaled the final stages of the Sino-Soviet split. The passage quoted above is said to have been written by Wang Li and Wu Lengxi, but Mao Zedong almost certainly edited and approved the article as a whole.

2. Some historical context: "Twelve years ago, during the World Congress of the World Psychiatric Association (WPA) in Honolulu, the Soviet All-Union Society of Psychiatrists and Neuropathologists was condemned by the General Assembly of the WPA for abusing psychiatry for political purposes. Six years later, at the beginning of 1983, it was almost certain that later that year a majority of the WPA General Assembly would vote in favor of either expulsion from the WPA or suspension of membership of the Soviet All-Union Society. Keeping the honor to themselves, the Soviets withdrew from the WPA." See ROBERT VAN VOREN (ED.), SOVIET PSYCHIATRIC ABUSE IN THE GORBACHEV ERA 10, International Association on the Political Use of Psychiatry (IAPUP) (1989).

the preliminary establishment of direct access by Western psychiatric delegations to Soviet forensic-psychiatric institutions and their alleged mentally ill political inmates.<sup>3</sup>

The subject of forensic psychiatry in China has thus far received little academic attention outside of China. A number of very detailed and informative studies of China's general psychiatric and mental healthcare system have been written,<sup>4</sup> but these have rarely addressed the legal or forensic dimension of the topic in significant depth.<sup>5</sup> In particular, very little documentary or other evidence has hitherto come to light suggesting that abusive practices similar to those that occurred in the former Soviet Union might also have existed, or might even still be found, in China. The general assumption has therefore been that the Chinese authorities, despite their poor record in many other areas of human rights concern, have at least never engaged in the political misuse of psychiatry. This article seeks to challenge and correct that assumption.

From the early 1990s onwards, scattered reports from China began to indicate that individual dissidents and other political nonconformists were being subjected to forensic psychiatric appraisal by the police and then committed to special psychiatric hospitals on an involuntary and indefinite basis. One prominent example was that of Wang Wanxing, a middle-aged worker who had first been arrested in the mid-1970s for supporting the then officially denounced policies of Deng Xiaoping. Partially rehabilitated after the death of Mao, Wang resumed his political-activist career in the 1980s and became personally acquainted with the student leaders of the spring 1989 pro-democracy movement in Beijing. In June 1992, he unfurled a banner in Tiananmen Square calling for greater human rights and democracy in China, was immediately arrested, and then sent to an institution for the criminally insane in the outskirts of the capital, where he

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3. For full and detailed accounts of the political abuse of psychiatry in the former Soviet Union, see SIDNEY BLOCH AND PETER REDDAWAY, SOVIET PSYCHIATRIC ABUSE: THE SHADOW OVER WORLD PSYCHIATRY (1984); THERESA C. SMITH AND THOMAS A. OLESCZUK, NO ASYLUM: STATE PSYCHIATRIC REPRESSION IN THE FORMER USSR (1996); van Voren (ed.), *supra* note 2.

4. See, e.g., VERONICA PEARSON, MENTAL HEALTH CARE IN CHINA: STATE POLICIES, PROFESSIONAL SERVICES AND FAMILY RESPONSIBILITIES, (1995); Michael R. Phillips, *The Transformation of China's Mental Health Services*, 39 THE CHINA JOURNAL 1-36 (1998); ARTHUR KLEINMAN, MD, SOCIAL ORIGINS OF DISTRESS AND DISEASE: DEPRESSION, NEURASTHENIA AND PAIN IN MODERN CHINA (1986); and Michael R. Phillips, Veronica Pearson and Ruiwen Wang, eds., *Psychiatric Rehabilitation in China: Models for Change in a Changing Society*, 165:24 THE BRITISH JOURNAL OF PSYCHIATRY (1994). For a disturbing photo-journalistic portrayal of conditions in ordinary mental hospitals in China in the early 1990s, see Jurgen Kremb, *Wie ein Tier am Pfahl*, DER SPIEGEL, August 1992, No. 32, at 140-146.

5. For an important exception, see Veronica Pearson, *Law, Rights, and Psychiatry in the People's Republic of China*, 15 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY 409-423 (1992).

remained — diagnosed by police psychiatrists as a “paranoid psychotic” — until early 1999. In November of that year, after he announced his intention to hold a press conference with foreign journalists to discuss his ordeal, he was again detained and sent back to the same psychiatric detention facility for an indeterminate period. Wang’s case and others like it have been the subject of several statements of concern to the Chinese authorities by relevant bodies of the United Nations.<sup>6</sup>

Another recent example is that of Xue Jifeng, an unofficial labor-rights activist who in December 1999 was detained by police in Zhengzhou, the capital of Henan Province, for attempting to hold a meeting with other labor activists and independent trades-unionists. He was then committed involuntarily to the Xinxiang Municipal Mental Hospital, where he remained as of December 2000. Xue was reportedly being force-fed psychiatric drugs and held in a room with mental patients who kept him awake at night and harassed him by day.<sup>7</sup> Moreover, this was his second forced term in a mental hospital for “illegal” labor activities. The first came in November 1998, after he tried to pursue legal action against local Party officials who he alleged had swindled, through a bogus commercial fundraising scheme, thousands of his fellow residents of their life savings. On that occasion, more than 2,000 people staged a public demonstration in Zhengzhou demanding their money back and calling for Xue’s release.<sup>8</sup>

Finally, in July 1999, the Chinese government launched a major and

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6. See, e.g., Nigel S. Rodley, *Report of the Special Rapporteur on Torture, Submitted Pursuant to Commission on Human Rights Resolution 1992/32*, UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, General E/CN.4/1995/34 (January 12, 1995). The report stated: “The Special Rapporteur also transmitted [to the Chinese government] reports he had received of persons detained in a psychiatric hospital for political reasons, where no medical justification was said to exist for their detention. The cases summarized in the following paragraphs concerned persons detained at An Kang Public Security Bureau Hospital[s]...” The report continued, “Wang [W]anxing was arrested on 3 June 1992 while attempting to unfurl a banner commemorating the June 1989 demonstrations at Tiananmen Square. He was transferred to An Kang in July 1992, where he was allegedly administered medicine that kept him drowsy and weak. Although he was said to have no psychiatric problems, his wife signed documents confirming that he did, after being pressured to do so and being reassured that this would lead to her husband’s early release.” According to the report, the Chinese government replied as follows: “An Kang hospital’s psychological appraisals unit had determined that he was suffering from paranoia, that some of his actions were governed by wishful thinking, that he had lost his normal capacity for recognition and was irresponsible. He was continuing to undergo treatment at the hospital.”

7. See Associated Press, *Rights Group Says China Sent Labor Activist to Mental Hospital*, April 11, 2000.

8. See FBIS Daily Report, *AFP Reports 2,000 Protest against Failed Investment Firm*, November 16, 1998. According to the report, “Xue Jifeng was taken from his home last Monday and placed in a psychiatric asylum after accusing the Henan authorities of being responsible for the failure of the Three Stars investment group. The provincial government in May announced the closure of the three-year-old group, which collapsed owing about 10,000 investors more than three billion yuan (360 million dollars)...”

continuing campaign of repression against the Falun Gong spiritual movement, a neotraditional sectarian group, several months after the group staged a massive peaceful demonstration outside the Zhongnanhai headquarters of the Chinese leadership. Over the past year or so, numerous reports have appeared indicating that practitioners of Falun Gong were also being forcibly sent to mental hospitals by the police authorities. The overseas Falun Gong support network has so far compiled details of around 100 named individuals who have been dealt with in this manner, while overall estimates suggest the total number may be as high as 600. To date, reports indicate that three Falun Gong practitioners have died as a direct result of their detention and mistreatment in Chinese mental asylums.

These disturbing cases highlight the need for a comprehensive reexamination of our previous understanding of the role and purposes of forensic psychiatry in China, both historically and contemporaneously. All countries have valid and necessary reasons for detaining certain criminally active members of the mentally ill population (especially psychotic murderers, arsonists, and rapists) in secure psychiatric hospitals.<sup>9</sup> This perhaps holds true in China where there are officially said to be around 10 million mentally ill people in the country, of whom some ten to twenty percent are regarded as posing a "serious danger" to society.<sup>10</sup> Under internationally agreed standards of legal and medical ethics, however, peaceful, religious, or political dissidents are emphatically not considered as belonging to this highly select category of people.

An extensive study of the officially published legal-psychiatric professional literature in China from the 1950s to the present day, viewed in conjunction with the growing number of independent case accounts of the kinds outlined above, has now produced a substantial amount of documentary evidence to indicate that the Chinese authorities have, in fact, a longstanding record of the misuse of psychiatry for politically repressive purposes, one that resembles in all key respects that of the former Soviet Union, and one, moreover, that may well have exceeded in scope and intensity the by now thoroughly documented abuses that occurred in the latter country prior to 1990. It should be stressed at the outset that the extent to which China's psychiatric profession as a whole is complicit in the legal-

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9. According to one source, for example, mental illness was the chief cause of crime in 20.7 percent of all cases of murder, injury, arson, poisoning and explosions committed in a certain area of China in 1982. See LI TIANFU ET. AL., FANZUI TONGJIXUE [CRIMINAL STATISTICS] 45 (1988). More recent reports indicate that mental illness-related crime remains a serious national problem.

10. See, e.g., LI CONGPEI (ED.), SIFA JINGSHENBINGXUE [FORENSIC PSYCHIATRY] 381 (February 1992). According to the author, out of three million mentally ill people in six central Chinese provinces, approximately 400,000 posed a direct danger to society.

psychiatric abuses described in this article remains unclear. It seems likely that these abuses are confined mainly to those working within the subspecialist domain of forensic psychiatry, a small and still secretive field of which most regular Chinese psychiatrists probably have little direct knowledge or experience.

The present article is an attempt to reconstruct the shadowy history of the political misuse of forensic psychiatry in the People's Republic of China — its antecedents and influences, general nature and overall scope and extent — and also to assess the degree to which it remains a problem in China today. The article comprises the following main themes and sections. The first is an overview of the origins and development of Chinese forensic psychiatry through the country's main historical periods since 1949, with a focus on the 1950s, during which Soviet influences predominated; the Cultural Revolution decade (1966-76), when political psychiatry reached its absurd apogee; the 1980s, when the reform era of Deng Xiaoping seems to have meant, for forensic psychiatry, a partial return to the orthodoxies of the pre-Cultural Revolution period; and the 1990s, which appeared to see a significant decrease in politically-directed psychiatry in China, only to be followed, at the end of the decade, by a substantial resurgence of abusive practices, notably in the case of Falun Gong detainees.

The second is a discussion of the judicial and legislative framework governing the practice of forensic psychiatry in China: the criminal and civil law contexts, legislation on mental health and forensic-psychiatric assessment, the levels of determination of criminal "non-imputability" by reason of insanity that can be made, the kinds of offenders falling within the system's purview, and the extent to which the rights and interests of the latter are (if at all) taken into account and afforded legal protection. Also considered is the question of China's expansive definition of the key legal determinant of involuntary psychiatric committal, namely "social dangerousness." Whereas under international standards, the applicable scope of the "dangerousness" criterion is mainly restricted to situations where mentally ill people pose a direct physical danger either to themselves or to others, in China it is applied also to those, such as certain types of dissidents, whom the government regards as posing a political threat to "social order."

The third is a survey of the professional legal-medical literature from China, including numerous quoted passages illustrating the close and longstanding cooperation between forensic psychiatrists and the security authorities in effecting the simultaneous criminalization and medicalization of certain forms of dissenting activity. The focus here is on official statistics

showing the relatively high proportion of so-called “political cases” among those brought for forensic psychiatric examination throughout China, and on passages describing the various diagnostic theories and perspectives that are commonly applied in such cases. Also discussed are the several main categories of political and religious nonconformists that are especially liable to fall prey to these police-dominated diagnostic and judicial procedures: so-called “political maniacs,” whistleblowers and exposers of official corruption, persistent complainants and petitioners, and also unconventional religious sectarians of various kinds.

Several more detailed case accounts are presented to complement and concretize this general picture. These afford both an illustrative insight into the kinds of individuals most at risk of being branded as criminally insane on account of their peaceful views and activities, and also an opportunity to evaluate whether or not they may indeed, as claimed by the authorities, have been mentally disordered to any significant degree. While this is clearly a relevant issue, it should be noted that the persons in question were in most cases arrested on criminal charges — but for activities not held to be crimes under international legal standards — prior to being committed for forensic psychiatric evaluation. If truly mentally disturbed, they should not have fallen within the scope of the psychiatric-criminal justice system, but should rather have been given appropriate treatment by the regular mental healthcare system.

Also included below is a first introduction to China’s little-known network of special custodial centers for the criminally insane. Although several such institutions have existed in China since at least the 1960s, in 1987 the Chinese government for the first time decided to establish a nationwide system of high-security facilities for “dangerously mentally ill offenders.” These, the equivalent of the USSR’s Special Psychiatric Hospitals run by the Interior Ministry, were to be uniformly designated as “Ankang” (Peace and Health) institutions, and were to be directly administered and run by the Ministry of Public Security and its subordinate provincial-level departments. Arrested political dissidents and others in similar categories brought for assessment by the State’s forensic psychiatrists are often officially treated as ranking among the most “serious and dangerous” of all alleged mentally ill offenders, and are thus prime candidates for compulsory committal in such institutions. To date, twenty Ankang facilities have already been built and brought into service around the country. These highly secretive institutions deserve to become more widely known as perhaps the last unexplored aspect, and possibly the most sinister one, of China’s extensive *laogai* system of judicial incarceration.

Perhaps the most striking aspect of all the official documentary sources consulted is the high frequency with which they refer to “cases of a political nature” (“zhengzhixing anjian”) in describing the day-to-day casework of State-appointed forensic psychiatrists in China. Time and again, even in the most cursory accounts of this type of work, specific mention is made of “political cases” as constituting a distinct category among the various types of criminal defendants routinely referred by various law-enforcement authorities for expert “forensic-psychiatric evaluation” (“sifa jingshenbing jianding”)—and even percentage rates for cases of this type are often provided. Indeed, it was from passages of this nature found in the official psychiatric literature almost a decade ago that the evidentiary paper trail for this article first began. In the Soviet case, by contrast, no such official mention or statistics were ever found in the relevant literature.

This study does not claim to be a comprehensive analysis of the political aspects and abuses of Chinese forensic psychiatry. Many important questions remain to be considered elsewhere and by other observers, many of whom will doubtless be better qualified than this writer to comment on matters relating to law and psychiatry. What follows is a preliminary attempt to bring together a significant corpus of new, though sometimes fragmentary, documentary evidence about the theory and practice of Chinese forensic psychiatry since 1949. It is one that amounts, however, to a clear and unmistakable *prima facie* case showing the longstanding and continuing existence of political psychiatric abuse in China.

## II. INTERNATIONAL STANDARDS ON ETHICAL PSYCHIATRY

In evaluating China’s past and current practices in the field of forensic psychiatry, it is important to be aware of the more widely applicable standards of law and ethics that have been established by the international community in the general area of mental healthcare and psychiatry in recent decades. The bodies chiefly responsible for defining these standards are the United Nations, the World Psychiatric Association (WPA), and the various psychiatric professional organizations of different countries.<sup>11</sup> The pre-eminent or overarching relevant provisions—namely,

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11. Several Western psychiatric associations have formulated national-level ethical guidelines in recent years. One example is the Canadian Medical Association’s “Code of Ethics Annotated for Psychiatrists,” approved by the board of directors of the Canadian Psychiatric Association in October 1978; see <<http://www.cma.ca/eng-index.htm>>, as of November 28, 2000. In the area of forensic psychiatry, one of the more noteworthy examples is the “Ethical Guidelines for the Practice of Forensic Psychiatry,” adopted by the American Academy of Psychiatry and the Law in May 1987 (and revised in October 1989); see <<http://www.cc.emory.edu/AAPL/ethics.htm>>, as of November 28,

that people everywhere enjoy equal rights to freedom of the person, freedom of political and religious belief, freedom of expression, the right to a fair trial and so forth — are comprehensively set forth in the Universal Declaration of Human Rights<sup>12</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>13</sup>

In the early 1980s, in response to growing international concern over the political misuse of psychiatry in the Soviet Union, its satellite states and a small number of other countries (notably, South Africa under *apartheid*),<sup>14</sup>

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2000.

12. According to Article 2 of the Universal Declaration, “[N]o distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs”; in other words, all rights listed in the document apply equally to all citizens of any country. Article 5 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; Article 9 adds, “No one shall be subjected to arbitrary arrest, detention or exile”; and Article 10 continues, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” On more specific related matters, the Declaration states, in Article 18, “Everyone has the right to freedom of thought, conscience and religion; [including the right...] to manifest his religion or belief in teaching practice, worship and observance”; in Article 19, “Everyone has the right to freedom of opinion and expression...”; and in Article 23 (4), “Everyone has the right to form and to join trades unions for the protection of his interest.” Finally, addressing the general question of states of emergency and national security-related measures, Article 29 specifies: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

13. The relevant rights as set forth in the Universal Declaration are enlarged and elaborated upon in the ICCPR in the following provisions: Article 2 (non-discrimination on the basis of political and religious opinion, ethnicity or similar grounds), Article 4 (exclusion of the right to freedom of thought, conscience and religion from the scope of rights that States Parties may derogate from in times of national emergency), Article 7 (freedom from torture), Article 9 (ban on arbitrary arrest or detention), Article 12 (no restriction allowed on key rights except as necessary to protect national security, public order, public health or morals or the rights and freedoms of others), Article 14 (right to a fair and impartial trial), Article 18 (freedom of thought, conscience and religion), Article 19 (freedom of expression and the right to hold opinions without interference), Article 21 (right of peaceful assembly), Article 22 (freedom of association, including the right to form and join trades unions), and Article 26 (equality before the law and prohibition of discrimination on grounds such as race, color, sex, and political or other opinion.)

14. In a major report of 1986 submitted to the UN’s Sub-Commission on Prevention of Discrimination and Protection of Minorities, for example, the Sub-Commission’s Special Rapporteur stated: “Between 8,000 and 9,000 [black] Africans suffering from mental disorders are detained against their will in privately owned institutions in the Republic of South Africa... There is not a single black psychiatrist in South Africa and vital decisions about thousands of African mental patients are made by part-time physicians who do not even speak the language of the patients... Recent legislative measures of the Government concerning the ‘rehabilitation’ of African pass [law] offenders equate in a dangerous way the non-observance of the *apartheid* laws with mental disorder... These conditions and policies, being a direct effect of *apartheid* in the health field, are inimical to the letter and spirit of the Constitution of the World Health Organization...” See Erica-Irene A. Daes (Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder*, E/CN.4/Sub.2/1983/17/Rev.1

the United Nations undertook a major investigative review of mental healthcare provision around the world. In particular, the world body focused on the rules, procedures and practices pursued by various countries in the area of involuntary psychiatric committal and treatment. In 1983, Special Rapporteur Daes presented the results of the investigative review in a report to the UN, figuring the following passage prominently in its conclusions:

[W]e are painfully aware that:

Psychiatry in some States of the international community is often used to subvert the political and legal guarantees of the freedom of the individual and to violate seriously his human and legal rights.

In some States, psychiatric hospitalization treatment is forced on the individual who does not support the existing political regime of the State in which he lives.

On the basis of these findings, the Special Rapporteur recommended that the UN Commission on Human Rights should, among other things, urge all member States “[To] prohibit *expressis verbis* psychological and psychiatric abuses, in particular for political or other non-medical grounds.”<sup>15</sup> After several years of discussion and drafting work within the UN, this initiative bore legislative fruit in December 1991, when the world body’s General Assembly adopted a wide-ranging set of provisions entitled “Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.” According to Principle 4 of this important UN document,

- A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.
- A determination of mental illness shall never be made on the basis of political, economic or social status, or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status.
- Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person’s community, shall never be a determining factor in the diagnosis of mental illness.
- A background of past treatment or hospitalization of a patient shall not of itself justify any present or future determination of mental illness.
- No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences

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(1986).

15. Daes, *supra* note 14.

of mental illness.

Among other important general provisions, the Principles state: “Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient’s health needs and the need to protect the physical safety of others” (Principle 9). “Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others” (Principle 10). “Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others” (Principle 11.11). “Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility...” (Principle 11.14). “In the cases specified [where involuntary committal or treatment is involved] the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her” (Principle 11.16). And according to Principle 13, all mental patients shall have “the right to full respect for his or her...freedom of communication...and freedom of religion or belief.”

Principle 20 deals specifically with the rights of mentally ill criminal offenders and reads as follows:

- The present Principle applies to persons serving sentences of imprisonment for criminal offenses, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.
- All such persons should receive the best available mental health care as provided in Principle 1 above. The present Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons’ rights under the instruments noted in paragraph 5 of Principle 1, above.<sup>16</sup>

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16. Paragraph 5 of Principle 1 reads: “Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All

- Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.
- Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11 above.<sup>17</sup>

Thus, the UN General Assembly ruled that no derogation from or restriction of fundamental civil and political liberties was to be permitted, or otherwise viewed as justifiable, in the case of detained criminal offenders who were ascertained by governmental authorities as being mentally ill.

Within the international psychiatric community, increasing reports in the 1970s and thereafter concerning the political abuse of psychiatry in the former Soviet Union and elsewhere provided a powerful impetus to efforts by concerned professionals to establish clear ethical codes aimed at eliminating political and other forms of unwarranted outside interference from the practice of psychiatry in all countries. The first major outcome of these efforts was the "Declaration of Hawaii," passed by the General Assembly of the World Psychiatric Association in July 1977 and updated at its July 1983 world congress. According to the preamble of the Declaration,

It is the view of the World Psychiatric Association that due to conflicting loyalties and expectations of both physicians and patients in contemporary society and the delicate nature of the therapist-patient relationship, high ethical standards are especially important for those involved in the science and practice of psychiatry as a medical specialty. These guidelines have been delineated in order to promote close adherence to those standards and to prevent misuse of psychiatric concepts, knowledge and technology.

The WPA statement continued,

If and when a relationship is established for purposes other than therapeutic, such as in forensic psychiatry, its nature must be thoroughly explained to the person concerned... As soon as the conditions for compulsory treatment no longer apply, the psychiatrist should release the patient from the compulsory nature of the treatment and if further therapy is necessary should obtain voluntary consent... The psychiatrist must on no account utilize the tools of his

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Persons under Any Form of Detention or Imprisonment."

17. U.N. General Assembly, report of the Third Committee, A/46/721, *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*, December 17, 1991. For a wider discussion of the ethical aspects of compulsory psychiatric hospitalization, see Robert Miller, *The Ethics of Involuntary Commitment to Mental Health Treatment*, SIDNEY BLOCH AND PAUL CHODOFF (EDS.), PSYCHIATRIC ETHICS 265-289 (1991).

profession once the absence of psychiatric illness has been established. If a patient or some third party demands actions contrary to scientific knowledge or ethical principles the psychiatrist must refuse to cooperate... The psychiatrist should stop all therapeutic, teaching or research programs that may evolve contrary to the principles of this Declaration.<sup>18</sup>

At its world conference in Athens in October 1989, moreover, the WPA adopted a further resolution stating, among other things: "A diagnosis that a person is mentally ill shall be determined in accordance with the internationally accepted medical standards.... Difficulty in adapting to moral, social, political, or other values, in itself should not be considered a mental illness."<sup>19</sup> In addition, the Athens resolution affirmed a number of key subsidiary protections for the rights of the mentally ill. For example: "The final decision to admit or detain a patient in a mental health facility as an involuntary patient shall be taken only by a court or a competent independent body prescribed by law, and only after an appropriate and proper hearing... They have the right of appeal and to be heard personally by the court or competent body." Also, "Patients who are deprived of their liberty shall have the right to a qualified guardian or counsel to protect their interests."<sup>20</sup> In August 1996, the WPA's General Assembly reiterated and updated these various principles in its Declaration of Madrid.<sup>21</sup> As noted above, China is a full member of the WPA.

Taken together, the UN's 1991 Principles and the WPA's Declarations of Hawaii and Madrid provide the core set of international standards upon which the ethical and legal practices of psychiatrists around the world should properly be evaluated. By detaining large numbers of non-

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18. Declaration of Hawaii, 1983, as included in Appendix II of Bloch and Reddaway, *supra* note 3, at 237-239.

19. The World Federation for Mental Health (WFMH) adopted the same principle in its January 1989 "Declaration of Human Rights and Mental Health." According to the document's preamble, "Whereas a diagnosis of mental illness by a mental health practitioner shall be in accordance with accepted medical, psychological, scientific and ethical standards...and whereas persons have, nonetheless, been at times and continue to be inappropriately labeled, diagnosed and treated as mentally ill...difficulty in adapting to moral, social, political or other values in itself shall not be considered a mental illness." (From a pamphlet issued by the WFMH, on file with author.)

20. "WPA Statements and Viewpoints on the Rights and Legal Safeguards of the Mentally Ill," adopted by the WPA General Assembly in Athens, October 17, 1989; in Geneva Initiative on Psychiatry, HUMAN RIGHTS AND PROFESSIONAL RESPONSIBILITIES OF PHYSICIANS IN DOCUMENTS OF INTERNATIONAL ORGANIZATIONS 70-71 (1998).

21. Declaration of Madrid, 1996, as cited in 1 MENTAL HEALTH REFORMS 8-9 (1997) (Journal of the Geneva Initiative on Psychiatry). Among new provisions included in the Madrid Declaration were that "psychiatrists should devise therapeutic interventions that are least restrictive to the freedom of the patient," and that "no treatment should be provided against the patient's will unless withholding the treatment would endanger the life of the patient and/or those who surround him or her."

violent political and religious dissenters and subjecting them to forensic psychiatric assessment and compulsory hospitalization, China's medico-legal establishment is acting in violation of almost all of these international legal and ethical standards.

### III. HISTORICAL OVERVIEW

#### A. Law and Psychiatry Prior to 1949

Chinese historical records from the past two millennia contain occasional references to cases of insane persons who committed violent crimes but were pardoned or treated leniently by the courts on account of their mental disorders; also recorded are the cases of several famous individuals who successfully avoided punishment by feigning insanity. Over the last few hundred years of the imperial era, however, more systematic legal norms were gradually applied in this area of the criminal justice system. According to one scholarly account,

The Ch'ing government came to grips with the problem of criminal insanity soon after the consolidation of its rule in the late seventeenth century. It initially relied on the voluntary efforts of the families and neighbors of insane persons to keep them under control, but this soon gave way to the more interventionist measure of registration and confinement, designed to isolate the insane from the rest of society. Mandatory confinement of all insane persons was soon followed by the introduction of prison sentences for insane killers.<sup>22</sup>

Where family members were ordered to take charge of the care and custody of a mentally ill person, they assumed collective legal responsibility for their ward's good conduct and could be punished by up to forty blows with a bamboo stave if he or she subsequently committed an offense.<sup>23</sup> Moreover, according to a contemporary Western observer, "Lunatics are in general required to be manacled, and the relatives must not remove the manacles without proper authority."<sup>24</sup> The death penalty for murder,

22. Vivien W. Ng, *Ch'ing Law Concerning the Insane: An Historical Survey*, IV:4 CH'ENG SHI WEN-T'I 84 (December 1980).

23. Technically, the maximum number of blows with a heavy bamboo stave prescribed by law was one hundred; in practice, however, this would often have been fatal, so the lesser number was used as a maximum instead. See DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA* 77 (1967).

24. ERNEST ALABASTER, *NOTES AND COMMENTARIES ON CHINESE CRIMINAL LAW* 93 (1899). See also Andrew H. Woods, M.D., *A Memorandum to Chinese Medical Students on the Medico-Legal Aspects of Insanity*, 9 JOURNAL OF THE NATIONAL MEDICAL ASSOCIATION OF CHINA 203-212 (September 1923).

normally mandatory in such cases, was not applied in cases where the offender was shown to be insane at the time of the crime, even when the victim was one of the offender's own parents. An exception to this rule of clemency was made, however, if the victim was one of the grandparents.<sup>25</sup> The death penalty was applied also in the case of multiple homicides by the insane.

After the founding of the Republic in 1911, a new criminal law was passed stipulating that punishment was to be waived or reduced in the case of crimes committed by the mentally ill. China's first specialized mental hospital was established in Guangzhou in 1898, with others following in Beijing (1906), Suzhou (1929), Shanghai (1935) and Nanjing (1947). In 1922, the country's first teaching center for psychiatry was established at the Xiehe Hospital in Beijing; and in 1932, the Nationalist government established an Institute of Forensic Medicine, headed by Lin Ji, who is today renowned as the father of the discipline in China. Also in the early Republican era, a new and more specialized type of institution known as the "psychopathic hospital" gradually began to appear in major Chinese cities. The earliest such institution was apparently located in Guangzhou (Canton), where opium addiction, syphilis, vagabondage and concubinage were among the more common social causes of crime-related mental illness. According to a contemporary Western account,

The only separate psychopathic hospital in China up to 1933 was a mission hospital in Canton, the John G. Kerr Hospital for the Insane. In 1924 this institution had 726 patients, half of whom were men... There are special psychopathic wards in a few general hospitals, such as in Soochow, Peiping<sup>26</sup> and Shanghai but these are small. China urgently needs modern special hospitals for mental disease in the large centers. In 1930 the [KMT] Ministry of Justice announced its intention to erect special reformatories and "lunatic asylums" in various large cities. There is a dearth of trained psychiatrists in China.<sup>27</sup>

The equivalent institution in the Chinese capital, the Peiping Municipal Psychopathic Hospital, was by 1935 responsible for the custody and care of around 250 criminally insane and other mentally disordered persons of various types. Of these, around a third had been referred to the hospital by "families, institutions or relatives," while as many as two thirds

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25. "And the sentence (slicing to pieces) is [in such cases] to be carried out in all its horror, even though the lunatic be already dead." Alabaster, *supra* note 24, at 96.

26. The name used for Beijing during much of the Republican era.

27. See H.D. LAMSON, SOCIAL PATHOLOGY IN CHINA 434 (1935).

had been directly placed there by the police authorities.<sup>28</sup> The average length of stay for inmates was between one month and eighteen months, and hospitalization (especially for the "police cases") was essentially compulsory,<sup>29</sup> although there seems to have been no formal legislation in this area at the time.

The psychopathic hospitals differed in two important respects from the earlier forms of compulsory custody for the mentally ill practiced during the pre-Republican period. First, their main purpose was to provide medical care and treatment, whereas the previous legal measures had simply been a prolonged form of preventive detention. Second, however, the scope of admissions was now considerably broader, with the types of offending behavior ranging from "killing mother with an axe," "attacking parents," "attempted suicides," "lying on the street and scolding people" and "appearing naked in public" at one end of the spectrum, all the way through to "ideas of grandeur," "burning of incense," and "restless patients with reports of jumping around, singing, laughing, [and] clapping hands" at the other.<sup>30</sup> Significantly, contemporary accounts give no indication that expressions of political deviance or heterodox thinking, whether as a symptomatic manifestation of mental pathology or otherwise, were seen or used by the authorities as grounds for imposing psychiatric incarceration at this time.

If anything, the law tilted more towards a lackadaisical approach in its construal of the "dangerousness" criterion, sometimes even in the most violent of cases. For example,

The police will loosen the control of any mental patient if his family is willing to bear the responsibility. One of the best examples of this kind is found in case No. 513, in which the patient chopped up more than ten people fatally with a knife during one of his attacks, but was allowed by the police to be discharged against the advice of the hospital because the patient's wife repeatedly petitioned the Bureau [of Public Security] that she would take all possible care to guard against the recurrence of a similar incident.<sup>31</sup>

It should be noted in passing that, in the 1980s and 1990s, it remained a common complaint within the Chinese psychiatric profession that once a determination of "absence of legal responsibility" on the grounds of mental

28. See Francis L.K. Hsu, *A Brief Report on the Police Co-operation in Connection with Mental Cases in Peiping*, in R. LYMAN ET. AL. (ED.), SOCIAL AND PSYCHOLOGICAL STUDIES IN NEUROPSYCHIATRY 202-230 (1939).

29. "The police considers it a custodial place." *Id.* at 225.

30. *Id.* at 210-211.

31. *Id.* at 222.

illness had been made, even the most violent of offenders could still, in many cases, be released straight back into society.<sup>32</sup> While the reasons for this hazardous practice stem mainly from the country's lack of secure psychiatric facilities, it contrasts sharply, nonetheless, with the apparent frequency with which those involved in "cases of a political nature" are officially deemed to be in need of custodial care.

### B. *The Early Years of the People's Republic*

By 1949, after several decades of virtually continuous warfare and national revolution, there were no more than fifty or sixty qualified psychiatrists to be found in the whole of China.<sup>33</sup> As the Communist Party began rebuilding the country, it turned primarily to the Soviet Union for scientific and technical assistance throughout the 1950s. While many of the earlier trained psychiatrists, some of whom had studied in the West, played a key role in expanding the professional infrastructure during these early years, they increasingly became a target of official suspicion for their alleged "bourgeois ideology." As one psychiatric journal succinctly put the matter: "With the arrival of advanced Soviet medical science, China's psychiatric workers were liberated from the ideological influence of the reactionary academic doctrines of Europe and America."<sup>34</sup> The new generation of psychiatric professionals that emerged in China after 1949 was thus overwhelmingly influenced by Soviet psychiatric theory and doctrine. And in particular, according to one of China's leading authorities on the subject, "Soviet forensic psychiatry exerted a very great influence after it was first introduced into China."<sup>35</sup> Within a few years, forensic-psychiatric

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32. See, e.g., ZHANG JUN, XINGSHI CUO AN YANJIU [RESEARCH ON MISCARRIAGES OF CRIMINAL JUSTICE] 110-111 (1990).

33. See SHEN YUCUN (ED.), JINGSHENBINGXUE [PSYCHIATRY] 16 (1997). Other official sources give a figure of as low as thirty psychiatrists for the whole country. Sixty psychiatrists for the population of China at that time works out at approximately one per eight million inhabitants. The figure for general physicians was approximately 670 for every one million inhabitants. See Xinhua News Agency, *Fifty Years of Progress in China's Human Rights*, February 17, 2000, at 1. There are currently said to be around 12,000 psychiatrists in China. See PSYCHIATRIC NEWS, June 16, 2000, available at <<http://www.psych.org/pnews/00-06-16/china.html>>, as of December 3, 2000. And according to an official Chinese news source, there are currently altogether 575 hospitals and 77,000 doctors and nurses dealing with mental diseases in China. See *Nation's Mentally Ill Need More Care*, CHINA DAILY, November 27, 2000; available at <<http://www.chinadaily.com.cn/cndydb/2000/11/d2-1ment.b27.html>>, as of December 4, 2000.

34. See Li Xintian, *One Decade of the Clinical Application of Artificial Hibernation Therapy in China*, 6 ZHONGHUA SHENJING JINSHENKE ZAZHI [CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES] 351 (1959).

35. See JIA YICHENG (ED.), SHIYONG SIFA JINGSHENBINGXUE [APPLIED FORENSIC PSYCHIATRY] 10 (September 1988).

assessment centers organized along Soviet lines had been set up in the cities of Nanjing, Beijing, Shanghai, Changsha and Chengdu;<sup>36</sup> clinical practice in the area of forensic psychiatry developed steadily thereafter. While psychiatry in general received relatively little support from the authorities, legal assessment work appears to have been given (perhaps unsurprisingly, considering the government's clear emphasis at this time on national and public security-related matters) significant priority.

It was during this same period that the Soviet psychiatric establishment began to apply, especially in the field of forensic assessment, the now widely deplored range of unorthodox clinical theories whereby particular forms of political and religious dissent were seen as being attributable to certain specific (though in other contexts, oddly rare) varieties of "dangerous" mental illness. The most frequently used diagnosis of this type was "sluggish schizophrenia," a diagnostic concept that was first formulated and used briefly by American psychiatrists during the 1930s, and then later adopted and radically developed by Academician Andrei Snejnevsky, the leading figure in Soviet psychiatry from the 1940s until his death in 1987. Under the directorship of Georgi Morozov, a key student and follower of Snejnevsky who applied the latter's doctrine of "sluggish schizophrenia" with increasing enthusiasm to cases of alleged ideological deviance, the notorious Serbski Institute for Forensic Psychiatry in Moscow served, from 1953 until the late 1980s, as the main theoretical and practical stronghold for the political abuse of psychiatry in the USSR.<sup>37</sup>

The key features of "sluggish schizophrenia," so called because of its slow rate of progression, which more often than not gave outsiders the impression that the reform-minded "sufferer" was mentally quite normal, were described as follows by Sidney Bloch, a Western psychiatrist and co-author of one of the major studies on Soviet psychiatric abuse:

Characteristically, patients given this diagnosis are able to function almost normally in the social sense. The symptoms may resemble

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36. See the Internet site of the Beijing Institute of Forensic Medicine and Science [Beijing Shi Fating Kexue Jishu Jianding Yanjiusuo] at <<http://www.fimedsci.com/sfjs/sfjs6.htm>>, as of November 29, 2000.

37. Underlying the strange complicity between law and psychiatry in the Soviet Union was the official view that, since socialist society was inherently superior to capitalist countries and thus the former social sources and causes of crime had mostly been eradicated, the continued occurrence of criminal or dissenting acts must be due to flaws in the offender's mental state. As Nikita Khrushchev explained: "A crime is a deviation from the generally recognized standards of behavior [and is] frequently caused by mental disorder. Can there be diseases, nervous disorders among certain people in Communist society? Evidently yes. If that is so, then there will also be offenses which are characteristic of people with abnormal minds.... To those who might start calling for opposition to Communism on this basis, we can say that...clearly the mental state of such people is not normal." See *Pravda*, May 24, 1959.

those of a neurosis or take a paranoid quality. The patient with paranoid symptoms retains some insight into his condition, but overvalues his own importance and may exhibit grandiose ideas of reforming society... The concept of sluggish schizophrenia [thus] facilitated the application of a label of disease of the most serious kind to people whom psychiatrists in the West would regard as either normal, mildly eccentric, or at worse neurotic. In other words, it does not require much to be labeled as mad by the Snezhnevsky-trained psychiatrist.

Professor Georgi Morozov...states: "Schizophrenia is a disease in which patients are with rare exceptions deemed not responsible." Yet he concedes that: "Forensic psychiatrists often experience difficulties when...symptoms are mild and the presence or absence of schizophrenia must be established." The diagnosis may then be made on a history of psychiatric symptoms in the past, that is long before the offense was committed, and, also possibly in the *absence of symptoms* at the time of the offense. Thus, the defendant may appear normal when under psychiatric examination, but according to the Snezhnevsky school, still harbor the disease.<sup>38</sup>

Another catch-all diagnosis that was commonly applied to people detained for particularly "puzzling" or "flagrant" acts of ideological dissent in the Soviet Union from the 1950s onwards was "paranoid psychosis." A wide repertoire of nonconformist behaviors was, however, shared between both sets of sufferers. These included: "reformist delusions," "litigation mania," "overvalued (or excessive) religiosity," "serious illegal acts [such as] the writing of complaints," "slander and dissemination of false information," "persistent ideas of reform that tend to be convincing to others and tend to cause recurrent illegal actions" and even "an interest in poorly-understood and bizarre foreign fashions and trends in art, literature and philosophy, and discussion of such interests."<sup>39</sup> The State's medico-legal punishment for such activities, moreover, was severe. According to a report on the authorities' handling of nineteen such cases:

Their pattern of adaptation changes to such a degree that their life undergoes a fundamental change; they dedicate their activities entirely to the struggle for their idea, which they often characterize as a "struggle for justice"... [However,] environmental change, the strict regime of a psychiatric ward, the impossibility of a continuation of their pathological litigious activity, sedative and neuroleptic

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38. Sidney Bloch, *Soviet Psychiatry and Snezhnevskyism*, in van Voren, *supra* note 2, at 56.

