



DATE DOWNLOADED: Thu May 20 22:06:33 2021

SOURCE: Content Downloaded from [HeinOnline](https://heinonline.org/HOL)

Citations:

Bluebook 21st ed.

Robin Munro, The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers, 10 UCLA PAC. Basin L.J. 136 (1991).

ALWD 6th ed.

Munro, R. ., The beijing trials: Secret judicial procedures and the exclusion of foreign observers, 10(1) UCLA Pac. Basin L.J. 136 (1991).

APA 7th ed.

Munro, R. (1991). The beijing trials: Secret judicial procedures and the exclusion of foreign observers. UCLA Pacific Basin Law Journal, 10(1), 136-150.

Chicago 17th ed.

Robin Munro, "The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers," UCLA Pacific Basin Law Journal 10, no. 1 (Fall 1991): 136-150

McGill Guide 9th ed.

Robin Munro, "The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers" (1991) 10:1 UCLA Pac Basin LJ 136.

AGLC 4th ed.

Robin Munro, 'The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers' (1991) 10(1) UCLA Pacific Basin Law Journal 136.

MLA 8th ed.

Munro, Robin. "The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers." UCLA Pacific Basin Law Journal, vol. 10, no. 1, Fall 1991, p. 136-150. HeinOnline.

OSCOLA 4th ed.

Robin Munro, 'The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers' (1991) 10 UCLA Pac Basin LJ 136

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

THE BEIJING TRIALS: SECRET JUDICIAL PROCEDURES AND THE EXCLUSION OF FOREIGN OBSERVERS*

Robin Munro**

Since January 5, 1991, more than 30 leaders of the 1989 Chinese pro-democracy movement, including Chen Ziming, Wang Juntao, Wang Dan, Ren Wanding and Bao Zunxin, have been brought to trial in Beijing on charges of "counterrevolution" and sentenced to prison terms ranging from two to thirteen years.¹ (Where verdicts have not been announced, human rights organizations are concerned that the sentences may have been considerably heavier.) Many more of those detained after June 4, 1989 remain in prison awaiting trial.

While insisting that these trials were openly and fairly conducted, the Chinese government ignored all requests by outside groups to be allowed to observe the trials. Foreign journalists were prevented by squads of uniformed and plainclothes police officials from approaching courthouses where trials were underway, or from filming posted trial-notices. In some cases, even the spouses and

* An earlier version of this article first appeared in NEWS FROM ASIA WATCH, Feb. 27, 1991.

** Staff specialist on China for Asia Watch, one of the five regional Watch Committees for Human Rights Watch, the U.S.-based human rights monitoring organization.

1. Some of the trials held since January 1991 have resulted in the following sentences:

<u>Name</u>	<u>Jail Term</u> (yrs.)	<u>Name</u>	<u>Jail Term</u> (yrs.)	<u>Released</u>
Bao Zunxin	5	Wang Dan	4	Liu Xiaobo
Chen Ziming	13	Wang Juntao	13	Chen Xiaoping
Guo Haifeng	4	Wang Youcai	4	Li Yuqi
Hu Ruoyang	4	Xiao Feng	3	Pang Zhihong
Kong Zianfeng	3	Xue Jian-an	2	Chen Tao
Li Nong	5	Yao Junling	2	Chen Lai
Liu Gang	6	Yu Zhenbin	12	Li Chenghuan
Liu Zihou	7(?)	Zhang Ming	3	
Ma Shaofeng	3	Zhang Qianjin	2	Many other dissidents have been tried, but their sentences are not known.
Ren Wanding	7	Zheng Zugang	2	

other members of the defendants' immediate families were prevented from attending the proceedings.²

Until recently, China's rationale for excluding foreigners was widely assumed to be its contention that the trials were an internal affair, and not a matter for outside interference. In fact, however, there exists in China a series of official court regulations which specifically bar foreign observers from attending trials of almost all political, and some categories of criminal defendants. This article presents these documents here in English summary with an analysis of the degree to which the Chinese government is willing to employ duplicitous means to evade international scrutiny of domestic political repression.

Other previously unknown and highly confidential regulations summarized and excerpted below include those dealing with access by foreign consular officials to their own nationals who have been detained in China. These regulations show that police and judicial authorities are authorized by the Chinese government to violate international diplomatic conventions and bilateral consular agreements in order to prevent such access in certain cases. Since the Chinese authorities are prepared to dishonor such agreements and to deny outside access even to foreign nationals detained on criminal charges in China, it is not surprising that all efforts to date by concerned foreign groups and individuals to observe the trials of the 1989 pro-democracy movement leaders have failed.³

Finally, the regulations excerpted below also include one grim reminder of the extent to which the authorities are determined to repress dissent: the censoring of wills of prisoners sentenced to death.