39. This list of symptoms is taken from a series of translations from official Soviet forensic psychiatric reports that appear in SEMYON GLUZMAN, ON SOVIET TOTALITARIAN PSYCHIATRY 39-44 (International Association on the Political Use of Psychiatry (IAPUP) 1989).

medication, all served to normalize their behavior rather quickly.<sup>40</sup>

The standard Soviet textbooks on forensic psychiatry were required reading for Chinese legal psychiatrists from the mid-1950s onwards, and full Chinese translations of Morozov's works were widely available in China from at least the early 1960s and possibly earlier. Even in the 1990s, favorable references to the Soviet school of forensic psychiatry were quite commonly found among the pages of the Chinese professional literature. Several recently published textbooks, moreover, still contain the full or partial texts of the main Soviet-era laws and regulations on the compulsory hospitalization of mentally ill offenders.<sup>41</sup> In classifying the schizophrenic conditions, the Russian term *vyalotekushchaya* can be rendered in English as either "sluggish" or (more broadly) as "latent." The Chinese medical lexicon lists latent or sluggish schizophrenia as "qianyinxing jingshenfenliezheng."<sup>42</sup> As late as 1994, the condition was still listed as being one of several officially acknowledged "borderline states,"<sup>43</sup> but from the 1980s onwards, it rarely appears in the relevant literature.<sup>44</sup> In the earliest known examples of political-style psychiatric diagnosis in China, which date from the early 1960s, the less specific term "schizophrenia," in either an undifferentiated or a "paranoid" form, appears to have been the most prevalent label used.

In China, as in the former Soviet Union, the diagnosis of

40. L.N. Diamant, *Issues in Clinical Evaluations and Compulsory Treatment of Psychopathic Personalities with Paranoid Delusions and Overvalued Ideas*, cited in Gluzman, *supra* note 39, at 40.

41. For example, the now discredited Soviet laws on forensic psychiatric hospitalization are extensively quoted in two Chinese textbooks published in 1992 (when the Soviet Union was finally collapsing.) See Li, *supra* note 10, at 404-406. See also Chen Weidong et. al., *Chapter 9: Litigation Procedures for the Adoption of Coercive Medical Measures*, in XINGSHI TEBIE CHENGXU DE SHIJIAN YU TANTAO [PRACTICE AND EXPLORATIONS IN SPECIAL CRIMINAL PROCEDURE] 467-505 (1992). See also SHEN ZHENG (ED.), FALU JINGSHENBINGXUE [LEGAL PSYCHIATRY] 64-68 (1989).

42. The Chinese term "qianyinxing jingshenfenliezheng" was specifically used, for example, by the leading forensic psychiatrists Jia Yicheng and Ji Shumao in a brief account of criticisms made against Soviet political psychiatry at an international academic conference in 1976. See Jia, *supra* note 35, at 15 (1988). Note that the Chinese term for "sluggish schizophrenia" is not to be confused with that used for "chronic schizophrenia," *manxing jingshenfenliezheng*.

43. See ZHAI JIAN'AN (ED.), SHIYONG FAYIXUE CIDIAN [A DICTIONARY OF APPLIED FORENSIC SCIENCE] 18 (1994).

44. Where "sluggish schizophrenia" is mentioned in Chinese sources, it is usually accompanied by cautionary remarks about the need to avoid "over-diagnosing" the condition. The principal objection, however, seems not to stem from any concerns about the possible use of political psychiatry, but is rather that the diagnosis of this "borderline condition" in the case of criminal offenders, and a resultant finding of non-imputability, can lead to their escaping punishment for serious crimes. One author, for example, recounts the case of a rapist who was diagnosed as having "sluggish schizophrenia" and was then promptly released by the police, to the consternation of the victim's family; a fresh forensic appraisal was arranged and the man was eventually ruled to bear "partial legal responsibility" for his crime. See Jia, *supra* note 35, at 196-198.

schizophrenia was and continues to be made in a far higher proportion of mental illness cases than in most other countries. Moreover, where diagnosed schizophrenics commit crimes and are brought for forensic psychiatric assessment in China, a finding of “absence of legal responsibility”—leading to the high likelihood of compulsory forensic hospitalization—is almost invariably made. For example, among 386 cases of schizophrenic offenders forensically assessed in the Beijing and Tianjin areas between 1978 and 1987, no fewer than 97.5 percent of the examinees were found to be “not legally responsible” for their actions.<sup>45</sup> Furthermore, other studies indicate that “cases of a political nature” have accounted for a very high proportion of the targets of assessment. In a study of 181 cases of schizophrenic offenders forensically examined at the Harbin No.1 Special Hospital between 1976 and 1980, political cases involving “reactionary speeches,” “sticking up posters with absurd content” and “shouting reactionary slogans” amounted to 59 in number, or 33.3 percent of the total.<sup>46</sup> Another authoritative account from the same period, moreover, put the figure for the country as a whole at an overwhelmingly high level: “In [psychiatrically appraised criminal] cases involving political speech and expression, schizophrenia sufferers accounted for 91 percent of the total, and 70 percent of these were chronic schizophrenics who had been living at large in society.”<sup>47</sup> The shadow of Soviet-era political psychiatry looms conspicuously in all these reports.

From the late 1970s and early 1980s onwards in China, the diagnosis of choice in political cases appears to have shifted towards “paranoid psychosis” and its various sub-categories (e.g., “litigious mania”), although schizophrenia continued also to be diagnosed. As we shall see, while the medical connotations are substantially different, the diagnosis of “paranoid psychosis” shares many of the characteristic features of vagueness, non-specificity and “apparent normality” found in the case of Soviet-style “sluggish schizophrenia.”<sup>48</sup>

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45. See Li Congpei, et. al., *An Analysis of Forensic Psychiatric Evaluations in Cases of Schizophrenia*, 20:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 135-138 (1987). Incidentally, one of the scholarly sources referred to in this article is a book by Georgi Morozov.

46. See Wu Xinchen, An Exploration of the Hallmarks of Criminal Behavior Among Schizophrenics, 16:6 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 338-339 (1983).

47. Luo Dahua (ed.), FANZUI XINLIXUE [PSYCHOLOGY OF CRIME] 216 (1984) (volume marked “for internal distribution only”). The Chinese phrase “living at large in society” (“sanju zai shehuishang”) is a somewhat pejorative term generally used in respect of “socially undesirable elements” whom the authorities feel should be placed under some form of supervision or restriction; in this case, it probably signifies that the alleged schizophrenics had not previously been institutionalized in any way.

48. As two expert observers of the Soviet psychiatric scene later remarked, a diagnostic shift in a broadly similar direction also occurred in the Soviet Union around the same period. According to

A brief outline of the therapeutic regime that came into being in the Chinese psychiatric field in the 1950s may also be useful. In light of the intense controversy that exists in the West over several of these therapies, it is important to bear in mind that the therapeutic resources available to psychiatrists throughout the world at that time were highly limited in both range and effectiveness, especially with respect to the major psychiatric diseases such as schizophrenia. Until the early part of the twentieth century, psychiatrists everywhere were largely helpless to relieve the catastrophic symptoms of these illnesses, and sufferers were for the most part simply warehoused in primitive insane asylums. During the inter-War period, however, several new treatments marked a major turning point in psychiatric clinical practice. One was insulin coma therapy, discovered in 1927 by Manfred Sakel, a Polish neurophysiologist and psychiatrist;<sup>49</sup> another was electroconvulsive shock therapy (ECT), discovered by the neurologists Ugo Cerletti and Lucio Bini in Rome in 1937; a third was the psychosurgical technique of prefrontal lobotomy, discovered in 1936 by Egas Moniz, a Portuguese neuropsychiatrist. The history of psychiatry is replete with major instances and patterns of the abuse of all these forms of treatment, especially in America and Europe in the 1940s and 1950s.<sup>50</sup> With the next important

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one of the experts, Richard J. Bonnie, a legal academic who participated in a 1989 visit to the USSR by an American psychiatric delegation that examined a number of psychiatrically-detained Soviet dissidents, "In the mid-1980s, Soviet psychiatric officials began to acknowledge that a pattern of 'hyperdiagnosis' had resulted in inappropriate psychiatric labeling and unnecessary hospitalization in the USSR. It was therefore noteworthy that Soviet psychiatrists who interviewed the twenty-seven patients concurrently with the U.S. team in 1989 found no current evidence of schizophrenia in the cases of fourteen patients who were thought to be without mental disorder by the U.S. psychiatrists. However, it is also noteworthy that the Soviet psychiatrists nonetheless still retained *some* psychiatric diagnosis for most of these patients. In this respect, the U.S. delegation found continuing evidence of 'hyperdiagnosis,' particularly in the tendency to characterize these patients as having 'psychopathy,' a term that seems to be roughly equivalent to the general concept of personality disorder. Specific examples of 'psychopathic' symptoms identified in the interviews by Soviet psychiatrists included 'unitary activity,' which related to a high level of commitment to a single cause, such as political reform, and 'failure to adapt to society,' which was used to describe a dissident patient who was 'unable to live in society without being subject to arrest for his behavior.' One of the Soviet psychiatrists was asked whether a patient who had been sent to a special hospital for distributing anti-Soviet leaflets presented a danger to society. 'Of course not,' he responded, 'everything the patient distributed can be read in the newspapers now.' As this observation implies, what had changed was the meaning of a socially dangerous act, not the meaning of mental disorder." Richard J. Bonnie and Svetlana V. Polubinskaya, *Unraveling Soviet Psychiatry*, 10 THE JOURNAL OF CONTEMPORARY LEGAL ISSUES 285-286 (1999).

49. In the course of treating diabetics, "Sakel discovered accidentally, by causing convulsions with an overdose of insulin, that the treatment was efficient with patients afflicted with psychosis, particularly schizophrenia." See Renato M.E. Sabbatini, *The History of Shock Therapy in Psychiatry*, 4 BRAIN AND MIND (Dec. 1997-March 1998) (electronic magazine on neuroscience, found at <[http://www.epub.org.br/cm/history\\_i.htm](http://www.epub.org.br/cm/history_i.htm)>, as of November 29, 2000).

50. The best overview of the extensive misuse of somatic therapies in the West is ELLIOT VALENSTEIN, GREAT AND DESPERATE CURES: THE RISE AND DECLINE OF PSYCHOSURGERY AND

breakthrough in the treatment of mental illness — the synthesis and widespread dissemination from the early 1950s onwards of major antipsychotic medications such as chlorpromazine — the use of these earlier therapies greatly declined in most countries.

It is clear from the Chinese psychiatric literature of the late 1950s and early 1960s that ECT and insulin coma therapy were in widespread clinical use in China (as in the U.S. and other Western countries) by that time, and that the theory and practice of these techniques had been learned directly from the Soviets.<sup>51</sup> Viewed in historical context, and when used for genuine therapeutic purposes, neither therapy would appear to be particularly controversial. According to reports from former victims of political psychiatric abuse in China, however, both insulin coma treatment and ECT (without concomitant use of sedatives or muscle relaxants) were often used by psychiatric staff from the 1960s onwards as methods of punishment rather than of treatment. Both therapies remain in widespread use in Chinese mental hospitals today.

Regarding the use of psychosurgery, an official source states that

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OTHER RADICAL TREATMENTS 1986. Tens of thousands of lobotomies were performed in the United States from 1936 until around 1952. The most egregious practitioner was the American neurologist Walter Freeman, who invented a technique known as the “ice-pick lobotomy,” which took no more than a few minutes to perform. According to one account, “This procedure was so ghastly, however, that even seasoned and veteran neurosurgeons and psychiatrists could not stand the sight of it, and sometimes fainted at the ‘production line’ of lobotomies assembled by Freeman.” Moreover, “[Lobotomies were] widely abused as a method to control undesirable behavior, instead of being a last-resort therapeutic procedure for desperate cases...Families trying to get rid of difficult relatives would submit them to lobotomy. Rebels and political opponents were treated as mentally deranged by authorities and operated [upon].” See Sabbatini, *supra* note 49. The use of psychosurgery did not really end in the U.S. until the 1970s (partly as a result of the influence of the film “One Flew Over the Cuckoo’s Nest”), and since then there have continued to be voices (so far, mainly in the wilderness) seeking to bring it back. Finally, according to a leading authority on medical ethics, “ECT stands practically alone among the medical/surgical interventions in that misuse was not the goal of curing but of controlling the patients for the benefit of the hospital staff.” David J. Rothman, at a U.S. National Institutes of Health conference on ECT held June 10-12, 1985, cited in Sabbatini, *id.*

51. For example, while acknowledging insulin coma treatment to be a “radical therapy with very severe side effects,” one study reported that at the Nanjing Mental Hospital in 1958 (the peak year of Mao’s “Great Leap Forward,” when the entire nation was being urged to make “greater, faster, better and more economical” strides towards Communism), doctors had begun applying the therapy to some 500 patients “on a continual daily basis...omitting the [previous] weekly rest day.” See Tao Guotai et. al., *Clinical Observations on 2,663 Cases of Insulin Shock Treatment*, 1 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 19-24 (1960); Bao Zhongcheng et. al., *Clinical Observations on 400 Cases of Electro-shock Therapy*, 1 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 28-30 (1960); Wang Jingxiang, *China’s Achievements Over the Past Decade in Insulin Shock Therapy Work*, 6 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 349-351 (1959). Another form of treatment that was apparently widely used in Chinese mental hospitals at this time was “artificial hibernation therapy” (“dongmian liaofa”), a prolonged state of deep sleep induced by means of chlorpromazine hydrochloride, or wintermin [*dongmian ling*]; a less radical version of this treatment was known simply as “sleep therapy” [*shuimian liaofa*].

Chinese neurosurgeons carried out numerous cases of human prefrontal lobotomy between 1949 and 1955 at hospitals in Tianjin, Nanjing, Shanghai, Beijing and Xian, but that the practice was discontinued for many years thereafter.<sup>52</sup> This was due to the fact that psychosurgery was banned from the mid-1950s onwards in the Soviet Union, where it was seen as contravening the "conditioned reflex" orthodoxies of the Pavlov school. The same source adds, however, that in 1986 a number of Chinese hospitals began to perform such operations once again, reportedly of a kind involving less drastic surgical intervention than had been required in the earlier series of operations.<sup>53</sup> Other studies indicate a further rise in the use of psychosurgery in China in recent years.<sup>54</sup> As one Western scholar writes,

Psychosurgery is also reemerging. During a visit to Guangzhou in 1988 I was told that one hospital had provided 20 patients to undergo this kind of surgery in the previous two years. In a visit to a hospital in Beijing in 1989, I discovered that doctors in Beijing and Tientsin [Tianjin] were collaborating on a psychosurgery project. It was clear from reading some of the files of the patients, who had had psychosurgery in Guangzhou, that selection and monitoring before or after the operation, as well as the procedure itself, gave great cause for concern.<sup>55</sup>

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52. See Shen, *supra* note 41, at 1016-1017; ZHU QIHUA ET. AL. (EDS.), *TIANJIN QUANSHU [AN ENCYCLOPEDIA OF TIANJIN]* 630 (1991).

53. Technical advances in recent decades have led to the widespread use internationally of less invasive forms of psychosurgery than those generally used before. Known as "stereotactic" techniques, these allow more precise and less damaging surgical interventions (for example, leucotomy and cingulotomy) to be carried out in place of the former "broad spectrum" lobotomy procedure.

54. See, e.g., *Observations on the Effectiveness of Stereotactic Brain Surgery in Cases of Schizophrenia with Aggressive Behavior*, 18:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 153-155 (1992); *A Follow-up Review of Stereotactic Brain Surgery in Cases of Chronic Schizophrenia*, 8:4 ZHONGHUA SHENING WAIKE ZAZHI [CHINESE JOURNAL OF NEUROSURGERY] 263-265 (1992).

55. Pearson, *supra* note 5, at 420. Pearson continues by saying, "Other matters for concern are the lack of consent to treatment, (particularly hazardous and irreversible practices), the custodial nature of most settings, the lack of any effective protection against compulsory detention, the summary removal of civil status, and the lack of an appeal mechanism." It should be noted, however, that she then states: "Reading through hundreds of case files, I have found no evidence that sane people are being detained for political offenses. When the direct question has been put as to why this does not happen in China, the consensus is that there is no need. There are other ways of dealing with dissidents that do not require the inappropriate utilization of a scarce and expensive hospital bed." Pearson continues, "There are undoubtedly people in psychiatric hospitals whose breakdowns have been precipitated by political events, or persecution for political reasons, but that is a different matter." Although a correct and reasonable observation in itself, the latter point by no means exhausts the wide repertoire and typology of "cases of a political nature" found in China since 1949. In particular, it misses the core question of why, in China, such people are commonly dealt with on the forensic (criminal) psychiatric track, rather than under normal mental healthcare procedures. The more sinister variations on this theme are discussed in detail below.

Most worryingly, according to a reliable eyewitness report, the Ankang forensic-psychiatric facility in the city of Tianjin had by 1987 established a large and technically advanced unit for carrying out psychosurgical operations; the director of the institute at the time was a neurosurgeon, and dozens of lobotomies and similar brain operations were reportedly being performed on inmates there each year.<sup>56</sup>

Three general varieties of ethically suspect or abusive psychiatry will be singled out for attention in the following discussion. The first involves a phenomenon known within the psychiatric profession as “hyper-diagnosis,” or the under-diagnosing of mental illness. In China, within the legal or forensic domain, this was most often seen in the cases of people who apparently were suffering from some form of mental illness, but whose symptoms included random or disconnected “political ravings” of a kind that the police viewed as being reactionary or “anti-government.” Owing to the extreme sensitivity of political discourse in post-1949 China, forensic psychiatrists came under strong implicit pressure from the authorities to interpret such utterances in a literal, or face-value, sense; the “offenders” would then be found “legally responsible” for their acts or statements, and duly sentenced as political enemies of the State. This represents one important instance (or medico-legal trope) of the “totalitarian” distortions of psychiatry found first in the Soviet Union and later, especially during the Cultural Revolution, in China.

The second relevant category is that of “hyper-diagnosis,” or the excessively broad clinical determination of mental illness. Within the legal domain in China, this has been reflected in a tendency on the part of forensic psychiatrists to diagnose as severely mentally ill, and therefore legally non-imputable for their alleged offenses, certain types of dissident or nonconformist detainees who were perceived by the police as displaying a puzzling “absence of instinct for self-preservation” when staging peaceful political protests, expressing officially banned views, pursuing legal complaints against corrupt or repressive officialdom, etc. This particular ethical distortion, which was perhaps the main hallmark of Soviet-era “totalitarian-style” psychiatry, is the one that has been most conspicuously in evidence, or readily apparent, in China for the past two decades and more.

A third category of politically motivated ethical abuse within the

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56. The source is a doctor who wishes to remain anonymous; however, official confirmation that a lobotomy unit had been established at the Tianjin facility appeared in *Gong'an Xitong Jingshenbing Guan-Zhi Gongzuo Chengxiao Xianzhu* [Public Security System's Work of Custody and Treatment of the Mentally Ill Achieves Conspicuous Results], RENMIN GONG'AN BAO [PEOPLE'S PUBLIC SECURITY NEWS], May 18, 1990, at 1.

field of Chinese legal psychiatry can be summed up under the heading of severe medical neglect. In certain respects, the problem of hypo-diagnosis can be seen as one major sub-form of the latter, since it resulted in numerous mentally ill individuals being sent to prison as political "counter-revolutionaries" and then denied all medical or psychiatric care for many years in an environment bound only to worsen their mental condition. But there was also a much broader aspect to the phenomenon, reflected both in the absence of medical-care provision for mentally ill prisoners in general, and, more specifically, in the deliberate withholding of such care from political offenders whom the authorities had already clearly diagnosed as being mentally ill.<sup>57</sup>

One of the best-documented examples of the latter form of abuse arose in the late 1950s and concerned a prominent Chinese writer named Lu Ling. From 1952 to 1955, a group of leading figures on the Chinese literary scene, including Lu Ling and led by the famous writer Hu Feng, came under increasing attack from the Party's cultural commissars for their alleged repudiation of Mao's doctrine that arts and literature should follow the path of "socialist realism" and serve the interests of the workers and peasants, and for their stubborn adherence to such "bourgeois notions" as the literary genre of "subjective inner realism." In July 1954, both Hu and Lu issued long written rebuttals of the charges against them, and the following year, the Party launched its first major political crackdown against China's intellectual establishment since 1949. Hu Feng was sent to jail for more than twenty years and many of his associates received lesser prison terms.

Lu was married, with three daughters, and was thirty-three years old at the time of his initial arrest in June 1955. During his first few years in

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57. The nature and significance of such medical neglect appears to have been different during the two main historical periods since 1949. Prior to 1978, it seems mainly to have resulted from a policy of deliberate official discrimination against mentally ill political offenders, who were seen as being too "heinous" in their crimes to merit any humanitarian attention, let alone proper psychiatric care; at that time, somewhat ironically, the fact that China's mental healthcare resources were much scarcer and even less well-developed than they nowadays are seems to have been a factor of secondary importance in the absence or denial of psychiatric care. In the post-Cultural Revolution period, by contrast, there is little evidence to suggest that psychiatric care has continued to be withheld from mentally ill prisoners on solely political grounds, and it is instead the persistent scarcity of such resources more generally that mainly explains the continuing problem of widespread medical neglect within the country's prison system. However, for the apparently small minority of psychiatrically incarcerated offenders in the post-1978 era who may, in fact, have been mentally ill at the time of committing their "political crimes," forced psychiatric custody also represents an abusive type of treatment that might best be described as a politically-motivated form of medical neglect. In such cases, the authorities' fallacious ascription of a criminal nature and purpose to the acts of mentally disordered speech or behavior in question means that the sufferer, whilst being denied access to proper and appropriate forms of medical care, is also placed in a coercive judicial setting that can only exacerbate his or her mental condition, especially if the underlying illness is of a paranoid nature.

detention, his refusal to admit any serious wrongdoing led to ever-harsher treatment at the hands of the authorities, and he eventually began to show clear signs of mental disturbance. In June 1959, after four years of solitary confinement without formal charge, during which he had been forced by his inquisitors to write endless screeds of self-denunciatory material, he finally exploded and wrote a second major rebuttal of all the charges against him. For this “odious act of resistance,” he was transferred to China’s primary detention facility for high-ranking political criminals, the secretive and much-feared Qincheng Prison, located just north of Beijing. For further resisting “ideological reform” and for moaning or shouting incoherently, he was often left bound and handcuffed by his jailers, although still held in solitary confinement. Finally, in early 1961, his sanity deteriorated to the point where the authorities decided to transfer him for secure custody and treatment to the capital’s Anding psychiatric hospital. After three years of intensive medication, he was deemed ready for release and allowed to return home on conditions of medical bail. For a year, he sat quietly at home, in an apparently catatonic state of post-traumatic stress, then in 1965 he began writing a long series of “petition letters” to the authorities seeking redress for his treatment at their hands. According to a recently published account of Lu’s case, these writings were largely incoherent:

Oh, but what letters they were! Some were left unaddressed, others had no recipient’s name written on them; most of them were incomprehensible, or filled with random abuse as if written by a small child; some were even marked for the attention of “Queen Elizabeth” and suchlike, bringing to mind the various mad characters of Chekhov’s plays. They were filled with a cold and remote sense of despair...<sup>58</sup>

The security authorities, however, interpreted these sad scribblings differently, and in November 1965 Lu was rearrested and sent back to Qincheng Prison on charges of engaging in “active counterrevolutionary activities.” He was to remain there, in continuous solitary confinement and reduced to spending most of his waking hours muttering incoherently at the cell wall, until June 1974, by which time he had lost all semblance of sanity. In 1979, after several years spent sweeping the streets of the capital “under supervision by the masses,” he received an official letter of rehabilitation from the Beijing Intermediate People’s Court:

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58. ZHU HENGQING, LU LING: WEI WANCHENG DE TIANCAI [LU LING: A TALENT UNFULFILLED] 112-113 (1997). This book provides the most detailed account to date of all aspects of Lu Ling’s case.

This Court has carried out a review and determined the following. On the question of Lu Ling's participation in the Hu Feng [Anti-Party] Clique, the Ministry of Public Security reached a conclusion on the matter in 1969 and thus no further action will be taken. As regards the more than thirty counterrevolutionary letters that Lu Ling wrote and mailed out between July and November 1964: since these actions resulted from the fact that he was afflicted by mental illness at the time, he should not be held criminally responsible for them.<sup>59</sup>

Some months later, Lu received a second letter from the court, stating: "Regardless of whether [you were] sane or insane, the expression of 'politically hostile'<sup>60</sup> language should never be seen as grounds for bringing charges of counterrevolution." This statement probably marked the high point of official efforts to reform China's highly repressive laws on political dissent; as we shall see, however, it proved to be little more than an ephemeral blip on the country's law enforcement horizon.<sup>61</sup>

For several decades in China, therefore, two distinct but closely related forms of political abuse have coexisted within the broad domain of Chinese law and psychiatry: on the one hand, an official reluctance to extend appropriate medical care to mentally ill prisoners convicted of political offenses, on the implicit grounds that the heinous nature of their offenses rendered them ineligible for even the most basic humanitarian consideration; and on the other, a parallel and rather more sophisticated tendency, inherited from the Soviet psychiatric tradition, according to which the uninhibited expression of ideologically unorthodox views was seen, in

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59. *Id.* at 113.

60. The Chinese term used was *gongji*: technically, this means simply "hostile" or "attacking," but when used in Chinese legal discourse (especially in the phrase "*e'du gongji*" — "viciously attacking") in connection with proscribed acts of speech or writing, it invariably means "politically hostile."

61. The same sentiment as that expressed in the court decision on Lu Ling's case appeared in March 1979 in one of the country's main daily newspapers: "In order genuinely to protect the democratic rights of the Chinese people, the following must be clearly and unequivocally written into the Constitution and the law: 'Speech shall not be taken as a grounds for the crime of counterrevolution. Whoever determines the crime of counterrevolution on the basis of a person's acts of expression shall himself be guilty of a criminal offense.'" GUANGMING RIBAO [GUANGMING DAILY], March 10, 1979. Ten years later, however, this bold opinion was roundly dismissed in the following terms in a textbook on criminal law: "Viewpoints such as this run contrary to the stipulations of China's Criminal Law and are therefore wrong." See GAN YUPEI (ED.), XINGFAXUE ZHUANLUN [CRIMINAL LAW] 512 (1989) (volume marked: "for internal use only"). The *locus classicus* post-Cultural Revolution document on why "hostile speech or statements" (especially those directed against State and Party leaders) were still to be dealt with as a criminal offense is the CPC's Central Political-Legal Commissions' *Opinion on the Question of Whether Viciously Attacking or Slandering Central Leading Comrades Constitutes a Crime*, December 17, 1981; a full translation (by Donald C. Clarke) can be found on the Internet at <<http://faculty.washington.edu/dclarke/public/clpc-opinion.htm>>, as of November 29, 2000.

certain cases, as indicative of “mental pathology” in an ostensibly legal and medical sense. Indeed, where the politically sensitive field of forensic psychiatry is concerned, there appears to have been little, since 1949, in the way of a stable middle-ground between these seemingly divergent tendencies, both of which were equally disreputable from the point of view of international standards. With the onset of the Cultural Revolution, however, the distinction in China between “political crime” and “political insanity” was lost entirely.

### C. *The Cultural Revolution*

Political cases: These are very seldom mentioned in the literature of other countries. According to a survey done by this author of forensic psychiatric appraisal cases carried out at the Shanghai Municipal Mental Health Center over the period 1970-71, however, political cases accounted for 72.9 percent of the total. This had to do with the particular historical circumstances of that time.

— Zheng Zhanpei, 1988<sup>62</sup>

On the afternoon of January 7, 1967, as China sank ever deeper into the social and political turmoil of the Cultural Revolution, a bizarre conversation took place at the Anding Hospital, Beijing’s foremost psychiatric institution, between a group of Red Guard activists and two of Chairman Mao’s closest colleagues in the new ultra-leftist Party leadership, Qi Benyu and Wang Li. The topic of discussion was a group of mental patients who had earlier been detained for treatment at the hospital after making “reactionary statements” about President Liu Shaoqi, Mao’s erstwhile senior colleague but now principal adversary in the Party leadership, and whom the Red Guards had recently “liberated” from their confinement. The conversation went, in part, as follows:

Qi Benyu: You Red Guards are the pioneers of rebellion in China’s mental asylums, you are rebels against revisionism; in [the] future, the Soviet Union will need to carry out a cultural revolution and do the same kind of thing!

Red Guard: I request permission...to conduct similar revolutionary

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62. See Shen, *supra* note 41, at 314. According to an official biography of Zheng Zhanpei published in 1999, “He has worked at the Shanghai Municipal Institute for the Prevention and Treatment of Mental Illnesses (now called the Shanghai Municipal Mental Health Center) from 1960 up to the present.” See Xie Bin, *Falu Yu Yixue Zazhi*, 6:3 SIFA JINGSHENBINGXUEJIA ZHENG ZHANPEI JIAOSHOU [THE JOURNAL OF LAW AND MEDICINE] 99 (1999). Among many other posts Zheng now holds, he is concurrently Chairman of the Shanghai Municipal Experts Committee for Psychiatric Judicial Appraisals and Adviser to the Shanghai Municipal Bureau of Reform Through Labor.

liaison activities in mental asylums throughout the country.

Wang Li: Our purpose in coming here today is to support you.

Qi Benyu (to a recently discharged mental patient): Are you mad?

Wang Fuxian: No...I just had different views and opinions from other people; I was in the minority. When I rebelled against the authority of my local Party Secretary, they said I was mentally ill.

Qi Benyu: How does that make you mentally ill? They're the ones who are mad! ... If the revisionists ever came to power, they'd have Wang Li and me declared "mentally ill" too!<sup>63</sup>

This obscure incident from over thirty years ago provides a rare glimpse into the elusive history of political psychiatry in China. The central figure in the Anding Hospital incident was one Chen Lining, a Party member who had incurred the wrath of Mao's political opponents in the early 1960s by writing articles and wall-posters criticizing the "revisionist" policies of President Liu Shaoqi. As a result, between 1962 and 1966, Chen was incarcerated seven times in mental hospitals and placed under secret arrest by the security police. By January 1967, however, the political tables had been turned. Liu was being attacked nationwide as China's "No. 1 Capitalist Roader," and Chen was duly released from the mental asylum and proclaimed by Red Guards to be the "Madman of the New Era" ("xin shidai de kuangren"). In a speech given at the Chinese Academy of Sciences two months later, Chen described a part of his ordeal in forensic-psychiatric detention as follows:

During my political persecution at the Hunan Provincial Mental Hospital, I was subjected to numerous bouts of drug interrogation,<sup>64</sup> given electro-convulsive therapy more than 40 times and insulin-coma shock therapy altogether 29 times, and was fed large quantities of chlorpromazine. They treated me like an experimental object and it was all a disguised form of physical torture. It was extremely painful, and by the end, I was left trembling and sweating all over and my memory had started to go.

The details of Chen's medical record from that time are highly revealing.

63. Transcript taken from "Red Guard Publications: Part III—Special Issues," Vol. 16, Center for Chinese Research Materials, Association of Research Libraries, Washington DC (1975), at 5186-5187. (Conversation edited here for purposes of conciseness.) Grateful acknowledgement is due to Lalagy Pulvertaft for providing source materials on the Anding Hospital incident and also (as discussed below) the cases of Chen Lining and the wife of Lu Dingyi.

64. *Mazui fenxi* is a practice whereby patients were drugged and questioned in an attempt to find out if they were feigning symptoms of mental illness. Most Chinese psychiatrists now regard this practice as "inhumane and contrary to human rights," but Li Congpei — the *eminence grise* of Chinese forensic psychiatry — was still advocating its use as of 1990. See Li, *supra* note 10, at 73-74 (1992).

According to an entry made by a psychiatrist in December 1963: “The patient’s mental illness has recurred; his counterrevolutionary statements are none other than a pathological mental symptom of his longstanding reactionary views. Diagnosis: schizophrenia.” The following year, a psychiatrist at Anding Hospital added a further entry: “Patient’s mental condition: thinking clear and alert, interacts well with others, answers questions appropriately... But lacks self-knowledge and is unclear as to why he was placed under criminal investigation in the first place. Initial diagnosis: schizophrenia (paranoid type).”<sup>65</sup>

A number of key pointers to the history of psychiatric abuse in China can be discerned from the above account. First, as the quotation from People’s Daily cited at the start of this article showed, the Chinese leadership was aware of the main facts about Soviet political psychiatry by at least the early 1960s. Second, it transpires that very similar abuses were also to be found in Chinese forensic psychiatry by around the same period. Finally, it appears that a significant campaign, albeit a highly politicized and ultimately destructive one, of public exposure of such practices took place in China well before the existence of Soviet political-psychiatric abuse was even known about in the West or had become a focus of Soviet dissident concern.

As the Cultural Revolution unfolded, however, the distinction between political crime and mental illness — one that had apparently been tenuous even at the best of times — was effectively abandoned in Chinese public life. For a decade and more, until roughly 1978, both legal and medical specificity were discarded outright in favor of an essentially pre-modern concept whereby, much as in Europe during the middle ages, the political or religious dissenter was viewed as being possessed by a deeply wicked, or “counterrevolutionary,” form of madness; for their part, the genuinely mentally ill were all too often condemned and punished as dangerous political subversives.

As a direct consequence of Qi Benyu’s “important directives” at the Anding Hospital meeting of January 1967, a sinister campaign of persecution — later dubbed the “tide of reversing psychiatric verdicts”

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65. “Red Guard Publications,” *supra* note 63. Less than a year later, however, when Chen Lining was found to have also said “crazy” things about Chairman Mao, the Red Guards swiftly repudiated him as a political role model and once again branded him a “heinous counterrevolutionary element.” A detailed account of this dramatic reversal in Chen’s political fortunes (and also in those of his erstwhile patron, Qi Benyu) can be found in CONG CHEN LINING ANJIAN KAN BIANSE LONG QI BENYU ZHI LIU DE FANGEMING ZUILIAN [THE CASE OF CHEN LINING SHOWS US THE COUNTERREVOLUTIONARY FEATURES OF THE CHAMELEON-LIKE QI BENYU AND HIS ilk], published in the Red Guard journal XIN BEI-DA — CHANGCHENG [NEW BEIJING UNIVERSITY — GREAT WALL] 1-4 (March 20, 1968). It is not known what eventually became of Chen.

(“jingshenbing fan’an feng”) — was launched and carried out by Red Guards around the country. A certain number of mental patients were, as in Wang Fuxian’s case, released after being found to have the requisite “revolutionary thinking,” while others, mostly senior cadres or their relatives, were accused by the ultra-leftists of having been diagnosed as mentally ill and admitted to the hospital solely as a means of protecting them from the political purges then underway. In many more cases, however, genuinely mentally ill people, especially those whose symptoms had included pseudo-political “ravings” against Mao, were dragged out of mental asylums and brutally coerced into “confessing” that they had been sane all along. These unfortunate individuals were then officially reclassified as counterrevolutionaries and either jailed or summarily executed. As Guan Xin, an official of the Zhejiang High People’s Court, explained in a restricted-circulation official report of 1981,

In the course of reviewing trumped-up cases and miscarriages of justice [“yuan jia cuo an”] from that period, numerous cases have been discovered of people who were obviously mentally ill but who were wrongfully imprisoned or even executed as “political lunatics.”

During the ten years of the Cultural Revolution, owing to interference and sabotage from the ultra-leftist line, the issue of the forensic-scientific evaluation of mental illness was for the most part consigned to the rubbish heap. Mentally ill people were convicted of crimes on the basis of their strange utterances and wild language, thereby creating the notion of the so-called “political lunatic” [“zhengzhi fengzi”] — a hodgepodge of the two unrelated terms “politics” (signifying class struggle) and “lunatic” (a state of biological pathology.)<sup>66</sup>

Similarly, Yang Desen, one of China’s leading forensic psychiatrists, noted in 1985: “During the ten years of chaos, a minority of mentally ill people were wrongfully executed or imprisoned as ‘counterrevolutionaries.’”<sup>67</sup> One

66. Guan Xin, *How to Discern Mental Illness and Ascertain Legal Capacity, A COMPILATION OF ARTICLES FROM “PEOPLE’S JUDICIARY”* 590 (1983) (volume marked “for internal use only”). As Guan concludes from this grotesque record: “Professional experience has clearly shown us that in order to avoid the wrongful conviction and execution of the mentally ill, it is vital that we should disseminate basic knowledge about forensic psychiatry with a view to correctly identifying the mentally ill and ascertaining the question of their [legal] responsibility.”

67. See Yang Desen, “On the Legal Responsibility of Mentally Ill Persons for Their Illegal Conduct,” 11:5 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 310-312 (1985). Yang Desen (also known as Young Derson) is head of the psychiatry department at Hunan Medical College. As the American psychiatrist and anthropologist Arthur Kleinman observed in his landmark 1986 study of Chinese psychiatry, *Social Origins of Distress and Disease: Depression, Neurasthenia and Pain in Modern China*, *supra* note 4, at 9, Yang was himself the target of political attacks during the Cultural Revolution: “During these years, Dr. Young, Professor Ling’s [i.e., Ling Ming-yu, then head of the

example serves to convey the extent of the medico-legal confusion that prevailed during those years and of the judicial absurdities that resulted. According to Shen Zheng, another leading authority on forensic psychiatry, during the period 1960-76, even among an unspecified number of mentally retarded people who were submitted for forensic-psychiatric evaluation for alleged criminal offenses, “the main subgroup (31.2 percent) consisted of political cases.”<sup>68</sup>

The profound crisis into which China’s entire psychiatric profession was thrown during the Cultural Revolution led to the effective dismantling of mental healthcare institutions across the country. Also, numerous Chinese psychiatric professionals, possibly a majority, were labeled as “bourgeois academic authorities” and either purged outright from their positions or sent down to the countryside, often for many years, to perform manual labor and “learn from the peasants.” Medicine in general, and psychiatry in particular, had long been a low-status profession in China, but during these years psychiatrists ranked close to the very foot of the social and political ladder. Virtually the entire intellectual domain of psychiatry and human psychology was officially repudiated, to be subsumed under a crude Maoist universalism whereby “correct political ideology” served not only as the key to social survival, but was moreover equated with mental health in general—and vice versa. Thus, in what little remained at that time of the country’s mental healthcare institutions, official wall slogans proclaimed to mental patients: “Without a correct political standpoint, one has no soul.”<sup>69</sup> Under this reductionist doctrine, psychiatry and psychiatrists became superfluous, and therapy for the mentally ill consisted largely, until the late 1970s, of group “study sessions” on the works of Mao.<sup>70</sup>

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HMC psychiatry department] former student and successor, received equally harsh treatment from the Red Guards because of his defense of the core psychiatric position that mental illness is an illness, and not wrong political thinking as the Maoists held.”

68. Shen, *supra* note 41, at 217. Even in the late 1990s, mentally impaired or disabled people were still being arrested on political charges and then subjected to forensic psychiatric assessment. For example, a study published in April 2000 examining the question of crimes committed by epileptics noted that the sample group included one person detained for making “anti-social speeches.” See Wei Qingping et. al., *Dianxian Huanzhe Weifa de Sifa Jingshen Yixue Jianding Fenxi* [An Analysis of Expert Psychiatric Testimony on Epileptic Patients’ Illegal Actions], 26:2 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 65-67 (2000).

69. “Meiyou zhengque de zhengzhi guandian, jiu dengyu meiyou linghun.” This quotation from Chairman Mao appears in his 1957 article *On the Correct Handling of Contradictions Among the People*, in SELECTED WORKS OF MAO TSE-TUNG, VOL. 5 384-421 (1977); the official translation of the quoted sentence differs slightly from that given above.

70. Given the virtual collapse of the country’s mental healthcare system at that time, it is surprising to learn that in the legal or forensic area of psychiatric work, things apparently continued much as they had before the Cultural Revolution. As can be seen from the passages cited above, large numbers of “dangerously mentally ill offenders” apparently continued to be arrested, brought before

The extreme political pressures of this era inevitably led to pervasive ethical corruption within the field of psychiatry and forensic medicine in general. As one writer put the matter, "In the past, owing to the influence of the extreme 'leftist' line, [forensic psychiatrists] overemphasized 'putting class struggle to the fore' and 'making vocational work serve politics,' to the extent that issues of an academic or technical nature were sometimes turned into a question of one's basic political standpoint."<sup>71</sup> According to another official account,

During those years when class struggle was at the forefront of everything, some [forensic doctors] paid no attention to the principle of seeking truth through facts, and instead took the slogans 'Always be highly conscious of the class struggle' and 'Maintain the highest level of revolutionary vigilance' as their basic guiding ideology for performing forensic evaluations... Some forensic doctors who insisted on upholding the truth were taken in for interrogation, thrown into jail and branded as counterrevolutionaries... Others, however, submitted to political pressure and went against their own consciences, making wrongful forensic evaluations... Still others went so far as to use their scientific knowledge to turn truth and lies upside down, saying black was white, and acting entirely in the service of particular individuals or groups.<sup>72</sup>

In the winter of 1978, a young man named Wei Jingsheng, who was to become China's best-known dissident and who later spent seventeen years in prison for advocating greater human rights and democracy, wrote an article in China's *samizdat* pro-democracy press describing conditions at Qinching Prison during the Cultural Revolution. His account was probably the first to reveal that psychiatric techniques were being misused in China

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panels of forensic-psychiatric assessors and then dispatched to secure mental hospitals around the country during the Cultural Revolution. But Communist dictatorships sometimes behave in very strange ways. Pol Pot, for example, in planning his new, improved version of Stalinism and Maoism, made provision for a mental hospital in his Democratic Kampuchea utopia. Construction of this facility for the treatment of insanity was planned in 1976, before his Communist Party had reached the conclusion that everything that was going wrong with the revolutionary society it was trying to build was the result of CIA-KGB-KMT-Vietnamese plots. This paranoid delusion on the part of Pol Pot and other Party leaders led them to decide to apply mass execution, rather than psychiatry, to solve social and political problems, and the hospital was never built. For the plans, see David A.T. Chandler, ed., *The Party's Four-Year Plan to Build Socialism in All Fields, 1977-1980*, in POL POT PLANS THE FUTURE 109 (1988). (With thanks to Dr. Stephen R. Heder, Lecturer in Politics at the School of Oriental and African Studies, London, for this information.)

71. Jia Yicheng et. al., *On Several Basic Concepts in Forensic Psychiatry*, 9:2 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 119 (1983).

72. Zhao Haibo, *On the Fundamental Principles and Methods of Forensic Medical Investigation*, in CUI JIAN'AN (ED.), ZHONGGUO FAYI SHIJIAN [CHINA'S FORENSIC MEDICAL PRACTICE] 47-48 (1993).

for purposes of political repression:

The most common form of torture is simple beating. The prisoner is summoned and surrounded by a group of men who slug and kick until he is bruised, bloody, and completely breathless. Even more common is for prisoners to be so heavily drugged that they become mentally unstable. The justification for administering these drugs is to cure "mental illness." Sometimes people are sent to the hospital for further "treatment." One person who had received the treatment recalls that after taking the medication he had talked to himself constantly for days on end. Naturally, such monologues were recorded for use during the next interrogation. Among the hospitals that participate in such practices are the Fuxing Hospital, Hospital 301, and Anding Hospital.<sup>73</sup>

Subsequent testimonies from high-ranking government officials who had been incarcerated at Qincheng Prison authoritatively confirmed Wei's general account. According to one former inmate, for example: "Especially inhuman was the practice of ...force-feeding you a kind of drug that induced hallucinations."<sup>74</sup> The most vivid and detailed account is that of Mu Xin, a former editor of the *Guangming Daily*, who was arrested in 1968 and held for several years at Qincheng Prison on trumped-up charges of conducting an "anti-Party conspiracy." In his memoir of this period, Mu wrote,

In the nearly four years from the moment I was thrown into Qincheng Prison to the downfall of Lin Biao, they continuously gave me stimulants. This would happen at least ten to fifteen days every month...They did this with the intention of destroying my brains, not just to impair my memory but also to make me unable to write anything anymore...Even after I returned to my home, having suffered several years of this continuing drugging and poisoning, my brain was severely damaged and traumatized.<sup>75</sup>

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73. Wei Jingsheng, *A Twentieth-Century Bastille*, in JAMES D. SEYMORE (ED.), THE FIFTH MODERNIZATION: CHINA'S HUMAN RIGHTS MOVEMENT, 1978-79, 217 (1980). Wei's article originally appeared in the March 1979 issue of TANSUO [EXPLORATIONS], a dissident journal founded and edited by Wei the previous winter.

74. Wang Li, *Wang Li's Testament*, cited in 26:1-2 CHINESE STUDIES IN PHILOSOPHY 5 (Fall-Winter 1994-95).

75. Mu Xin, "Inmate No. 6813 in Qincheng Prison," in *Mao's Great Inquisition: The Central Case Examination Group, 1966-1979*, 29:3 ZHONG GUO FALU YU ZHENGFU [CHINESE LAW AND GOVERNMENT] 74-75 (May-June 1996). The bizarre lengths that prison guards at Qincheng went to in order to manipulate and control the inmates was related by Mu as follows: "Before they delivered the newspaper that carried the news of the death of Mr. Dong [Biwu] [one of the founders of the People's Republic, who had fallen from official grace during the Cultural Revolution], they surreptitiously gave me a drug that suppresses tears (in fact, many of the female 'prisoners' were given this drug before they met with their children who came to meet them in prison.) This drug makes it impossible, somehow, for a person to shed tears, no matter how badly he or she might feel. On the other hand,

As mentioned earlier, many mental patients, especially senior cadres or their relatives, were accused during the Cultural Revolution of having feigned their illnesses as a means of avoiding punishment for their political opposition toward Mao. One such case involved a woman named Yan Weibing, wife of the then Minister of Propaganda, Lu Dingyi, who was one of the first senior victims of the Cultural Revolution purges. This little-known case bears more than a passing resemblance to the infamous "doctors' plot" concocted in the Soviet Union shortly before Stalin's death.<sup>76</sup> It claimed numerous senior political casualties and delivered a traumatic blow to China's psychiatric profession in general. According to an account of the case compiled by Red Guards in June 1968,

The active counterrevolutionary element Yan Weibing, wife of the counterrevolutionary revisionist clique leader Lu Dingyi, over the six-year period from March 1960 to January 1966 wrote dozens of anonymous counterrevolutionary letters that insanely attacked Deputy Commander Lin Biao, the close comrade-in-arms of our most dearly beloved leader Chairman Mao, and members of his family; she

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before they delivered the newspaper that carried the news of [the death of] Chiang Kai-shek, they deliberately doped me with some drug that had the opposite effect of the first one. In spite of all this, however, it was most certainly unlikely that I would feel the slightest bit of 'grief' at the death of a public enemy of the people like Chiang Kai-shek, and I most certainly would not be able to bring myself to shed tears on his account. Those people were able, in fact, to sense this, and so they ordered the 'guard' to pour some liquid sulfuric acid — which attacks one's eyes severely and makes one's eyes all runny — on the ground right outside the door of my cell, and then they tried to fan the fumes into my room in an effort to force me to shed tears, thus allowing them to make a report on my 'counterrevolutionary sentiments.'" *Id.* at 92-93.

76. The ENCYCLOPEDIA BRITANNICA provides the following summary of this incident: "Doctors' Plot: (1953), alleged conspiracy of prominent Soviet medical specialists to murder leading government and party officials; the prevailing opinion of many scholars outside the Soviet Union is that Joseph Stalin intended to use the resulting doctors' trial to launch a massive party purge. On Jan. 13, 1953, the newspapers Pravda and Izvestiya announced that nine doctors, who had attended major Soviet leaders, had been arrested. They were charged with poisoning Andrey A. Zhdanov, Central Committee secretary, who had died in 1948, and Alexander S. Shcherbakov (d. 1945), who had been head of the Main Political Administration of the Soviet army, and with attempting to murder several marshals of the Soviet army. The doctors, at least six of whom were Jewish, also were accused of being in the employ of U.S. and British intelligence services, as well as of serving the interests of international Jewry. The Soviet press reported that all of the doctors had confessed their guilt. The trial and the rumored purge that was to follow did not occur because the death of Stalin (March 5, 1953) intervened. In April Pravda announced that a reexamination of the case showed the charges against the doctors to be false and their confessions to have been obtained by torture. The doctors (except for two who had died during the course of the investigation) were exonerated. In 1954 an official in the Ministry of State Security and some police officers were executed for their participation in fabricating the cases against the doctors. In his secret speech at the 20th Party Congress (February 1956), Nikita S. Khrushchev asserted that Stalin had personally ordered that the cases be developed and confessions elicited, the "doctors' plot" then to signal the beginning of a new purge. Khrushchev revealed that Stalin had intended to include members of the Politburo in the list of victims of the planned purge." See <<http://www.britannica.com/seo/d/doctors-plot/>>, as of November 29, 2000.

insanely opposed Comrade Lin Biao, and is [thus] an active counterrevolutionary element who has committed towering and heinous crimes.<sup>77</sup>

In fact, Yan had been under psychiatric diagnosis and treatment, including frequent insulin coma therapy, for several years for a mental condition that senior Chinese psychiatrists had determined to be some form of paranoid behavioral disturbance.<sup>78</sup> She suffered frequent outbursts of uninhibited anger, much of which was apparently aimed at Lin Biao's wife, Ye Qun, and to whom she had been sending copious amounts of politically colored "hate mail" in recent years. In the months leading up to the full-scale outbreak of the Cultural Revolution in May 1966, her husband Lu had been considering having her compulsorily admitted to the Anding Hospital for treatment. In the event, all of the psychiatrists and senior government officials responsible for Yan's earlier care and treatment (including Shen Yucun, who survived to become the principal editor of the major PRC textbook on psychiatry after 1978 and head of the WHO's mental health liaison office in Beijing) were branded by Red Guards as having been centrally involved in a "counterrevolutionary conspiracy" to falsely diagnose Yan as mentally ill so that she could be spared punishment for her "insanely hostile" letters against Lin Biao and his wife; at least one of them committed suicide as a result.<sup>79</sup>

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77. Documentation Group of the Revolutionary Committee of Beijing College of Politics and Law and Documentation Group of the Capital Red Guards Committee's Politics and Law Commune, *A Shocking Case of Counterrevolution: An Investigative Report into the Attempt by Peng Zhen, Lu Dingyi and their Sinister Lieutenants to Concoct a Counterrevolutionary Phony Medical Diagnosis Aimed at Shielding the Active Counterrevolutionary Element Yan Weibing*, in ALL TYPES OF CASES: MODEL EXAMPLES OF THE BOURGEOIS DICTATORSHIP EXERCISED BY LIU, DENG, PENG AND LUO [XINGXINGSE DE ANJIAN: LIU DENG PENG LUO SHIXING ZICHANJIEJI ZHUANZHENG DE YANGBAN] 18-33 (1968). A whole separate study could fruitfully be done on the topic of the close convergence of political and popular-psychological language during the Cultural Revolution, and on the wholesale semantic degradation that resulted. When the Red Guards accused Mrs. Yan of "insanely attacking" Lin Biao, for example, they meant it both as a serious political allegation and also, more randomly, as a form of sheer political abuse. On a deeper discursive level, however, they seem also to have been acknowledging that she probably was mentally ill, and the phrase "insanely attacking" may thus have been intended as a kind of pseudo-medical, politically reductionist explanation for her allegedly deviant mental behavior. On a much simpler level, of course, the question inevitably arises: who was the more "crazy," she or they?

78. The precise diagnosis, made by psychiatrists two weeks after Yan was formally arrested, was: "Paranoid state on the basis of a sub-acute hysterical personality type." *Id.* at 31.

79. The psychiatrist was Shi Shuhan, an official at the Ministry of Health; he took an overdose of barbiturates on August 25, 1966. Among the numerous senior psychiatrists and health officials denounced and punished as "counterrevolutionary conspirators" as a result of the Yan Weibing "false diagnosis" case were: Qian Xinzhong, Minister of Public Health; Huang Shuze, deputy Minister of Public Health and head of the ministry's healthcare bureau; Xue Bangqi, director of the East China Hospital in Shanghai; Shen Yucun, a psychiatrist in the brain medicine department of Beijing Hospital

The real target of the Red Guards' displeasure, of course, was Lu Dingyi himself, and the evidence of his wife's letters formed a crucial plank in their efforts, soon thereafter successful, to have him dragged from power. Yan's persecutors thus had little time for diagnostic niceties and their final verdict on her mental state was as follows: "What was Yan Weibing's real mental illness? A counterrevolutionary disease of the heart!<sup>80</sup> Her mind was extremely alert...and her state of anxiety [reflected only] her high degree of counterrevolutionary vigilance." She had been under investigation by the Ministry of Public Security for many months on account of the letters to Lin Biao's family, and on April 28, 1966, the central authorities ordered her arrest on charges of counterrevolution. Her fate thereafter is not known.

Accounts from senior-level cadre victims of the Cultural Revolution purges go only a small way toward explaining, however, the extremely widespread incidence of forensic-psychiatric "cases of a political nature" that was later reported to have occurred during those years. A perhaps more typical story was one related many years later to a Western human rights organization by a former political prisoner, identified only as "Mr. C," who spent a total of more than sixteen years in various labor camps, detention centers and prisons for the "mentally disordered" in China. His account conveys with great clarity the grotesque ironies and injustices that characterized legal psychiatry at that time:

Summer 1969. After I was arrested as a counterrevolutionary, I was interrogated three times. I did not want to accept any charge for a crime that I had not committed, nor did I want to name any person as having committed any crime. Therefore I was sent to Jiangwan Number 5 [in Shanghai]. This place was known as the "Institute for Diagnosing Mental Disorder" — the setting of my most terrifying experiences during my entire 16 years of imprisonment.

The whole "institute" was a large cage from within which one could not see the skies. Inside this large cage there were many small cages, which were only half as high as an average person. One could only squat or lie in them, and I had to crawl in and out of mine. They were no better than chicken houses. All those detained in the "institute" were suspected of mental disorder, but being there would truly drive a mentally normal person insane. There, one could constantly hear frightening screams. The wardens tried to stop people from screaming and, when failing to do so, would administer drugs to

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(and wife of Qian Xinzong); Su Zonghua, director of the Shanghai Hospital for the Prevention of Mental Diseases; Xu Yunbei, a former Party Secretary at the Ministry of Health; Zhang Ziyi, former deputy head of the Party's Propaganda Department; Zheng Xuewen, head of the medical treatment department of the Ministry of Health; and Geng Dezhong, the personal physician of Lu Dingyi.

80. "Fangeming de xin-bing." (Footnote inserted by author.)

cause people to lose consciousness and thus become silenced. Once awakened from the drug, one felt very dull, depressed and uncomfortable.

People sent to this institute were mostly those who had committed serious counterrevolutionary crimes such as shouting anti-Mao slogans in public. In order to avoid sentencing of death, these people pretended to be mentally abnormal by screaming nonsense, only to be cruelly beaten and drugged. They were allowed to go out of their small cages to be "aired" once a day, and were given two meals of very thin porridge each day.

Whenever the wardens appeared, I would tell them that I was not mentally disordered and that I would like to talk to them about my problems if only they would let me out of the "institute." Usually, people insisted on their lunacy in order to receive a reduced sentence. Therefore, when I very soberly proclaimed that I was normal, they truly believed me to be a madman.

I did not know how long I would be treated like an animal in a place where fear alone could suffice to drive a person crazy. Many of the inmates I met had been there for more than ten years; some had been imprisoned there for over twenty years. Worse still, when an inmate was diagnosed to be a normal person, he or she would either be executed, given a more severe sentence, or shut up in the cage forever as a "politically insane" criminal.

I was there for only about 100 days. A good-hearted warden, knowing that I was a college student from reading my personal files, secretly released me. I hid for a while, then was arrested again soon after.<sup>81</sup>

The place where Mr. C was held—"Jiangwan No. 5"—is believed to be the same institution that in 1987 was renamed as the Shanghai Public Security Bureau's Ankang Center for the Custody and Treatment of the Mentally Ill, located just south of the Fudan University campus on Guoquan North Road. Apart from the appalling conditions of detention that Mr. C describes, what is most striking about his story is the Orwellian complexity and intricacy of the classification of the inmates. Most were arrested "counterrevolutionaries" who had shouted banned political slogans and then been suspected of mental illness. Others, presumably "genuine" counterrevolutionaries, had adopted the survival stratagem, after their arrest, of feigning mental illness in order to avoid being executed for shouting such slogans. Meanwhile Mr. C himself, another political offender, was regarded

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81. See *Shanghai Detention Center for the Mentally Disordered: An Interview with Mr. C*, 1:5 HUMAN RIGHTS TRIBUNE 16 (October 1990). (Human Rights Tribune is the journal of the New York-based monitoring group, Human Rights in China. HRIC's journal is now called China Rights Forum.)

as indisputably insane by the warders because he had actively chosen to reject this stratagem by declaring himself quite sane. The normal language and conceptual armory of forensic-psychiatric science would seem to be of little direct use as a means of understanding or construing a situation of such utter medico-legal absurdity as this one.

One further issue that should be briefly addressed here concerns the extent and quality of psychiatric care available to criminal offenders in general in China since 1949. The focus here is on the theme, as noted above, of medical neglect, rather than of either hypo-diagnosis or hyper-diagnosis; in practice, though, these various divergent themes were often complexly intermingled. The U.N.'s basic document in this area, the Standard Minimum Rules for the Treatment of Prisoners, stipulates that seriously mentally ill persons are not to be held in prisons and that less severely disturbed inmates are to be given appropriate medical care.<sup>82</sup>

Since prison systems in most countries are notoriously under-resourced in terms of their ability to provide psychiatric treatment for mentally ill offenders, in practice these provisions are often widely ignored. China's shortcomings in this respect should thus, in principle, occasion little surprise or blame. For decades after 1949, however, the PRC prison authorities applied a policy of actively withholding appropriate medical care in the case of major political prisoners suffering from mental illness. According to Article 37 of the 1954 PRC Regulations on Reform Through Labor, prison authorities were not permitted to take custody of offenders suffering from mental illness or other serious diseases, "except in the case of major counterrevolutionary criminals."<sup>83</sup> Since the great majority of all convicted prisoners in China during the 1950s and 1960s were "counterrevolutionaries," this discriminatory policy inevitably meant that large numbers of mentally-ill political prisoners were denied access to

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82. See especially Article 82 of the Standard Minimum Rules, adopted by the United Nations on August 30, 1955: "(1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible. (2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management. (3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer. (4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment."

83. See also Xu Shoubin, *The Legal Protection and Restriction of Rights of the Mentally Ill*, 6 FAZHI SHIJI [WORLD OF LEGALITY] 26 (1994). The prohibition on penal institutions taking in mentally ill prisoners was reiterated by the Ministry of Public Security (whose No. 11 Bureau ran all such facilities until July 1983 when jurisdiction was transferred to the Ministry of Justice) in Article 9 of the Ministry's 1982 *Detailed Rules on the Disciplinary Administration of Prisons and Labor-Reform Detachments (Trial Draft)*, in A COMPILATION OF STANDARD INTERPRETATIONS OF THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA: SUPPLEMENTARY VOLUME 798 (1991). However, the provisions of Article 37 of the 1954 Regulations remained in force.

proper care throughout their imprisonment. Another abusive practice that seriously compounded this general problem was that, until fairly recently, both sentenced counterrevolutionaries, irrespective of their mental state, and common criminals suffering from mental illness were frequently held in solitary confinement cells throughout their term of imprisonment.<sup>84</sup> An extreme example of the conditions of squalor and misery that could result from this practice was related in a 1983 directive from the Ministry of Public Security:

In December 1980, the authorities at Yingshan Prison, Guangxi Province, placed a mentally disturbed prisoner in solitary confinement and kept him there for more than two years. They afforded him neither medical treatment nor ideological education. No one cleared away the prisoner's excrement and urine, with the result that a mound of fecal matter thirty-five centimeters high accumulated inside the cell. During the winter of 1982, the prisoner was not supplied with any additional clothing or bed quilt, and as a result of the extreme cold and the noxious gases created by the fermentation of the decaying excrement, the prisoner died in January [1983] from the combined effects of cold exposure and gas poisoning.<sup>85</sup>

The same directive ordered that mentally ill prisoners were henceforth not to be placed in solitary confinement and must be given proper medical care and attention. In March 1998, however, a leading southern Chinese newspaper reported the case of a violent prisoner suffering from chronic schizophrenia who had been kept locked by police in an outdoor cage for at least the previous five years. As a result of the publicity, the man was subsequently freed from the cage and placed in a secure mental asylum. According to the newspaper account,

Reporters found Deng Qilu, the "man in the cage," at Beitan Village,

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84. Even common criminals with mental illnesses were rarely dealt with according to the provisions of the 1954 Regulations, since virtually no mental healthcare facilities were to be found anywhere in the country's prison system; as late as 1988, the penal network reportedly still contained only two specialized mental hospitals. See *Penal-System Medical and Health Work Has Been Greatly Strengthened and Developed in Recent Years*, 4 FANZUI YU GAIZAO YANJIU [RESEARCH IN CRIME AND REFORM] 53-55 (1994).

85. See *Notification of Bureau No. 11 of the Ministry of Public Security On Strengthening and Reorganizing the Management of Solitary Confinement Cells* (July 12, 1983), in ZHONGHUA RENMIN GONGHEGUO FALU GUIFANXING JIESHI JICHENG [A COMPILATION OF STANDARD INTERPRETATIONS OF THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA] 1591-1593, (October 1990). A heavily censored version of the same directive appears in: ZHONGHUA RENMIN GONGGEHEGUO JIANCHA YEWU QUANSHU [A COMPENDIUM OF PRC PROSECUTORIAL WORK] 1496-1497 (1991). The directive ordered an immediate tightening up of the administration of solitary confinement units throughout China.

Nanxiang Township, Xuwen County last weekend. The cage had been made [by the police] by welding together reinforced steel pipes and had an area of approximately two square meters inside but had no exit. It was situated in an open yard at the side of the village. The caged man looked to be a little over 40 years old, had grown long whiskers, and was stark naked. When we strangers walked close to the cage, his eyes showed fear and panic.<sup>86</sup>

A related issue concerns the question of prisoners who went insane or were driven mad during their time in prison. This type of phenomenon, known as “prison psychosis,” is common to prison systems around the world, but it was especially frequent and severe in China during the Cultural Revolution.<sup>87</sup> In particular, the police pressure on those arrested for alleged political offenses was often so great that many people began to believe that they actually had committed “towering crimes against the people,” notably conspiracy, espionage and political subversion, and in the course of their daily forced-confessional writing sessions in prison, they began to reinterpret large sections of their own pasts in lurid and entirely fabulous terms. In some cases, this unusual and highly specific form of “politically induced” prison psychosis was driven, at some vestigial level of the person’s sanity, by a realization that it was only by constantly amplifying the scale and seriousness of the imagined crimes that one might hope to prolong the police investigation and thereby postpone the day of eventual punishment, which not infrequently meant death.<sup>88</sup> Clinically speaking, the people

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86. *Man Detained in Iron Cage for Ten Years in Guangdong*, YANGCHENG WANBAO, March 28, 1998; translation from BBC Summary of World Broadcasts, April 13, 1998. (Chinese press reports on the case varied on whether the man had spent five or ten years in the cage.) The background to the case was described in another news report as follows: “On 29th May, 1999, Deng was detained for investigation after he suddenly stabbed and inflicted serious injury upon a police officer with a sharp weapon measuring 80 cm in length. On 30th July of the same year, the Zhanjiang City Hospital for the Prevention and Treatment of Mental Disease and a forensic psychiatry appraisal team of Zhanjiang City determined: ‘Deng Qilu has been suffering from dementia praecox for a period of 16 years... In this connection, it is suggested that he be placed under long-term, intensified custody to prevent him from committing violence and injuring others.’” *Id.*

87. Recent data, however, show that the condition was rarely if ever diagnosed in China until fairly recently. According to one local study published in 1998, no cases were recorded during the 1980s, but during the 1990s the condition was said to have accounted for 9.2 percent of all cases of forensic psychiatric examination. See Zheng Chengshou et. al., 80 Niandai yu 90 Niandai Sifa Jingshenbingxue Jianding Anli de Duizhao Yanjiu [*A Comparative Study on the Case Expertise of Forensic Psychiatric Between the 1980s and 1990s*], 4 CHINESE JOURNAL OF PSYCHIATRY 228-230 (1998).

88. One such case from the Cultural Revolution is described at length in SHEN YUCUN (ED.), JINGSHENBINGXUE [PSYCHIATRY] 1106-1107 (1997). See also Jia, *supra* note 35, at 513. This particular condition is referred to in Chinese psychiatry as either “delusion-like fantasy syndrome” [lei wangxiangxing huanxiang zheng] or “reactive confabulatory syndrome” [fanyingxing xugou zheng]; the latter diagnosis may be clinically related to a condition known elsewhere as “Korsakoff’s syndrome.”

concerned were already acutely mentally disturbed, but their flights of confessional fantasy, of whose veracity they themselves were quite convinced, would frequently be given blanket credence by the authorities and taken as grounds for criminal conviction.

In 1979, soon after Deng Xiaoping's return to power, the judicial authorities issued a directive instructing that — “in the interests of revolutionary humanism and so that these offenders do not die in prison”— a nationwide review be carried out of the cases of all “aged, weak, sick and disabled or mentally ill prisoners,” and that the majority of such persons be set free.<sup>89</sup> As late as the 1990s, however, reports from the legal-medical literature indicated that many severely mentally ill prisoners in China continued to be held in solitary confinement cells in regular prisons, watched day and night by a roster of prison guards and assigned prisoner “trusties,” due to the continued widespread lack of secure psychiatric treatment facilities.<sup>90</sup>

The total number of mentally ill prisoners falling within the scope of the government's 1979 amnesty order was officially said to be 4,600, many of whom were over eighty years old and one third of whom had already been in prison for ten years or more. Among this large group of prisoners were no doubt many of those former mental patients from the early 1960s whose psychiatric symptoms had included “strange political utterances” and

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89. “Joint Directive of the Supreme People’s Court, Supreme People’s Procuratorate and Ministry of Public Security Concerning the Clearing Out of Aged, Weak, Sick and Disabled or Mentally Ill Prisoners,” April 16, 1979. All mentally ill (or otherwise infirm) prisoners serving sentences of death with a two-year suspension of execution (*si-huan*) were, however, specifically excluded from the scope of this official amnesty order. A sanitized version of the April 16, 1979 directive, omitting the statistical and other details cited above, appears in many PRC legal anthologies; the unexpurgated version referred to here can be found in 1 *JIANCHA GONGZUO SHOUCE* [A HANDBOOK OF PROCURATORIAL WORK] 281-283 (December 1980).

90. See, e.g., LIN HUAI (ED.), *JINGSHEN JIBING HUANZHE XINGSHI ZEREN NENGLI HE YILIAO JIANHU CUOSHI* [CAPACITY OF MENTAL ILLNESS SUFFERERS FOR CRIMINAL RESPONSIBILITY AND MEASURES FOR THEIR MEDICAL GUARDIANSHIP] 67 (1996). In December 1994, a new Prisons Law of the PRC finally superseded the 1954 Regulations on Reform Through Labor. Surprisingly, the current law entirely omits the previous “strict” prohibition on prisons accepting mentally ill offenders into penal custody; this move may perhaps be attributable to the authorities’ decision several years earlier to set up the Ankang network of facilities specifically for this purpose, but it still merits further examination. According to Article 17 of the new law, “Prisons shall perform physical examinations on all prisoners turned over to them for punishment. If through physical examination either of the following conditions is found in a prisoner sentenced to life imprisonment or to fixed-term imprisonment, they may temporarily not admit the prisoner into prison custody: 1) A serious illness that requires release on bail for medical treatment; 2) pregnancy, or nursing of an infant.” Besides omitting any mention of the previous prohibition on prisons accepting mentally ill offenders, Article 17 uses a much less emphatic phrase than before to describe the action to be taken in respect of the types of offenders who are still mentioned. Whereas now, prison authorities “may temporarily not admit the prisoner into prison custody”, previously they had “to refuse to take into custody” not only the two categories of offender cited above but also any prisoner suffering from mental illness.

who had been harassed and beaten into “confessing their sanity” during the Cultural Revolution. The main lesson of experience drawn by the authorities in the late 1970s, however, was not that “political lunatics” of this sort should never have been criminally detained in the first place. Instead, the new and reform-minded viewpoint was simply that they should henceforth be relieved of their “criminal liability” and placed in police-run psychiatric custody, rather than in regular prisons as before.

#### D. *Psychiatric Abuse in the Post-Mao Era*

In some countries in the West, the relationship between law and human rights often ends up in a self-contradictory predicament. The so-called human rights of the mentally ill, such as the right to refuse treatment and the right to refuse hospitalization, are clear examples of the kind of phony human rights advocated by Western jurisprudence.

— Chinese textbook on forensic psychiatry, 1989<sup>91</sup>

If the political misuse of psychiatry had ended with the inauguration of the Deng Xiaoping era in 1978, the above account of the first thirty years of forensic psychiatry in China would be of primarily historical interest. The official repudiation of the Cultural Revolution in the late 1970s and the commencement of the policy of “opening and reform,” however, did not bring an end to such practices. Over the next two decades, China’s forensic psychiatrists continued to diagnose certain categories of dissident-type individuals as being “dangerously mentally ill” and to send them to long-term custody in special mental asylums. According to official accounts, there was a substantial decrease in the overall scale and incidence of these practices after the Cultural Revolution. For example, a retrospective study of forensic psychiatric assessments carried out at the Hangzhou No. 7 People’s Hospital, published in June 1987, reported:

According to this hospital’s statistics, cases of antisocial political speech and action accounted for 54 percent of all cases [examined] during the year 1977; currently, the proportion of such cases has fallen to a level of 6.7 percent. This shows that the present situation of stability and unity in China has resulted in a marked fall in the number of cases arising from such factors.<sup>92</sup>

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91. Chen Shouyi, preface to Zheng, *supra* note 87, at 9.

92. Zhong Xingsheng et. al., *A Preliminary Analysis of 210 Cases of Forensic Psychiatric Medical Assessment*, 20:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 139-141 (1987). As Veronica Pearson has commented, regarding this report from 1987, “There is no discussion of whether this is an absolute drop in numbers due to a decrease in that kind of crime, or whether the officials of the Public Security Bureau now only take notice of such behavior if it is very extreme.” See *supra* note 5, at 413.

While highly welcome, this reduction in the overall scale of political psychiatric abuse in China needs to be viewed and evaluated in an appropriate conceptual context. The statistics generally cited for the incidence of "cases of a political nature" in Chinese forensic psychiatry during the Cultural Revolution decade (in this case, 54 percent) are, by any objective standard of assessment, quite staggeringly high. They point to a situation whereby miscarriages of legal and medical justice were so widespread and pervasive as to be almost mind-boggling in their ethical implications. By contrast, the 1987 figure of 6.7 percent for such cases appears low. However, even the latter statistic would suggest a rate of political psychiatric abuse in China during the past two decades that is at least comparable to, and quite possibly higher than, that reported in the case of the former Soviet Union.<sup>93</sup> Furthermore, official sources give alternative statistics on this count for China during the period since 1978 that go substantially beyond 6.7 percent. The problem thus appears to remain serious.

A brief outline of the research methodology adopted in the remainder of this article may be useful. In a book published in 1989, Dr. Semyon Gluzman, a Soviet psychiatrist who famously broke ranks with his colleagues in the early 1970s to speak out against the political abuses within his profession and then spent several years in prison as a consequence, proposed three different ways to approach the study of the political misuse of psychiatry.<sup>94</sup> Gluzman's "three methods of collecting evidence and analyzing the situation" have direct methodological relevance for our present topic:

The first approach is to personally and objectively examine those who were found non-imputable by reason of insanity after being charged with political and religious crimes... During such an examination, at least the following should be established. 1) Was the victim in fact persecuted for political or religious crimes? 2) Did the victim show any signs or symptoms of psychiatric illness? ... 5) What is the internationally accepted standard of psychiatric practice in such cases (including the finding of "diminished capacity" in countries where it is in use? ...

In Gluzman's view, this approach to establishing and proving abuse of psychiatry was both procedurally very difficult and also "not in itself

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93. See Section VII.B., *infra*. For a detailed discussion of the statistical size and extent of the political psychiatry problem in China since 1980, *see id.*

94. *See* Gluzman, *supra* note 39, at 33-35.

effective."<sup>95</sup> However, he argued, "This work must be done: real people, victims of abuse, need protection and help, not academic discussion about humanism and justice." He continued:

The second approach should combine a systematic study of the precepts of Soviet psychiatric theory, consideration of the differences among different school[s] of thought, and serious discussions in which specific disagreements can be focused on, and expert statisticians can be consulted. In my view, this is a very effective approach. But I doubt that such a discussion is feasible because it would require commitment and patience on both sides."

Gluzman's other proposed methodology was as follows:

The third approach is very complex and laborious. It is necessary to examine an enormous number of Soviet psychiatric publications that are available in open libraries, administrative norms, regulations, professional guidelines, monographs, collections of articles, scientific journals, dissertations, etc. As far as I know, nobody in the USSR or abroad has ever undertaken such a study. The advantages of such an approach are self-evident; no "discovery" can be disputed and such "content analysis" will inevitably show who abused their profession and when. It will also reveal their theoretical justifications.

In the case of the Soviet Union, in practice, it was largely by means of the first of these methods, the individual case-based approach, that the problem of political psychiatry first became known in the West,<sup>96</sup> and this remained largely true throughout the subsequent campaign to end psychiatric abuse in the Soviet Union.<sup>97</sup> In China, the practical difficulties associated with this approach are at least as great, and probably much greater, than was the case even in the former Soviet context. In particular, the task of carrying out objective and independent psychiatric assessments of Chinese individuals who have been placed in forensic psychiatric custody solely, apparently, on account of their political or religious views is

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95. "First of all, every instance of unjustifiable exculpation indicates only professional incompetence and the responsibility of a particular psychiatrist does not reveal an institutional phenomenon. Secondly, it is difficult to collect such information and therefore the proof cannot be complete. The many difficulties in obtaining all legal psychiatric documentation for an objective study make this approach very difficult." *Id.* at 34.

96. That is to say, significant numbers of Soviet dissidents and others still managed, despite the politically repressive environment, to collect substantial numbers of individual case details on people placed in mental asylums on account of their political or religious views, and to transmit these to international human rights groups and the foreign news media. This has only recently begun to happen in China's case.

97. Gluzman's misgivings about the effectiveness of the method seemingly relate more to the subsequent, "post-mortem" phase of investigations into the Soviet case.

something that may only become feasible at some point in the future, if and when the Chinese government begins to allow direct outside scrutiny of its practices in this field. At present, in most cases, we do not know even the names of the individuals discussed in the official documents excerpted below. The Falun Gong cases are important exceptions, though by no means the only ones.

Similarly, in the case of China, Gluzman's second approach, that of initiating a direct and sustained theoretical dialogue between Chinese psychiatrists and their Western counterparts over allegations of politically-directed psychiatric practice, represents a highly desirable aim but one that is unlikely to be practically attainable in the immediate to near future. While all appropriate efforts should certainly be made toward establishing this kind of intra-professional dialogue, the key determinant to the success of any such efforts, and more importantly, to ending the abusive psychiatric practices at issue, will undoubtedly remain the political will and attitude of the Chinese government.<sup>98</sup>

Since the relatively closed nature of official Chinese society renders, for the meantime, alternative avenues of investigation largely impracticable, the principal methodology used in compiling the evidence of psychiatric abuse in China presented below has conformed, in the main, to the third approach advocated by Gluzman. The principal source of information relied upon has been the wide range of professional legal and psychiatric publications issued officially by the Chinese government since the early 1980s. These include a series of major textbooks and manuals on forensic medicine and psychiatry, legal studies dealing with the psychological dimensions of crime, journals and periodicals dealing with all aspects of law and jurisprudence, various national, provincial and municipal-level laws and regulations on the handling of mentally ill offenders, including rules for the involuntary committal of those viewed as especially "dangerous" to society, and several specialized medical periodicals, notably the *Chinese Journal of Psychiatry* and the *Chinese Journal of Nervous and Mental Diseases*.<sup>99</sup> In addition, a number of first-hand accounts written by former inmates of the

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98. At present, the general signs in this area are far from being good: in recent years, despite the continuing economic reforms, the Chinese security authorities have redoubled their efforts to suppress all forms of perceived political or religious dissonance in society; and notwithstanding China's current participation in bilateral "human rights dialogue" sessions with Western countries and the European Union, Beijing continues to view human rights issues in general as representing a major "battle front" in its relations with the West.

99. *Zhonghua Jingshenke Zazhi* and *Zhongguo Shenjing Jingshen Jibing Zazhi* (formerly known as *Zhongguo Shenjing Jingshenke Zazhi*; for purposes of consistency, the latter two titles are both referred to in the present article by the journal's current English name, the *Chinese Journal of Nervous and Mental Diseases*). Each journal appears four times a year.

Ankang system and other Chinese psychiatric detention facilities have been examined.

Although the officially published sources contain little in the way of detailed individual case material and offer scant insight into the prevailing conditions of treatment and incarceration in China's police-run secure psychiatric facilities, they manifest in full measure the advantages referred to by Gluzman above. First, unlike victim or refugee accounts for example, they are, by virtue of their provenance, not amenable to disputation or refutation by the authorities. Second, they provide a productive source of information for a content analysis-based examination of the issues. Finally, they afford major insight into the various theoretical justifications used by Chinese psychiatrists, in their collaborative endeavor with the security authorities to medically criminalize certain forms of dissent.

#### IV. A SHORT GUIDE TO POLITICAL PSYCHOSIS

As a preface to more detailed discussions of the Chinese medico-legal concept of political insanity since the Cultural Revolution, it may be helpful to have before us a capsule definition of what, more specifically, the Chinese judicial and psychiatric authorities have in mind when they speak of "political cases" involving the commission of crimes by the allegedly mentally ill. The following passage, taken from a textbook on forensic psychiatry produced in 1983 by the official publishing house of the Ministry of Public Security, fulfills this purpose well. Published less than five years after the official denunciation of the Cultural Revolution, it affirms and incorporates key elements of the still deeply-entrenched abusive concepts and practices of that era, while at the same time seeking — in accordance with the more modern and "scientific" official ethos of China in the 1980s — to cloak them in the terminology of modern medical science. Moreover, it provides a virtual roadmap of the political abuse aspects of the system of forensic-psychiatric evaluation and custody that, only four years later, was to be formally adopted and developed by the Chinese government as the Ankang regime.

##### A. *Manifestations of Counterrevolutionary Behavior by the Mentally Ill*<sup>100</sup>

As Article 90 of the [1979] Criminal Law points out: "All acts carried out with the aim of overthrowing the political power of

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100. See LIU ANQIU (ED.), SIFA JINGSHENBINGXUE JICHU ZHISHI [BASIC KNOWLEDGE IN FORENSIC PSYCHIATRY] 18-19 (1983).

the dictatorship of the proletariat and the socialist system, and which endanger the People's Republic of China, are crimes of counterrevolution." Under the dominant influence of pathological thinking and other symptoms of psychological disease, mentally ill people may engage in behavior that sabotages the proletarian dictatorship and the socialist state. In terms of form and consequence, these acts constitute crimes of counterrevolution. The most commonly encountered pathological states involving counterrevolutionary behavior by the mentally ill are delusions of grandeur and delusions of persecution.

A mentally ill person suffering from delusions of grandeur, for example, may think that he is the "head of the Central Committee" or a "leading political figure" ["lingxiu renwu"], and may formulate "guidelines" and "policies" as a replacement for existing policies, laws or decrees that he thinks are unreasonable. In one case, a mentally ill person proclaimed himself as a "peasant revolutionary leader" and called for a new political party to be set up in order to carry out a second revolution, and he openly drew up a manifesto and handed out leaflets.