2. See *Rough Justice in Beijing*, appearing in this same issue.

3. Asia Watch made two requests in 1990 to be allowed to observe the trials of those detained since June 4, 1989, but no response was received from the Chinese authorities. Similar requests by Amnesty International and other human rights organizations have likewise been ignored, and several recent delegations to Beijing by concerned Western groups wishing to meet with the accused and observe the trials, including Médecins du Monde and the "International Delegation Concerned with Human Rights in China" have encountered a wall of official silence in the Chinese capital. Requests by the U.S. Embassy in Beijing for permission to send observers to attend the trials have fared no better. At least two Chinese nationals presently studying in the U.S. have risked arrest by travelling to Beijing in an effort to gain admittance to the trials. One, Ge Xun, was tailed by Chinese police throughout his several-day-long, and entirely fruitless, sojourn around the relevant central government offices. *Chinese Dissident Says Beijing Afraid of Scrutiny On Trials*, Reuters, Jan. 20, 1991. The other, Mao Jiye, Secretary General of the Chinese Students and Scholars Federation in Canada, was prevented by police at Beijing airport from entering the country and was put on the first available flight to Japan, where his flight to China originated. *China Allows Activist Safe Departure*, United Press International, Dec. 19, 1990.

THE GUANGDONG HIGH COURT AND SUPREME PEOPLE'S COURT DIRECTIVES OF 1982

On May 25, 1982, the Guangdong Provincial High People's Court requested formal instructions from the Supreme People's Court of China concerning inquiries made by the United States Consulate in Guangzhou. The U.S. Consulate had asked that their officials be permitted to attend and observe trials in the province (According to the State Department in Washington, D.C., for the past decade, U.S. consulates throughout China have sought to be allowed to attend trials of accused counterrevolutionaries and others. The Chinese government has consistently denied permission).

The Guangdong court's request took the form of a list of specific recommendations to the Supreme People's Court as to how the question of requests by foreigners to attend trials in China should be handled. The formal response (*Written Instructions of Reply*) of the Supreme People's Court, issued on July 5, 1982, endorsed these various recommendations and set out additional broad guidelines. Indicative of their authoritative character, both these documents are published in an official volume, unrestricted in its circulation, entitled *The Collected Laws of the People's Republic of China*.⁴ It may be no coincidence that the trials and sentencing of most of the leading activists of the "Democracy Wall" period, including Wang Xizhe, Xu Wenli and Chen Erjin, took place during the same months as the issuance of the documents in question.

The *Request for Instructions* begins by referring to two other documents—the Supreme People's Court's (*Trial*) Regulations for the People's Courts, dated December 11, 1979, and the *Consular Convention between the People's Republic of China and the United States of America*. It points out that both these documents only contain provisions for the authorization of foreigners to attend trials concerning cases which involve foreign interests. The *Request for Instructions* then sets forth the following recommendations, subsequently endorsed by the Supreme People's Court:

1. If foreign consular officials or other foreigners ask to be present as visitors at public hearings of specific cases which do not involve foreign interests, the people's courts should in gen-

4. THE COLLECTED LAWS OF THE PEOPLE'S REPUBLIC OF CHINA [ZHONGHUA RENMIN GONGHEGUO FALU QUANSHU] (Wang Huaian 3d ed. 1989) [hereinafter COLLECTED LAWS]. The documents are entitled, respectively, *Request for Instructions by the Guangdong Provincial High People's Court on Whether Foreigners are Allowed to be Present as Visitors or to Conduct Press Coverage when the People's Courts Hold Public Sitzings on Cases which Do Not Involve Foreign Interests* and *Written Instructions of Reply of the Supreme People's Court on Whether Foreigners are Allowed to be Present as Visitors or to Conduct Press Coverage when the People's Courts Hold Public Sitzings on Cases which Do Not Involve Foreign Interests*. *Id.* at 288-89.

eral refuse permission.⁵

2. For the purpose of carrying out external propaganda on the socialist legal system, the people's courts may selectively invite foreign consular officials or other foreigners to be present as visitors at, or to conduct press coverage of, public hearings of ordinary criminal cases or of cases involving civil or economic disputes. They shall comply with the courtroom rules of the people's courts.

3. When the people's courts hold, in accordance with the law, public hearings of cases involving counterrevolution, or cases of dereliction of public duty relating to China's internal affairs, then foreigners and foreign journalists should in general not be permitted to be present as visitors or to conduct press coverage. Where cases damaging to the reputation of the state and nation, and also any other cases that are not suitable for foreigners to understand are concerned, then foreigners and foreign journalists must, without exception, be denied permission to be present as visitors or to conduct press coverage whenever, in accordance with the law, public hearings of such cases are held.

4. When foreigners or foreign journalists request to be present as visitors at, or to conduct press coverage of, public hearings of relevant cases by the people's courts, such requests should be handled in accordance with the stipulations of Article 9 of the Courtroom Rules.⁶ The question of which cases to select [for this purpose] should be considered and decided upon by the court presidents, and, moreover, the prior agreement of the external affairs departments and authorization by the intermediate courts must be obtained. In cases involving either counterrevolution or dereliction of public duty, prior approval and authorization by the high courts must be obtained. Their reactions and opinions⁷ should be promptly reported to the court at the next

5. The original Chinese term for "cases which do not involve foreign interests"—*fei shewai anjian*—means, strictly speaking, cases either in which foreigners are not involved as parties to litigation or in which foreign legal interests are not at stake; it should not be construed as meaning, for example, "cases into which foreigners have no business poking their noses."

6. The *Courtroom Rules of the People's Courts*, issued by the Adjudication Committee of the Supreme People's Court on December 11, 1979, came into force on January 1, 1980. Article 9 of the *Courtroom Rules* reads:

In cases where foreigners request to attend as visitors, or foreign journalists request to conduct press coverage of public hearings of cases involving foreign interests, they may submit the request to the chief competent department and may, upon approval of the people's court, be admitted to the courtroom after showing a visitor's permit or pass permit issued by the people's court; moreover, they should observe the various stipulations set forth in Articles 5, 6, 7 and 8 of these Rules.

The latter articles cover matters such as that minors, the mentally ill and intoxicated persons are not to be admitted to courtrooms; and that no tape-recording, photographing, clapping or speech-making will be permitted from the visitors' gallery.

7. It is unclear from the original text as to whether the phrase "[t]heir reactions and opinions" refers to the views of foreigners and foreign journalists who have been admitted to trials or, alternatively, to the views of the "high courts," as referred to in the preceding sentence.

higher level and to [other] relevant departments.

In brief, then, the Guangdong High Court's recommendations concerning trials of counterrevolutionaries were that foreigners of all types "should in general not be permitted to be present." Moreover, the exclusion of foreigners should be automatic concerning "cases damaging to the reputation of the state and nation" and "any other cases the details of which it would be disadvantageous to permit foreigners to become acquainted with." These various points would seem to dispense quite comprehensively with any possibility of foreigners ever gaining admittance to trials of counterrevolutionaries in China. Thus, the stipulation in section 4 of the *Request for Instructions* of a notional procedure by which foreigners might be admitted to such trials appears to have no practical substance or significance.

In its *Written Instructions of Reply* of July 5, 1982, the Supreme People's Court informed the Guangdong High Court that, "...after joint deliberations with the chief competent departments of the Ministry of Foreign Affairs, we are in basic agreement with the opinions of your court" (emphasis added). The *Written Instructions of Reply* then detailed three sets of procedures to be followed in the event of requests being received from foreigners to attend trials of "cases which do not involve foreign interests." In the second of these, the Supreme People's Court stressed that the types of trials to which foreigners (including embassy officials, consular staff and journalists) are to be granted admittance "should be selected with great care" (*yingdang shenzhong di yuyi xuanze*) and that "in general, it is appropriate to select common criminal cases and civil cases."⁸

Thus, while the *Written Instructions of Reply* do not explicitly endorse the Guangdong High Court's recommended ban on the admission of foreign observers to trials of counterrevolutionaries, the Supreme People's Court's expression of "basic agreement" with the *Request for Instructions* as a whole show that such an endorsement is in fact clearly implicit. Any reasonable interpretation to the contrary would require the Supreme People's Court to have specifically rejected the Guangdong court's recommendation on this point, something which it did not do.

8. Authorization for such admission must be obtained from the external affairs departments and from courts at the next higher level. The other two procedures mentioned in the *Written Instruction of Reply* are that such requests should be addressed to the "competent foreign affairs departments" and then discussed and decided upon by them in conjunction with the people's courts, which should issue visitors' and journalists' passes to the successful applicants. Third, the Supreme Court advises that if the Guangdong court decides to grant permission for U.S. Consular officials to attend, locally, "trials which do not involve foreign interests," then, in order "not to give undue prominence to one particular country," consular officials or journalists of other foreign countries should also be invited to attend the relevant trials.