People suffering from delusions of persecution with a certain specific content, for example those who deludedly [sic] harbor feelings of suspicion towards the Party organization, government departments and certain leading officials, may adopt all kinds of retaliatory measures against them, thereby occasioning counterrevolutionary behavior. Still other kinds of mentally ill people, those suffering from disorders of thought and logic, try to interpret and understand the present political situation [in China] from the standpoint of pure theory. A mentally ill person, for example, owing to his divorce from reality, applied the former political orthodoxy to China's present-day context: the patient insisted that the Cultural Revolution had been entirely necessary and extremely timely, and he even went around publicly arguing his case with others. In addition, people with pathological personality disorders may also engage in various kinds of counterrevolutionary behavior.

### **Identifying Counterrevolutionary Behavior by the Mentally Ill**

Counterrevolutionary behavior carried out by mentally ill people is to be distinguished from the commission of such behavior by genuine counterrevolutionary elements. The following basic hallmarks will assist us in ascertaining those in the former category:

In analyzing the personal history of an individual engaging in counterrevolutionary behavior, no historical origins or social background showing any logical relationship [with the behavior in question] can be identified. That is to say, no conformity can be found between the nature of the counterrevolutionary behavior and

the person in question's previous political demeanor, ideological make-up and moral or ethical quality.

The content of the behavior displays a certain degree of absurdity and lack of commensurability with the actual status and capacity of the person concerned. For example, an ordinary student expressing the wish to become a major and important figure: most people would regard this as being something quite unimaginable. Or a person who groundlessly suspects the leadership of persecuting and harming him and then proceeds to focus his resentment upon the entire Party organization: this represents a marked deviation from normal logical reasoning and inference.

The person concerned carries out the counterrevolutionary behavior in a brazen and flagrant manner and with no sign of scruples or misgivings. In a publicly confrontational manner, he or she will hand out leaflets in broad daylight and deliver speeches on the main road or at street corners. Naturally, some mentally ill people may act in a more covert manner than this; yet as soon as they're caught, they admit to everything quite frankly and unreservedly. In addition, mentally ill people may write anonymous letters, but often these are not genuinely anonymous but rather a manifestation of some mental impairment. For example, a person suffering from mental illness wrote a letter to all Military Regions in the country and to the Central Committee, signing his name as "Chen Zhenli" ["Chen the Truth"]; this was not his real name, but he still wrote his actual address on the envelope. After the case was cracked and he had been caught, the person was asked why he had written this anonymous letter. He replied that it was actually an open letter: he'd used the name "Chen Zhenli" because he had the truth on his side and the viewpoints he expressed were all "true."

The various elements of the counterrevolutionary-behavior process are generally only loosely interconnected and may be logically self-contradictory. They can also show a lack of consistency over time — sometimes active and positive, but at other times passive and negative — and may even be self-repudiatory in nature.

The most important grounds for ascertaining the commission of counterrevolutionary behavior by the mentally ill is where, necessarily, a correspondence exists between the particular manifestation of mental abnormality and the mental illness in question. A detailed investigation of the person's background and medical history may reveal additional psychiatric symptoms, and the counterrevolutionary behavior will then be seen as simply one manifestation or symptom of the mental illness.

The official literature on forensic psychiatry in China in recent decades is replete with formulations expressing, more or less overtly, all of the theoretical themes and contours mentioned above. To show that the

general theory is alive and well in contemporary China, it should suffice to cite at length one further authority, Long Qingchun, a leading forensic psychiatrist at the Beijing Ankang institute, who included the following comparative discussion in a textbook which he edited in 1994:

*B. What Is the Difference Between a Paranoiac and a Political Dissident?*<sup>101</sup>

There is a certain type of person with the mental illness of paranoid psychosis [“pianzhixing jingshenbing”]. The content of the fantasies and delusions of such persons does not come from their having been persecuted, but is mainly about state policies and principles. Such persons continually submit petitions, and are often taken by non-specialists to be political dissidents [“chi butong zhengjianzhe”]. But there is a difference in nature between the two.

Paranoiacs, commonly known as “document crazies” [“wen fengzi”], manifest [their illness] through their loss of reason in political theory. With respect to all sensitive [political] issues, they listen only to themselves and think, “Only I am right.” Although they might focus on one or two specific issues, generally they have both historical problems and current problems.<sup>102</sup> Their political theory and their political stance are mutually contradictory; although they oppose the [government’s] general line and policies, they also support Marxism-Leninism and materialism. Political dissidents are relatively specific. They have dissenting opinions about certain specific issues, and don’t simply oppose everything.

Paranoia is a kind of morbidity; therefore, the delusions and fantasies are self-contradictory. They are not plausible and consistent, and have no capacity to spread to others. That which is expressed by political dissidents is logical and has a certain capacity to spread to [literally: “infect”] others.

A paranoiac will take any opportunity to peddle his views, without regard to time, place, or audience. A political dissident will choose the time, place, and audience for expressing his views; he will not start talking to just anyone he runs into.

The acts and views of paranoiacs do not match their education, reading, and status. There was, for example, an old retired

101. See LONG QINGCHUN (ED.), *SIFA JINGSHEN YIXUE JIANDING ZIXUN JIEDA* [CONSULTATIVE QUESTIONS AND ANSWERS FOR FORENSIC-PSYCHIATRIC MEDICAL EVALUATIONS] 58-59 (1994).

102. “...wangwang shi ji you lishi wenti, you you xianshi wenti.” In China, the phrase “having historical problems” generally indicates that the person in question was accused of (and usually punished for) “bourgeois” or “counterrevolutionary” views or activities in the past; similarly, the phrase “having current problems” often indicates that the person is a current target of such political suppression (*c.f.* the terms “lishi fangeming” and “xianxing fangeming,” meaning “historical counterrevolutionary” and “active counterrevolutionary.”) A better translation of “wenti” in this context might thus be “political record” or “political taint.”

worker with only three years of elementary school education who worked untiringly to write a "Manifesto of Scientific Communism."<sup>103</sup> He bought a typewriter and printer with his own money and sent his "work" out everywhere. Neither his wife nor his children could convince him to stop. The acts and views of political dissidents are consistent with their learning and their status; moreover they generally have better sense than to pursue something in complete disregard of the [legal] consequences.

Disarmingly enough, the basic distinction that Long appears to be drawing here between political lunatics and dissidents is that while the former engage in nonsensical rambling, what the latter say makes a lot of sense and is broadly convincing to others. Two more central points should be noted in this context however. First, the political dissidents in question, while escaping psychiatric incarceration for their oppositional viewpoints, would for the most part have been severely dealt with under criminal law provisions against "counterrevolution," since 1997 renamed as "crimes of endangering state security." Second, those diagnosed as being "paranoid psychotics" following their arrest on similar charges of political subversion will, in most cases, neither be freed from police custody nor given appropriate treatment, whether out-patient or in-patient, for their alleged politico-psychiatric disorders. Rather, they will be declared "not legally responsible" (i.e. non-imputable) and then placed indefinitely in Ankang custody or similar. A third vital issue also arises in all such cases: whether the person concerned was genuinely suffering, in fact, from any internationally recognized mental disorder. These various topics will be addressed at greater length and in different contexts below.

For now, it should suffice to note that in both of the above passages from 1983 and 1994, respectively, a basic distinction was drawn between "genuine" political offenders, counterrevolutionaries, on the one hand, and mentally disordered political offenders, or what the authorities colloquially call "political lunatics" and we may perhaps refer to as "pseudo-counterrevolutionaries," on the other. This was certainly progress as compared to the situation of forensic psychiatry during the Cultural Revolution, when the dividing line in this area became grotesquely blurred. But what did not change after 1978 was the authorities' firm insistence that, in both types of situation, a serious political crime had been committed.

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103. See Section VII.D., *infra*, for a detailed account of this case.

## V. THE LEGAL CONTEXT

### A. Legal Norms and Judicial Process

In an article published in 1974 in the British Medical Journal summarizing his findings from a recent study visit to Soviet psychiatric hospitals, the British psychiatrist J.K. Wing expressed with neat precision the unusual ethical dilemma he encountered in evaluating his Soviet colleagues' handling of cases of political offenders alleged to be mentally ill. After discussing two other problematic issues that arose,<sup>104</sup> Wing wrote,

The third conceptual problem concerns [legal] "responsibility." This is the most difficult one for the British psychiatrist to comment on since it means trying to answer a ludicrous non-question: should a person who is not severely mentally ill by our standards be regarded as responsible for an action which we would not regard as a crime?<sup>105</sup>

The same central issue hovers disquietingly over any discussion of the formal legislative and procedural aspects of the ways in which "political lunacy" cases are handled in the Chinese forensic psychiatric context. The range of cases falling within the system's scope and purview is much wider, of course, than this one specific category, and it seems reasonable to assume that the great majority of cases dealt with under the system involve the commission of genuine and serious offenses (such as murder, rape and arson) by mentally ill people. The following descriptive account thus has a general applicability, and critical observations are directed toward the significant minority of cases where the system claims and applies jurisdiction over people, such as peaceful dissidents, sane or otherwise, who have not committed any internationally recognized criminal offense.

Until 1979, the main judicial yardstick in this field was a brief directive issued by the Supreme People's Court in 1956, according to which persons found to have been mentally ill at the time of committing criminal offenses were not to be held legally responsible for their actions.<sup>106</sup> The

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104. These were, the fact that "there is nothing in our criminal law equivalent to the Soviet category of crimes against the State," and secondly, that "the concept of mental illness, particularly of schizophrenia, is a good deal wider [in the USSR then, as in China today] than in the U.K."

105. J.K. Wing, *Psychiatry in the Soviet Union*, BRITISH MEDICAL JOURNAL 433-436 (March 9, 1974).

106. See Reply of the Supreme People's Court on the Question of the Handling of Crimes Committed by Mentally Ill Persons (June 2, 1956). Soon after the Cultural Revolution, during which legal norms had collapsed almost entirely, the Supreme People's Court reiterated the validity of the June 1956 directive. See Supreme People's Court, Document No. 17 (78), August 4, 1978.

mental state of the defendant was to be ascertained by “the relevant medical departments” and through interviews with the person’s neighbors.<sup>107</sup> In 1979, the first Criminal Law of the PRC codified this longstanding policy, although in somewhat simpler terms than before.<sup>108</sup> Then in March 1997, an extensively revised version of the Criminal Law was promulgated which significantly amended the previous provisions in this area:

Article 18. If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment.

Any person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state.

If a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he shall bear criminal responsibility; however, he may be given a lighter or mitigated punishment.

Any intoxicated person who commits a crime shall bear criminal responsibility.<sup>109</sup>

The main changes were as follows. First, “expert forensic evaluation” must

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107. The directive also stipulated: “Counterrevolutionary elements and their families, or landlords and rich-peasant elements, should not be dealt with differently.” This seems to run counter to Article 37 of the 1954 Regulations on Reform Through Labor, which excluded “major counterrevolutionary offenders” from the rule that prisons were not allowed to admit criminals suffering from mental illness. In practice, however, any contest at that time between the court system and the prison system (which was run by the all-powerful Ministry of Public Security) would generally have ended in the latter’s favor.

108. According to Article 15 of the 1979 Criminal Law: “A mentally ill person who causes dangerous consequences at a time when he is unable to recognize or unable to control his own conduct is not to bear criminal responsibility; but his family or guardian shall be ordered to subject him to strict surveillance and arrange for his medical treatment. A person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime during a period of mental normality. An intoxicated person who commits a crime shall bear criminal responsibility.”

109. Similar provisions appear in the 1996 PRC Law on Administrative Punishments, which governs all of the wide-ranging forms of non- or extra-judicial punishment currently available to law enforcement agencies in China. According to Article 26 of this law, “If a mental patient commits an illegal act at a time when he is unable to recognize or cannot control his own conduct, no administrative penalty shall be imposed on him, but his guardian shall be ordered to keep him under close surveillance and arrange for his medical treatment. Administrative penalty shall be imposed on a person whose mental illness is of an intermittent nature and who commits an illegal act when he is in a normal mental state.” The same general provisions appear also in Article 10 of the 1994 revised version of the PRC Regulations for the Punishment of Public Order Offenses, which allow police to impose (without trial) custodial sentences of up to fifteen days for minor offenses.

now be performed in order to ascertain whether or not a defendant was mentally ill at the time of committing an offense. Except during the Cultural Revolution, in practice this was hitherto also generally the case, but the statutory inclusion of a forensic-psychiatric appraisal procedure is still important. Second, the new law stipulated for the first time that mentally ill defendants may be ordered by the government to undergo "compulsory medical treatment." While not specifically mentioned, involuntary committal is certainly among the intended range of available legal options. Again, this merely codifies a longstanding police prerogative, but the new law's mention of compulsory medical treatment has particular significance in light of the Chinese government's post-1987 program for creating a nationwide network of Ankang institutions. Finally, whereas previously a judgment of either full legal responsibility or total absence of such responsibility had to be officially rendered when evaluating a defendant's mental state, the intermediate option of "limited legal responsibility" ("xianding zeren nengli") can now be adopted; while this too was frequently done in the past, it is now fully lawful. Significantly, the lack of such an intermediate option in the legal code of the former Soviet Union was a frequent target of criticism from the dissident community there.

The legislative basis for conducting "expert evaluations" had been formally laid down in March 1996 in a revised version of the Criminal Procedure Law of the PRC. According to Article 119 of that law, "When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their evaluations." Article 120 of the same law added, "If an expert intentionally makes a false verification, he shall assume legal responsibility." And Article 121 continued: "The investigation organ shall notify the criminal suspect and the victim of the conclusion of the expert verification which will be used as evidence in his case. A supplementary expert verification or another expert verification may be conducted upon application submitted by the criminal suspect or the victim." An especially problematic area where criminal defendants suspected of mental illness are concerned relates to the lawful time limits on pretrial detention. According to Article 9 of the government's 1984 "Supplementary Provisions" on this question, all time limits on detention specified in the 1979 Criminal Law could be dispensed with during the period that a criminal defendant was being held in custody for forensic-psychiatric appraisal,<sup>110</sup> and Article 122 of the revised Criminal Procedure Law proceeded to formalize this dubious

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110. See Supplementary Provisions of the Standing Committee of the National People's Congress Regarding the Time Limits for Handling Criminal Cases (July 7, 1984).

legal practice: "The period during which a criminal suspect is undergoing appraisal for mental disorder shall not be included in the calculation of time limits for handling the case."<sup>111</sup>

Separately, the police are accorded wide legal powers to detain and hospitalize alleged offenders who are suspected of being mentally ill. According to Article 14 of the 1995 Law of the People's Police of the PRC,

The people's policemen of public security organs may take protective measures to restrain a mentally ill person who seriously endangers public security or other people's personal safety. If it is necessary to send the patient to a designated institution or place for guardianship, the matter shall be reported for approval to the public security organ of a people's government at or above the county level, and his or her guardian shall be notified without delay.

This law does not require the police to arrange either prior or subsequent forensic psychiatric assessment of persons whom they decide to send to a "designated institution," which in practice may be either an Ankang custodial facility or, in the case of lesser offenses, the secure ward of a regular mental hospital; they merely have to report the matter to a superior police authority.<sup>112</sup> The police may choose, at their discretion, to send the detainee for forensic psychiatric examination; and in cases where the alleged offense was a serious one, the procuracy, the prosecuting authority, would no doubt require that such an examination be carried out and a subsequent finding made of non-imputability by reason of mental illness as a precondition for agreeing to suspend criminal proceedings against the person. However, Chinese law remains highly vague in this general area, and in practice offenders suspected of being mentally ill may end up being first committed by the police, and then left in prolonged custodial limbo while other authorities decide if and when an expert evaluation of their mental state is needed. In most criminal cases, the authority of the courts is circumvented at an early stage, since either the police or the procuracy normally suspend criminal justice proceedings once a forensic finding of non-imputability has been made. The latter authorities then decide, on the

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111. Another relevant provision of the new Criminal Procedure Law, Article 48, reads as follows: "All those who have information about a case shall have the duty to testify. Physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves shall not be qualified as witnesses."

112. The police in many countries are empowered, in emergency situations, to take suspected mentally ill people into custody and to transfer them to psychiatric hospitals if they fear that dangerous consequences might otherwise ensue. In the case of China, however, it is the lack of any clear legal requirement for prompt forensic psychiatric evaluation that to be conducted that renders this police power liable to misuse and therefore problematic from a human rights point of view.

basis of their assessment of the “degree of dangerousness” of the offense in question, whether or not custodial care is required.

Moreover, since China broadly follows the “commensurability principle” of forensic psychiatric practice, whereby an offender deemed to be legally non-imputable by reason of insanity for a given crime is generally held in secure psychiatric custody for at least as long as the period of penal incarceration to which they would have been sentenced if ascertained to have been sane at the time of committing the offense, the authorities’ inclusion of certain types of peaceful political prisoners (alongside psychotic murderers and the like) among the “most serious and dangerous” category of alleged mentally ill offenders means that such people can end up being psychiatrically detained on an indefinite or even permanent basis.

The question of the civil rights entitlements and “capacity for civil action” of mentally ill people in China is dealt with in various provisions of the 1987 General Principles of the Civil Law of the PRC. For example, Article 13 states: “A mentally ill person who is unable to recognize his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent *ad litem*.” It continues by saying that those “unable to fully recognize” their own conduct shall be regarded as having “limited capacity” for civil conduct and may engage in “civil activities appropriate” to their state of mental health. In other articles, issues relating to the guardianship of mentally ill people are addressed. The General Principles do not, however, contain any provisions on such important matters as the legal procedures and criteria for the compulsory hospitalization and treatment of the mentally ill. In particular, there appears to be little, if any, in the way of legislative interconnect or cross-over between, on the one hand, the handling of mentally ill offenders under the Criminal Law and, on the other, the broader issue of their civil rights entitlement as laid down in the General Principles.<sup>113</sup> Whatever may be the situation of those subjected to civil psychiatric committal in China,<sup>114</sup> it is clear from the relevant official literature that criminal detainees found not legally responsible by reason of insanity may also, by virtue of this finding,

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113. Indeed, simply by virtue of being ill, even mentally ill people who do not commit offenses may suffer significant reduction of their civil rights; confidential regulations state, for example, that the police “should delay issuing [citizens’] identity cards to...persons who are mentally ill”—so placing them in a broadly similar category of official treatment as that applied to persons placed under formal arrest or serving terms of imprisonment, who are to be denied identity cards altogether. *See LIU GUANGREN (ED.), HUKOU GUANLIXUE [THE ADMINISTRATION OF HOUSEHOLD RESIDENCE] 324 (1992)* (volume marked “for distribution within the public security organs only”).

114. A more detailed discussion of the civil law aspects of the treatment of mentally ill people in China can be found in Pearson, *supra* note 5, at 417-420.

lose most if not all of their civil rights.<sup>115</sup>

In 1985, a prominent authority in the field of legal psychiatry, Wu Jiasheng, acknowledged the urgent need for China to take legislative action in this area:

Legislation to protect and safeguard society in the area of mental illness should be promptly formulated. The most pressing problems are those concerning compulsory custodial treatment; at present, there are no clear guidelines on the applicable scope of such treatment, on the means by which it should be carried out, the types and methods of treatment, the time limits on detention, or the rights of the mental patient. From the viewpoint of building a healthy and complete socialist legal system, it is essential that we formulate relevant laws and regulations soon.<sup>116</sup>

The same year, the Chinese government began preparing to enact comprehensive national legislation on the treatment of the mentally ill, and since then, ten different draft versions of a "Mental Health Law of the PRC" have been produced and widely circulated among psychiatric professionals around the country; the World Health Organization has also provided input on the draft law.<sup>117</sup> The question of involuntary psychiatric committal and treatment has been addressed in considerable detail by the law's drafters, with provisions on such matters as the criteria for compulsory admission, the civil legal capacity of those committed, and the permissible use of restraints on inmates. In addition, the draft law contains several stipulations on the basic rights and interests of the mentally ill (for example, that "inhumane treatment of patients is not allowed" and that those compulsorily hospitalized should have their mental state "systematically assessed at least

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115. Specific procedures for the courts to make findings of civil competence and incompetence are set forth in Articles 170-173 of the Civil Procedure Law of the PRC (1991). Courts may declare a mentally ill person to have "lost the capacity for civil action" and they may also reverse such rulings (Article 19 of the General Principles of Civil Law), although the former (as in other countries) is not an essential prerequisite for compulsory civil psychiatric committal. In the case of criminal psychiatric committal, however, the courts in China appear to have an almost negligible role to play, either in terms of authorizing and approving such treatment, or as regards providing those psychiatrically detained with legal channels for appeal and possible redress.

116. Wu Jiasheng, *Qiantan Jingshenbingren Weifa Zhaohuo Xingwei de Zeren Nengli [A Brief Discussion of the Legal Capacity of Mentally Ill Persons Who Behave Unlawfully and Create Disastrous Incidents]*, 40 FAXUE [JURISPRUDENCE] 43-45 (1985).

117. The law drafting group is headed by Professor Liu Xiehe of the Institute of Forensic Medicine at the West China Medical University in Chengdu. The most recent joint initiative between China and the WHO on drafting a mental health law was a high-level symposium held in Beijing on November 11, 1999, attended by Dr Gro Harlem Brundtland, the WHO's Director-General, and thirteen vice-ministerial-level Chinese officials. The full text of Brundtland's speech at the conference can be found at <[http://www.who.int/director-general/speeches/1999/english/19991111\\_beijing.html](http://www.who.int/director-general/speeches/1999/english/19991111_beijing.html)>, as of December 1, 2000.

once every half year"); and it even briefly addresses the rights of mentally-disordered criminal defendants and provides a basic legal framework for the operation of forensic psychiatric custodial centers.<sup>118</sup> The passage of a well-crafted mental health law is clearly vital to any attempt to reform the system and safeguard the rights of those psychiatrically detained.<sup>119</sup> However, there is no indication that the government intends to enact formal legislation regulating official behavior in this sensitive area anytime soon.

In August 1989, the Chinese government issued a long-awaited set of formal rules — the Temporary Regulations for Judicial Appraisal of the Mentally Ill — specifying legal procedures for the conduct of expert psychiatric appraisals in criminal, civil, administrative and other types of cases.<sup>120</sup> According to Article 1 of the Temporary Regulations, they were intended, among other things, "to safeguard the lawful rights of mental illness sufferers," but in fact they contained almost no specific provisions on this topic. On more institutional matters, the Temporary Regulations instructed that Psychiatric Judicial Appraisal Committees were to be

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118. In the 1988 draft, these were referred to as "Guardianship Hospitals for the Mentally Ill" [Jingshenbingren Jianhu Yiyuan], which were to be organized and led by the Public Security departments; such hospitals were therefore clearly the same as the ones now more commonly referred to as "Ankang."

119. For useful and authoritative practical guidelines on this field of legislation, see WORLD HEALTH ORGANIZATION, MENTAL HEALTH CARE LAW: TEN BASIC PRINCIPLES, WHO/MNH/MND/96.9 (1996). The legislative experience of the former Soviet states in this area also provides an important comparative frame of reference. According to two well-qualified observers,

"Establishing a proper legal foundation for mental health care has been the top priority for reformers in transforming psychiatry in practically all post-Soviet and post-socialist countries... The [July 1992] Russian law merits particular attention because it has provided a sound model for the other countries of the former Soviet Union. The law has many positive features that will help to facilitate the transformation of Russian psychiatry. (1) It codifies the fundamental norms and principles that should guide psychiatric care, including confidentiality, informed consent, and medical necessity. (2) It declares and reinforces the fundamental idea that psychiatrists are expected to be independent in making their decisions, which—as the law states—should be based only on 'medical indications, medical duty and the law.' (3) It establishes formal procedures for judicial review of involuntary hospitalizations, and of alleged violations of the rights of hospitalized patients. (4) Finally, the law opens psychiatric institutions to outside scrutiny and thereby promotes accountability to patients' families and to the society at large. The State is directed to 'set up a service independent of health agencies for the protection of rights of psychiatric patients,' and the law also specifically authorizes associations of psychiatrists, families or other citizens to monitor the observance of patients' rights and to file complaints on behalf of aggrieved patients. Enactment of this law was itself a remarkable achievement..."

See Bonnie and Polubinskaya, *supra* note 48, at 292-294.

120. See "Guanyu Jingshen Jibing Sifa Jianding Zanxing Guiding" ["Temporary Regulations for Judicial Appraisal of the Mentally Ill"], issued jointly by the Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security, Ministry of Justice and Ministry of Civil Affairs (July 11, 1989). The regulations came into force on August 1, 1989. This followed an earlier set of rules on the same topic issued in October 1985 by the Anding psychiatric hospital in Beijing, which were "to be adopted by all provinces" in China. See Pearson, *supra* note 5, at 411.

established at all provincial, regional and major municipal levels of government, and that these should comprise “responsible officials and experts” from the courts, procuracy, and public security, judicial administration and health departments. These committees were also to appoint, for specific cases that arose, Technical Appraisal Groups consisting of not less than two expert assessors, and the latter’s expertise was to be sought in all cases where questions of mental competence had arisen in respect of criminal defendants, parties to civil or administrative litigation, persons undergoing administrative punishment (primarily, those sentenced without trial to up to three years in “re-education through labor” camps), criminal offenders serving custodial sentences, and also “other persons involved in the case who require [such] appraisal.” The only “right” specifically accorded to the subject of the appraisal appears in Article 8: “The Appraisal Committee may, depending upon the circumstances, accept a request from the person being examined for a supplementary appraisal, a fresh appraisal or a review of the [original] appraisal to be performed.”

The principal task of the appraisers was to ascertain whether or not, at the time of “carrying out dangerous behavior,” the person concerned was mentally ill, and, if so, to identify the specific nature and severity of the illness. Depending on the type of case involved, the appraisers would also be charged with ascertaining the level of mental capacity and responsibility of those being examined in one or more of the following areas: overall legal responsibility for criminal acts committed; capacity to distinguish between right and wrong actions; ability to control one’s behavior and actions; capacity to stand trial (capacity for litigation); to serve a sentence or undergo other punishment; to testify or provide evidence; and (in the case of mentally ill victims of alleged sexual assault) to exercise either self-defense or sexual consent.<sup>121</sup> Two other important points should be made. First, only the “judicial organs” (i.e., courts, procuracy, police) were accorded the right to present a person for forensic psychiatric appraisal. Second, although the Temporary Regulations do not state as much, it was clearly understood that the findings of the expert appraisers were not binding on the judicial organs and that any final decision on whether to institute charges or to proceed to trial would be made solely by the latter.

The 1989 Temporary Regulations are still China’s authoritative governing document in this area. In early 2000, however, the Ministry of Health issued a “recommendatory draft” version of a new document entitled

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121. The Chinese terms for these various criteria are (in order of listing above): “xingshi zeren nengli,” “bianren nengli,” “kongzhi nengli,” “susong nengli,” “fuxing (shou chufa) nengli,” “zuozheng nengli,” and “ziwo fangwei nengli.”

“Administration Methods for Psychiatric Judicial Appraisal,”<sup>122</sup> the final clause of which states that the 1989 Temporary Regulations are to be superseded by the new document once it comes into force. The Administration Methods themselves were based to a very large extent on a similar document issued by the Beijing municipal government in January 1998,<sup>123</sup> and it is likely that they are already being implemented on a trial basis in several parts of China. It should be noted at the outset that none of these regulations list or refer to the enjoyment of any statutory rights or protections by the person being evaluated, and no provision is made for the lodging of appeals against eventual committal on grounds of criminal insanity.

The main additional measures and stipulations found in the new draft regulations are as follows. First, a new national-level governing body is to be instituted. According to Article 5, “The Supreme People’s Court, Supreme People’s Procuracy, Ministry of Health, Ministry of Justice and Ministry of Public Security shall jointly form a State Committee for the Coordination of Psychiatric Judicial Assessments, which shall be responsible for coordinating all such work throughout the country.” This State Committee will stand at the apex of the system of provincial-level Psychiatric Judicial Appraisal Committees created in virtue of the 1989 Temporary Regulations, and will establish offices in the various health departments under the jurisdiction of the State Council, China’s highest administrative body. Second, the new draft regulations stipulate a wide range of new measures aimed at imposing tighter regulation over the existing forensic-psychiatric appraisals system, especially in respect of the legal and academic accreditation of Technical Appraisal Groups and of individual expert assessors, the various time limits within which appraisals must be applied for, organized and completed (for example, assessors are to complete their appraisal within 30 days of first examining the person), and the requirement that complete case documentation, including all relevant police files, must be provided to the assessors before they can proceed. And third, the draft regulations introduced a number of significant legal-procedural safeguards. For example, officials or assessors having a close

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122. See MINISTRY OF HEALTH, JINGSHEN JIBING SIFA JIANDING GUANLI BANFA [ADMINISTRATION METHODS FOR PSYCHIATRIC JUDICIAL APPRAISAL], issued informally sometime in early 2000. The full Chinese text of this document can be found on the Internet at <<http://www.fmedsci.com/sfjs/sfjs11.htm>>, as of November 29, 2000.

123. See BEIJING MUNICIPAL BUREAU OF HEALTH, BEIJING SHI JINGSHENBING SIFA JIANDING GUANLI BANFA [BEIJING MUNICIPAL PSYCHIATRIC JUDICIAL APPRAISAL MANAGEMENT RULES] (1998) The full Chinese text is available on the Internet at <<http://www.fmedsci.com/sjfs/sjfs3.htm>>, as of December 5, 2000. The document came into force on January 1, 1998.

family connection with the examinee or any other personal interest in a case must withdraw themselves, the rule of recusal, and the examinee or other concerned persons have the right to request this. Technical Appraisal Groups must comprise no fewer than three assessors, and any expert opinions dissenting from the group's final recommendations should be separately noted on the official record. Also, private individuals and bodies may now also apply for expert appraisal to be carried out.

All these pending reforms are no doubt highly worthwhile, and they may well have an important impact on ensuring the overall accuracy, quality and consistency of forensic psychiatric appraisals in China. The bottom line, however, as far as our main topic, the treatment of alleged mentally ill political offenders, is concerned, is that none of those experts or officials working in the various committees and groups listed above have any say or discretion in the selection of the people whom they are required to examine. The identity of those individuals is determined solely by the nature of the country's criminal justice system; if the law says that a certain action is a crime, and if the offender is then arrested and brought for forensic psychiatric assessment, the expert assessors are required, unless they are ill or have some other acceptable reason for declining the job, to carry out an appraisal of the person's mental condition. It is not their task to determine whether or not a crime was actually committed, but rather to evaluate the detainee's sanity and then reach a conclusion as to whether or not he or she should bear "legal responsibility" for whatever offense the police claim was committed.

When the charge in question is a political one, however, this task immediately becomes, for the expert assessor, not only highly politicized in the general sense, but also, given China's overall history and track record in this particular area, potentially fraught with considerable personal risk. The safest course of action in such cases, undoubtedly, is for psychiatric assessors to "go by the book" — and as we have seen, Chinese forensic psychiatric textbooks still, even today, define certain types and instances of the uninhibited public expression of officially banned views and ideas as being clearly indicative of mental pathology. We do not have any first-hand accounts from Chinese forensic psychiatrists as to how they feel in such situations, but the following account of the situation of their former Soviet counterparts may provide some useful comparative insights into the matter:

When the psychiatrist is finally confronted with the dissident, he knows he is dealing with someone who stands accused of committing what is considered by the authorities to be a serious crime. He is on his toes. He probably does not know, in most cases, whether a high-

level decision has been made by the KGB to hospitalize the dissident, or whether the KGB investigator had genuine doubts about the dissident's mental health. The safer course is to assume that the KGB would like the dissident to be hospitalized. The psychiatrist himself is often in a special group to begin with: he is a forensic psychiatrist, usually a consultant to the KGB, and is particularly sensitive to the expectations of authorities. If he is sure that the expectation of hospitalization exists, then much less evidence of illness is needed to establish a diagnosis. If he does not know, then his need to play it safe may influence him to see more symptoms than he ordinarily would — sufficiently more to justify a diagnosis of illness.<sup>124</sup>

At another level, moreover, ethically conscientious assessors face the following invidious choice: to find the defendant to be sane and hence "legally responsible" for the alleged political offense, in which case he or she will almost certainly be found guilty and sentenced to a long term of imprisonment; or to make a finding of insanity and legal non-imputability, in which case the person will most likely be committed for an indeterminate period to an Ankang or similar-style center for psychiatric custody and treatment?<sup>125</sup>

### B. *Counterrevolutionary Crimes in China*

Since the police allegations in most cases involving the use of politically directed psychiatry in China have concerned the charge of "counterrevolution," we should examine this category of crime in greater detail. The world of criminal jurisprudence was first introduced to the concept of counterrevolution during the French Revolution, in a decree issued by the Jacobins on March 10, 1793 establishing the system of "revolutionary tribunals." The works of Marx and Engels are replete with references to "counterrevolution," and Lenin eventually enshrined the concept in the Soviet criminal code after describing it as being not merely a useful legal device but also an "instrument of terror" that would awe the

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124. Walter Reich M.D., *Diagnosing Soviet Dissidents*, HARPER'S 31-37 (August 1978). At the time of writing this article, Dr. Reich was Lecturer in Psychiatry at Yale University and chairman of the program in the medical and biological sciences at the Washington School of Psychiatry. Over the previous six years he had interviewed a number of Soviet dissidents and psychiatrists.

125. In his report to the *British Medical Journal*, J.K. Wing posed a tantalizing ethical question that might also be asked of Chinese legal psychiatry: "Assuming for the moment that the Soviet psychiatrists have made their diagnosis in good faith, the question looks quite different to them: is a person who is suffering from a slowly developing form of schizophrenia responsible for an action that is likely to land him, at the very least, in a labor camp for three years? The Soviet doctor claims that he is acting humanely and that, in essence, the part he plays is no different from that of the American psychiatrists who saved Ezra Pound from execution." *See supra*, note 105.

opponents of the Bolshevik Party into submission. The term was subsequently incorporated into the criminal codes of several Soviet satellite states, although the USSR itself later dropped the term in favor of the less political-sounding “crimes of state.”<sup>126</sup> In China, somewhat ironically, the concept was first enshrined in law by Chiang Kai-shek, the leader of the KMT, whose government on March 9, 1928, promulgated a Temporary Law on the Punishment of Crimes of Counterrevolution, aimed primarily at the Communist Party of China.<sup>127</sup> Soon after establishing its first territorial base in Jiangxi Province, the Communist Party took steps to establish a similar legal regime, but aimed at suppressing the “KMT bandits” and their supporters among the local rural elite. On April 8, 1934, the Communist Party enacted its first formal law in this area: the Regulations of the Chinese Soviet Republic on the Punishment of Counterrevolution.<sup>128</sup>

Upon the Communist Party’s assumption of power in October 1949, the clear evidence of widespread wrongful executions and imprisonments perpetrated by the Party’s secret police since the 1930s proved to pose no obstacle to the systematic expansion of the same kind of legal regime that had produced these earlier injustices.<sup>129</sup> In February 1951, the Central People’s Government passed a law, titled “Regulations of the PRC on the Punishment of Counterrevolution,”<sup>130</sup> which would serve as the main legal basis and justification for the systematic persecution of political dissidents and all other opponents of the Party for most of the next three decades. With

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126. The Chinese term for “crimes of state” is “guoshi zui.”

127. See “Zanxing Fangeming Zhizui Fa” [Temporary Law on the Punishment of Crimes of Counterrevolution]. According to the latter law, “All attempts to subvert the Chinese Nationalist Party and the National Government...are defined as crimes of counterrevolution.” As the KMT’s Judicial Yuan expressly proclaimed, moreover: “Cases involving the Communist Party are to be dealt with as counterrevolutionary offenses.”

128. See Han Yanlong & Chang Zhaoru (eds.), *Zhonghua Suweiai Gongheguo Chengzhi Fangeming Tiaoli*, [Regulations of the Chinese Soviet Republic on the Punishment of Counterrevolution] in ZHONGGUO XIN MINZHUYI GEMING SHIQI GENUIDI FAZHI [LEGAL SYSTEM OF THE BASE AREAS DURING THE REVOLUTIONARY PERIOD OF NEW DEMOCRACY], in 3 WENXIAN XUANBIAN [A COMPILATION OF SELECTED DOCUMENTS] 5-11 (1981).

129. For example, as the State Council noted in 1983: “Some work-units and individuals have recently submitted petitions on behalf of comrades who were unjustly killed during the period of the Second Revolutionary Civil War [1927-37]...requesting that these wrongly executed comrades be commemorated as martyrs.” See PRC State Council, State Council Document No. 91, 1983, *Guowuyuan Pizhuan Minzhengbu Guanyu Dui Di’erci Guonei Geming Zhanzheng Shiqi Susanzhong Bei Cuosha Renyuan de Chuli Yijian de Tong-zi* [Notification of the Ministry of Civil Affairs, As Approved and Circulated by the State Council, Concerning the [Ministry’s] Opinion on How to Handle the Cases of Persons Wrongly Killed in the Course of Campaigns to Suppress Counterrevolution During the Period of the Second Revolutionary Civil War] in Xinfang Gongzuo Shiyong Zhengce Fagui Shouce, Zhonggong Zhongyang Bangongting [A Handbook of Policies, Laws and Regulations for Use in ‘Petitions and Visits’ Work], published by the Office of the CPC Central Committee (July 1992) (document marked “for internal distribution only”).

130. “Zhonghua Renmin Gongheguo Chengzhi Fangeming Tiaoli.”

Deng Xiaoping's return to power in late 1978, the growing trend towards an official condemnation and repudiation of both the 1957 Anti-Rightist Movement and the Cultural Revolution, together with rising public demands for the rehabilitation of the legions of counterrevolutionary political victims created during those two periods, acquired major new impetus. Over the next five years or so, virtually all of the hundreds of thousands of people who had been condemned, imprisoned, or executed for alleged counterrevolutionary offenses during the Cultural Revolution decade were exonerated by the new regime and declared to have been victims of the myriad "trumped-up cases and miscarriages of justice" perpetrated by the former radical Maoist leadership, the "Gang of Four," and its followers. Similarly, the great majority of those branded as "rightists" in 1957 were finally rehabilitated, although Deng's role as Party General Secretary in overseeing the purges of that time meant that many simply had their political "hats" removed, rather than being officially pronounced innocent.

Overall, the Party's use of charges of counterrevolution against its political enemies and opponents — real or imagined — during the second half of the twentieth century undoubtedly generated more miscarriages of justice and devastated the lives of greater numbers of innocent people than any other single factor on China's judicial landscape. The only just and appropriate governmental response to such an appalling judicial track record would have been for Deng and his colleagues, in the late 1970s, to have set about dismantling the entire legal category of "crimes of counterrevolution," thereby repudiating the manifest judicial failings of the past and holding out the promise of a more politically neutral criminal justice system. But instead, in July 1979, the new leadership chose to give a prominent place in the country's inaugural criminal code to an entire chapter on counterrevolutionary crime, laying down penalties ranging from several years in jail to life imprisonment or even death. Since then, at least ten thousand people or more have been consigned to long terms in prison on charges of counterrevolution that were no less politically determined and legally unsound than in the past.

By the mid-1980s, however, the incidence of counterrevolutionary crime as a proportion of the total number of criminal offenses recorded each year in China had dropped, according to official figures, to a very low level as compared with the situation during the first two decades or so of the People's Republic.<sup>131</sup> Until quite recently, the total number of imprisoned

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131. This reduction in the number of counterrevolutionary cases in China does not mean that the authorities have become substantially more tolerant of political criticism than before. Rather, a clear trend has been evident since 1980 towards sentencing political dissidents and other "enemies of

counter-revolutionaries was classified by the government as top secret, but the example of one province may serve to illustrate the general trend. In October 1959, Heilongjiang Province recorded a total prison inmate population of some 97,332 persons, of whom no fewer than 57,933, or just under 60 percent of the total, were counterrevolutionaries. By 1981, out of a total prisoner population of 23,685, the number of counterrevolutionaries had fallen to only 577, or 2.5 percent of the total.<sup>132</sup>

This reduction did not occur in a gradual or phased manner, but rather took the form of a sudden drop over a brief several-year period from December 1978 onwards. By 1982, for example, the government had officially exonerated the victims of more than 27,800 counterrevolutionary cases (involving a much greater number of actual defendants)<sup>133</sup> that had been falsely adjudicated in courts across the country during the two-year period from September 1976, when Mao died, until late 1978, when Deng returned to power. Similarly, in Fujian province alone during 1977-78, altogether 750 counterrevolutionaries were sentenced by the courts, of whom ninety-three received the death penalty and were executed. Again, the great majority of those sentenced were eventually rehabilitated.<sup>134</sup> These various figures show the extensive use that was still being made of such charges even after the conclusion of the Cultural Revolution.

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national stability" on alternative and less obviously political legal grounds: for example, on common criminal charges such as alleged economic malfeasance, soliciting prostitutes, and even for violating restrictive regulations on the ownership of fax machines. In many cases, these charges have clearly been trumped-up and devoid of factual basis. Another recent trend has been towards imposing "administrative sentences" on dissidents and others in the form of up to three-year terms of "re-education through labor" ("laodong jiaoyang")—an extremely widespread form of detention without trial that is applied solely at the discretion of the police authorities.

132. See HEILONGJIANG PROVINCIAL PEOPLE'S PROCURACY, HEILONGJIANG JIANCHA ZHI [ANNALS OF THE HEILONGJIANG PROCURACY] (1988). Of the 577 persons imprisoned in 1981, just under half were said to be "historic counterrevolutionaries," that is, political prisoners who had probably already been held in jail for several decades.

133. Many criminal "cases" ("anjian") in China involve multiple defendants, and this was especially true in the case of counterrevolutionary offenses carried out during the early 1980s, when numerous "reactionary organizations" dedicated either to the restoration of Cultural Revolution-era policies or (at the other end of the political spectrum) to the promotion of Western-style democracy appeared in many parts of the country.

134. For documentary sources on the above statistics, see SICHUAN SHENGQING [A GENERAL ACCOUNT OF SICHUAN PROVINCE] 548 (December 1987) (published "internally" by Sichuan People's Press) at 548; *Many "Unjust, False and Erroneous" Verdicts Also Found Among Cases Tried Between 1977 and 1978*, RENMIN SIFA XUANBLIAN [A COMPILATION OF ARTICLES FROM "PEOPLE'S JUSTICE" MAGAZINE] 116-8 (February 1983) (volume marked "for internal use only"). Among twenty-one of the counterrevolutionaries sentenced by the Fuzhou Intermediate Court, the latter report added, "Seventeen, or 77 percent of the total, were found to have been completely innocent... The original verdict was upheld in only one case." And of nine such verdicts rendered by the Xiamen Intermediate Court, "All were found to have problems."

Thereafter, according to official statistics, the numbers declined sharply. From 1980 to 1984, Chinese courts tried a total of 7,123 cases of counterrevolution (again accounting for many more defendants, only a tiny handful of whom would have been acquitted).<sup>135</sup> The question of possible rehabilitation and release did not arise in these cases, however, since by that time the government had completed its post-Cultural Revolution “rectification of the political line,” and therefore those sentenced in the 1980s and later were all considered to be “genuine” political enemies of the State. By the mid-1980s, the annual numbers of sentenced counterrevolutionaries were down to single digits in many Chinese cities. Foshan Municipality in Guangdong Province, for example, had tried and sentenced 1,861 such cases in 1951; 2,165 in 1955; 3,298 in 1959; 178 in 1972; and 275 in 1976. During the entire nine-year period from 1979 until 1987, moreover, a total of only forty-seven cases of counterrevolution were tried by the Foshan court system, representing an average of 0.5 percent of all the criminal cases tried by local municipal courts during those years.<sup>136</sup> As of the late 1990s, the government’s official accounting for the total number of sentenced counterrevolutionaries still held in prisons throughout China stood at around 2,000.

However, an analysis of the changing composition of cases of counterrevolution since the early 1980s, that is, the relative proportions of those convicted of the various types of counterrevolutionary offenses during different periods, reveals a striking trend. The 1979 Criminal Law specified more than ten varieties of counterrevolutionary crime, ranging from carrying out “subversion” and “espionage” to organizing “reactionary sects” and “counterrevolutionary groups.” The main judicial weapon used by the government in the punishment of non-violent acts of speech and expression, however, was the Article 102 charge of “counterrevolutionary propaganda and incitement.” The specific meaning and content of this offense was explained in detail by the Supreme People’s Procuracy in 1992 as follows:

There are four main forms of expression [of Article 102 crimes]: 1) shouting counterrevolutionary slogans in public and making counterrevolutionary speeches; 2) writing, posting up or distributing in public places counterrevolutionary leaflets, banners, and big-or small-character posters; 3) extensively mailing out

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135. See 1 DANGDAI ZHONGGUO DE SHENPAN GONGZUO [JUDICIAL WORK IN CONTEMPORARY CHINA] (1993). According to this book, the figure of 7,123 counterrevolutionary cases accounted for 0.43 percent of all criminals sentenced during the period in question.

136. See FOSHAN SHI FAYUAN ZHI [ANNALS OF THE FOSHAN MUNICIPAL COURTS], compiled and published by the Foshan Municipal Intermediate Court (year of publication not known, but probably 1988 or 1989).

counterrevolutionary -propagandist letters or sending threatening and alarmist letters to [government] organs, [social] bodies, and universities or colleges; and 4) editing and issuing reactionary publications and publishing counterrevolutionary articles. The first two of these four categories...account for two-thirds of all cases of counterrevolutionary incitement.<sup>137</sup>

Between 1980 and 1991, the proportion of sentenced counterrevolutionaries convicted under Article 102 rose steeply. According to one authoritative account, the average incidence of Article 102 offenses as a proportion of all counterrevolutionary offenses during the 1980s was "approximately 20 percent."<sup>138</sup> By 1990, however, an official law journal noted: "During the most recent period, counterrevolutionary propaganda and incitement cases have accounted for around 80 percent of all the counterrevolutionary cases accepted and dealt with by the people's courts."<sup>139</sup> Far from declining after the Cultural Revolution, therefore, both the government's sensitivity to dissident-style criticism and the extent to which it was determined to punish such acts of free political expression had, by the early 1990s, significantly increased as compared to the frequency with which it prosecuted and punished other alleged forms of counterrevolution. It should be emphasized that dissident-style individuals brought for forensic psychiatric examination in China in recent decades have also, for the most part, been initially charged with the same offenses as those singled out for attention by the Procuracy in the passage quoted above: namely, political speech making, sloganneering, leafleting and poster sticking.

In March 1997, the Chinese government finally responded to years of intense international criticism over its cavalier use of the statutes on counterrevolution as a means of suppressing peaceful political and religious dissent by ostensibly removing them from the Criminal Law. In their place, however, came a whole range of new but very similar offenses known as

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137. SUPREME PEOPLE'S PROCURATORATE, XINGSHI FANZUI ANLI CONGSHU (FANGEMING ZUI), [CRIMINAL CASE-STUDIES SERIES: VOL. I: CRIMES OF COUNTERREVOLUTION] 238 (November 1992).

138. *Id.* at 238. According to the same source, the incidence of counterrevolutionary crimes as a percentage of all criminal offenses committed during the period 1980-89 varied from between 0.08 percent and 0.8 percent; and "even in the highest year, it did not reach 1 percent of the total."

139. See Li Li and Li Shaoping, *Lun Fangming Xuanchuan Shandong Zui de Rending* [On the Determination of Crimes of Counterrevolutionary Propaganda and Incitement], XIANDAI FAXUE [CONTEMPORARY JURISPRUDENCE] (No. 1, 1990). One factor behind this relative surge in Article 102 offenses was no doubt the government's June 1989 nationwide crackdown on the Tiananmen Square pro-democracy movement, which had been officially condemned as a "counterrevolutionary rebellion." However, the incidence of all categories of counterrevolutionary offense (notably "leading and organizing a counterrevolutionary group" [Article 97] and "counterrevolutionary sabotage" [Article 100]) rose dramatically after the June 1989 crackdown, so the high predominance of Article 102 offenses at this time was still of considerable statistical significance.

“crimes of endangering state security.”<sup>140</sup> In essence, the concept of peaceful and non-violent political crime in China was not abolished as a result of this move, but merely remodeled in a form ostensibly more acceptable to international legal opinion. Far from attempting to hide the fact that this was in large part a mere change of name with little change in substance, the Chinese leadership went out of its way to stress this point, in what was probably an attempt to mollify domestic conservatives who feared it was another step down the road toward liberalization. The first indication that it would be “business as usual” after the legislative changes in question came from Wang Hanbin, Vice-Chairman of the National People’s Congress Standing Committee, in a speech to the national parliament introducing the revised criminal code: “The punishment meted out for crimes of counterrevolution in the past will remain valid and cannot be altered.”<sup>141</sup> This ruled out any question of amnesty or early release for those already sentenced on such charges. The protracted legal debate that preceded the new legislation’s introduction made the matter even clearer. According to one commentator, “By altering the name of this legal weapon [the statutes on counterrevolution], we will be changing neither its basic nature, its tasks nor its combat effectiveness; still less will we be discarding it. All that will be involved is the adoption, in line with today’s changed circumstances, of a new and more appropriate designation for the weapon.”<sup>142</sup> And as another pointed out, “The proposal to redesignate counterrevolutionary offenses as crimes of endangering state security means nothing more than a change of name; in no way does it imply the ‘deletion’ or ‘abolition’ of those offenses.”<sup>143</sup>

Since March 1997, the Chinese security authorities have proceeded to apply the new charges to precisely the same types of people — political dissidents, ethnic rights activists, independent trades unionists, unofficial religious believers and so forth — who previously were judicially dealt with on charges of counterrevolution; if anything, the sentences passed on such

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140. A detailed analysis of the significance of these legislative changes can be found in ROBIN MUNRO AND SOPHIA WOODMAN, *WHOSE SECURITY? AN ANALYSIS OF “STATE SECURITY” IN CHINA’S NEW CRIMINAL CODE*, HUMAN RIGHTS WATCH AND HUMAN RIGHTS IN CHINA (1997). Another very detailed and informative account of the topic can be found in DONALD C. CLARKE, *WRONGS AND RIGHTS: A HUMAN RIGHTS ANALYSIS OF CHINA’S REVISED CRIMINAL CODE* (1999).

141. Speech by Wang Hanbin to the Fifth Session of the Eighth National People’s Congress, March 6, 1997.

142. Guo Qun, *Guanyu Fangeming Zuizhang de Tiaozheng [On Readjusting the Chapter on Crimes of Counterrevolution]*, in CUI QINGSEN (ED.), *ZHONGGUO DANGDAI XINGFA GAIGE [REFORM IN CHINA’S CONTEMPORARY CRIMINAL CODE]* Chapter 20 (1991).

143. Li Wenyan, *Fangeming Zui Gaiwei Weihai Guojia Anquan Zui Qianyi [My Humble Views on the Changeover from Counterrevolutionary Crimes to Crimes of Endangering State Security]*, FAZHI RIBAO [LEGAL DAILY], March 14, 1991.

people for “endangering state security” in recent years have been even harsher than those previously imposed for counterrevolutionary offenses.<sup>144</sup> Legal reform in China since 1978 has brought many new and valuable benefits to the country as a whole. There has been no sign, however, that the authorities are prepared to slacken off or display greater tolerance in their longstanding judicial war against dissident freedom of expression and association in the key realms of politics, ideology and religion. Essentially, insofar as the country’s criminal justice system is concerned, all that has changed in the post-Mao era is the specific content of what is officially regarded to be “counterrevolutionary” or “threatening to state security.”

For this same reason, “cases of a political nature” will no doubt continue, much as before, to account for a significant proportion of offenses committed by the “dangerously mentally ill” in China. For much of the past two decades, certainly, the officially reported incidence of “pseudo-counterrevolutionary” cases as a proportion of all cases of forensic psychiatric appraisal (somewhere between five and fifteen percent) has been markedly higher than the reported incidence of cases of “genuine” counterrevolution as a proportion of the total number of criminal offenses committed (much less than one percent). The precise significance of these puzzling statistics is unclear, but they evidently do not point in the direction of any major systemic reforms in the medico-legal handling of the former variety of cases. In summary, so long as the notion of “political crime” continues to hold sway in police stations and courtrooms around the country, forensic psychiatry in China seems set to remain mired, to a greater or lesser extent, in the unethical practices of the past, tainting the ability of Chinese psychiatrists to perform their proper and legitimate role within the criminal justice system.

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144. The following examples illustrate the draconian manner in which the new state security laws have been applied. On December 21, 1998, the veteran dissident Xu Wenli, 55, was sentenced to 13 years’ imprisonment for “conspiring to subvert state power” after he attempted to legally register a peaceful opposition group, the China Democracy Party (CDP); the following day, his colleague Qin Yongmin, 49, was sentenced to 12 years’ imprisonment on the same criminal charge. On December 27 the same year, Zhang Shanguang, a Hunan labor activist, was sentenced to 10 years’ imprisonment after a two-hour trial held behind closed doors which found him guilty of “providing intelligence to institutions outside the borders,” a charge relating to his attempts to establish an “Association to Protect the Rights and Interests of Laid-off Workers” in Xupu County. In July 1999, Yue Tianxiang, a labor rights activist, was sentenced to 10 years’ imprisonment for “subversion”; Yue, who was detained on January 11 and formally charged on January 26, 1999, formed the China Labor Rights Observer in Gansu Province to protect the rights of laid-off workers. And on August 6, 1999, Liu Xianbin, a leading CDP member in Sichuan, was sentenced to 13 years’ imprisonment for alleged conspiracy to subvert state power; Liu was unable to find defense counsel as a series of lawyers withdrew from the case following pressure from the authorities.

## VI. THE ANKANG: CHINA'S SPECIAL PSYCHIATRIC HOSPITALS

In the mid-1980s, China's leaders, perceiving the emergence of an "ideological vacuum" among the populace, caused mainly by the official downplaying of politics in national life since the Cultural Revolution, launched a campaign to build "socialist spiritual civilization"<sup>145</sup> across the country. The purpose was to create a spiritual counterpart to China's already fairly well developed "material civilization," the national infrastructure and the economy. Since in Chinese the words for "spiritual" and "mental" are the same, the new movement was also an attempt to expand "mental civilization," and thus had important implications for the field of mental health work. In October 1986 in Shanghai, the ministries of health, civil affairs and public security convened the country's Second National Conference on Mental Hygiene Work, the first national-level meeting of this kind in almost thirty years.<sup>146</sup> The main item on the agenda was the sharp increase in the rate of mental illness among China's population in recent years: since the 1970s, the rate was said to have risen from seven per thousand members of the population to as many as 10.54 per thousand.<sup>147</sup> The level of violent crime in society was also rising rapidly, and China's severe lack of healthcare facilities for the mentally ill was identified as a major causal factor.

In April 1987, the three concerned ministries drew up a list of proposals designed to address these problems. According to the resulting policy document, "An especially urgent need is for the public security organs immediately to set up institutions for the custody and treatment of mentally ill people who break the law and create disastrous incidents... Owing to the lack of management over the mentally ill, many of them are spread over society at large and they create endless disastrous incidents that pose a very serious threat."<sup>148</sup> The ministries' main policy recommendations were threefold: first, to speed up the passage of a national mental health law;

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145. "Shehuizhuyi jingshen wenming."

146. The first one had been held in 1958.

147. According to a website run by the Beijing Institute of Forensic Medicine and Science (Beijing Shi Fating Kexue Jishu Jianding Yanjiusuo), the rate of mental illness among China's population currently stands at 13.47 per thousand. See <<http://fmedsci.com/sfjs/sfjs09.htm>>, as of December 1, 2000.

148. *Weisheng Bu, Minzheng Bu, Gong'an Bu Guanyu Jiaqiang Jingshen Weisheng Gongzuo de Yijian* [Opinion of the Ministries of Health, Civil Affairs and Public Security on the Strengthening of Mental Health Work], April 20, 1987, in ZHONGHUA RENMIN GONGHEGUO WEISHENG FAGUI HUIBIAN 1986-1988 [PRC COMPILATION OF LAWS AND REGULATIONS ON HEALTH, 1986-1988] 366-369 (June 1990).

second, to further develop forensic appraisals work; and third, to establish a national network of police-run centers for the custody and treatment of severely mentally ill offenders. Further important meetings swiftly followed. In June the same year, the First National Academic Symposium on Forensic Psychiatry was held in the southern city of Hangzhou, and in December, the First National Public Security Conference on Custody and Treatment of the Mentally Ill took place in Tianjin.<sup>149</sup>

At some point in the course of these meetings, it was officially decided that the name "Ankang," meaning "Peace and Health," would be used as a uniform designation for the proposed new network of custodial facilities for mentally ill offenders. In December 1987, the Ministry of Public Security formed a National Ankang Work Coordinating Group, one of whose deputy chairmen was Wang Guiyue, director of the Tianjin Ankang facility and recent founder of a "stereotactic brain surgery" unit there.<sup>150</sup> A small number of institutions for the criminally insane had already been in existence in China for many years; known locations include Beijing, Shanghai, Tianjin, Dalian and Jilin Province. After the April 1987 conference decision, however, moves to establish institutions of this type elsewhere proceeded apace, and by May of the following year, a total of sixteen Ankang centers had been established and brought into service. A series of guiding documents were then drawn up by local public security authorities, including the "Administration Methods for Ankang Hospitals," "Detailed Implementation Rules for Nursing Work in Ankang Hospitals" and "Rules for the Admission and Treatment of Mentally Ill People Who Seriously Endanger Public Security."<sup>151</sup> By 1992, the total number of such institutions had risen to twenty, with several others under construction.<sup>152</sup>

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149. This latter meeting was held at the Tianjin Public Security Bureau's Custody and Treatment Center for the Mentally Ill, which was shortly thereafter renamed as the Tianjin Ankang institute. Since that time, "national academic conferences on the custody and treatment of the mentally ill," attended mainly by practicing forensic psychiatrists, have been convened in various Chinese cities approximately every two years; the first, for example, was in Wuhan in May 1988, see RENMIN GONG'AN BAO [PEOPLE'S PUBLIC SECURITY NEWS], May 20, 1988, and the third was in Hangzhou in October 1990, see HANGZHOU RIBAO [HANGZHOU DAILY], October 24, 1990.

150. RENMIN GONG'AN BAO [PEOPLE'S PUBLIC SECURITY NEWS], May 24, 1988, at 1. A report two years later in the same newspaper confirmed the independent observer's account, cited above, of the establishment of a high-technology lobotomy unit at the Tianjin Ankang facility. See *Gong'an Xitong Jingshenbing Guan-Zhi Gongzuo Chengxiao Xianzhu* [Public Security System's Work of Custody and Treatment of the Mentally Ill Achieves Conspicuous Results], RENMIN GONG'AN BAO, May 18, 1990, at 1.

151. These regulations are listed in RENMIN GONG'AN BAO, May 18, 1990; however, no actual copies of the documents have as yet come to light.

152. See LONG QINGCHUN (ED.), SIFA JINGSHEN YIXUE JIANDING ZIYUN JIEDA [CONSULTATIVE QUESTIONS AND ANSWERS FOR FORENSIC-PSYCHIATRIC MEDICAL EVALUATIONS] 152 (1994). The twenty places having Ankang facilities as of 1992 were the cities of Tianjin, Beijing, Shanghai,

According to one source, large Ankang centers can accommodate around 1,000 inmates;<sup>153</sup> the Tianjin facility, however, is now believed to have around twice that capacity. According to another official source, the average length of stay for mentally ill offenders in the Ankang system is five and a half years, with some inmates being held for as long as twenty years.<sup>154</sup> The government's eventual goal is to establish one Ankang center for every city in China with a population of one million or above.<sup>155</sup>

The institutional model for the new Ankang forensic-psychiatric regime set up in China after 1987 was the Shanghai Municipal Hospital for Custody and Treatment of the Mentally Ill, which had been first established in May 1985.<sup>156</sup> This institute, now known as the Shanghai Ankang, is located in the same part of the city that previously housed "Jiangwan No. 5," the scene of Mr. C's ordeal during the Cultural Revolution; indeed, it is highly probable that they are one and the same place. In April 1986, the Shanghai government took the national lead by promulgating a detailed set of regulations for the compulsory hospitalization of mentally ill people who "create incidents or disasters" ("zhaoshi zhaohuo").<sup>157</sup> These regulations are still the most specific thus far issued in China on the crucial procedural matter of how mentally ill offenders actually get admitted to Ankang care: expert forensic psychiatric appraisal of the detainee was to be performed, but once a finding of legal non-imputability had been made, the public security authorities were then accorded complete authority to issue the

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Shenyang, Dalian, Tangshan, Wuhan, Xi'an, Suzhou, Chengdu, Hangzhou, Hefei, Fuzhou, Ningbo, Jinhua and Shaoxing; and also Heilongjiang Province, Jilin Province, Ningxia Autonomous Region, and Inner Mongolia Autonomous Region (city locations for the latter four are unknown). As of late 1999, the total number of Ankang facilities was reportedly still twenty. See Zheng Zhanpei et. al., *Woguo Sifa Jingshenbingxue Jianding Gongzuo de Xianzhuang ji Zhanwang* [Present Situation and Future Prospects of China's Judicial Psychiatric Appraisals Work], 32:4 CHINESE JOURNAL OF PSYCHIATRY 201 (1999).

153. See Lin, *supra* note 90, at 54-55 (1996).

154. See Gu Xiangdong et. al., *Shehui Jineng Xunlian Dui 32 Li Zhuyuan Manxing Jingshenfenliezheng Huanzhe de Liao Xiao Guancha* [An Examination of the Efficacy of Social Skills Training for 32 Chronic Schizophrenic Patients], 20:2 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 85-87 (1994).

155. RENMIN GONG'AN BAO [PEOPLE'S PUBLIC SECURITY NEWS], May 24, 1988, at 1.

156. The Chinese name for this institute was "Shanghai Shi Jingshenbing Guan-Zhi Yiyuan." In 1987, it was renamed "Shanghai Shi Gong'an Ju Ankang Jingshenbing Guan-Zhi Yuan" [Shanghai Municipal Public Security Bureau Ankang Institute for the Custody and Treatment of the Mentally Ill]. The same wording is now used (after substitution of the specific city or province name in question) as a uniform designation for all the various Ankang centers in China.

157. See "Shanghai Shi Jianhu Zhiliao Guanli Zhaoshi Zhaohuo Jingshenbingren Tiaoli" ["Shanghai Municipal Regulations on the Guardianship, Treatment and Management of Mentally Ill People Who Create Incidents or Disasters"], promulgated on August 29, 1986, in SHANGHAI GONG'AN NIANJIAN, 1988 [SHANGHAI PUBLIC SECURITY YEARBOOK, 1988] 343-346 (December 1988) (volume marked: "for internal distribution only"). The regulations came into force on October 1 the same year.

necessary paperwork for compulsory psychiatric admission; the courts had no visible role in the process.<sup>158</sup> Shortly thereafter, municipal and provincial governments elsewhere in China, including Tianjin and Guangdong, issued similar sets of regulations.<sup>159</sup>

Specific criteria outlining the various types and categories of mentally ill offenders who are to be compulsorily admitted to Ankang can be found in several published sources in China. These criteria vary slightly from source to source, but the most complete and exhaustive version appears in an official encyclopedia of police work published in 1990. The encyclopedia begins by explaining the three main types of people who are to be taken into police psychiatric custody:

The first are those commonly known as "romantic maniacs" ["hua fengzi"],<sup>160</sup> who roam around the streets, grab food and drink from others, expose themselves naked, or look unkempt and disheveled, and so have an adverse effect on social decorum.

The second are those commonly known as "political maniacs" ["zhengzhi fengzi"], who shout reactionary slogans, write reactionary banners and reactionary letters, make anti-government speeches in public, and express opinions on important domestic and international affairs.

The third are those commonly known as "aggressive maniacs" ["wu fengzi"], who beat and curse people, pursue women, elderly people and children, smash up public property, commit murder or arson, or who otherwise endanger people's lives and the safety of property.

The encyclopedia then lists the following more specific and operational criteria for dealing with mentally ill people falling within the three categories:<sup>161</sup>

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158. An argument that the courts should be given a leading role in this process is made in Lin, *supra* note 90, at 53-54.

159. See "Tianjin Shi Shouzhi Guanli Weihai Shehui Zhi'an Jingshenbingren Banfa" ["Tianjin Municipal Methods for the Shelter and Management of Mentally Ill People Who Endanger Public Order"], undated and unpublished document on file with the author; and "Guangdong Sheng Shourong Anzhi Zhaohuo Zhaoshi Jingshenbingren Zanxing Banfa" ["Guangdong Provincial Temporary Methods for the Shelter and Settlement of Mentally Ill People Who Create Disasters or Incidents"], issued by the Guangdong Provincial People's Government on January 17, 1990, in Office of the Guangdong Provincial People's Government, GUANGDONG SHENG FAGUI GUIZHANG HUIBIAN [A COMPILATION OF GUANGDONG PROVINCIAL LAWS, REGULATIONS AND RULES] 275-276 (January 1989-December 1990).

160. The term "hua fengzi" (literally: "flower crazies") is a euphemistic one whose broad meaning encompasses aspects of the English terms "hippy," "nutcase," and "sex maniac"; however, it does not have the often violent or non-consensual overtones of the latter term.

161. Another important category of persons liable to be sent to Ankang facilities is those who develop "prison psychoses" of various kinds (as discussed above) during their confinement in regular

The public security organs have primary responsibility for the management and treatment of the following five kinds of severely mentally ill persons, all of whom pose a relatively grave threat to social order:

- Persons carrying knives who commit violent or injurious acts; those who are suicidal; and those who commit arson or other acts that seriously disturb social order, with definite consequences.
- Persons who disrupt the normal work of Party and government offices or who disrupt normal work and production in enterprises, scientific and educational institutions, thereby posing a danger.
- Persons who frequently expose themselves naked, or otherwise harm social morals, in busy crowded areas or in public places.
- Persons who shout reactionary slogans, or who stick up or distribute reactionary banners and leaflets, thereby exerting an undesirable political influence.<sup>162</sup>
- Mentally ill people who drift in from other areas and disrupt the public order of society.

Upon encountering any of these five types of people, the public security organs are to take them into custody for treatment.<sup>163</sup>

Finally, the police encyclopedia adds, “The taking of mentally ill people into custody is especially important during major public festivals and when foreign guests arrive for visits, and it should be appropriately reinforced at such times.”<sup>164</sup> For our present purposes, the most important categories of

prisons. The incidence of this type of mental illness has apparently risen sharply in China in recent years. One significant subgroup of such sufferers is reportedly those sentenced to death and awaiting execution; if the stress and anxiety of impending execution leads them to become mentally ill, they are regarded as “incompetent to undergo punishment” and are then placed in Ankang custody for treatment until they become sane enough to be executed. Moreover, prisoners who stage hunger strikes in jail are often regarded as suffering from a subtype of this particular illness and are therefore also sent to Ankang centers for secure psychiatric treatment.

162. “Huhan fandong kouhao, zhangtie sanfa fandong biaoyu, chuandan, zaocheng buliang zhengzhi yingxiangde.”

163. ZHONGGUO GONG’AN BAIKE QUANSHU [CHINA ENCYCLOPEDIA OF PUBLIC SECURITY] 1964 (February 1990). A similar set of criteria for enforcing police custody of the mentally ill is listed in ZENG WENYOU ET. AL. (ED.), JING GUAN BI DU [ESSENTIAL READING FOR POLICE OFFICIALS] 163 (1992) (volume marked “for internal circulation only”). A more readily accessible source, giving roughly the same kinds of guidelines and discussing the role and purposes of the Ankang system more generally, is Liu Dechao, *Dui Weihai Shehui Zhi'an de Jingshenbingren de Chuli* [On the Handling of Mentally Ill People Who Endanger the Public Order of Society], 2 XIANDAI FAXUE [MODERN JURISPRUDENCE] 69-71 (1990). Finally, a 1996 book states that the various criteria for compulsory Ankang admissions were first formulated at the First National Public Security Conference on Custody and Treatment of the Mentally Ill, held in Tianjin in December 1987. See Lin, *supra* note 90, at 111.

164. The rounding-up by police of mentally ill citizens in advance of important public events and visits by foreign dignitaries was also a highly characteristic feature of political psychiatry in the former Soviet Union.

alleged mentally ill people listed above as being targets for Ankang-style custody and treatment are, first, "political maniacs," namely those displaying "dangerously" political dissident-like behavior, including "expressing opinions on important domestic and international affairs"; and second, those accused of disrupting "the normal work of Party and government offices," since in practice this category is often taken to include the kinds of persistent petitioners and complainants whom the police regard as suffering from "litigious mania." As mentioned earlier, most countries need to maintain institutions for the criminally insane in order to protect the public from genuinely dangerous psychotic offenders. At least in the modern era, however, few countries have ever regarded the above-mentioned types of mentally ill people as being legitimate targets for forced psychiatric custody. The former Soviet Union was the most prominent such country, and to the extent that it now follows a similar set of practices, China's recently established Ankang system appears to be performing a role much the same as that of the Soviet Interior Ministry-run "Special Psychiatric Hospitals," which were used to incarcerate, in a medically unjustifiable way, hundreds and possibly thousands of peaceful Soviet dissidents.

Owing to the highly secretive nature of these institutions, little is known about the conditions of detention and treatment currently found within them. One first-hand account of conditions at the Shanghai facility on the eve of its transformation into an Ankang center, however, painted a disturbing picture of widespread fear among the inmates arising from the frequent resort by warders and nursing staff to various abusive methods of punishment. The account, which was written by a female dissident and former political prisoner who had been placed in the Shanghai facility in early 1987 and which contained case details of several other "political maniacs" held there at the time, reads in part as follows:

The only difference between [prison and this hospital] was that the two used different methods of punishment. The instruments of punishment in prison were common handcuffs, whereas the hospital used medical appliances...

If patients were disobedient in the hospital, the doctors would increase their medication. Besides eating, they only felt like sleeping, and often suffered from cramps. This is not a civilian hospital that you can leave in three or five months. There, three or five years was considered to be a short time. Moreover, you had to work for seven hours a day. Those who were on more medication dribbled saliva constantly. Their eyes often rolled upwards helplessly in their sockets. They walked slowly and stumbled frequently.

If such and such a person was to be punished, her bed would be taken to the area between the dining hall and the workshop, and

she would be tied by her four limbs to the bed by straps looped through the metal bed frame. In this way the nurses could supervise her from morning till night. In the daytime during working hours the dormitory was locked. Sometimes two people could be punished at once. During the daytime when everyone was working, we looked at the women's hands and feet tied to the bed. We all kept silent, lowered our heads and carried on working. In the evening when we returned to the dormitory, we would watch the bed carried away, and see the empty space where it had stood. A cold shiver would go through your heart. You didn't know when it would be your turn. Maybe you would be punished because the doctors discovered you had smuggled a letter out to some visitors, or maybe because you had had an argument with the doctors or nurses. When they wanted to punish someone, the alarm outside the dormitory (in the dining room) would sound and several police would arrive at once, and tie you to the bed.

Another kind [of punishment] was injections. One kind was muscular injection and the other intravenous, which was much more painful. I saw some patients after intravenous injections, whose tongues were so swollen they bulged out of their mouths. After a few days of injections, their facial muscles were all stiff, their eyes fixed and staring. Their faces were like waxwork masks -- they couldn't turn their heads and would have to slowly turn their whole body if they wanted to look at something.

Yet another kind of punishment was acupuncture with an electric current. The patients called it the "electric ant." It uses electrically controlled acupuncture needles. There are three levels of current. The higher the current, the more painful, and the degree of pain also depends on the particular acupuncture points used. There is the *taiyang* point (on the temple), *hegu* (also known as "hukou," on the palm of the hand between the thumb and the index finger) and the heart point on the sole of the foot. The people who have suffered this say the heart point on the sole of the foot is the most painful. In civilian hospitals, when a patient is subjected to electric shock treatment it is forbidden to let the other patients watch, but in this [kind of] place, treatment was no longer about curing illness and saving peoples' lives. It had become the penal code the doctors used to maintain control. When they wanted to punish someone, they would make all the patients stand around her bed, while the patient twitched in agony and pitifully cried, "I won't do it next time... I won't do it again, please let me go..." After it was over, the nurses admonished all the other patients that whoever violated the rules next would suffer the same treatment as her. Everyone would lower their heads, fearing that their faces had turned pale.<sup>165</sup>

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165. Handwritten account circulated to various human rights groups in 1995; the writer cannot

The most recent confirmed case of a political dissident being sent to the Shanghai Ankang facility is that of Li Da, a young worker at an electrical appliances firm in the city who had apparently been involved in the May 1989 pro-democracy movement. On three separate occasions, prior to his arrest in July 1998, he stood outside the Shanghai No. 1 Department Store handing out leaflets calling for the rehabilitation of victims of the June 4, 1989 government crackdown, for greater political democracy in China, and for the right to commemorate Taiwan National Day. Li's case was briefly reported on by Voice of America in February of the following year, on the basis of a letter he had smuggled out of the Shanghai Ankang facility. There has been no further news about him since.

Another account, this time involving a fatality at the Ankang facility in Beijing, suggests that staff violence against inmates was still commonplace in institutions of this type at least as late as 1993. In March that year, as part of China's bid to host the 2000 Olympic Games, a delegation from the International Olympic Committee arrived in Beijing to inspect the city's sporting and other facilities. Over the preceding few weeks, among other preparations designed to enhance China's chances of winning its bid for the games, the Beijing authorities had removed large numbers of homeless, indigent or mentally ill people from the streets of the city and shipped them out of town either to their original place of residence or to temporary holding centers, and in the case of mentally ill targets of this "cleanup" operation, the Beijing Ankang center was apparently also used for this purpose. One such person was a 41-year old mentally retarded man named Wang Chaoru, who lived with his parents in the southern part of the city. According to a detailed account of Wang's case that was subsequently written by Nicholas Kristof and Sheryl WuDunn, the Beijing correspondents of the New York Times during that period, a policeman arrived at the family's door, accompanied by a woman named Zhang from the local Street Committee, two days before the IOC delegation's arrival in Beijing:

The policeman wanted to take Wang away, but the retarded man began shrieking his protests. So the policeman and Zhang left. The next morning, Zhang returned, this time with two policemen. They

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presently be identified for reasons of personal safety. According to the account, the ward in which she was placed held twenty women, three of whom were political dissidents of various kinds. Moreover, "[inmates] convicted of murder were allowed to talk freely together, but political prisoners were not permitted to do the same." The reason why one of the three dissidents had been admitted was, according to the same account, as follows: "She had gone onto the streets to make a speech protesting about the high increase in the cost of living. She said that skyrocketing prices had made people's lives worse, and that political corruption nowadays meant officials made a fortune through their official posts, something that could not have happened in Mao Zedong's day."

had no arrest warrant, no detention warrant, and they didn't suggest that Wang had broken any law or endangered anybody. They didn't give any reason for wanting to take him away, but they insisted that he had to leave with them. "I don't want to go," Wang cried out in fear. "Mama, Papa!" He raced to the corner of the big bed, shielding his head with his arms. His parents knew that it would be futile to resist, so they watched helplessly as the two policemen dragged away their terrified son. Wang had reason to be frightened. A year earlier, as part of their efforts to beautify Beijing in preparation for the annual session of the National People's Congress, the police had taken him to a sanatorium on the outskirts of Beijing and beaten him to a pulp. A few days later, they drove him to the Temple of Heaven, where they deposited him in a wounded clump at the front gate. It took Wang two hours of walking to find his way home.

As the Olympic delegation toured Beijing's sports facilities on March 7, Wang's parents waited anxiously for news about their son. Two days later, shortly after dawn,

A police car came to pick them up, but the police officer said that only one of the parents could go. The parents, now desperate with worry, imagining their son beaten bloody, perhaps even in a coma, insisted that they both go. The police backed down and drove them out to Fangshan, a hospital closely associated with the Public Security Bureau... When they arrived, the police took the parents into an office that was bare except for several chairs and a table. "The person has died," an officer informed them matter-of-factly. "We have inspected the body." Wang Shanqin and An Yulian were devastated. They felt responsible for their son, who had depended on them. He had pleaded with them to let him stay, yet they had allowed the police to take him away.

Wang's father demanded to see the body, and he and his wife were then led down a long corridor to the hospital's morgue. Later, the couple described to the foreign journalists what they found on arrival:

"There was blood all over his face," the father recalled slowly and hesitantly, like a man fighting with himself, negotiating between his desire to tell the world and the pain of remembering. "His hair was all red with blood. His lips were cut up, and his eyes — they were pierced, as if they had burst open and then swollen shut." ... In his back, there was a big hole. Someone must have stuck a police baton into his back, boring it into the flesh. And his behind was all bruised" ... "The back of my son's legs," he continued, as he rubbed his hands under his kneecaps, "had these huge bumps, these swellings. I told them I wanted to sue, and you know what they said? 'You'll never

win.' On the day we cremated him, they gave me a bag with 5,000 *yuan* in it. They didn't say what the money was for."<sup>166</sup>

The Beijing Public Security Bureau has a close organizational affiliation with only two hospitals in the capital: one is the Binhe Penal Hospital, located until recently within the grounds of the Beijing No. 1 Municipal Prison (this facility was torn down and relocated about five years ago); the other is the Beijing PSB Ankang Institute for the Custody and Treatment of the Mentally Ill, which is located in Fangshan District, a suburban area to the southwest of the city.<sup>167</sup> Even today, very few foreigners living in China have ever heard of the name "Ankang," so it is unsurprising that the authors of the above account did not specifically identify the place of Wang Chaoru's death as being the Beijing Ankang facility. But that is undoubtedly where he died.

## VII. THE MATRIX OF THEORY AND PRACTICE: READINGS FROM THE LEGAL-MEDICAL LITERATURE

### A. *The Dangerousness Criterion*

Under international legal and medical standards, a number of key principles are held to be paramount in the field of psychiatry. First, compulsory hospitalization is, in most cases, only justified where the patient's mental state poses a direct danger, usually physical, either to his or her own health and safety, or to that of others; alternative considerations,

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166. NICHOLAS D. KRISTOF AND SHERYL WUDUNN, CHINA WAKES: THE STRUGGLE FOR THE SOUL OF A RISING POWER 98 (1994). The authorities' version of Wang's death was as follows: "'The police said that my son had died on the night of the sixth,' [said the father.] That was just hours before the Olympic delegation arrived. 'They said he went mad and died on the streets. That's impossible! When they said that, I yelled at the policemen. They were just too inhumane. How could they hate my son so much?'"

167. A detailed official description of the organization and functions of the Beijing Ankang facility can be found in Lin, *supra* note 90, at 111-116; the account is written by Zhang Hu, a leading forensic psychiatrist who formerly worked at the Harbin No. 1 Special Hospital ("Ha'erbin Shi Diyi Zhanke Yiyuan") and for the past ten years or so has been based at the Beijing Ankang institute. In his article, Zhang says that the Beijing Ankang is divided into three parts: a closed and highly secure zone ("fengbi qu"), where all new admissions are placed; a semi-open zone, holding around half of the inmates; and an open zone, mainly devoted to work-therapy activities, where inmates scheduled for release are held. According to Zhang, the facility is run "fully in accordance with humanitarian principles," although he also acknowledges that "many problems remain to be solved." In his view, Ankang centers should primarily be places of treatment, rather than detention or punishment: "If the reverse were true, so that the medical objectives became secondary, and the principal purpose was simply to lock up the patients and keep them in custody, then it would be wrong, and the nature and aims of Ankang hospitals would no longer be the same." *Id.* at 113. Another description of the Ankang regime can be found in Li, *supra* note 10, at 385-386.

such as concern by the authorities that a person's mental state or behavior may prove injurious to "social stability," do not meet the requirements of this key "dangerousness" criterion.<sup>168</sup> As a UN Special Rapporteur noted in 1983, "It is not satisfactory to generalize about 'dangerousness' in the abstract. One must distinguish between 'danger to self', danger to others', and 'danger to the public'... The argument of 'overprediction of dangerousness' poses a grave threat to the human rights and fundamental freedoms of the patient."<sup>169</sup> Second, it is a commonplace of international law, starting with the Universal Declaration of Human Rights, that no person may be subjected to detention, arrest, trial or any other form of persecution on account of their peacefully held political or religious views and activities.<sup>170</sup> And third, as a logical extension of these two principles, it is flatly impermissible for government authorities to subject any person, whether mentally ill or otherwise, to involuntary psychiatric treatment or hospitalization on criminal charges relating to the person's political or religious views and beliefs — or indeed, to do so for any other reasons of governmental convenience.