The obsessive degree of secrecy shown by China's courts extends, however, well beyond the mere physical exclusion of foreigners from courtrooms in sensitive cases. The *Collected Laws* also includes the text of another important judicial directive, dated October 18, 1957 and entitled *Written Instructions of Reply of the Supreme People's Court Instructing that the Judgment of Cases which Should Not be Heard in Public According to Law Should Still Be Made Public to the Society*. Although left unspecified in this particular text, the types of cases "which should not be heard in public" certainly include those specified in the Criminal Procedure Law of China (1980). According to Article 111 of the latter:

The people's courts shall conduct adjudication of cases in the first instance in public. However, cases involving state secrets or the private affairs of individuals are not to be heard in public.⁹

In response to the question of whether or not public announcements should be made of court judgments in cases held *in camera* (a question raised during the height of the notorious "Anti-Rightist Campaign" by the Shaanxi Provincial High People's Court in a memorandum of August 6, 1957), the Supreme People's Court directive answered in the affirmative. In its further elaborations on the point, however, the Supreme People's Court stated:

If the judgement [in such a case] can be announced immediately after the hearing, then, even if no members of the public are present¹⁰ at the time, the judgment should nonetheless be immediately announced.

Given that nearly all of the several hundred thousand casualties of the 1957 "Anti-Rightist Campaign" were, 20 years later, fully rehabilitated and declared victims of frame-ups and miscarriages of justice by the Party-controlled courts, the recent inclusion in the *Collected Laws* of such a clear example of judicial "giving with one hand and taking away with the other" raises serious cause for concern. However, the main point of the 1957 document's reproduction in the 1989 volume seems to be to underscore the restriction of foreigners' access to information about sensitive trials, given that the reproduction appears immediately after the exchange between the Guangdong High Court and the Supreme People's Court. The document states:

The purpose of allowing, in accordance with law, certain cases not to be heard in public is so that certain undesirable conse-

9. THE CRIMINAL LAW AND THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA 150 (Foreign Languages Press 1984), [hereinafter CRIMINAL PROCEDURE LAW]. Article 111 further states: "Cases involving the commission of crimes by minors . . . are also generally not to be heard in public." Hearings concerning these three types of cases are, of course, closed to Chinese citizens as well as to foreigners. *Id.*

10. "sui wu qunzhong pangting . . ."

quences which might ensue if the cases were heard in public may be avoided. Thus, when preparing the written judgments, adjudicative personnel should, when entering the facts of the crimes, carefully avoid mentioning any details which might produce these undesirable consequences. In cases involving state secrets, secrecy should be carefully maintained¹¹

In other words, according to the Supreme People's Court, even when a trial has been held *in camera* and the verdict is to be "publicly" announced in a courtroom devoid of members of the public, the written verdict should still be carefully doctored in order to erase important facts from the legal record—facts which in cases of counterrevolution are likely to have been crucial to the determination of guilt. This directive is, as mentioned, a judicial relic of the discredited "Anti-Rightist" period, but it remains in force. When assessing their response to the numerous requests by foreign governments, groups and individuals to be admitted as observers to the recent trials of leading dissidents, senior Chinese officials most likely have turned to that section of the *Collected Laws* in which both the directive and the Guangdong High Court-Supreme People's Court exchange appear.

Another example of ostensibly insisting upon adherence to due process while effectively conferring authority upon the courts to violate that same due process is seen in a document issued by the Supreme People's Court on September 20, 1983. The document, entitled *Reply (1) of the Supreme People's Court on Matters Relating to the Application in Practice of the Laws by the People's Courts in Adjudicating Cases Involving Severe Criminal Offenses*,¹² answered a number of questions raised by the lower courts concerning draconian new legislation introduced in 1983 in connection with a major anti-crime campaign. This "crackdown on crime," which led to the execution of many thousands of so-called "serious criminals," continued until at least 1985; the 1983 legislation remained in force thereafter, and a new round of the campaign, still in progress in June 1991, was launched in early 1990.¹³ Section 12 of *Reply (1)* reflects the court's approach:

Question: In order to strike prompt and severe blows against criminal activities, would it be permissible not to hold hearings of certain cases in public? ([Query from courts in] Jiangxi, Fujian and Henan provinces and from the railroads court system.)

Answer: According to the stipulations of Article 111 of the Criminal Procedure Law, the people's courts should hear all cases in open court except where the law specifies otherwise.

11. COLLECTED LAWS, *supra* note 4, at 289.

12. *Id.* at 126.

13. See AMNESTY INTERNATIONAL, WHEN THE STATE KILLS 122 (1989); see also R. EDWARDS, L. HENKIN & A. NATHAN, HUMAN RIGHTS IN CONTEMPORARY CHINA 64 (1986).

However, [the courts] may, in accordance with specific circumstances, be flexible in determining the scope of trials to be heard openly (emphasis added).¹⁴

As mentioned above, Article 111 clearly states that the only types of cases to be heard *in camera* are those "involving state secrets or the private affairs of individuals" (as well as those involving minors). In the passage just cited, however, the Supreme People's Court in effect instructed the lower courts not to feel bound by the Criminal Procedure Law, and instead, to decide for themselves which cases to hold publicly and which to conduct *in camera*.

CONFIDENTIAL REGULATIONS OF 1981 ON CONSULAR ACCESS TO DETAINED FOREIGNERS

On June 19, 1981, China's public security, foreign affairs and judicial authorities jointly issued a highly confidential directive setting forth regulations governing the access by foreign embassy officials, consular staff and journalists to foreign nationals detained in China on criminal charges or as criminal suspects, and detailing the correspondence rights of such detainees.¹⁵ Appended to the directive—issued only to provincial-level foreign affairs departments, public security offices, high people's courts and high people's procuratorates—were two versions of the relevant regulations.

The various documents are found in a confidential volume entitled *Manual of Law Enforcement (Part 3)*.¹⁶ The second version of the regulations covers the matter of outside access to both Chinese and foreign detainees and is, according to the joint directive, the one to be issued to foreign embassies or consulates in the event that a national of the foreign country concerned is arrested or detained in China. The first (and much longer) version deals exclusively with the matter of diplomatic access to detained foreign nationals. Marked "confidential," this version sets forth a range of restrictions on diplomatic access to foreign-national detainees; these restrictions are not even hinted at in the version of the regulations intended for foreign diplomatic scrutiny.

A comparison of the confidential version of the regulations with the version that appears in the openly published *Collected*

14. "Dan gongkai shenpan de guimo, keyi anzhaoshi qingkuang linghuo queding."

15. *Joint Circular of the Ministry of Public Security, Ministry of Foreign Affairs, Supreme People's Court and Supreme People's Procuratorate Concerning How to Handle the Matter of Interviews with Offenders of Foreign Nationality Held in Custody and the Correspondence of Such Offenders with the Outside World* in POLICY AND LAW RESEARCH OFFICE OF THE MINISTRY OF PUBLIC SECURITY, ZHIFA SHOUCE (DI SAN JI) [MANUAL OF LAW ENFORCEMENT (PART 3)] 209-13 (2d ed. 1985) [hereinafter *Joint Circular*].

16. *Id.* The various documents are the *Joint Circular*, the *Confidential Regulations*, and the (open) *Regulations*.

*Laws*¹⁷ reveals the existence of what can only be termed a policy of deliberate duplicity by the Chinese authorities. When the Chinese government declares, as it has done consistently regarding the trials of pro-democracy movement leaders, that criticisms of human rights abuses in China are "groundless" (since official actions have invariably been carried out "in strict accordance with the law"), the question must then be asked: to which version of the law do the authorities refer—the openly released version, or the "restricted access," confidentially circulated (*neibu*) version? As the following extracts show, the distinction can be crucial. Additionally, the documents' secret restrictions on outside consular access to foreign nationals held in China help to account, by extension, for the recent unqualified refusal of the authorities to admit foreign observers to the trials of the 1989 Chinese dissident leaders or, indeed, to allow foreigners any access to the defendants whatsoever.

The 1981 *Joint Circular* begins by noting that in 1955 China "specifically drew up confidential regulations" concerning the issue of "meetings with detained criminals of U.S. nationality."¹⁸ Recent diplomatic developments, however, necessitated the "updating" of these regulations:

Not long ago, the Chinese Government signed and joined the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations¹⁹ and also signed a number of bilateral consular "agreements" and "exchange of notes" with the United States, Canada and Australia. All of these documents contain stipulations that if a citizen of the dispatching nation is detained or arrested, then the receiving nation should, among other things, permit visits [with the detainee] to take place. Moreover, these documents are all binding in nature upon the two parties; they must be respected by both sides, and no infringement of them is permitted.²⁰

The circular then states that, since foreign nationals were currently being detained in more than ten different provinces, municipalities and autonomous regions throughout China, it became necessary to set forth so-called "clear and precise regulations" on the matter of access to detained foreign nationals. But in a striking non sequitur, insofar as foreign diplomatic access to the truth of the matter is concerned, the circular continues:

Hence, we have formulated a set of *Confidential Regulations*

17. COLLECTED LAWS, *supra* note 4, at 310.

18. *Joint Circular*, *supra* note 15, at 209.