The following questions should be borne in mind, therefore, in seeking to evaluate the cases of those described as "mentally ill political offenders" in China. Were the individuals concerned in fact mentally ill? If so, did they pose a genuine and direct danger to themselves or to others?

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168. The UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (discussed *supra* at 11-13) contain broader criteria for involuntary hospitalization than just that of dangerousness; for example, they also permit involuntary commitment in the case of a person suffering from mental illness whose judgment is impaired and who is likely to suffer further psychiatric deterioration if not hospitalized. This aspect of the Principles clearly goes well beyond the question of dangerousness to self or others, and as such is viewed as controversial by many experts in the field. For a detailed critique of this and other aspects of the December 1991 UN document, see Eric Rosenthal and Leonard S. Rubenstein, *International Human Rights Advocacy under the "Principles for the Protection of Persons with Mental Illness,"* 16 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY 257 (1993). However, while the Principles may create a certain potential for abusive practices by allowing involuntary commitment on the grounds of possible further deterioration in the patient's subjective mental condition, they nonetheless still define the objective "dangerousness" criterion quite narrowly. Since the Chinese authorities invariably cite this particular criterion (and in the much wider form, moreover, of a putatively "social" or "political" type of dangerousness) when explaining why certain types of political nonconformists require to be psychiatrically detained, it is important to emphasize that China is in violation of international standards in this specific and key respect. Certainly, official concern that the mental state of those involved might "further deteriorate" unless they are forcibly committed never appears, in the Chinese legal-medical literature, as being either the whole or partial grounds for such action having been taken by the authorities. Finally, it is again vital to stress here that one is talking, in the Chinese case, about people being *criminally* detained and then subjected to *forensic* psychiatric appraisal — a very different matter from the kinds of involuntary civil commitment cases to which the psychiatric "deterioration" provisions in the UN Principles might well give rise.

169. Daes, *supra* note 14, §§ 246-247.

170. See for example, Articles 9, 18 and 19 of the Universal Declaration of Human Rights.

And did their activities, as officially described, in any way justify their being placed under arrest and subjected to the authority of the State's criminal-psychiatric assessors? The first question is, in most cases, difficult if not impossible to answer on the basis of the fragmentary case material available, although certain useful insights can often be gleaned. The remaining two issues boil down, in essence, to the dangerousness criterion and how it is defined and interpreted by the authorities. The understanding of dangerousness as a medico-legal category varies considerably in legal systems around the world,<sup>171</sup> but the question of a mentally ill person's potential for doing physical harm to himself or others is of central and primary concern in most jurisdictions; secondary considerations may include psychological harm, danger to property, or damage to the environment.<sup>172</sup> China, however, is today the only country known specifically to include "political harm to society" within the scope of what the medico-legal authorities officially regard as being dangerous mentally ill behavior.<sup>173</sup>

How high or prominently, then, do so-called political cases figure in the Chinese psychiatric establishment's general hierarchy or ranking of

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171. For an informative account of this topic, see Timothy Harding and Cleopatre Montandon, *Does Dangerousness Travel Well? A Cross-National Perspective on Medico-Legal Applications*, in JOHN R. HAMILTON AND HUGH FREEMAN (EDS.), DANGEROUSNESS: PSYCHIATRIC ASSESSMENT AND MANAGEMENT 46-52 (1982). A fuller and more in-depth discussion of the various issues involved can be found in John Gunn, *Dangerousness*, in JOHN GUNN AND PAMELA J. TAYLOR (EDS.), FORENSIC PSYCHIATRY: CLINICAL, LEGAL AND ETHICAL ISSUES 624-645 (1993).

172. The dangerousness criterion is a contentious issue among psychiatrists at the best of times, even when it is narrowly restricted to the potential for committing physical violence. According to one writer, "Furthermore, the evidence is pretty overwhelming that psychiatrists are not very good at predicting dangerousness; their success rate in correctly identifying future violence varies from a high of 40 percent...to a low of something like 0.3 percent... The role of psychiatrists in sentencing and detaining procedures is also challenged, on the grounds that they cannot even agree amongst themselves on a definition of dangerousness. I myself like the simple one of it being the potential to cause serious physical harm to others, although there is a case for psychological harm to be included also." See Hamilton and Freeman, *supra* note 171, at 1-3.

173. This is not to say that no other countries still practice political psychiatry; a handful do, notably Cuba. For the background history, see CHARLES J. BROWN AND ARMANDO M. LAGO, THE POLITICS OF PSYCHIATRY IN REVOLUTIONARY CUBA (1991). For a more recent case report, see *Dissidents Stage Fast to Protest Reincarceration*, AGENCE FRANCE PRESSE, February 27, 1998; in FBIS same day. But so far as is known in these other cases, the notion of political harm is not actually written into the formal definition of psychiatric dangerousness. It is also worth noting that even where the dangerousness criterion is validly and legitimately applied, "The level of security applied to a patient should always be the minimum level which is compatible with safety and good management." Gunn, *supra* note 171, at 635. In practice this means that unless a crime has already been committed, a violent mentally ill person may be detained in, for example, the secure ward of a normal mental hospital; those who commit serious crimes of violence may, by contrast, end up in a secure prison mental hospital. In China, as the Ankang admissions criteria listed earlier clearly indicate, non-violent and alleged mentally ill "political offenders" are among those most likely to receive the latter kind of treatment.

“serious crimes committed by the mentally ill”? This important issue has a close bearing upon the further question of whether the offenders concerned, once evaluated as being “not legally responsible” for their actions, will end up, variously: a) being set free and placed under a “family surveillance and control” order, or instructed to undergo either outpatient or inpatient psychiatric treatment at a normal hospital; b) being placed under involuntary committal in the secure ward of a regular mental hospital or, for those with no means of financial support, in a similar closed section of one of the numerous Ministry of Civil Affairs-run “social welfare institutes”<sup>174</sup> found throughout the country; or c), being forcibly confined without limitation of time in an Ankang institute for the criminally insane. As the following passage from 1988 makes clear, “cases of a political nature” are deemed by the Chinese medico-legal establishment to rank among the most serious and dangerous of all possible forensic-psychiatric offenses:

Of the 222 cases in the present group where diagnoses of schizophrenia were made, sixty-six cases (or 29.7 percent) involved murder or serious injury (a figure closely approximating the findings of Li Congpei *et. al.* in their study); there were fifty-five cases of a political nature; and forty-eight cases involved disturbances of social order. The combined total for these three categories came to 169 cases, accounting for 76.1 percent of all cases committed by schizophrenics. From this, we can ascertain the major gravity of the threat posed to social order and personal safety by schizophrenia sufferers who commit crimes, and also the severity of the consequences thereof.<sup>175</sup>

Thus, so-called political cases and also those involving disturbance of public order<sup>176</sup> are evidently seen by China’s legal-medical authorities as

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174. These institutes serve, simultaneously, as warehouses or dumping grounds for indigent elderly people, abandoned or orphaned infants and small children and also the destitute mentally ill. For further information, see JEFF RIGSBY AND ROBIN MUNRO, DEATH BY DEFAULT: A POLICY OF FATAL NEGLECT IN CHINA’S STATE ORPHANAGES 273-375 (Human Rights Watch, pub.) (1996).

175. Shen Muci, Jin Wei, Cai Jianhua, and Han Baojin, *Sifa Jingshen Yixue Jianding 654 Li Fenxi [An Analysis of 654 Cases of Forensic-Psychiatric Medical Evaluation]*, 21:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 168 (1988). As can be seen, “cases of a political nature” accounted for as much as 25 percent of all the schizophrenia cases forensically examined in this study.

176. Many cases of “disturbing public order” in China also merit inclusion under the general heading of “cases of a political nature,” since state-appointed forensic examiners frequently diagnose such persons as suffering from “litigious mania” (“susong kuang”) also known as “processomania.” The latter diagnostic category was reportedly first posited by a French psychiatrist in the 19th century, and was widely applied by Soviet forensic psychiatrists (who generally regarded it — as do their Chinese counterparts today — as being a subspecies of “paranoid psychosis”) in the cases of politically dissident detainees up until the late 1980s. Western systems of law acknowledge a category of persons known as “vexatious litigators”; but this term is applied only in civil cases (most

representing no less serious and dangerous a threat to society than cases of murder and injury committed by genuinely psychotic criminal offenders. In other words, psychiatric detainees of both these political categories are prime candidates for long-term admission into Ankang. But the official view goes still further than this, for it sometimes seeks actually to equate violence and dissidence, by depicting the latter as being a form of "violence" in itself. A prime example of this mode of thinking can be seen in the following passage written by Li Congpei, probably the most eminent forensic psychiatrist working in China today, and several others, on the question of crimes committed by schizophrenics:

Among the cases under discussion, outbursts of violent behavior<sup>177</sup> were characterized by several unusual features: for example, the person's "criminal" motive would frequently be vague and unclear or the reverse of what it originally seemed to be, and was thus difficult to fathom; or the person would often display absolutely no sense or instinct of self-preservation, for example by openly mailing out reactionary letters or pasting up reactionary slogan-banners in public places — and even, in some cases, signing his or her real name to the documents; and in cases where the "criminal" behavior had been relatively savage,<sup>178</sup> the person would later maintain an air of cool indifference.<sup>179</sup>

At the outset of this analysis of 386 cases of criminal behavior by schizophrenics, Li and his colleagues stated that the diagnostic criteria applied in the study were based, among other things, upon the psychiatric classification models laid down in the World Health Organization's International Classification of Diseases (ICD-9) and the American medical profession's Diagnostic and Statistical Manual of Mental Disorders (DSM-III). The authors' explicit characterization, however, of the relatively mild acts of public political protest referred to above as representing typical examples of violent psychotic behavior will no doubt dismay psychiatric

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commonly, in judicial denial of the right to bring suit on the grounds that the plaintiff's allegations are frivolous or unwarranted), and certainly not as a psychiatric label leading to incarceration on the grounds of criminal insanity. The various different types of "disturbing social order" in China that also properly qualify as "political cases" are further discussed below.

177. "Shixing baoli xingwei."

178. "Jiaowei xiongcan."

179. Li Congpei, Li Yongzhi, Liu Jinsheng and Fang Mingzhao, *Jingshen Fenliejian Sifa Jingshenbing Jianding An Li Fenxi [An Analysis of Cases Involving the Forensic-Psychiatric Evaluation of Schizophrenia]*, 20:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 135-138 (1987). It is worth noting also that the works of Georgi Morozov were cited as an authority in the footnotes to this article.

professionals around the world who actually do base their work on these standard reference texts.

### B. *Official Statistics on Political Psychiatry*

The frequency with which “cases of a political nature” are referred to in the official forensic psychiatric literature has been noted several times in this article, and we shall now examine these statistics in greater detail. According to these sources, the incidence of forensic psychiatric “political cases” has declined steadily over the past two decades, falling from a level of around fifteen percent in the 1980s to as low as one or a few percent in the late 1990s; the general trend thus appears to parallel the sharp decline seen in the numbers of “genuine” counterrevolutionary cases dealt with by the authorities over the same period.

At the outset, it should be noted that not all of the “political cases” cited in these official publications necessarily involved persons who were of entirely sound mind when detained by the security authorities for exercising their right to free expression. Many of them may indeed have been suffering from various mental quirks, disorders or abnormalities at the time in question, and a certain proportion may even have been in urgent need of psychiatric attention. Two key questions arise in all such cases, however. First, why were the numerous individuals who actually make up these statistics arrested by the police in the first place, since their only real offense seems to have been voicing opinions and viewpoints which, for a wide range of questionable reasons, the Chinese authorities viewed as politically unacceptable? The fact that these dissident, or pseudo-dissident, viewpoints were apparently directed, in a high number of reported cases, against the Communist Party of China neither represents a legally acceptable grounds for arrest, nor — still less — can it be regarded as a medically sound or valid reason for questioning the basic sanity of those involved. And second, why were so many of these individuals, sane or otherwise, seen by the authorities as posing such a serious “danger” or “threat” to society that, upon being arrested, they had to be labeled by forensic psychiatrists as “not legally responsible” for their dissident or pseudo-dissident activities, and then promptly divested, as a result, of most of their civil and litigious rights — notably the right to be tried in court — and finally, sent for indeterminate periods of time to police-run institutes for the criminally insane?

The following passages provide a typical cross-section of the numerous statistical references to such cases that have appeared in China's professional literature during the post-Mao era. During the 1980s, the overall statistical profile for political-style forensic psychiatric appraisals was broadly as follows. According to Shen Zheng, a leading authority in the field,

In a research study of 1986 on eighty-three criminal cases where diagnoses of schizophrenia were made, Zhang Junxian and others found that cases of murder and injury accounted for 55.4 percent, political cases accounted for 13.3 percent, and hooliganism and sexual crime accounted for 10.8 percent.<sup>180</sup>

Commenting on the same study, Zhou Yingde, another psychiatrist, provided the following additional details:

Of the eleven cases of antisocial acts or statements carried out by schizophrenics, six involved the writing of slogan-banners in public places, three involved the shouting of slogans amidst crowds of people, and two involved the sending of openly-signed letters by post.<sup>181</sup>

Similarly, according to Zhou, out of another sample group of fifty criminal cases in which the defendants were examined by police-appointed psychiatrists, "Altogether six cases, or twelve percent of the total, involved the writing of reactionary letters; and another two cases, or four percent of the total, involved the shouting of reactionary slogans."<sup>182</sup> The combined incidence of sixteen percent in this sample is broadly consistent with the 13.3 percent figure given for "political cases" by Shen Zheng.

According to Zhang Xinzhi, an elderly forensic medical expert who has worked in the Chinese police force since 1954 (most recently as deputy-head of the Wuhan Municipal Public Security Bureau's department of forensic medicine),

In criminal cases, mentally ill people, as a result of their pathological thoughts and hallucinatory delusions, may exhibit abnormal behavior in the form of anti-social acts and statements; for example: murder, arson, rape, theft, injury, disrupting traffic, and writing reactionary letters and posters or shouting reactionary slogans.

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180. Shen, *supra* note 62, at 302.

181. *Id.* at 305.

182. ZHOU YINGDE (ED.), FANZUI DIAOCHA ZONGLUN CANKAO ZILIAO [GENERAL THEORY OF CRIMINAL INVESTIGATION: REFERENCE MATERIALS] 417 (1987).

Out of 111 cases specifically examined by Zhang from the period 1982-89 in which criminal defendants underwent forensic-psychiatric evaluation,

There were forty cases of murder, accounting for thirty-nine percent of the total; fifteen cases of rape, or thirteen percent of the total; fourteen cases of theft, also thirteen percent; six arson cases, or six percent; sixteen cases of injury, or fourteen percent; twelve cases of writing reactionary letters, or eight percent; four cases involving the shouting of reactionary slogans, or four percent; and four suicide cases, another four percent.<sup>183</sup>

The combined incidence for the two types of “political case” noted by Zhang in his study was thus twelve percent, again broadly consistent with the figures of sixteen and 13.3 percent officially recorded in other parts of China during the mid- to late-1980s.

Similarly, a study by Shen Muci, Jin Wei and other psychiatrists from the Hangzhou No.7 People’s Hospital published in the *Chinese Journal of Nervous and Mental Diseases* in 1988, found that out of 654 people subjected to forensic-psychiatric evaluation at the hospital between 1973 and 1986 in connection with alleged criminal acts,

Altogether 103 cases were of a political nature; of these, forty cases involved the making of political statements, twenty-five involved [the display or distribution of] political slogan-banners or leaflets, twenty-one cases involved acts of political propaganda; and seventeen cases involved [the writing and sending of] letters.<sup>184</sup>

Once again, the aggregate figure for “political-style” criminal-psychiatric cases in this particular sample group comes, coincidentally or otherwise, to almost sixteen percent — a figure surpassed only, moreover, by the 21.9 percent of those in the same forensic sample group who had allegedly committed murder or serious injury.<sup>185</sup>

In addition, the same study noted that a further one hundred of the 654 cases concerned acts that allegedly “disturbed social order,” including twenty-nine cases of “unreasonably making trouble” (“wuli qunao”) — a code-phrase generally reserved by the authorities to denote the legions of

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183. Zhang Xinzhi, *Jingshenbingren Fanzui 111 Li Qianxi* [*A Preliminary Analysis of 111 Cases of Crimes by the Mentally Ill*], in ZHAI JIAN’AN (ED.), FORENSIC MEDICAL PRACTICE IN CHINA [ZHONGGUO FAYI SHIJIAN] 556-561 (August 1993). No fewer than 85 percent of the 111 criminal cases reportedly involved schizophrenics.

184. Shen, et. al., *supra* note 175, at 166-168.

185. According to the article, eighty percent of the political cases in this particular study were ones dating back from before 1980, a situation about which the authors comment: “This shows that [the incidence of forensic-psychiatric] cases of a political nature is closely related to [the question of] political movements and social stability.” *Id.* at 168.

"petitioners" ("shangfangzhe") who regularly besiege the government offices around the country responsible for dealing with citizens' complaints about official malfeasance or corruption, and which are also supposed to handle citizens' applications for official redress of the countless past acts of political persecution and injustice committed by Chinese government agencies.<sup>186</sup> As mentioned above, many of those falling in this general category should also properly be seen as "political cases."<sup>187</sup> Out of the one hundred persons accused of "disturbing social order," forty-eight were diagnosed as suffering from schizophrenia, eight were said to have various personality disorders, thirteen were found to be not mentally ill (and so were "legally responsible" for their actions), while an additional five were diagnosed as being "paranoid psychotics." If cases of this secondary category are added into the various statistics for those primarily defined by the authorities as being "political" in nature, then the overall incidence rates for political psychiatry in China in the 1980s rises to somewhere in the region of 20 percent of the criminal psychiatric caseload.

Finally, it should be noted that of the 103 "political cases" in the group, only sixteen, or approximately 15 percent, were determined to be "not suffering from mental illness" and so were liable to criminal prosecution; the majority of the group was found to be mentally ill and thus liable for psychiatric custody. Similarly, of the 100 cases of "disturbing social order," only thirteen were determined to be not mentally ill, while all the rest were found to be not legally responsible and were also therefore

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186. Usefully, Shen and his colleagues also provide a break-down of the specific medical diagnoses made by state forensic psychiatrists in respect of the various criminal categories included within this large sample group. Notably, of the 103 "political cases," fifty-five (or more than half) were attributed to schizophrenia; mental retardation was said to account for five of the cases; eight were attributed to mania; seven were described as being due to anti-social or sociopathic personality disorders; nine were said to be due to reactive psychosis; three more were attributed, respectively, to prison psychosis, "other mental illness" and organic brain disease sequella; and in only sixteen (or 15 percent) of the numerous "political cases" were the defendants found to be "not mentally ill"—and therefore liable to criminal prosecution for their "anti-social" or "counterrevolutionary" acts. (It should be stressed, of course, that the majority of those in the "political" subcategory were not set free by the authorities after being found "not legally responsible" by reason of mental illness; rather, the legal issue then became: in what particular form of "non-penal" state custody would it be most appropriate to place such people in order that society could be afforded maximum protection from their "pathologically dangerous" political behavior.)

187. For further information on the authorities' application of abusive detention policies to mentally ill persons alleged to have "disturbed social order," see *Not Welcome at the Party: Behind the "Clean-Up" of China's Cities — A Report on Administrative Detention under "Custody and Repatriation,"* Human Rights in China, pub. (September 1999). In the late 1980s, even orphans and abandoned children, residents of the Shanghai Children's Welfare Institute, were sometimes forcibly sent to psychiatric institutions by the orphanage authorities; this was done to them as a punishment for daring to cooperate with an independent investigation then being carried out by the Shanghai municipal legislature into phenomenally high death rates among infants and young children at the orphanage. For details of these cases, see Rigsby and Munro, *supra* note 174, at 273-375 (1996).

candidates for involuntary psychiatric committal.<sup>188</sup>

Turning now to the present era, two recently published studies from China have provided a detailed statistical breakdown of the relative incidence of “political cases” in forensic psychiatric appraisals work during successive decades from 1960 to as recently as the late 1990s. The first of these, published in January 2000, examines the situation in one particular institution in the southwestern city of Kunming, the Yunnan Provincial Mental Hospital.<sup>189</sup> The authors of the study offer few specific observations on their various findings, but they provide a very useful set of data, contained in Table 1 (see following page).

According to the data, the reported incidence of political cases at this one hospital fell from a high point of around 50 percent in the 1960s and 1970s,<sup>190</sup> to just over four percent during the 1980s, and ended at an average level of just under one percent in the 1990s. It should be noted, however, that this hospital appears to have dealt with a comparatively low number of political cases during the 1980s; as we have seen, the reported level for that period elsewhere in China was around fifteen percent. Moreover, while the actual number of cases reported for the 1990s was only nine, this was merely the figure for one hospital. If typical for the rest of the country, this low figure would translate into a total for the country as a whole during the 1990s of several hundred “political cases,” and possibly thousands.

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188. The authors of the study also offered a statistical break-down of the subjective “motives” (“zuo’an dongji”) underlying the “criminal acts” carried out by the individuals in question. Of the 103 “political cases,” thirty-one were attributed (oddly enough, given the ostensible topic of discussion) to “pathological behavior” on the defendant’s part, thirteen were attributed to “delusions of persecution,” fifteen were attributed to “impairments of mental logic,” nine were attributed to “auditory delusions,” eight to “personality disorders,” while a total of twenty were attributed to “non-pathological” motives (note that this figure exceeds by four, for some reason, the overall number who were determined to be “not suffering from mental illness”); the remaining seven cases were attributed, variously, to “delusions of jealousy” (one case), “relational delusions” (five cases), and “impairment of consciousness” (one case). Of the one hundred cases of “disturbing social order,” altogether twenty-eight were attributed to “pathological behavior” on the defendant’s part, sixteen to “delusions of persecution,” and twelve to “personality disorders”; eighteen cases were deemed to be “non-pathological” in motive; and the remaining twenty-six to various other motivating factors.

189. See Yao Zuhua et. al., *Jin 40 Nian Sifa Jingshenbingxue Jianding Anli de Bijiao [A Comparative Study on the Case Expertise of Forensic Psychiatrics Over the Past 40 Years]*, 33:1 CHINESE JOURNAL OF PSYCHIATRY 47-49 (2000).

190. Interestingly, regarding the figure of 50.09 percent for the 1960s and 1970s, the authors comment: “At that time, when applying for appraisals to be carried out, the judicial organs almost never requested that an appropriate determination of legal responsibility be rendered in respect of the person being examined; in the overwhelming majority of cases, therefore, only a medical diagnosis was made in the appraisal conclusion.” This was probably because the police and procuratorial system was in tatters for much of this period: especially during the Cultural Revolution, all such work was subsumed under the activities of ad hoc “security committees” (“baowei weiyuanhui”) set up in all the localities of China.

**Table 1: Forensic psychiatric appraisals at the Yunnan Provincial Mental Hospital, 1960-97**

Period	Nos. (#)	Violent cases	Economic cases	Sexual assault cases	Political cases	Divorce cases	Sexual victim cases	Mental injury cases	Appraisals of sentenced prisoners
	#	%	#	%	#	%	#	%	#
1960-79	575	236	41.04	13	2.26	23	4.00	288	50.09
1980-89	1274	734	57.61	92	7.22	79	6.20	54	4.24
1990-97	936	437	46.69	131	14.00	60	6.41	9	0.96

**Table 2: Forensic psychiatric appraisals listed in ten Chinese journals, 1976-95**

Period	Murder and injury	Theft	Arson	Sexual crime	Sexual victims	Obstructing social order	Politics ( <i>zhengzhi</i> )	Hooliganism	Other	Total
1976-1990	2,016	617	129	465	373	591	272	81	385	4,929
1990	(44.90%)	(12.52%)	(2.62%)	(9.43%)	(7.57%)	(11.99%)	(5.52%)	(1.64%)	(7.81%)	(100.00%)
1991-1995	1,841	605	172	612	1,178	331	103	88	66	4,996
Total	3,857	1,222	301	1,077	1,551	922	375	169	451	9,925
	(38.86%)	(12.31%)	(3.03%)	(10.85%)	(15.65%)	(9.29%)	(3.78%)	(1.71%)	(4.54%)	(100.00%)

The second recent study, published in January 1999, surveyed a total of 9,925 cases of forensic psychiatric appraisal that had been reported in 231 separate articles published in ten psychiatric legal-medical journals in China between 1976 and 1995. During the period in question, the authors found a total of 375 "political cases," representing an average incidence rate of 3.78 percent. The overall data from this considerably more representative survey was tabulated in the article as shown in Table 2 (*see* previous page).<sup>191</sup>

Although the time periods used in this survey are not strictly comparable with those in Table 1, what is clear is that among the sample data used, the total number of "political cases" for the five-year period 1991-95 was more than one third of that reported for the entire 15-year preceding period. In other words, viewed chronologically, rather than as a percentage of the total cases for each individual period, the absolute per-year numbers of political cases had hardly changed at all between 1976 and 1995. Moreover, even when viewed as a percentage of the total cases for each period, the incidence rate for "political cases" was still, apparently, proceeding along at the quite considerable level of 2.06 percent during the first half of the 1990s, or more than half the average rate for the entire period since 1976. Also important to note is the fact that the figure of 103 such cases for this period was by no means the total number that actually arose around the country. Rather, it was simply the number that happened to emerge in a rather large group of separately published local studies. The true figure for China as a whole at that time was undoubtedly far higher than this.<sup>192</sup> Finally, many of those included under the heading of "obstructing social order" in the above table were probably also "political cases" in the wider Chinese forensic-psychiatric sense of the term, since this is often the police's criminal charge of choice in cases of "litigation mania," whistleblowing, persistent complaint against authority, and "false accusation" ("wugao").<sup>193</sup>

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191. See Zhao Jiancong et. al., *Woguo Sifa Jingshenbingxue Xianzhuang de Yanjiu* [A Study on the Current Data of Judicial Psychiatry in China], 1 CHINESE JOURNAL OF PSYCHIATRY 53-54 (1999).

192. Another study published in April 2000, for example, noted that at a single psychiatric hospital, the Zigong Mental Health Center, altogether 956 cases of forensic psychiatric evaluation were performed over the period 1981-88. If this was roughly typical for the rest of the country, the total number of such evaluations conducted across China as a whole during the same period would certainly have run into the tens of thousands, and possibly even the hundreds of thousands. *See supra* at 92.

193. For a detailed account of the forensic-psychiatric handling of cases of "false accusation" in China, *see* ZHONGGUO GONG'AN BAIKE QUANSHU [CHINA ENCYCLOPEDIA OF PUBLIC SECURITY] 1965 (February 1990). As the article explains, those found guilty of false accusation are subject to the disturbing judicial principle of "reverse criminal culpability" ("shixing fan zuo zui"), whereby the offender is sentenced to whatever term of imprisonment would have been applied to the person

Armed with the above statistical data, we can now attempt to make a rough "ballpark" estimation of altogether how many political dissidents and people in other similar categories may have been branded as criminally insane and confined to forensic custodial facilities in China over the past two decades. It should be stressed that, given the fragmentary nature of the currently available statistical evidence, this is an inherently hazardous undertaking and one that can yield, at best, only a very approximate indication of the actual extent of the problem. As we have seen, "political cases" accounted, according to the official statistics, for around 15 percent of all forensic psychiatric appraisals carried out during the 1980s, and, during the 1990s, for somewhere in the region of several percent. The largest statistical indicator on this general topic thus far found in China's legal-medical literature appeared in a volume published in 1988 and was as follows:

According to statistical materials presented at the First National Conference on Forensic Psychiatry, held at Hangzhou in June 1987, the total number of forensic psychiatric appraisals cases (most of which dated from 1980 and later) handled by a certain number of mental hospitals in China had already reached more than 10,000.<sup>194</sup>

According to the same source (at 28), altogether twelve mental hospitals accounted for no fewer than 7,862 of the above-mentioned cases; findings of mental illness were made in 87.51 percent of these cases. In addition, the same source notes (at 31) that three mental hospitals in Shanghai conducted a total of almost 1,000 cases of forensic psychiatric appraisal over the five-year period between August 1982 and August 1987; again, findings of mental illness were made in approximately 80 percent of these cases. However, another source states that between 1982 and 1989, a single hospital in the Shanghai area — the Shanghai Municipal Center for Mental Health — carried out as many as 1,034 forensic psychiatric appraisals.<sup>195</sup> Similarly, between 1983 and 1987, as noted earlier, a total of 931 cases of forensic psychiatric appraisal were conducted at the Beijing Anding Hospital alone. While figures for the total numbers of such appraisals carried out during the 1990s in China are as yet relatively scarce,

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accused in the event that the accusation had proved to be well founded. Whilst mentally ill offenders of this type are supposed be exempted from criminal judgment, they may nonetheless still be subject to the "commensurability principle" and so have to spend similarly long periods in psychiatric custody. *See supra* at 58.

194. Jia, *supra* note 35, at 1-2 (September 1988).

195. *See Lin, supra* note 90, at 133 (1996). (No rate for findings of mental illness in this group was given.)

it is clear from numerous officially published sources that the recent general trend here has been rapidly upwards.

To summarize briefly the above data, during the period 1980-97, twelve hospitals in China performed almost 8,000 forensic psychiatric appraisals, or an average number of 670 per hospital. Applying the average "political case" rate of 15 percent for this general period to the latter figure, one obtains a total figure of 1,200 "political cases," of whom approximately 90 percent (or 1,080) would have been found legally non-imputable by reason of insanity for their alleged crimes and hence (in most or all cases) sent to forensic custody (the remainder would almost certainly have been sent to prison as "counterrevolutionaries"). In addition, we see that the total numbers of forensic psychiatric appraisals that were conducted by individual mental hospitals in China reached, during the same general period, high triple figures. And finally, we know that the total number of such evaluations being conducted across China nowadays is rapidly rising each year.

In order to estimate, on the basis of these partial figures, the approximate sum total of forensic psychiatric "cases of a political nature" in China, we also need to know how many mental hospitals there are throughout the country and how many of those are engaged in forensic appraisals work. The former figure, at least, is known; according to a recently published article in the Chinese press, "575 hospitals and 77,000 doctors and nurses are dealing with mental diseases in China."<sup>196</sup> It is not known how many of these hospitals are qualified or officially authorized to perform forensic psychiatric evaluations.

Let us assume, however, that only one in twenty of the hospitals (that is, around thirty institutions) is so authorized; this is likely to be a considerable underestimate of the actual situation. If so, one could reasonably estimate, on the basis of the average number of cases examined by each of the twelve hospitals referred to above, that these institutions performed somewhere in the region of 20,000 forensic psychiatric appraisals during the first seven years of the 1980s alone, and that approximately 3,000 of these were probably "political cases." (It should also be remembered that many other cases — notably those involving "crimes of disturbing public order" — were appraised during the same period that did not fall within the scope of the authorities' own definition of "political cases," but which would nonetheless qualify as such from the international standards point of view.)

Even allowing for the officially reported decrease in cases of this

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196. See *Nations's Mentally Ill Need More Care*, CHINA DAILY, November 27, 2000.

general nature from the early 1990s onwards, therefore, it is reasonable to estimate that somewhere in excess of 3,000 "political cases" (broadly defined) have been dealt with by Chinese forensic psychiatric examiners countrywide over the past two decades, and moreover that the great majority of these were subjected, as a result, to some form and duration of forced psychiatric custody and treatment. This conjectural "ballpark" figure is almost certainly inaccurate, but it probably errs on the conservative side; and it provides, at least, a reasonable indication of the general order of magnitude involved.<sup>197</sup> By comparison, in the case of the Soviet Union, existing studies indicate that the total confirmed number of political dissidents and others in similar categories who were wrongfully branded as mentally ill and sent to forensic custodial facilities during the 1970s and 1980s was somewhere (depending upon the study in question) in the region of two to three hundred, with unconfirmed estimates also extending into the several thousands.<sup>198</sup>

### C. Diagnostic Concerns

A useful and pithy working definition of the abnormal mental condition allegedly responsible for the various civic-minded activities mentioned above was provided as recently as 1994 in a textbook on forensic psychiatry written by a leading official at the Beijing Ankang institute:

Paranoid psychosis manifests itself, in clinical practice, in two

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197. According to Richard J. Bonnie, Professor of Law at the University of Virginia School of Law and Director of the University's Institute of Law, Psychiatry and Public Policy, "In the United States, where most psychiatric evaluations of criminal responsibility are initiated by defense attorneys, forensic examiners find a clinical basis for an insanity defense in approximately 10-20 percent of cases, depending on the state. See, e.g., Warren, J.W., Rosenfeld, B., Fitch, W.L., and Hawk, G., *Forensic Mental Health Clinical Evaluation: An Analysis of Interstate and Intersystemic Differences*, 21 LAW AND HUMAN BEHAVIOR 377-390 (1997). (In 1987-88, opinions favoring insanity were rendered by forensic examiners in 7 percent of evaluations in Michigan, 9 percent in Virginia, and 13 percent of evaluations in Ohio.) Interestingly, forensic examiners in the former USSR tended to render opinions of non-imputability in a substantial majority of cases in which the defendant was found to have a mental disorder. Bonnie, R.J., *Coercive Psychiatry and Human Rights: An Assessment of Recent Changes in the Soviet Union*, CRIMINAL LAW FORUM, 1:319-346 (1990), at page 334 ("[N]onimputability determinations ... occur in a much larger proportion of criminal cases than appears to be the norm in the United States and other Western countries."). That practice appears to have continued in Russia."

Richard J. Bonnie, personal communication to author, December 7, 2000. See also "Statistics of Mentally Disordered Offenders 1999 — England and Wales," U.K. Government, available at <<http://www.homeoffice.gov.uk/rds/pdfs/hosb2100.pdf>>, as of December 7, 2000; see in particular Table 6, p.12.

198. See, e.g., the various estimates on this topic presented in Bloch and Reddaway, *supra* note 3; Smith and Olesczuk, *supra* note 3.

different ways: one form is “litigious mania,” in which delusions of persecution tend to predominate; the other form is “political mania,” where the dominant role is played by “political delusions.” The content of the delusions in “political mania” concern the line and policies of the State; those afflicted do avid research into politics and put forward a whole set of original theories of their own, which they then try to peddle by every means possible, thereby leading to court action.<sup>199</sup> For this reason, such people are sometimes viewed as being political dissidents.

For example, one middle-aged person who was suffering from “political mania” wanted to do research into “modern humanism” and spontaneously resigned from his job. He spent all his time shut up at home, writing manuscripts tens of thousands of characters in length, which he then sent to the Academy of Social Sciences and the editorial departments of various newspapers and journals, hoping they would accept them. When all his efforts failed, he got in touch with some foreigners and asked them to publish his articles abroad, thereby causing a great deal of trouble.<sup>200</sup>

With this definition in mind, we shall now consider a number of important medical diagnosis-related issues that commonly arise in the context of the forensic-psychiatric evaluation of “political cases” in China. The first concerns the high rate at which findings of legal non-imputability on grounds of mental illness are made. In reviewing a total of 931 cases of forensic-psychiatric evaluation performed at Beijing’s Anding hospital during the period 1983-87, Tian Zu’en and other senior physicians at the hospital established, among other things, that altogether 301, or 32.3 percent, of the criminal defendants concerned were found to have “impaired ability to recognize” their actions; another 307, or 33 percent, had “impaired ability to control” their actions; and 323 others, or 34.7 percent, had “no

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199. “...cong’er yinqi susong” literally means “thereby leading to litigation.” The text is ambiguous as to whether it is the dissident or the government who initiates the “litigation” in question. Since there is no known case of any Chinese political dissident having ever launched court action against the government for pursuing “erroneous polities” (*i.e.*, an “incorrect” form of Marxist socialism), the above reference to “litigation” or “court action” can only be understood as a somewhat euphemistic indication by the author that the dissident in question was criminally prosecuted for his contrarian political views and writings. This would also explain why he was being subjected to forensic psychiatric examination: he had already been detained or arrested for alleged political crimes.

200. Long, *supra* note 152, at 83-84. Interestingly, the author adds: “The incidence of unlawful and calamitous behavior, however, is markedly less common in the case of paranoid psychotics than in the case of schizophrenics. The vast majority of such behavior is caused by the sufferers’ paranoid delusions... And in cases where, under the dominant influence of delusions of grandeur or persecution, “reactionary speech or action” ensues, then it will usually do so in public places, for example with the person concerned handing out leaflets or sticking up big-character posters, signed with his or her real name, in crowded public places.”

impairment of legal capacity.”<sup>201</sup> This finding is significant because, like numerous other officially published statistics on the same point, it indicates that a far higher proportion of criminal defendants brought before psychiatric evaluation panels in China, altogether 65.3 percent in Tian’s case study, are found to be legally incapable by reason of insanity than is the case in most other countries.<sup>202</sup> An even more striking finding of the same study was that out of the nineteen political psychiatric cases specifically defined as being “counterrevolutionary” in nature, fourteen defendants, or 73.7 percent, were determined to have “impaired recognition” of their allegedly criminal acts, while the remaining five, or 26.3 percent, were found to have “impaired control” over their actions.<sup>203</sup> None of these nineteen pseudo-counterrevolutionaries was determined to be mentally normal.<sup>204</sup>

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201. The Chinese terms for these categories, in order of above listing, are: “bianren zhang’ai,” “kongzhi zhang’ai,” and “falu nengli wu zhang’ai.” See Tian Zu’en, Yu Qingbo, Qi Wei, Wang Ping, Chen Lifeng and Yu Tian, *Jingshenbingren de Xingshi Falu Nengli* [Criminal Legal Capacity of the Mentally Ill], 21:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 169-171 (1988). Under Chinese law the presence of either “impaired recognition” or “impaired control” constitutes, by itself, sufficient grounds for a finding of “lack of legal responsibility.”

202. See for example, “Statistics of Mentally Disordered Offenders 1999—England and Wales,” U.K. Government, available at <<http://www.homeoffice.gov.uk/rds/pdfs/hosb2100.pdf>>, as of December 7, 2000; see in particular Table 6, p.12.

203. Curiously enough, however, where the question of “criminal motive” (“fanzui dongji”) was concerned, Tian and his coauthors found that while the illegal political behavior of eleven of the nineteen “counterrevolutionary” forensic examinees had been inspired by “pathological motives” (“bingli dongji”), and that of three others by “unclear motives” (“buming dongji”), the remaining five examinees were said to have been prompted by “real” or “authentic” motives (“xianshi dongji”) — meaning (in the authors’ own words): “motives arising from the conflicts and requirements of reality and having no direct or evident relationship to the mental illness from which the person is suffering.” In other words, the five “mentally ill” individuals in question appear, by the authorities’ own admission, to have been entirely sane and rational at the time of staging their banned political manifestations. See Tian, *supra* note 201, at 175-177. The same article also discussed the correlation between motive and legal responsibility: out of the total group of 931 forensic-psychiatric examinees, all the 323 persons who were determined to bear “full legal responsibility” for their criminal acts were also said to have been inspired by “authentic” motivating factors, suggesting an officially perceived one-to-one correlation between these elements under normal circumstances; a roughly similar number of persons (352) were found to bear “limited responsibility” for their actions despite also having been prompted by real or authentic motives; and only twenty-three persons found to be similarly motivated were determined to bear “no legal responsibility” for their acts. Of 163 persons whose crimes were officially attributed to “pathological motives,” all were declared to be not legally responsible, as were eighteen others who were said to have acted from “mixed motives.” The remaining 52 persons from the group were said to have had “unclear” motives, and all were similarly held not legally responsible. *Id.* at 176.