19. China's participation in the Vienna Convention on Diplomatic Relations became effective on December 25, 1975, and on September 15, 1980, China dropped one of its three former reservations concerning specific articles of the convention. China's participation in the Vienna Convention on Consular Relations became effective on August 1, 1979.

20. *Joint Circular*, *supra* note 15, at 209.

Concerning Meetings with Offenders of Foreign Nationalities Held in Custody and the Correspondence of Such Offenders with the Outside World, a set of Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World, and also a Permit of Visitation.

The Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World can be given to embassies and consulates [whose staff are] permitted to visit their nationals who have committed crimes in China.²¹

It is disturbing enough that the procedures which foreign officials must follow in order to visit their detained nationals are covered only in the *Confidential Regulations*, and not in the version that such officials are actually given. Much more troubling, however (as revealed in the *Confidential Regulations*, which deal only with foreign detainees), is the previously unknown fact that foreign nationals, as well as Chinese citizens, can be charged with the crime of "counterrevolution." The *Confidential Regulations* provide:

1. Principles for the conduct of meetings. In general, meetings will be permitted in the case of ordinary criminal offenders upon whom judgment has already been passed and also those upon whom judgment has not yet been passed, and also in the case of counterrevolutionary criminals upon whom judgment has already been passed. Permission may also be granted for meetings with counterrevolutionaries upon whom judgment has not yet been passed, provided that this would hinder neither the investigation nor the trial.²²

But the worst is yet to come:

Where it would hinder either the investigation or the trial, meetings [with foreign counterrevolutionaries upon whom judgment has not yet been passed] should temporarily be denied. But the decision is to be rendered by the public security department (or bureau) at provincial, municipal or autonomous-regional levels, or by the high people's court, and a report should be sent to, and placed on file by, the Ministry of Public Security, the Ministry of Foreign Affairs, the Supreme People's Court and the Supreme People's Procuratorate.

In cases where, because it would hinder either the investigation or the trial, permission for meetings is temporarily denied, then, on the basis of the stipulations of the Criminal Procedure

21. *Id.* at 209-10.

22. *Id.* at 210. It is unclear to whom, precisely, this notion of 'foreign counterrevolutionaries' might be intended to refer. A number of Hong Kong Chinese and dozens of Taiwan Chinese have been arrested and convicted on charges of counterrevolution over the past decade. However, the Chinese authorities regard Chinese from both Hong Kong and Taiwan as being citizens of the PRC, and certainly not "foreign nationals" with whom the *Confidential Regulations* are solely concerned. In any event, the existence of this category of crime should give pause for thought to any foreigners who may be thinking of involving themselves in, for example, China's post-June 1989 underground dissident movement.

Law, the family or work-unit of the foreigner concerned is not to be informed that he or she has been detained or arrested.²³

In the event of the other side making, on the basis of the relevant provisions of the Vienna Convention on Consular Relations or various bilateral treaties or agreements, representations about the matter to China's foreign affairs or other departments, then we can find some pretext or excuse to raise by way of an explanation, or we can just procrastinate."²⁴

The above passage in effect provides, in terms leaving little room for doubt, a policeman's charter for the secret and incommunicado detention of foreigners in China. Moreover, that charter potentially extends through the trial and conviction stage, and allows throughout the withholding of notification of the accused's family "where it would hinder either the investigation or the trial." In addition, the passage not only condones but actively encourages China's police and judicial authorities to disregard major international and bilateral agreements which, as noted above, "are all binding in nature upon the two parties; they must be respected by both sides, and no infringement of them is permitted."

Elsewhere, in reference to cases where meetings with foreign detainees have been authorized, the *Confidential Regulations* state: "As regards location, the meetings should be arranged to take place in a reception room, rather than in the [prisoner's] cell, in order to prevent any observation of prison conditions from taking place."²⁵

If the basic rights of foreign nationals can be treated with such obvious contempt by the Chinese authorities, there can be little hope that the rights of Chinese citizens might fare any better. In-

23. *Id.* Although not specified in the *Confidential Regulations*, the "stipulations of the Criminal Procedure Law" alluded to here are probably Articles 43 and 50. Article 43 states:

When a public security organ detains a person, it must produce a detention warrant. The family of the detained person or his unit shall be notified within twenty-four hours after detention of the reasons for detention and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them.

Article 50 states:

When a public security organ arrests a person, it must produce an arrest warrant. The family of the arrested person or his unit shall be notified within twenty-four hours after arrest of the reasons for arrest and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them.

CRIMINAL PROCEDURE LAW, *supra* note 9, at 128, 130.

24. ". . . ke tuoci jieshi huo tuoyan." *Joint Circular*, *supra* note 15, at 210. The translation here is based upon the definition of terms given in A CHINESE-ENGLISH DICTIONARY, a standard PRC reference book published in Beijing in 1982: "tuoci: 1) find a pretext; make an excuse . . . 2) pretext; excuse; subterfuge. . . [e.g.] He said he was busy, but that was just an excuse." "tuoyan: delay; put off; procrastinate. . . [e.g.] The deadline is drawing near; we can't delay any more. . . play for time; stall (for time). . . dilatory (delaying, stalling) tactics." A CHINESE-ENGLISH DICTIONARY (1982).

25. *Joint Circular*, *supra* note 15, at 211.

deed, the actual fate of thousands of Chinese pro-democracy activists held incommunicado or brought secretly to trial since the start of the June 4, 1989 repression has been at least as bad, and often much worse, than the potential scenario outlined above.²⁶

In a final act of calculated diplomatic deception, the version of the 1981 *Joint Circular* which appears in the June 1989 volume, *Collected Laws of the People's Republic of China*, has been carefully doctored to remove all reference to the *Confidential Regulations*. Only the *Regulations Concerning Meetings with Offenders Held in Custody and the Correspondence of Such Offenders with the Outside World*, the document authorized for foreign diplomatic scrutiny, is included as an appendix in the volume; the *Confidential Regulations* have been airbrushed from the scene, and the effect is to make it appear that the *Joint Circular* refers exclusively to the former document.²⁷

In short, the truly authoritative laws and regulations in China

26. See, e.g., ASIA WATCH, PUNISHMENT SEASON: HUMAN RIGHTS IN CHINA AFTER MARTIAL LAW (1990); ASIA WATCH, REPRESSION IN CHINA SINCE JUNE 4, 1989: CUMULATIVE DATA (1990) [hereinafter CUMULATIVE DATA].

27. On August 27, 1987, the Chinese authorities issued another set of public regulations concerning cases involving foreign nationals, entitled *Regulations of the Ministry of Foreign Affairs, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Various Matters Relating to the Handling of Cases Involving Foreign Interests*. This document, which also appears in *Collected Laws*, deals more fully with the issues of notification of detention and arrest and of providing consular access to detainees than did either of the June 1981 regulations, and specified that the *Vienna Convention on Consular Relations* and bilateral diplomatic agreements were to be respected. It also stated that "... where conflicts arise between the present regulations and any previous regulations, the present regulations should in all cases be taken as the standard." *COLLECTED LAWS*, *supra* note 4, at 312.

However, the preface to *Collected Laws* stipulates equally clearly that the volume comprises only those "laws and decrees that are currently in effect." The preface adds that "certain sections" of the laws and regulations included in the volume have been superseded by "subsequent legal interpretations and are thus no longer in effect"; but it also states that where this is the case, "the inoperative sections have not been deleted, and explanatory footnotes have instead been added." *Id.* at preface. The 1981 *Joint Circular* and the open *Regulations*, discussed above, are reproduced in *Collected Laws* without the addition of any such explanatory footnotes.

Moreover, the original format of the documents' presentation, as found in the confidential *Manual of Law Enforcement (Part 3)* is maintained in *Collected Laws*, inasmuch as both the original appendices to the 1981 *Joint Circular* are clearly noted in the latter. The difference is that the first appendix—which in the uncensored version comprises the *Confidential Regulations*—is (as one would only expect of such a document) listed in *Collected Laws* simply as having been "Omitted." It is not footnoted in the text as having been either "superseded" or rendered "inoperative" by any more recent regulations. The 1981 *Confidential Regulations* can therefore safely be assumed to be still effective. Above all, however, the authorities' time-honored custom, which is well exemplified by the case of the June 1981 documents, of producing "paired" regulations, one to be made public and the other kept confidential, leads one to speculate as to the possible existence of a "confidential" variant of almost any law or regulation publicly promulgated by the Chinese authorities—including, of course, one such for the August 27, 1987 *Regulations*.

(as opposed to many of those which appear publicly in the statute books) in effect comprise one enormous and virtually impenetrable "state secret," especially where the judicial punishment of dissent or "counterrevolution" is concerned.