204. But again, they were caught on the horns of what might be called “psychiatric justice with Chinese characteristics.” For had they been found to be sane, they would have proceeded to trial and almost certain conviction on charges of counterrevolution, the most serious offence in the Criminal Law. Since, however, the ostensibly political activities that brought them into the orbit of the criminal justice system in the first place are viewed by the government as being so “socially dangerous” that such persons must on no account be allowed to continue manifesting their “pathological symptoms”

These various figures suggest either that the standard of proof and evidence for determining criminal insanity is considerably less rigorous in China than elsewhere, or that far fewer cases of a frivolous, implausible or opportunist nature are presented for expert medical evaluation. The latter possibility can effectively be ruled out since virtually all such cases in China are put forward by the police or the state prosecutor, rather than, as generally occurs in the West, the counsel for the defense. Either way, it is clear that criminal defendants' chances of being "acquitted" of the suspicion of mental illness is in practice extremely low — a situation broadly similar to that found in the criminal trials system, where less than one percent of defendants are eventually found to be innocent. A volume published in 1999 by three experts from the Institute of Forensic Medicine at the West China Medical University in Chengdu, including Liu Xiehe, one of China's top forensic psychiatrists, sheds important light on this issue. Liu and his colleagues began by calling for his Chinese colleagues to adopt, along the lines of certain stipulations found in the Criminal Code of Canada, a "presumption of sanity" when conducting forensic psychiatric appraisals. As they explained,

At present in China there are two main modes of thought. First, the "clinical mode of thought," which is mainly found among appraisals experts who have worked for many years as clinical psychiatrists and also, part time, as judicial psychiatric appraisers. When psychiatric experts of this kind have to perform judicial appraisals, they make a presumption that the person being examined is either mentally abnormal or afflicted by some form of mental illness. The reason for this is that they assume that the examinee would not have been sent for appraisal in the first place unless he or she was in fact mentally abnormal or suffering from mental illness; or else, they feel that the person must indeed have been behaving in some unusual kind of way, otherwise the judicial officers, lawyer or family members concerned would not have raised the request for an appraisal to be carried out. As a result of this general presumption, or feeling of probability, the appraiser will then go to great pains to avoid "being negligent," either by searching through the case files for any possible evidence of mental abnormality or mental disease, or by urging the judicial officers, lawyer or family members to provide as much evidence of this nature as they can.<sup>205</sup>

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within society at large, the fact that they were determined to be mentally ill meant that they would instead, in all probability, be placed in closed psychiatric prison wards where they would be forced to undergo indefinite medical treatment for their exotic psycho-political disorders. For China's hapless "political lunatics," in short, freedom is seldom a viable outcome.

205. Zhang Wei, Huo Kediao and Liu Xiehe, *Fayi Jingshenbingxue Jianding de Siwei Fangshi* [Modes of Thought in Forensic Psychiatric Appraisals], in FAYIXUE JINZHAN YU SHIJIAN [ADVANCES

The second main mindset, which the three writers call “the judicial appraisal mode of thought,” was one generally found among full-time police forensic psychiatrists, who tended to take the opposite approach and presume that all criminal suspects sent for psychiatric appraisal were mentally normal. The reason they did so was in order to ensure that as many offenders as possible would receive due punishment for their actions. In the view of the book’s authors, both of these tendencies were biased and unscientific, and they concluded by calling for China to adopt a similar “presumption of sanity” rule as that found in the Canadian legislation.

The situation described here clearly gives much cause for general concern. Where “cases of a political nature” are involved, however, the implications become more complex and troubling still. Basically, these have to do with the same general problem identified elsewhere in this discussion, namely the essentially specious nature of the Chinese judicial authorities’ distinction between “genuine” and “mentally ill” counterrevolutionary offenders. At least where internationally recognized criminal offenses are concerned, the two “modes of thought” identified above might result, at worst, in either a mentally ill offender being sent to a regular prison and not receiving any medical treatment, or in a sane offender being wrongly diagnosed as mentally ill and sent to a forensic psychiatric asylum.<sup>206</sup> In China’s “political cases,” however, no internationally recognized offense has been committed, but simply an act of free expression protected by international law, so the general picture assumes a significantly different quality and character than this. Presumably, the former type of Chinese psychiatrist will tend to rush to assume that a person detained for political offenses is indeed mentally ill and needs to be forcibly committed, whereas those of the second mindset will insist that “due punishment” be meted out and that the person be sent immediately to jail. In short, political detainees are presumed to be either guilty, or insane. Given this essentially punitive medico-legal climate, whichever variety of expert appraiser the hapless Chinese dissident, or “pseudo-dissident,” happens to encounter, it is evident that his or her chances of being allowed to walk free at the end of the day are effectively nil.

As if this were not unjust enough, there is sometimes a further subtle twist to the situation. One of the tasks of forensic psychiatrists everywhere is

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AND PRACTICES IN FORENSIC MEDICINE] (1999). The passage quoted above can be found at <<http://www.legalmed.org/ref/99z1.html>>, as of November 29, 2000.

206. There is, of course, a third possibility, namely that the person sent either to prison or a mental asylum will eventually turn out to have been innocent; such miscarriages of justice occur, from time to time, in all legal systems around the world.

to ascertain whether or not the examinee is feigning symptoms of mental illness as a way of avoiding trial or punishment. This phenomenon, generally referred to as “malingering,” was discussed in the context of the psychiatric examination of political offenders by one Chinese source as follows:

*Counterrevolutionary behavior by the mentally ill:* In most cases, the mental illness takes the form of either delusions of grandeur or delusions of persecution. When the mentally ill person exhibits behavior that endangers the People’s Republic of China, it is usually in the form of speech or writing, such as writing reactionary posters or banners, shouting reactionary slogans, or drafting reactionary manifestos. The hallmark of such counterrevolutionary behavior by the mentally ill is that one can generally find no immediate or proximate cause for it. The thoughts and actions appear illogical. The counterrevolutionary behavior is carried out in public, with no apparent fear of the consequences, in broad daylight and in a brazen and flagrant manner. However, one must be on the alert in such situations: the person concerned may simply be feigning mental illness as a cover for their actions, while all the time engaging in genuinely counterrevolutionary plots.<sup>207</sup>

The above passage also raises another diagnostic emphasis, or clinical predisposition, that appears to be central to the official forensic psychiatric mindset in cases of this type. In essence, this can be colloquially summed up as the belief: “You’d have to be crazy to do things like that in China.” Underlying this assumption, which itself is a reflection or facet of the “presumption of insanity” issue, is the common understanding that any Chinese citizen in his or her right mind would surely be aware that to publicly challenge the government on questions of political ideology is an extremely high risk activity that most likely will lead to one’s arrest by the police. One writer succinctly conveyed the official psychiatric viewpoint on this question in a book published in 1987:

In criminal cases involving the mentally ill, we find that people whose minds are dominated by pathological thoughts, fantasies and delusions often engage in abnormal behavior in the form of antisocial acts or statements. Such behavior can include: murder, arson, rape,

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207. “...jiu keneng shi yi weizhuang jingshenbing shouduan wei yanhu, jinxing zhenzhengde fangeming goudang.” See China Encyclopedia of Public Security, *supra* note 163, at 1967. The implied scenario — of a dissident being caught in the street red-handed by the police while pasting up banned political material, and then being forensically examined to see if he or she was only “pretending to be mad” — surely takes some beating, even by official Chinese standards of political diligence and correctness. The most suitable diagnostic label for such crafty and devious political offenders would perhaps be “pseudo-pseudo-counterrevolutionaries.”

theft, injury, disrupting traffic, and writing reactionary letters or posters and shouting reactionary slogans... Political offenses of this kind are usually perpetrated in public places. The person concerned will write out reactionary documents, sign them in full, and then sometimes — as if afraid that people won't know his or her real identity — even add their full addresses and give details of their work unit. In other cases, the person involved will write out slogan-banners and then go walking down the street, in broad daylight and into crowded areas, with a whole pile of the things draped over his or her arm and begin pasting them up all over the place. When other people start noticing this performance and come over to see what's happening, the person often tries to "act casual" and pretend that he or she is some kind of a "big hero."<sup>208</sup>

With unintended irony, other Chinese forensic psychiatrists frequently note that the mental instability of people of this type is further apparent because, in "openly signing their real names" to such documents and then "failing to run away" afterwards, they have clearly demonstrated a "lack of any instinct for self-preservation."<sup>209</sup> The above passage, however, could easily have been referring to the kinds of peaceful protest actions that took place on a daily and hourly basis in Tiananmen Square, and most other parts of China, during the May 1989 pro-democracy movement. While such activities are understandably irksome to authoritarian governments who insist upon a high degree of public conformity to official standards of thought and behavior, and while it is possible that some, or perhaps even many, of the "political offenders" concerned may have been mentally or emotionally disturbed in some way, the fact remains that none of these people, according to the official account, committed murders, raped or molested anyone, set fire to public buildings, attacked important government leaders, or even exposed themselves naked in the street. Those who were indeed mentally ill should have been provided with prompt and appropriate medical care, while the rest should have been allowed, in conformity with internationally recognized standards, to go about their public business in an unrestricted fashion.

#### D. An Illustrative Case

The following case study appeared in a 1994 textbook on criminal psychiatric work edited by a leading official at the Beijing Ankang facility:

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208. See Zhou, *supra* note 182, at 417 and at 305.

209. See, for example: Mao Shulin et. al., "Chapter Seven: Psychopathology and Crime," *FANZUI XINLIXUE [PSYCHOLOGY OF CRIME]* 222 (1985); also see Jia, *supra* note 35, at 38. Similar references to the "lack of instinct for self-preservation" shown in cases of this type can be found throughout the Chinese legal-medical literature.

*A retired worker threw himself wholeheartedly into the study of political economy, tirelessly and laboriously writing "A Manifesto of a Scientific Communist." Why was this mental illness?*<sup>210</sup>

Subject of [forensic-psychiatric] evaluation: Zhu, male, 57 years old, married. Ethnically Han, lower middle school educational level, worker in a coalmine. No unusual aspects in his development since childhood. Upper-primary school [sic] educational level, entered the army in 1956, joined the Party in 1961, and enthusiastically studied the works of Chairman Mao. Was demobilized in 1963 and began work at the coalmine. During the "Cultural Revolution," served as vice-chairman of the mine's Revolutionary Committee and was quite an activist. His achievements in "grasping revolution and promoting production" were, moreover, publicized in the People's Daily, and because of this Zhu regarded the Cultural Revolution as the sole path to the realization of Communism.

In 1979 he began to get ideas about writing books on political theory, and after he retired in 1986 he often used to seek out members of the leadership and expound his thoughts and ideas to them. In his view, [the policy of] taking economic construction as the focus [of national work] was entirely mistaken, and he completely negated the principles and policies laid down [by Deng Xiaoping in December 1978] at the Third Plenum of the Party's 11<sup>th</sup> Central Committee. He maintained that the international communist movement had already entered a third high tide, that China had produced its leader, and that this leader was none other than himself.<sup>211</sup> Furthermore, he wrote a 100,000-character-long document entitled "A Manifesto of a Scientific Communist" and mailed it out to all the leading organs at central, provincial and

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210. See Long, *supra* note 152, at 174-175 (italics indicate subtitle of passage, in original).

211. Many Western-trained psychiatrists might also identify this particular aspect of Zhu's behavior as a possible sign of mental instability — as being, say, indicative of "delusions of grandeur" or other forms of "overvalued ideation." Both these diagnostic concepts appears with particular frequency, however, in Chinese forensic psychiatric discussions of "political cases" (the Chinese terms used are, respectively, "kuada wangxiang" and "chaojia guannian"), where those being psychiatrically assessed at the same time face serious criminal charges for activities that a Western-trained examiner would be viewing, at worst, as a potential medical problem. Moreover, it should be noted that much of China's political culture during the first three decades after 1949, especially the "individual heroic" mode of leadership embodied in the exemplary person and history of Chairman Mao, served to instill in many Chinese people a strong and no doubt exaggerated sense of personal responsibility for the entire "fate of China." A good example is that of Chen Erjin, a young dissident who in 1974 wrote a book entitled *Lun Wuchanjieji Minzhu Geming* [*On the Proletarian Democratic Revolution*], in which he called for national democratic change in the direction of a socialist two-party system. In 1982, he was arrested and sentenced to ten years of imprisonment as a counterrevolutionary for attempting to set up a "second Communist Party" in China. According to several reliable informants who knew Chen well, however, he was in no way mentally impaired or unstable. See CHEN ERJIN, CROSSROADS SOCIALISM: A MANIFESTO FOR PROLETARIAN DEMOCRACY (1984), an English translation of Chen's book first published in the June 1979 issue of the Beijing dissident journal *Si-Wu Luntan* [*April Fifth Forum*].

municipal levels. Zhu had discussed all these views with the leadership of his work unit. He was normally a fairly quiet man, and he never used to discuss politics with ordinary members of the masses.

Most leaders of Zhu's work unit felt that while his political viewpoints were wrong, they were not reactionary in content; moreover, he had relayed them all to the leadership and the organization, he had not disseminated them among the masses, and when mailing them out he had signed his real name to them. Also, Zhu had spent several thousand *yuan* of his own money to buy a printing machine, which his wife used to print out his various writings, and so his behavior had seemed orderly and logical and he didn't appear to be mentally ill.

According to the masses, Zhu's everyday speech was quite logical; he behaved in a respectable manner, was always polite in his dealings with people, and had an orderly and regular lifestyle. In their view he wasn't mentally ill, just highly eccentric, and so they regarded him as being a political dissident.

In March 1987, Zhu was expertly evaluated and found to be suffering from paranoid psychosis, on the following main grounds:

The content of Zhu's "theories" was conceptually chaotic: for example, he maintained that "during the period of scientific socialism, it is the State that engenders [social] classes, the superstructure that determines the economic base, and the mode of rule that determines the mode of production," etc. He maintained that all the principles and policies laid down since the Third Plenum of the 11<sup>th</sup> Central Committee were wrong. He was the leader who would guide the international communist movement during its third high tide. All this was a form of "political delusion," a pathological mental disorder, and Zhu's behavior was thus obstinate, impervious to reason, and insoluble through criticism or discussion.

Under the influence of his "political delusions," Zhu's pathological willpower grew ever stronger. Upon his retirement, he declared that he would "keep on writing until his very last breath." He saved more than 4,000 yuan to buy a printing machine. Even after these materials had been sent back,<sup>212</sup> he continued writing and mailing out his articles just as before, thereby manifesting utter political lunacy.<sup>213</sup>

Zhu's views and utterances were incompatible with his status, position, qualifications and learning; the great disparities here clearly demonstrated his divorce from reality.

Paranoid psychosis differs from schizophrenia in that, in the former, mental activity remains well balanced, the delusions are

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212. Presumably, after confiscation by the authorities.

213. "Biaoxianchu zhengzhi-shang de fengkuangxing."

relatively systematic and not entirely absurd in content, and the integrity of the personality remains relatively intact. Aside from his “political delusions,” therefore, Zhu’s overall mental activity remained normal, he was able to lead a quite normal life, and even his own family had difficulty believing that he was mentally ill.

Crucially, this account contains no indication that Zhu had engaged, by international standards, in anything of a remotely criminal nature. From the case details provided, it seems clear that he was simply a committed leftwing thinker, of the kind to be found everywhere in China during the Cultural Revolution decade, but one who — inexplicably and inexcusably from the government’s point of view — had failed to perform the requisite ideological *volte face* after the 1978 return to power of Deng Xiaoping and the Party’s repudiation of Cultural Revolution-era political theory. It should also be noted that over the several years following Mao’s death and the ascendancy of the new political line, thousands of Zhu’s fellow “die-hard ultra-leftists” across China were arrested and sentenced to long terms of imprisonment on various counts of counterrevolution.<sup>214</sup> So why was Zhu, presumably following his initial detention or arrest on such charges, not dealt with in similar fashion, but rather referred by the police for forensic-psychiatric assessment and then found to be mad? Zhu’s case affords several vital clues that help elucidate the curious dividing line drawn by China’s medico-legal authorities between “political crime” and “political insanity.”

The first aspect of Zhu’s case that seems to have raised forensic psychiatric eyebrows was the fact that Zhu had in no sense acted covertly or “conspiratorially” in the way he developed and publicized his contrarian political theories: as was noted earlier, this is widely taken in China to be a *prima facie* indication of mental instability, on the implicit assumption that “proper” political dissidents have “sufficient sense of self-preservation” to assiduously conceal their activities from the authorities, through fear of the stern judicial punishment they would otherwise encounter.

Second, the authorities evidently saw Zhu’s endeavors in the realm of political theory as somehow “incompatible” with his status as a mere worker. This condescending attitude may seem surprising in view of the strong emphasis placed by Mao on the importance of China rearing a new generation of “worker intellectuals” after 1949. But Zhu was a longtime Party member who had at one time risen to the relatively important position of vice-chair of his local Revolutionary Committee, so he was surely entitled to have more than a passing interest in political theory. What the

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214. The official sobriquet generally applied to such people at the time was “residual poisonous dregs of the Gang of Four.”

authorities appear to have taken primary exception to, however, is Zhu's original authorial efforts in this field, and in particular their detailed and extensive nature. In the official medico-legal view, only academic scholars or Party theorists are supposed to engage in this type of activity; for ordinary members of the public to do so is apparently seen as being not just eccentric, but also—and especially where dissident-type theories are being advanced—indicative of an underlying mental abnormality.

Third, there was the alleged "conceptual chaos" of Zhu's theoretical writings: this represents perhaps the most sinister aspect of the authorities' forensic psychiatric "case" against his sanity. What is significant, however, is that no substantive evidence was raised to suggest that Zhu was in any way cognitively impaired, or that his thoughts were indeed "chaotic" or disconnected. To the contrary, he was officially said to be "logical...respectable...polite" and to have "an orderly and regular lifestyle." The evidence that was officially given pertained solely to his ideas and theories themselves: these were "wrong," "obstinate" and "politically deluded," and the fact that Zhu persisted in holding them, even after receiving an official warning, was identified as a sign of "utter political lunacy."<sup>215</sup> The authorities' stated belief that Zhu's "overall mental activity remained normal" and their observation that even his own family viewed him as sane, was seen, not as undermining the final diagnosis of "paranoid psychosis," but rather as in effect confirming it. As noted earlier, this particular diagnostic contradiction was the very hallmark of the Soviet-era political diagnosis of "sluggish schizophrenia."

The above case is not one drawn from the obscure archives of China's revolutionary past. It was published in Beijing in 1994 in an official training manual for Chinese forensic psychiatrists. It was thus presumably seen as a typical illustrative case, the concluding diagnosis being one fully appropriate for study and emulation by others in the legal-psychiatric profession today.

### VIII. THE FALUN GONG: NEW TARGETS OF PSYCHIATRIC ABUSE

The authorities in the former Soviet Union employed political

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215. In point of fact, all the various theoretical viewpoints attributed to Zhu by the authorities (for example, that "the superstructure determines the economic base") are typical of mainstream Maoist thought from the late 1950s until Mao's death in 1976, and moreover are held in common by numerous 20th century Western schools of Marxism, in a tradition extending from Trotsky through to the various "New Left" European schools of thought of the 1960s and 70s. Zhu may well have been slightly "megalomaniac" by disposition, but then so, by some accounts, were many European New Left theorists.

psychiatry against a wide range of different types of people: political dissidents, religious sectarians and spiritual nonconformists, ethnic nationalists, labor rights activists, and Jewish people seeking emigration to Israel, among others. In China, the principal known target of such treatment since 1949 has been political activists of various kinds, together with a variety of people accused of "disturbing public order," such as petitioners, complainants, "whistleblowers" and "litigious maniacs." Our current lack of detailed information on individual cases does not, however, necessarily mean that people of other types and categories, similar to those seen in the former Soviet case, have not also been subjected to compulsory psychiatric treatment and hospitalization in China. For example, several cases of Chinese labor activists being dealt with in this manner have just recently come to light. Since the latter part of 1999, however, it has become abundantly clear that religious sectarians now also form a major target of politically repressive psychiatry in China.<sup>216</sup>

In April 1999, a hitherto obscure though numerically large spiritual community in China calling itself the *Falun Dafa* (Great Wheel of Buddha's Law) or *Falun Gong* (Cultivation of the Wheel of the Law)<sup>217</sup> staged an unannounced peaceful protest demonstration outside Zhongnanhai, the main Communist Party leadership compound in central Beijing. According to reports, more than 10,000 practitioners from the group, whose devotional activities center on the practice of a traditional form of Chinese physical and mental exercises known as *qigong*, took part in the silent, day-long vigil.<sup>218</sup> The source of their dissatisfaction was an escalating campaign of official criticism of the Falun Gong movement, and of its leader, a middle-aged former government official named Li Hongzhi. The public demonstration was the largest held in China since the Tiananmen protests of May 1989, and it apparently caught the government's security services completely by surprise. A flurry of official condemnations quickly followed, but no overt

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216. In recent years, religious sectarian movements in Russia have once again come under direct legal and medical attack from government authorities. See, e.g., *Duma Appeal on Dangerous Religious Sects*, MOSCOW ROSSIYSKAYA GAZETA, December 28, 1996; translated in FBIS, same date; and Lev Levenson, *Psychiatrists and Officers in Defense of Traditional Values*, EKSPRESS KHRONIKA, January 31, 1997.

217. "Fa lun" is the Chinese rendering of the Sanskrit word "dharma" (Buddhist law).

218. The practice of qigong has undergone a massive popular revival in China since the early 1980s. A detailed account of this phenomenon can be found in Zhu Xiaoyang and Benjamin Penny (eds.), *The Qigong Boom*, 27:1 CHINESE SOCIOLOGY AND ANTHROPOLOGY (Fall 1994). On September 15, 2000, as part of the government's continuing crackdown on Falun Gong practitioners, the State Sports General Bureau issued new rules tightening up controls over the practice of qigong throughout China. See *Jianshen Qigong Guanli Zanxing Banfa* [Temporary Methods for Administering Bodybuilding and Qigong]; available at <<http://www.sport.gov.cn/qigong.htm>>, as of November 29, 2000.

action was taken against the Falun Gong until July 19-20, when dozens of the group's leading organizers and practitioners were suddenly arrested by police in the middle of the night. Two days later, and thus retroactively, as far as those already detained were concerned, the government announced that the Falun Gong was a proscribed organization and that it was to immediately cease all activities throughout the country.<sup>219</sup> Since then, tens of thousands of practitioners nationwide have been detained, arrested, sent to jail or labor camps for periods of several weeks or years, or formally charged and sentenced to terms of up to 18 years' imprisonment.<sup>220</sup> As of November 2000, reports indicate that more than seventy detained practitioners have died as a result of torture or severe ill treatment at the hands of the authorities.<sup>221</sup> Despite this harsh campaign of governmental repression, thousands of Falun Gong practitioners have continued, on an almost daily basis, to travel to Beijing and other major cities to stage peaceful protests against the continuing crackdown; they are invariably arrested within moments and carted off to police holding centers to await their punishment.<sup>222</sup>

The most distinctive aspect of the government's protracted campaign to crush the Falun Gong, aside from its sheer scope and brutality, has been the flood of reports that began emerging in the latter half of 1999 indicating that large numbers of the group's detained practitioners were

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219. Proclamation of the Ministry of Public Security of the People's Republic of China, July 22, 1999. Using unusually strong language, the Ministry called for the Falun Gong to be "outlawed and extirpated" (yuyi qudi) throughout China. In a comprehensive denial of the civil rights of all Falun Gong practitioners, moreover, the proclamation stated: "It is forbidden to undertake assemblies, marches or demonstrations in defense or propagation of the Falun Dafa (Falun Gong), whether by means of sit-ins, petitioning the authorities, or any other such activities."

220. As the trials of Falun Gong leaders unfolded, the sect's main overseas support network issued the following translation of a directive that it claimed had recently been issued by the Beijing Bureau of Justice, imposing restrictions on detained sectarians' right of independent access to legal defense: "To All Law Firms and District and County Judicial Departments: All consultations and retainers in respect of Falun Gong issues must be reported immediately. Particular requirements are: 1) In no circumstances may a lawyer accept a retainer involving any client involved in Falun Gong issues. Such cases should be reported to the Regulation Section (telephone: 6340-8078) and will be decided upon only after being reported. 2) In any event where consultations are requested by a client involved in Falun Gong issues, any advice or explanations proffered by attorneys offices must conform to the law and be strictly in conformity with the tone of the Central Government. 3) All recent consultations and retainers on Falun Gong issues must be documented and faxed immediately to the Regulation Section on or before August 2, 1999 (fax: 6340-8034)." See <[http://www.clearwisdom.net/eng/china/judicial\\_announcement.html](http://www.clearwisdom.net/eng/china/judicial_announcement.html)>, as of December 3, 2000.

221. See *Two More Falun Gong Members Reported Dead in Chinese Police Detention*, AGENCE FRANCE PRESSE, December 7, 2000. According to the article, the current number of reported Falun Gong deaths in police custody stood at seventy-four.

222. For a detailed account of the human rights violations involved in the government's anti-Falun Gong campaign, see Amnesty International, *People's Republic of China: The Crackdown on Falun Gong and Other So-called "Heretical Organizations,"* ASA 17/011/2000 (March 23, 2000).

being forcibly sent to mental hospitals by the security authorities.<sup>223</sup> By late 2000, overseas Falun Gong support groups had documented well over a hundred such cases where the names and other details of the victims were known, while overall estimates of the total number dealt with by the authorities in this way had risen to around six hundred. These various reports have not yet been independently confirmed by international human rights groups or similar organizations, and instances of factual error or misreporting may eventually come to light, however, there is presently no reason or evidence for doubting their overall veracity.<sup>224</sup> Certainly, numerous Western journalists who have witnessed police raids on Falun Gong demonstrators, in Beijing and elsewhere, have frequently reported seeing detainees being severely beaten up in front of their own eyes, so there is no grounds for believing that such people receive any more humane treatment after their removal from the public arena.

The accounts of the treatment meted out to detained practitioners in mental asylums around the country make frequent and consistent reference to the following kinds of practices: people are drugged with various unknown kinds of medication, tied with ropes to hospital beds or put under other forms of physical restraint, kept in dark hospital rooms for long periods, subjected to electro-convulsive therapy or painful forms of electrical acupuncture treatment, denied adequate food and water and allowed only restricted access to toilet facilities, forced to write confessional statements renouncing their belief in Falun Gong as a precondition of their eventual release, and then required to pay fines or unreceipted charges of several thousand *yuan* for their board and treatment in the hospital. Many have been held in mental asylums since the late summer and fall of 1999, when the news of this form of repressive treatment was first reported. Among the currently known victims have been university professors, medical workers, government functionaries, members of the police and armed forces (including several senior officers), farmers, students, housewives, and a judge.<sup>225</sup> Three of those sent forcibly to mental asylums

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223. See, e.g., Elisabeth Rosenthal, *China is Said to Hold Devotees of Sect in a Psychiatric Hospital*, THE NEW YORK TIMES, January 21, 2000.

224. The ethical teachings of Falun Gong reportedly make its practitioners so frank and honest that, when stopped by police while traveling on trains in recent months and asked if they are going to Beijing to petition or demonstrate on behalf of the sect, they invariably feel obliged to give a truthful reply, thereby leading to their forcible eviction from the trains or worse.

225. According to an Associated Press report on February 11, 2000, "A judge in southern China has been put in a psychiatric hospital and forced to take narcotics for refusing to renounce his belief in the banned Falun Gong spiritual movement, a rights group said today. The case of Huang Jinchun is the latest troubling sign that the communist government is using mental institutions to punish political or religious dissenters. Huang displayed no symptoms of mental illness either at work or after being sent to the hospital nearly three months ago, the Hong Kong-based Information Center of Human

are reported to have died as a direct consequence of the ill treatment they received there.<sup>226</sup> Thus far, it appears that Falun Gong practitioners subjected to this treatment have been sent to regular mental hospitals rather than to Ankang custodial facilities; the main reason for this is probably that most Chinese cities do not yet possess any such specialized psychiatric detention facilities. Many outside observers, however, have found the Chinese government's continuing campaign against the Falun Gong to be closely reminiscent of the kinds of extreme and unbridled political campaigns waged by the Party during the Cultural Revolution. In this connection, it should be noted that the security authorities' current practice of detaining Falun Gong practitioners in normal psychiatric institutions, rather than going through the due process normally required for forensic committals, certainly appears to be a worrying reversion to the widespread pattern of arbitrary political-psychiatric abuse that prevailed during the Cultural Revolution.

The following reports and victim statements afford a vivid insight into current conditions and practices within mental hospitals where Falun Gong

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Rights and Democratic Movement in China reported, citing former colleagues and nurses. But at the Longqianshan Psychiatric Hospital in the southern Guangxi region, medical personnel gave Huang daily injections of a narcotic that left him sleepy and muddled, after he refused to stop practicing Falun Gong, the nurses said. "The doctors and nurses made fun of me: 'Aren't you practicing Falun Gong? Let us see which is stronger, Falun Gong or our medicines?'" Huang related in an appeal posted earlier this week on an overseas Falun Gong website.<sup>227</sup>

226. According to the source cited at *infra* note 227, the circumstances of the three Falun Gong practitioners' deaths were as follows.

1) In December 1999, Yang Weidong, 54, a medical inspector in Weifang city, Shandong, was forcibly committed to the city's Kangfu mental hospital. Already in poor health after several weeks spent in police custody as punishment for having gone to Beijing to petition against the anti-Falun Gong crackdown, Yang developed edema of the liver while at the mental hospital. According to the account, "Even the doctor in Kangfu Hospital was frightened upon seeing his condition. He told the guard who watched Yang Weidong: 'He is in a state of physical collapse, how come you do not send him home? His illness is already incurable.'" Yang reportedly died on December 25, several days after being released from the hospital.

2) In May 2000, a woman named Shi Bei reportedly died after being forcibly held and given psychotropic medication at the Hangzhou No. 7 Hospital, Zhejiang (see Section VIII *infra* for further details of Shi's case).

3) In June 2000, a 32-year-old man named Su Gang, a graduate in computer science and employee at a chemicals plant in Zibo city, Shandong, died after nine days of forcible hospitalization and medication at the Changle Mental Hospital. He had earlier been held in police detention for around 130 days for his Falun Gong activities. According to the account, "At 6 p.m. on May 31, the security staff of Su Gang's workplace sent him back to his father, Su De'an. After nine days of brutal 'treatment,' which included daily over-dose injections with damaging effects on the central nervous system, Su Gang looked miserable...he was very slow in reacting and his limbs appeared stiff...He was not able to recover from the severe mental and physical damage he had suffered in the mental hospital. After a period of painful struggle, he left this world on the morning of June 10, 2000." Su's death in psychiatric custody was also reported in *Bad Medicine in China* (editorial), THE WASHINGTON POST, June 23, 2000.

practitioners have been detained.<sup>227</sup>

- *Tan Guihua, female, 42 years old, an employee from the Third Leather Shoe Factory of Qingdao, Shandong Province, detained at the Jiaozhou Mental Hospital in Shandong Province.*<sup>228</sup>

On September 12, 1999, Tan went home after appealing in Beijing for the Falun Gong. Before she could sit down, some officers from her work unit and the Politics and Law Commission broke into her home and took her to the mental hospital.

The officers dragged her into the mental hospital by force. By then, they had already prepared a big dose of injection and planned to give her the shot as soon as she arrived. Tan refused to take the injection. A tall nurse then went out and brought back eight mental patients. They pressed her down and gave her the injection. In only a few seconds, she began to feel faint and sick. Her heart started to beat extremely fast. She had to press her head against the wall and hold the ground firmly with both hands. While in great pain, she bit down tightly on the comforter in her mouth and tried not to make any noise. Her mouth bled from the biting. She then lost consciousness. She did not feel better until the effects of the drug gradually abated.

Later, a female doctor asked Tan daily whether she would continue to practice Falun Gong. Tan said 'yes', and the doctor then shocked her with electrical needles. She was shocked in this way altogether seven times. Meanwhile, she had been force-fed medicines and given injections three times a day. She spent two months in the hospital like this.

Later, the female doctor asked a nurse named Ma to give her another kind of injection. It was said to be some kind of imported medicine, and the drug effect would last for over one month. After that injection, Tan's period stopped coming. Her eyeballs couldn't move and she became slow in reacting to things. A few days later, they added another medicine to the injection. After this shot, Tan shook all over violently and couldn't even hold the bowl. She was tortured like this for 20 days. When her family members finally picked her up, she was all muddleheaded and could not see things

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227. These case descriptions appear in Dr. Shiyu Zhou et. al. (eds.), *A REPORT ON EXTENSIVE AND SEVERE HUMAN RIGHTS VIOLATIONS IN THE SUPPRESSION OF FALUN GONG IN THE PEOPLE'S REPUBLIC OF CHINA—AUGUST 2000 UPDATE*, Golden Lotus Press, pub., August 2000; *see Chapter 3: "Detention and Abuse in Mental Hospitals,"* at 65-82. The information in the report was assembled by a group of activists and researchers associated with the Falun Gong overseas support network's principal website, <<http://www.minghui.org>>. The above-cited passages from the report have been slightly edited to correct faulty English, but otherwise are as they appear in the original document. The full text of the report can be found at <<http://hrreport.flfd.net>>, as of December 4, 2000.

228. *A REPORT ON EXTENSIVE AND SEVERE HUMAN RIGHTS VIOLATIONS IN THE SUPPRESSION OF FALUN GONG*, *supra* note 227, at 72.

clearly. Her mind was totally blank and could not recall things for a long period. Her whole body was puffy. Her eyes looked dull. Her reactions became slow, and it took a long time for her to say a single word.

- *A 22 year old Falun Gong practitioner, detained at Jining Mental Hospital, Shandong Province.<sup>229</sup>*

On October 25, I went to Beijing to peacefully appeal to the government. However, I was arrested and escorted back to my hometown on my third day in Beijing. I was first given 15 days of detention. Then, on the seventh day of my detention, I was sent to a mental hospital in Jining, Shandong province. I do not have any mental problems. I was sent to the mental hospital because the authorities wanted to destroy me mentally in order to prevent me from practicing Falun Gong.

In order to put me into the mental hospital, the police department forced my father and the officials of my workplace to sign a statement saying that I had mental problems. They then forced me into the mental hospital. Four male doctors carried a very thick rope and forced me to put on the uniform used by mental patients. When I was changing clothes, a female doctor gave me an injection. I struggled desperately, but the four male doctors tied me to a bed with ropes. They gave me a lot of injections. Soon the medicine started to take effect. I tried my best to control myself but I could not keep myself balanced. I felt extremely anxious, very uncomfortable and thirsty. I bumped against the wall and fell to the ground anxiously. Thoughts of death flashed through my mind. Later the doctor gave me another injection. I fell asleep. On the second day, my mind became a blank. I had a headache and I fainted. I could not think of anything. My legs and arms had no strength. My tongue felt stiff and stretched out from my mouth as if something was pulling it out and I couldn't control it. I also felt stiff in my neck, which stretched forward at an extreme angle. I was unable to consciously control these movements. In this condition, I could not eat at all. So they inserted a tube through my nose into my stomach and fed me. The nurse said this was how they persecuted the members of "an evil religion." Later, my nose started to bleed. By that time, they had given me nine injections in total.

On my third day in the mental hospital, they forced me to take perphenazine.<sup>230</sup> At the beginning, they only fed me one pill.

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229. *Id.* at 76.

230. (Footnote inserted by author.) Perphenazine is an antipsychotic medication that can be administered either orally or by intramuscular injection. According to Medscape, an Internet "registered users only" website of information on psychiatry, "Perphenazine is used for the symptomatic management of psychotic disorders. Drug therapy is integral to the management of acute

Later they fed me four to five pills because I had continued to practice Falun Gong. The symptoms of taking perphenazine were the same as being injected. I endured inhumane mental and physical tortures like this for thirty-six days.

Now Jining Mental Hospital has become a place to persecute Falun Gong practitioners. There are still many practitioners being detained there. I hope the international community and all kind-hearted people around the world will pay attention to our sufferings.

- *Han Jizhen, female, detained at the Nanjing Mental Hospital, Jiangsu Province.*<sup>231</sup>

My mother, Han Jizhen, is a Falun Gong practitioner living in Nanjing, China. She is now being detained in a mental hospital although she is perfectly normal.

On December 23, my mother went to Beijing to appeal on behalf of the Falun Gong, and was arrested by a young police officer who slapped her face madly. Later, she was escorted back to Nanjing and thrown into the Nanjing mental hospital (now called the Nanjing Brain Hospital). In the beginning, the hospital refused to treat her. However, under pressure from the government authorities, they eventually took her in.

The doctor said she was sent to the mental hospital because she was a Falun Gong practitioner, even though she had no mental illness. In the hospital, she was forced to take injections and medicines, which made her lose her strength and feel terrible. My family went to the hospital to ask for her release, but the doctor said, "Since the police sent her here, we have to give her medicines. Otherwise, if she continues to go to Beijing to appeal for Falun Gong in the future, we will be in trouble."

In the name of saving people from illnesses, the hospital has been pressed into political service by the Chinese Communist Party as a means of persecuting mentally normal people. The hospital has betrayed its working ethics.

Before the Chinese New Year, after petitioning by my family, my mother was allowed to return home for two days. Then, the police sent her back to the mental hospital again because she refused to give up her practice of Falun Gong. She is now still being "treated" in the mental hospital. I feel so sad that innocent people are being treated like this. I appeal to the world for help.

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psychotic episodes and accompanying violent behavior in patients with schizophrenia..." See <<http://www.medscape.com>>, as of December 1, 2000.

231. Statement by Wang Yongsheng, a Ph.D. student at the Physics Department of Houston University. See A REPORT ON EXTENSIVE AND SEVERE HUMAN RIGHTS VIOLATIONS IN THE SUPPRESSION OF FALUN GONG, *supra* note 227, at 77.

- *Chen Zhong, male, 55 years old, detained at the Treatment Center for Mental Diseases in No. 102 Hospital, Changzhou, Jiangsu Province.*<sup>232</sup>

On the afternoon of July 25, the local police and officers from the Civil Affairs Bureau asked Chen Zhong to go for interrogation. Without any due legal procedure, he was then taken to the Treatment Center for Mental Diseases in No. 102 Hospital, Changzhou, for examination. Without any attempt at disguise, they said, "If you continue to practice Falun Gong, we can make you crazy even if you are not." But he did not give in.

On the afternoon of September 28, again using interrogation as an excuse, the police took Chen Zhong to the Mental Hospital of the No. 3 People's Hospital in Wujin County. He was forcibly hospitalized and made to take medicines normally used for mental patients. Chen Zhong refused to take the medicine, so they proceeded to electrocute him. They later did so again (altogether five times) and then forced him to take the medicines. This went on for more than ten days.

In an audiocassette tape, he said, "I am feeling very cold as I only have a T-shirt on me. My family does not know my whereabouts. I do not have a change of clothes, nor can I shave. In fact, the hospital, which calls itself a "humanitarian hospital," is detaining many people who appealed to the government for various injustices they had received. This hospital is an even worse place than the [police] detentions centers, with many more cruel mental and physical tortures. I am a Falun Dafa practitioner and also a law-abiding citizen. I practice "Truthfulness, Compassion and Tolerance,"<sup>233</sup> which is beneficial to both the State and society. Why am I being treated like this?"

Among the three Falun Gong practitioner reported to have died as a result of their ordeals in Chinese mental hospitals in recent months was a woman named Shi Bei. Under pressure from the police, hospital staff reportedly gave her forced injections of high dosage sedatives and denied her food for one week in order to prevent her from propagating her spiritual beliefs inside the hospital; her precise cause of death remains unknown.<sup>234</sup> The hospital in question was said to be the Hangzhou No. 7 People's Hospital —

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232. A REPORT ON EXTENSIVE AND SEVERE HUMAN RIGHTS VIOLATIONS IN THE SUPPRESSION OF FALUN GONG, *supra* note 227, at 82.