CONFIDENTIAL REGULATIONS OF 1984 ON THE CENSORING OF PRISONERS' WILLS

The Chinese government is prepared to go to remarkable lengths in order to muzzle dissent. Many autocratic regimes try to silence their critics even beyond the grave, but only the Chinese authorities have, so far as is known, actually drawn up detailed regulations which convert this task into a bureaucratic routine. The document, issued on January 11, 1984, is entitled *Circular of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice Concerning the Correct Handling of Last Wills and Various Objects Left Behind by Criminals Condemned to Death*.²⁸ As was noted earlier, the "crackdown on crime" which began in the summer of 1983 subsequently led to expedited trials and summary executions for many thousands of those accused by the authorities of committing "serious crimes." As the 1984 circular makes clear (see below), many of these persons regarded their trials and convictions as unjust and the death sentences imposed upon them as being entirely wrongful. In sanctioning the censorship of the last wills and testaments of people condemned to death, the 1984 circular ensures that even the families of the condemned individuals will never be able to know the details of their relatives' final thoughts.

So far, the official Chinese media has announced a total of 50 judicial executions of those involved in the 1989 pro-democracy movement.²⁹ All have been either workers or peasants, rather than students or intellectuals. Many may have been wrongfully executed, but access to any last statements of self-exoneration has been denied. Now that the series of show trials of the so-called "black hands" of the democracy movement have apparently ended, it is likely that the authorities will once again turn their attention to the thousands of worker participants in the movement who have been held incommunicado since the June 1989 crackdown. In particular, the authorities have yet to bring to trial several of the main leaders of the Beijing Workers Autonomous Federation, most notably Liu

28. ZHIFA SHOUCHE (Di Si Ji): DAJI XINGSHI FANZUI ZHUANJI [RESEARCH OFFICE OF THE MINISTRY OF PUBLIC SECURITY, MANUAL OF LAW-ENFORCEMENT (4): SPECIAL ISSUE ON THE CRACKDOWN AGAINST CRIMINAL OFFENDERS] 68-9 (1984) [hereinafter *1984 Circular*].

29. See CUMULATIVE DATA, *supra* note 26. See also *Protester Executed for Burning Troop Carrier*, South China Morning Post, Mar. 19, 1991.

Qiang. It is probable that Liu and other leaders of China's fledgling independent labor movement, especially those imprisoned in the provinces, will be tried in secret and that their sentences will be severe.

The "crackdown" legislation of 1983-84 remains in force and offers the legal basis for the latest round of the anti-crime campaign, which began in Spring 1990. The January 1984 circular thus provides a chilling reminder of the Chinese authorities' continued determination to control all forms of political expression, even when the state has already exacted the ultimate penalty. The circular is addressed to provincial-level courts, procuratorates and public security and judicial organs:

Recently, certain areas have reported that a tiny minority of criminals who have been sentenced to death have been using the opportunity to write letters and leave last testaments as a means of engaging in slander, so as to confuse the issues of right and wrong and poison people's minds. In addition, some individuals have exploited the situation in order to hold funerals for executed criminals and make trouble, thereby disturbing the proper social order. In order more smoothly to ensure the implementation of Articles 154 and 155 of the Criminal Procedure Law, and deal correctly with these problems, we therefore instruct as follows:

1. The people's court responsible for handing a condemned criminal over for execution should promptly examine any last wills or statements made by the condemned criminal, and deal with them in the following ways:

i) Wills and statements of a general nature, dealing with such matters as the bequeathing of property, settling of financial debts and entrusting of family affairs to others, are to be handed over to the person's family after duplicate copies have been made for future reference.

ii) Those parts which are slanderous in nature or which make reactionary statements are not to be handed over to the person's family.

iii) Where complaints of grievances and alleged injustices are concerned, the facts should be quickly investigated and the matter dealt with in accordance with the law. The sections [of the will or statement] complaining about the grievances or alleged injustices are not to be passed on to the person's family.

iv) Any part involving leads or clues to cases, or which is of a testimonial or similar nature, should be copied down and the information conveyed to the competent organs; such parts are not to be handed over to the person's family.

All other wills and statements, besides those containing the parts specified in sections ii), iii) and iv) above, are to be copied out and only the copies given to the person's family; the original document is to be placed on file for future reference [. . .]

4. It is strictly forbidden for any person to hold funerals

and make trouble on behalf of a criminal who has been executed, or to take the opportunity to disturb public order or engage in other such acts.³⁰

30. 1984 Circular, *supra* note 28, at 68-9.