233. In Chinese, "Zhen," "Shan," and "Ren"—the three cardinal teachings of the Falun Gong sect.

234. The overseas Falun Gong support network stated in its report: "Shi Bei was simply starved to death." This was unlikely to have been the sole cause of death, however, since she was reportedly denied food for only a week.

the same institution on which, as was noted above, three staff psychiatrists had optimistically reported in 1987:

According to this hospital's statistics, cases of antisocial political speech and action accounted for 54 percent of all cases [examined] during the year 1977; currently, the proportion of such cases has fallen to a level of 6.7 percent. This shows that the present situation of stability and unity in China has resulted in a marked fall in the number of cases arising from such factors.<sup>235</sup>

Remarkably, the Chinese authorities have admitted quite openly that Falun Gong practitioners are now being admitted to mental hospitals in large numbers. In an official volume published in late 1999, for example, they stated:

According to doctors at the Beijing University of Medical Science, since 1992 the number of patients with psychiatric disorders caused by practicing "Falun Gong" has increased markedly, accounting for 10.2 percent of all patients suffering from mental disorders caused by practicing various *qigong* exercises. In the first half of this year, the number rose further, accounting for 42.1 percent.<sup>236</sup>

The fact that the Falun Gong sect did not even exist in 1992 (it was formally established in the mid-1990s and grew rapidly only during the last few years) did not deter the book's authors from making this remarkable claim. Another official spokesperson went still further, however, asserting absurdly in September 1999: "Falun Gong practitioners now account for 30 percent of all mental patients in China."<sup>237</sup> In neither case, moreover, was the coincidence between the reportedly very sizeable increase in Falun Gong admissions to mental hospitals in the first half of 1999, and the fact that it was during this same period that the government began preparing its nationwide public crackdown upon the sect, deemed to be worthy of

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235. See Zhong, *supra* note 92, at 139-141.

236. JI SHI, LI HONGZHI AND HIS "FALUN GONG"—DECEIVING THE PUBLIC AND RUINING LIVES 12 (1999). Similarly, in a July 1999 report from Xinhua, the official Chinese government news agency, Dr. Zhang Tongling, a psychiatrist at the No. 6 Attached Hospital of the Beijing Medical University, was quoted as saying: "I myself have witnessed a rocketing rate of mental illness among Falun Gong practitioners since 1996." She quoted statistics from the psychiatric departments of two Beijing hospitals as showing that mentally diseased Falun Gong followers now accounted for 42 percent of all mental patients, compared with only 10.01 percent in 1996. "It is an indisputable fact that practicing Falun Gong can lead to many kinds of mental disorders, which however has never been admitted by Falun Gong advocates," said Cai Zhuoqi, also a psychiatrist at the Beijing Anding Hospital." See *Medical Scientists Reveal Falun Gong Fallacies*, XINHUA NEWS REPORTS, July 24, 1999; reproduced in FBIS, same date.)

237. The claim is made in a video CD-ROM entitled FALUN GONG—CULT OF EVIL, issued by the Chinese government in September 1999 as a companion item to Ji, *supra* note 236.

mention.

In October 1999, the Standing Committee of the National People's Congress issued a proclamation stating the following:

"Heretical cult organizations shall be resolutely banned according to law, and all of their criminal activities shall be dealt with severely. Heretical cults, operating under the guise of religion, qigong or other forms, employ various means to disturb social order and jeopardize people's lives and property and economic development, and they must be banned according to law and punished resolutely. People's courts, procuratorates, public security, national security, and judicial and administrative organs shall fulfill their respective duties and join efforts in carrying out these tasks."<sup>238</sup>

Although widely reported overseas as being "a new anti-cult law," this decision in fact merely reinforced an existing set of provisions contained in Article 300 of the 1997 Criminal Law legitimizing the suppression of what the authorities termed "heretical cult organization" ("xie jiao"); the maximum penalty under Article 300 for such crimes is life imprisonment.<sup>239</sup>

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238. Decision of the Standing Committee of the National People's Congress on Banning Heretical Cult Organizations and Preventing and Punishing Cult Activities, adopted at the 12th Session of the Standing Committee of the Ninth NPC on October 20, 1999; English translation in 45 BEIJING REVIEW (1999). This Decision, in turn, was essentially a brief public notification of a more complex and detailed set of rules that had been formulated by the Supreme People's Court and Supreme People's Procuracy on October 8, 1999, explaining how Article 300 and other relevant provisions of the Criminal Law were to be applied in the course of the "anti-cult" crackdown. See Explanations of the Supreme People's Court and Supreme People's Procuracy Concerning Laws Applicable to Handling Cases of Organizing and Employing Heretical Cult Organizations to Commit Crimes, adopted at the 1079th Meeting of the SPC on October 9, 1999 and at the 47th Meeting of the Ninth Procuratorial Committee of the SPC on October 9, 1999; English translation in 45 BEIJING REVIEW (1999). The latter document is highly reminiscent of a similar set of guidelines issued by the same two bodies in August 1989 explaining how the various Criminal Law statutes on "counterrevolution" were to be applied in practice in the course of the ongoing legal campaign to suppress the nationwide pro-democracy movement of April-June 1989. See ZUIGAO RENMIN FAYUAN, ZUIGAO RENMIN JIANCHAYUAN GUANYU BANLI FANGEMING BAOLUAN HE ZHENGZHI DONGLUAN ZHONG FANZUI ANJIAN JUTI YINGYONG FALU DE RUOGAN WENTI DE YIJIAN [OPINION OF THE SUPREME PEOPLE'S COURT AND SUPREME PEOPLE'S PROCURACY ON SEVERAL QUESTIONS CONCERNING THE SPECIFIC APPLICATION OF LAW IN THE HANDLING OF CRIMINAL CASES COMMITTED DURING THE COUNTERREVOLUTIONARY REBELLION AND POLITICAL TURMOIL], August 1, 1989; in SIFA SHOUCE [JUDICIAL HANDBOOK], VOL.6, People's Court Publishing House, Dec. 1990, at 100-105.

239. Harsh as this seems, it actually represented an improvement over the 1979 Criminal Law, Article 99 of which (in conjunction with a September 1983 "anti-crime campaign" decision by the National People's Congress) defined the offense of "organizing and leading a superstitious or reactionary sect or society ("fandong hui-dao-men") as being a counterrevolutionary crime punishable, at maximum, by the death penalty. Under this law, literally hundreds of leaders of banned religious and other sects were executed or sentenced to up to life imprisonment in China during the 1980s. Interestingly, the term officially used since March 1997 for banned sectarian activities—*xie jiao*—is a reversion by the authorities to the term traditionally used by the Confucian authorities over the past

Since the start of the crackdown, the Chinese authorities have frequently asserted that Falun Gong is an “evil cult” displaying the same abusive and life-threatening organizational characteristics as the Aum Shinrikyo cult in Japan, which released sarin poison gas on the Tokyo subway in 1995, the Branch Davidians cult, dozens of whose members were killed when the U.S. law-enforcement authorities stormed its headquarters in Waco, Texas in 1993, and the Solar Temple cult, many of whose members committed collective suicide in Switzerland in 1994.<sup>240</sup> On this and other implicitly political grounds, the government has further branded the Falun Gong movement as posing a serious “threat to state security.”

An additional major justification given for the sect’s suppression has been the authorities’ claim that the sect tries to prevent its members from seeking proper medical attention when they fall ill. According to officially released data, more than 1,400 Falun Gong practitioners or their family members have died as a result of this malign sectarian doctrine.<sup>241</sup> Sect leaders and members, however, have consistently denied this key government allegation. It is worth noting, however, that for the majority of China’s population, the economic market reforms that have been pursued since the late 1970s have made affordable access to Western-style and even

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millennium and more to suppress ideological heterodoxy in Chinese society. For further details of contemporary China’s religious sectarian movements and their suppression by the Chinese government, see Robin Munro (ed.), *Syncretic Sects and Secret Societies: Revival in the 1980s*, 21:4 CHINESE SOCIOLOGY AND ANTHROPOLOGY (Summer 1989). For numerous case examples of religious sectarians and members of similar-style groups sentenced in the 1980s under Article 99 of the pre-1997 Criminal Law, see ROBIN MUNRO AND MICKEY SPIEGEL, DETAINED IN CHINA AND TIBET: A DIRECTORY OF POLITICAL AND RELIGIOUS PRISONERS 251-271 and 343-350 (Human Rights Watch, pub.) (1994).

240. See, e.g., *Cults Endanger National Security*, XINHUA NEWS REPORTS, September 27, 2000; English translation in FBIS, same date. If comparisons between the Falun Gong and other major sects or cults are to be drawn, then groups such as the Jehovah’s Witnesses or (at a stretch) the Church of Scientology would seem to be more apposite and reasonable models of comparison than the very extreme examples of sectarianism raised by the Chinese authorities. One of the best English-language sources of objective information and analysis on the Falun Gong phenomenon is an Internet website assembled by the scholar Barend ter Haar: “Falungong: Evaluation and Further References,” available at <<http://www.let.leidenuniv.nl/bth/falun.htm>>, as of November 29, 2000.

241. Hundreds of these fatal cases and other alleged tragedies are documented by the authorities in Ji, *supra* note 236. It would be wrong to dismiss these official claims of widespread fatalities as false, but it would be equally inappropriate to accept them as necessarily true — or for that matter, as having the abusive significance ascribed to them by the government — until they have been independently verified and studied, something which has not yet been done. In particular, such an assessment would need to examine whether the number of reported fatalities departed significantly, in either direction, from the normal mortality rate statistics for such a large subgroup of the Chinese population as that accounted for by the Falun Gong (many millions); it is not immediately apparent that it does. And second, the officially claimed causal connection between those deaths and the practice of Falun Gong by those who died would need to be further explored and evaluated by independent medical assessors.

to traditional Chinese-style medical treatment become largely a thing of the past. Much of the current popularity among Chinese today of various kinds of "alternative medicine" or "self-treatment" approaches to curing illness can be directly attributed to the severe practical and financial difficulty that many people experience in trying to gain access to more mainstream or professional forms of medical care. Falun Gong practitioners themselves claim that the mental and physical discipline they follow is highly efficacious in helping to maintain good health; the results of two wide-ranging epidemiological surveys and analyses conducted in Beijing in 1998, that is, prior to the government crackdown on the sect, would certainly seem to substantiate this claim.<sup>242</sup> Above all, the question must be asked: why, if Falun Gong has such deleterious effects upon its practitioners as the Chinese government alleges, have there been no reports of similar outbreaks of mental and physical illness occurring among the numerous and very sizable overseas-based Falun Gong communities in recent years?

Whatever the underlying truth of the matter may be, and while there are no doubt certain aspects of the Falun Gong belief system that many liberal-minded or non-religious people may find to be unacceptable,<sup>243</sup> the fact remains that the Chinese government has thus far presented no plausible evidence to support its central allegation that the sect poses such a threat to national security, or so fundamentally endangers public safety, as to justify, under internationally accepted standards, the imposition of an effective state

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242. The first survey examined the cases of 1,449 Beijing residents who practiced Falun Gong, and was conducted by a group of senior physicians in the capital, including Wang Qi, chief physician at the General Hospital for Armed Police; Li Naiyuan, chief physician at the Stomatological Hospital of Beijing Medical University; Zheng Lihua, deputy chief physician at the People's University of China Hospital; Qu Zengqiu, a pharmacist at the same hospital; Tian Xiulan, managing physician at the Beijing Hospital of Nuclear Industry; and Jing Lianhong, a physician at the Dongshi Hospital for Women and Children. The survey addressed a wide range of medical conditions found among the target patients (including diseases or complaints of the cardiovascular, digestive, musculoskeletal, respiratory, urinary, endocrine and nervous systems, as well as gynecological, skin, hematological and ear, nose and throat disorders), and the tabulated results of the study indicated that the practice of Falun Gong led to marked improvements in all these categories of health; only one patient (suffering from a digestive ailment) was reported as showing a deterioration in health. See THE EFFECT OF FALUN GONG ON HEALING ILLNESSES AND KEEPING FIT: A SURVEY AMONG PRACTITIONERS IN BEIJING ZIZHUYUAN ASSISTANCE CENTER, OCTOBER 18, 1998 (February 2000), available at <[http://clearwisdom.net/eng/science\\_eng/survey98\\_2eng.htm](http://clearwisdom.net/eng/science_eng/survey98_2eng.htm)>, as of December 4, 2000. The second survey in 1998 examined the health effects of Falun Gong practice on a much larger sample group of practitioners in five districts of Beijing; it was also conducted by numerous highly qualified medical personnel (trained in both Western and traditional Chinese medicine), and its findings were broadly similar to those of the first survey. See FALUN GONG HEALTH EFFECT SURVEY OF TEN THOUSAND CASES IN BEIJING, available at <[http://clearwisdom.net/eng/science\\_eng/survey98\\_1eng.htm](http://clearwisdom.net/eng/science_eng/survey98_1eng.htm)>, as of December 4, 2000.

243. Possible examples of the latter include the sect's underlying hostility towards homosexuality and its belief, as taught by Master Li Hongzhi, that human intelligence and civilization were originally brought to planet Earth by aliens from outer space.

of emergency requiring the nationwide suspension both of the Falun Gong's constitutional right to exist and also of the fundamental civil liberties of millions of the sect's adherents.<sup>244</sup>

Certainly, the United Nations' body with primary responsibility for monitoring and enforcing human rights standards around the world has failed to be convinced that any such situation presently exists in China. In a declaration issued in August 1999, the UN body stated:

We are convinced that the banning by the People's Republic of China on 22 July 1999 of the spiritual movement Falun Gong/Falun Dafa and the subsequent arrest of leaders, massive destruction of publications and audio-visual material, and the prohibition of assembly of its practitioners are direct violations of the spirit and provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and of Article 18 of the International Covenant on Civil and Political Rights.<sup>245</sup>

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244. The true size and extent of the Falun Gong movement remains open to question, but it is clearly extremely large. The sect itself claims to have around 100 million practitioners worldwide, most of them in China; the Chinese government acknowledges a figure of only several million practitioners inside the country.

The following provides a useful summary of the limits specified under international legal standards on governments' freedom to restrict civil liberties and human rights in the name of national security:

"The International Covenant on Civil and Political Rights provides for the rights of free expression, assembly and association, but qualifies them by allowing restrictions in the interest of protecting national security. Such restrictions, however, are only valid if they are prescribed by law and 'necessary.' The latter requirement means that the restriction must be proportional to its purpose in severity and intensity and the least restrictive means of achieving that purpose. Thus interference with a right must be interpreted narrowly in cases of doubt and not presumed to be the rule. In the case of freedom of association and assembly, a restriction must be 'necessary in a democratic society,' that is it must not only meet the above requirements but must also be respectful of the democratic values of pluralism, tolerance, broad-mindedness and popular participation in the political decision-making process... A threat to national security is not the same as a threat to any given government of the nation, and mere criticism of a governing party or its policies should not be restricted in the name of national security."

See Munro and Woodman, *supra* note 140, at 4-5. See also "Johannesburg Principles on National Security, Freedom of Expression and Access to Information," drafted by an international team of human rights experts, including legal scholars, U.N. rights specialists and diplomats, at a conference in Johannesburg, South Africa, in 1995 convened by the London-based NGO, Article 19. The full text of the Johannesburg Principles is available in *The New World Order and Human Rights in the Post-Cold War Era: National Security vs. Human Security*, papers from the International Conference on National Security Law in the Asia Pacific, November 1995 (Korea Human Rights Network, 1996). According to the Principles, "The peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties."

245. *The Banning of the Falun Gong and Subsequent Arrests of Practitioners*, Report of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, August 4, 1999. Article 18 of the International Covenant on Civil and Religious Protection (ICCPR) states: "1) Everyone shall have the right to freedom of thought, conscience and religion. This right

Besides the clear and unambiguous legal proscription of sectarian activities of all kinds in China today, however, the authorities also have at their disposal a medical justification, of sorts, for waging such an intense campaign of persecution against the Falun Gong. Since the late 1980s, the Chinese psychiatric establishment has identified a unique set of mental disorders that it says can arise from the practice of traditional *qigong* forms of exercise and self-cultivation, and also from a more heterogeneous range of thought and behavior broadly termed as "feudal superstitious belief" ("fengjian mixin"). In 1989, the country's medical authorities formally recorded this category of psychiatric ailments in the Chinese Classification of Mental Disorders (2nd Version, also known as the CCMD-II), under the heading "mental disorders closely related to culture."<sup>246</sup> The international psychiatric community recognizes a range of mental conditions known as "culture bound syndromes,"<sup>247</sup> and there seems to be no reason to suppose

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shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

246. The Chinese terms used are "qigong ban-fajingshen zhang'ai" and "qigong suo zhi jingshen zhang'ai" (mental disorders associated with or induced by qigong.) Detailed clinical and diagnostic discussions of this culture-bound psychiatric condition can be found in the following articles: Shan Huaihai et. al., *Clinical Phenomenology of Mental Disorders Caused by Qigong Exercise*, 102:6 CHINESE MEDICAL JOURNAL (in English) 445-448 (1989); Shan Huaihai et. al., *A Study of the Comparison Between Hysteria-like Episodes Caused by Chinese Qigong (Deep Meditation) and Hysteria with Psychosocial Stress*, 18:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 156-158 (1992); Xu Shenghan, *Psychophysiological Reactions Associated with Qigong Therapy*, 107:3 CHINESE MEDICAL JOURNAL 230-233 (1994); Shan Huaihai, *Qigong Suo Zhi Jingshen Zhang'ai de Linchuang Ziliaoyu Zhenduan [Clinical Material and Diagnosis on Mental Disorders Induced by Qigong]*, 3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES (1999); Yang Desen, *Qigong Neng Zhiliao Shenjingzheng yu Jingshen Jibing ma? [Can Qigong Cure Neurosis and Mental Illness?]*, 26:1 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 52-53 (2000); He Jiali et. al., *Butong Shiduan Qigong Suo Zhi Jingshen Zhang'ai Linchuang Duizhao Yanjiu Ji Zhenduan Biaozhun Tantao [A Clinical Comparative Study of, and Diagnostic Criteria for, Qigong-induced Mental Disorders Over Various Periods]*, 26:2 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 116-117 (2000); and Zheng Hongbo et. al., *Lian 'Falun Gong' Yinshi Jingshen Zhang'ai 4 Li Baogao [A Report on Four Cases of Mental Disorders Induced by 'Falun Gong']*, 26:3 CHINESE JOURNAL OF NERVOUS AND MENTAL DISEASES 142 (2000). Finally, a number of individual studies of this type involving cases where criminal charges were brought can be found in ZHENG ZHANPEI, SIFA JINGSHEN JIANDING DE YINAN WENTI JI ANLI [THORNY PROBLEMS AND CASE EXAMPLES IN JUDICIAL PSYCHIATRIC APPRAISAL] 275-309 (1996).

247. These include, for example, "koro," a type of panic reaction among males, especially in Asia, characterized by intense fear that the penis is shrinking inside the body; "amok," a form of violent mass hysteria that is typically found in Malay society; and "latah," a condition found in many

that the improper or excessive use of *qigong* may not, in certain circumstances and cases, lead to various forms of mental imbalance or disorder. It is surely remarkable, however, that there so suddenly occurred, according to the official version of events, such a massive epidemiological outbreak of *qigong*-related mental illness across China during the precise period immediately before and after the start of the government's crackdown on Falun Gong in July 1999. Still more puzzling is the fact that, in the Chinese government's main published compilation of evidence concerning the severe psychological damage that the practice of Falun Gong is alleged to induce in its practitioners,<sup>248</sup> the sufferers are, in all recorded cases, said to have contracted an exotic mental disorder known as "dysphrenia"—a condition that is apparently either so rare or so mild that, not only does it not appear in the World Health Organization's ICD-10, it is also entirely absent from the CCMD-II, the Chinese medical establishment's own official listing of mental disorders.<sup>249</sup> While the legal and psychiatric establishments may not yet be collaborating, therefore, where the official treatment of Falun Gong and other religious sectarians is concerned, in quite so close and systemic a manner as they have for many years been doing with regard to the "political mania" phenomenon, the recent quantitative surge in forced psychiatric committals of Falun Gong activists nonetheless provides a clear indication that law and psychiatry are now working together in ever-closer professional tandem in the fast-growing judicial suppression of proscribed religious heterodoxy.

## IX. CONCLUSIONS

Excuses and rationales can always be found to explain why doctors become involved in human rights abuses of various kinds, such as in physician-assisted executions, "medical supervision" over torture sessions,

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parts of Africa and characterized by fear that the soul is being taken away from the body. For a detailed discussion of these issues, see ARI KIEV, TRANSCULTURAL PSYCHIATRY (1982).

248. See Ji, *supra* note 236.

249. Only a handful of references to "dysphrenia" have been found on the Internet. First, the website of Rick's College, Idaho (an institution run by the Church of Jesus Christ of Latter-Day Saints, or Mormons), contains the following cryptic definition: "Dysphrenic: bad brain" (a literal translation of the original Greek term.) Second, an Italian neurological website mentions the term in passing in a brief note on "migraine madness." And third, Amnesty International provided the following information in a recent report on the anti-Falun Gong crackdown in China: "The word 'dysphrenia' is not widely recognized by Western psychiatric professionals and does not appear to be defined in Western medical books. The only references found by AI's expert medical advisor is related to neurological movement disorders which occur as side effects of drug treatment for schizophrenia or a psychopathic disorder of communication—'psychopathic' meaning a psychiatric illness." See Amnesty International, *People's Republic of China: The Crackdown on Falun Gong and Other So-called "Heretical Organizations,"* ASA 17/011/2000 (March 2000).

the procurement of transplantable organs from executed criminals' bodies, and also politically repressive psychiatry.<sup>250</sup> These range from the claim that expert medical involvement is required, in the case of torture and executions, in order to limit or alleviate the sufferings of the subjects of these procedures, through the more instrumental argument that, in the case of organ transplants and certain types of execution, the procedures themselves are of an inherently medical nature, to the construction of elaborate, pseudo-scientific theories that posit, as in the case of political psychiatry, false medical justifications for the State's enlistment of doctors in the criminal justice and law enforcement process. All these practices entail, however, a fundamental corruption of the basic tenets of medical ethics — notably the principle that medical skills should be deployed only for the improvement of life and health, as summed up in the Hippocratic injunction "Do no harm."

In this article, we have briefly indicated two of the more obvious reasons why Chinese psychiatrists allow themselves to be pressed into the unethical deployment of their skills for State-directed purposes of political and religious repression: first, the professional acculturation process, in which psychiatrists learn from the official medical literature at the outset of their training that certain types of ideologically nonconformist behavior are attributable to severe and dangerous forms of "mental pathology;" and second, the more insidious element of personal and professional fear, inspired by a wider culture involving decades of individual and institutional experience, of the severe negative consequences of departing from the official "political line" laid down by the authorities in such matters. There are surely, in addition to those enumerated above, other more subtle reasons why Chinese psychiatrists become active partners in the political corruption of their profession.

The question remains, however: why do the authorities themselves bother? Indeed, why would any repressive regime go through such elaborate and often costly steps as adopting coercive psychiatric measures against a certain number of its political and religious opponents, when other much simpler methods of neutralizing such troublesome people — for example, execution or lengthy imprisonment — have always been readily available, and, in the case of both the Soviet Union and China, were frequently used? One possible reason has to do with the changed political landscapes that emerged, both in the USSR after the death of Stalin, and in China after the

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250. For a detailed study of one of these issues, see *BREACH OF TRUST: PHYSICIAN PARTICIPATION IN EXECUTIONS IN THE UNITED STATES*, a joint report by the American College of Physicians, Human Rights Watch, the National Coalition to Abolish the Death Penalty, and Physicians for Human Rights, pub. (March 1994).

death of Mao: in these countries, the former totalitarian solution of the physical liquidation of political enemies was ended by the emergence of reformist leaderships dedicated to the curtailment of past policy "excesses." For dissidents of various kinds, this meant that being arrested by the security police no longer entailed their permanent physical removal from society, but rather long terms of imprisonment from which they had a reasonable chance of emerging alive; a sustained dissident network or movement therefore could, and did, come into being in both these countries after the deaths of their respective "great dictators." For the successor authorities, Khrushchev and Deng, however, this represented an unwanted complication of their new "liberalizing" dispensations, and more elaborate mechanisms of inducing long-term fear in the ideological enemies of the State thus had to be found. There are surely few more potent deterrents to dissident activity of any kind than the threat of permanent or semi-permanent forced removal to an institution for the criminally insane. A potential Chinese dissident or religious nonconformist may be prepared to face imprisonment for his or her beliefs, but indefinite psychiatric custody is probably quite another matter. Additionally, psychiatric labeling of this kind serves to stigmatize and socially marginalize the dissident in a way that regular criminal imprisonment, in the present era at least, often fails to do.

Another reason why "liberalizing" Communist governments tend to engage in such practices may derive from the *amour propre*, or self-justificatory vanity, found in historically repressive regimes of this type when they attempt to dispense with nakedly terrorist methods of dealing with ideological dissent or nonconformity. Such phenomena must still, in the official view, be crushed, but it better serves the government's self-image at such times to adopt more sophisticated and where possible, scientific means and approaches to the fulfillment of this task. Thus, the perceived ideological enemies of the regime are officially said, in some cases, to be merely ill, rather than always or necessarily ill intentioned. While this general rationale for the use of political psychiatry may seem to contradict the "deterrent" argument outlined above, in practice they are not mutually incompatible. Rather, the dissident's fear of being branded mentally ill and condemned to a lunatic asylum serves as a more subtly powerful deterrent to any further oppositional belief or activity, while the reforming government, for its part, can rest satisfied in the belief that it is acting more humanely and scientifically than its unreconstructed predecessor ever did.

A closely related reason has to do, no doubt, with the country's international image and prestige. Naked repression as conducted in the old

days becomes, in the more forward-looking era of "opening and reform to the outside world," a source of increasing international embarrassment for the government. Hence, the former overtly political crimes of "engaging in counter-revolution" are reborn under the more internationally acceptable rubric of "crimes of endangering state security," while particularly flagrant or uninhibited political protestors, and more recently sample groups of Falun Gong religious detainees, are sent to mental hospitals to be "treated," rather than simply jailed as before. Again, this may appear to be paradoxical or even self-defeating governmental behavior, given the widespread international public awareness that now exists about the malign political uses of psychiatry in the former Soviet Union and certain other countries. But the surprising fact remains that in China there has been, thus far, virtually no public discussion or dissemination of information of any kind concerning the history of psychiatric abuse elsewhere in the world, let alone of the strong reaction to such abuse that has been generated internationally over recent decades. In all the Chinese books and journals on psychiatry that have been consulted for this article, only one explicit and very brief reference to the history of political psychiatric abuse in the former Soviet Union, and none to that of other countries, has been found.<sup>251</sup> In this regard, the Chinese medico-legal authorities may unknowingly have been a victim of the government's longstanding policy of censoring and controlling the flow of sensitive news information from around the world.

All of the above reasons may partly explain the existence of political psychiatric abuse in China today, but they cannot directly account for the fact that such practices existed there long before the inauguration of the Deng Xiaoping "new era" in the late 1970s. Here, both systemic and also more contingent factors appear to have played the determinant role. First, there was the fact that Chinese forensic psychiatry largely owed its existence, as a discipline, to the fraternal efforts and advice of Serbski Institute-trained experts from the Soviet Union in the 1950s; Chinese psychiatry thus "benefited" from psychiatric doctrines characteristic of the Khrushchev era, but at a time when China itself was still firmly in the grip of its own unreconstructed Marxist leader. This would clearly explain why

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251. See Jia, *supra* note 35, at 15. The passage referred to the Soviet psychiatric practice of labeling political dissidents as suffering from "sluggish schizophrenia" and incarcerating them in mental hospitals for long periods. It added that this practice had been "severely criticized by representatives from other countries at an international academic conference on psychiatry in 1976." (It is unclear to which conference the author was referring; it was likely a mistaken reference to the WPA's Sixth World Congress at Honolulu in August 1977, the first major international event at which Soviet political psychiatry was exposed to international criticism, and where the historic Declaration of Hawaii (*see supra* at 13) was passed by the WPA General Assembly.) Significantly, however, the passage in the Jia Yicheng volume itself contained no criticisms of the Soviet practices in question.

the basic doctrines of political psychiatry arose at a seemingly “inappropriate” time in China’s political development, and why they continued to hold significant sway in Chinese forensic psychiatry both up to and beyond the death of Mao.

Second, however, there appears to be a deeper and more systemic explanation for the phenomenon, one that has applied almost throughout the history of the People’s Republic. In brief, the main underlying reason, observable throughout the official psychiatric literature from the late 1950s onwards, for why some political dissidents and other kinds of ideological nonconformists are singled out from among the much broader ranks of their prison-bound “counterrevolutionary” or “state security endangering” colleagues for special treatment in the form of legal-psychiatric diagnosis and forced committal, appears to be that they lack, in the experienced and discerning eyes of the police, the prerequisite hallmark of dissent “street credibility.” That is to say, they express their oppositional or contrarian viewpoints openly and with no attempt to disguise their true identities, and when detained by the police on political charges they make no effort to deny their activities or pretend that they weren’t really making fundamental criticisms of the regime. As the official literature makes clear, this represents, to China’s seasoned enforcers of the “dictatorship of the proletariat,” a rarely encountered and inexplicable form of behavior characterized by a perplexing absence of any normal instinct for self-preservation, and thus one that can be perceived only as mentally abnormal. In the authorities’ view, “proper” political dissidents and other ideological enemies behave covertly and conspiratorially, because they know the dire penalties for being caught. To act otherwise strikes the authorities, no doubt quite genuinely, as being sheer political lunacy.

This more consistent and longstanding element in the Chinese official conception of criminal-psychiatric deviance or pathology is, in turn, reflective of a fundamental hallmark of Chinese-style Marxism, namely the strong emphasis always placed by Mao upon “correct thinking.”<sup>252</sup> In China, even more so than in Russia, the objective or material Marxian prerequisites for advanced socialism were conspicuously absent in the first half of the twentieth century, and Mao’s solution to this revolutionary resource deficit was to transfer the pivotal role away from the economy and towards ideology and other such “superstructural” factors: that is, from being to consciousness, from the objective to the subjective, from the material to the

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252. This same emphasis had, of course, much older antecedents, namely the traditional Confucian concern for correct speech and behavior, as expressed for example in the value-concepts of “propriety” (“li”) and “rectification of names” (“zheng ming”).

spiritual, and from process to will.<sup>253</sup> The Soviet guardians of the faith, people like chief Party ideologist Mikhail Suslov, decried all this as anti-materialist “voluntarism” on the part of their Chinese colleagues, and even Serbski School-trained forensic psychiatrists might have demurred at the extensive underlying use made by their Chinese counterparts of the basic Soviet medico-legal theory of ideological deviance.

Another important difference, rather ironically, between the two systems was that whereas the Soviets never admitted that psychiatric abuse had been practiced, the Chinese profession acknowledged that it had frequently occurred during the Cultural Revolution. But here again, the Maoist stress on ideological factors meant that the post-1978 reexamination of “past excesses” within the profession was mainly limited to a critique of the categories and specific content of the “politically deluded” ideas that had been identified, wrongly, it was now said, as being symptomatic of criminal mental pathology. No significant challenge was raised to the core notion that thought and speech could constitute crimes, or that in certain cases these could amount also to “political lunacy” in a forensic medical sense. At an important level of official Chinese discourse for the past half century, therefore, there has existed a clear and persistent epistemological identification or elision between, on the one hand, the social concept of correct political thought and action, and on the other, the ascription, in individual cases, of basic mental health and stability. All this represents the deeper and more intractable defining layer or facet of “political psychiatry with Chinese characteristics.”

The reality today, however, is that most Chinese, and certainly those of the younger generation, would no sooner think of taking to the streets and staging political protest manifestations — especially in the form of sticking up “big character posters,” the most commonly cited symptom of Chinese-style “political lunacy” — than they would think of studying Das Kapital or

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253. As Stuart Schram, the leading Western expert on Mao's thought and philosophy, has written: “Mao's contribution to the theory and practice of revolution is also characterized by an extreme voluntarism. To be sure, ‘voluntarism,’ in the sense of an accent on conscious action, is by no means absent from Marx himself. But there is no doubt that it is carried much further in Lenin, and further still in Mao Tse-tung, and in the ideology of the Chinese Communist Party. This voluntarism attained a kind of apotheosis in the theory of the permanent revolution. Consider, for example, a passage such as this [by Mao, 1958]:

‘Men are not the slaves of objective reality. Provided only that men's consciousness be in conformity with the objective laws of the development of things, the subjective activity of the popular masses can manifest itself in full measure, overcome all difficulties, create the necessary conditions, and carry forward the revolution. In this sense, *the subjective creates the objective.*’

See STUART R. SCHRAM, THE POLITICAL THOUGHT OF MAO TSE-TUNG 135-136 (1969) (emphasis added by Schram).

memorizing the poems of Mao Zedong. The right to engage in street-level politics of this kind, so characteristic of the Maoist era, was excised from the Chinese Constitution in 1982, and there now exists a panoply of legislation that severely criminalizes all such unauthorized forms of political expression by China's citizens; the same is true of all types of unauthorized religious activity. What was formerly a central part of Chinese political culture is now, in the post-Tiananmen era, little more than a folk memory for most people. This fact alone would probably suffice to account for the officially recorded decline, since the 1980s, in "cases of a political nature" in Chinese forensic psychiatry.<sup>254</sup>

One important issue should be raised in this connection, however. The official statistics on this question never included, and still today omit, a range of other activities that are elsewhere generally seen as being quite civic-minded or at least socially permissible in nature: persistent petitioners and complainants of various kinds (the so-called litigious maniacs), people who seek to expose corruption or malfeasance in the workplace and in government administration (the "whistleblowers," or those with so-called paranoid delusions), and also nonconformist religious or spiritual practitioners of various kinds, such as the *Falun Gong* (the so-called dysphrenics). As China continues to develop and expand both its legal system and the overall principle of rule by law, and as a greater degree of rights consciousness correspondingly takes hold among the populace as a whole, examples of the former kinds of behavior are bound to increase dramatically; thus far, however, there has been no reported decrease in the numbers of such cases dealt with as constituting crimes by the mentally ill. Similarly, although for somewhat different reasons, religious sectarianism or spiritual nonconformism is now rapidly on the rise in most parts of the country, and the authorities' recent extension of the "mental pathology" model to significant numbers of *Falun Gong* adherents thus further lengthens the shadow over any hopes or optimism that political psychiatry may be destined soon to disappear from the Chinese law-enforcement scene.

In conclusion, we return to the question of whether or not those dealt

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254. This decline in the official social acceptability of the "big character wallposter" culture in China may also, however, make it even more likely that those who still persist in such activities and behavior will be viewed by the authorities as being mentally disturbed in some way, and thus liable for forensic psychiatric examination and committal. A further important point concerns the current rapid increase in China of all types of forensic psychiatric appraisal cases; with the passage (as described above) of a series of relevant countrywide rules and regulations in recent years and the concomitant institutional build up of the legal-psychiatric appraisals system, the absolute number of such cases is now multiplying annually in China. A decline in the percentage incidence of "political" and other such cases does not necessarily mean, therefore, that fewer actual cases of these types are being dealt with under the system. The overall trend may even be in the other direction.

with in China as being dangerously mentally-disordered political or religious offenders really are, as the authorities claim, suffering in significant numbers from any recognizable form of mental illness. Ultimately, this is an irrelevant question to be asking in the ostensible context of the practice of forensic psychiatry, since the acts in question are not only absent from the internationally accepted definition of crime, but also specifically protected under international law as clear examples of the exercise of the right to freedom of expression. Indeed, it is this that defines the Chinese authorities' practices in this general area as constituting a fundamental abuse of human rights. If for the sake of argument, however, one suspends all disbelief, takes the official case reports and statistics at face value and accepts that all of those dealt with in this way were in fact seriously mentally ill, then another conclusion arises: that Chinese-style "political lunacy" represents a genuinely new, post-1949 "culture-bound syndrome" of considerable size and extent, and one that therefore deserves formal recognition in the country's official classification of acknowledged mental disorders. It is certainly true that the incessant mass political campaigns waged by the Chinese Communist Party over the past fifty years has claimed countless lives and driven large numbers of people insane. It may well also be true that the deeper cultural effects of this longstanding history of political witch-hunts and persecution have caused many of those suffering from genuine mental illness to exhibit their disorders in the form of politically colored language, thought, and behavior.<sup>255</sup> For China's medico-legal authorities to charge psychiatrically disturbed individuals of this kind with committing serious offenses and then send them to institutes for the criminally insane, however, is clearly to add insult to injury.

The challenge for the international psychiatric community now is to find ways of exerting its influence to ensure that China's secretive Ankang system and other custodial psychiatric facilities around the country can no longer be used by the security authorities as a long-term dumping ground for political and religious nonconformists who, for one reason or another, they find it awkward or inconvenient to bring to criminal trial. As an indispensable first step towards this goal, both the World Psychiatric

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255. In the case of the Soviet Union, when Western psychiatric delegations were finally, in 1989 and 1990, allowed access to alleged mentally ill dissidents held in psychiatric custody, a minority of those examined were found to be suffering from some form of mental disorder or other. In most such cases, however, these were deemed by the Western experts to be little more than harmless borderline conditions, and of a kind that should not have occasioned even civil psychiatric committal, let alone compulsory forensic-style custody. For details of the findings of one of these expert delegations, see Bonnie and Polubinskaya, *supra* note 48, at 279-298; see also Richard J. Bonnie, *Soviet Psychiatry and Human Rights: Reflections on the Report of the U.S. Delegation*, 18 LAW, MED. & HEALTH CARE 123 (1990).

Association and its constituent national professional bodies should begin seeking direct access to the Ankang network and other places of psychiatric custody in China, with a view to independently monitoring conditions and practices therein.<sup>256</sup> Advocacy efforts by local and international psychiatric bodies would also greatly assist in encouraging individual Western governments and the European Union to take up the issue, notably by placing the issue of political-psychiatric abuse in China on the formal agenda of the various bilateral human-rights dialogue sessions that have become, in recent years, a central and regular feature of Sino-Western relations.

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256. Initial steps have already been taken in this direction. In May 2000, for example, the American Psychiatric Association's Committee on the Abuse of Psychiatry and Psychiatrists passed a resolution at the APA's annual conference in Chicago "recommending that the World Psychiatric Association investigate the alleged wrongful detention of Falun Gong practitioners in psychiatric hospitals." See *APA Committee Calls for Investigation of Chinese Psychiatric Abuses*, PSYCHIATRIC NEWS, June 16, 2000, available at <<http://www.psych.org/pnews/00-06-16/chinese.html>>, as of December 3, 2000. According to a subsequent report, "The Board [of APA Trustees] also referred this matter to the APA Commission on International Psychiatry and the Committee on Misuse and Abuse of Psychiatry for monitoring the progress of the WPA's investigation." PSYCHIATRIC NEWS, June 16, 2000, available at <<http://www.psych.org/pnews/00-08-04/board.html>>, as of December 4, 2000. Additionally, when an APA delegation of sixty-five American psychiatrists attended the Second Sino-American Conference on Psychiatry in Beijing in April 2000, "[The U.S. psychiatrists] Herbert Peyer, [Allan] Tasman, [Jeffrey] Geller and other psychiatrists met with Chinese Society of Psychiatry leaders informally to convey their concerns about Falun Gong practitioners being allegedly detained involuntarily in psychiatric hospitals and injected with harmful medications for political reasons." PSYCHIATRIC NEWS, June 16, 2000, available at <<http://www.psych.org/pnews/00-06-16/china.html>>, as of December 3, 2000.