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The Ankang: China's Special Psychiatric Hospitals

ROBIN MUNRO*

In the former Soviet Union during the Khrushchev–Brezhnev era, the KGB used its forensic psychiatric institutions to brand, arbitrarily and for political reasons, large numbers of political dissidents as suffering from ‘schizophrenia’ and ‘paranoid psychosis’ and then incarcerated them for long periods in ‘special psychiatric hospitals’. In 1976, the Soviet Union was severely censured on this account by psychiatrists from all over the world at a conference in Hawaii of the World Psychiatric Association. Only after Gorbachev’s rise to power were these errors rectified. We have now discovered that similar such practices have also occurred in certain parts of China.¹

Jia Yicheng (China’s top forensic psychiatrist), 1998

Since the earliest years of the People’s Republic of China (PRC), political dissidents, religious nonconformists, ‘whistle-blowers’ and other dissenting citizens have consistently been viewed by the Communist Party as posing a major political threat to society. Even in today’s economically more open China, such people continue to be arrested and imprisoned as enemies of the state. Until 1997, the criminal charge of choice under the PRC legal system was ‘counterrevolution’, while nowadays the less politically sounding charge of ‘endangering state security’ is most often applied.²

In a significant minority of such cases, however, the official psychiatric literature in China unequivocally records that, since the late 1950s, detained dissidents of various kinds have additionally been ordered to undergo examination by police psychiatrists, a process known as ‘forensic psychiatric evaluation’, and have then been labelled as

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¹ Jia Yicheng (1998) ‘A Discussion of Certain Legal Issues Concerning the Hospitalisation of the Mentally Ill’ (1) *Shanghai Archives of Psychiatry* 6. The Hawaii World Congress of the WPA took place in 1977, not in 1976. For an explanation of the term ‘forensic psychiatry’, see note 3 below.

² For details of the relevant legislative changes, see Human Rights Watch/Asia and Human Rights in China (1997) ‘Whose Security?: “State Security” in China’s New Criminal Code’ (9:4) *Human Rights Watch Report* at 13-21 and *passim*.

criminally insane and forcibly committed to various types of psychiatric institutions.³ In essence, the question placed before psychiatric examiners in all such cases has been: are the detainees in question 'bad' (in the legal sense), 'mad' (in the medical sense), or are they — in certain borderline cases — a combination of both? Whatever the verdict, in the authorities' view, socially dangerous acts have 'objectively' been committed, and so society must be protected from any further such threat. Freedom, pursuant to a finding that the forensic examinee is both sane and innocent, has thus rarely been an option for those concerned. Even today, the acquittal rate for people accused of political crimes in China is virtually nil, and if found non-prosecutable or not guilty by reason of insanity, dissidents dealt with under the Chinese legal-psychiatric system are, in most cases, sent for long-term 'custodial care'.

During the 1970s and 1980s, reports that the security authorities in the Soviet Union were incarcerating substantial numbers of political and religious 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 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 organisations to expose these abuses 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. It was not readmitted to the body until 1989, after several years of perestroika and the preliminary establishment of direct access by Western psychiatric delegations to Soviet forensic-psychiatric institutions and their alleged mentally-ill political and religious inmates.⁴

Why did the Soviet authorities resort to this obscure and, at first sight, rather improbable form of political repression when they had at their disposal the fearsome resources of the KGB, a panoply of legislation tailor-made to criminalise all forms of open dissent in society, and also a vast nationwide network of prisons and labour camps⁵ — all of which had been regularly deployed on a massive scale against dissidents of all kinds since at least the 1930s? The answer to this vexatious question is still far from clear, and it remains similarly elusive in the case of China. A useful starting point, however, is to look at how those at the sharp end of the system, the victims themselves, have sought to understand and explain it. In a rightly famous *samizdat* article smuggled out

³ The term 'forensic psychiatry' refers to the field of professional cooperation between psychiatrists and the police or the judiciary. A typical example of such cooperation is where police officers suspect that a detainee may be mentally ill, and therefore seek expert psychiatric opinion in order to ascertain the detainee's mental capacity to undergo further legal proceedings. Although forensic psychiatry is commonly applied, in China as elsewhere, within both the civil and the criminal sectors of the legal system, the focus of the present study is on its nature and role within the Chinese criminal justice system.

⁴ On the abuse of psychiatry in the former Soviet Union, see Bloch, S and Reddaway, P (1977) *Russia's Political Hospitals: The Abuse of Psychiatry in the Soviet Union* Victor Gollancz; Bloch, S and Reddaway, P (1984) *Soviet Psychiatric Abuse: The Shadow Over World Psychiatry* Victor Gollancz; Smith, TC and Oleszczuk, TA (1996) *No Asylum: State Psychiatric Repression in the Former USSR* New York University Press; and van Voren, R (ed) (1989) *Soviet Psychiatric Abuse in the Gorbachev Era* IAPUP. See also Helsinki Watch (January 1988) 'Soviet Abuse of Psychiatry for Political Purposes'; and Helsinki Watch (May 1990) 'Psychiatric Abuse in the Soviet Union' (both published by Human Rights Watch, New York).

⁵ See Appelbaum, A (2003) *Gulag: A History* Doubleday.

of a strict-regime labour camp in 1974, titled 'A Manual on Psychiatry for Dissenters',⁶ the leading Soviet dissidents, Vladimir Bukovsky and Dr Semyon Gluzman — both of whom had received long prison terms for publicly opposing the political misuse of psychiatry against sane dissenters in the USSR (Gluzman was himself a psychiatrist and Bukovsky had earlier been psychiatrically incarcerated on spurious medical grounds) — offered the following explanation:

It is well known that in the Soviet Union today large numbers of dissenters are being declared insane, and there is reason to fear that this method will be used on an even greater scale in the future. It is not difficult to find an explanation for this phenomenon. From the point of view of the authorities, it is an extremely convenient method: it enables them to deprive a man of his freedom for an unlimited length of time, keep him in strict isolation, and use psychopharmacological means of 're-educating' him; it hinders the campaign for open legal proceedings and for the release of such people, since even the most impartial man will, if he is not personally acquainted with a patient of this sort, always feel a twinge of uncertainty about his mental health; it deprives its victim of what few rights he would enjoy as a prisoner, and it provides an opportunity to discredit the ideas and actions of dissenters, and so on.

There is, however, another, no less important side. Dissenters, as a rule, have enough legal grounding so as not to make mistakes during their investigation and trial, but when confronted by a qualified psychiatrist with a directive from above to have them declared non-responsible, they have found themselves absolutely powerless. All this has, inevitably, engendered renewed fear and dismay in dissenting circles and is a reason for cases of unexpected 'repentance' and recantation which have occurred in recent months.

Forensic psychiatry has thus renewed the fear of persecution, which a knowledge of the law and skill in applying it had previously dispelled. A mood of resignation to one's fate, a sense of one's powerlessness to resist this method of persecution, has become widespread.⁷

The subject of legal or forensic psychiatry in China has hitherto received little academic attention outside of the PRC itself. A number of very detailed and informative studies of the country's general psychiatric and mental healthcare system have been written,⁸ but these have rarely addressed the forensic dimension of the topic in significant

⁶ *Samizdat*, meaning 'self-published', was the term used for any kind of dissident or officially unsanctioned literature in the former Soviet Union.

⁷ Bukovsky, V and Gluzman, S (1974) 'A Manual on Psychiatry for Dissenters' cited in Bloch, S and Reddaway, P *Russia's Political Hospitals* supra note 4 at 419. At the time, Bukovsky was serving a 12-year prison sentence for having sent detailed documentation on the psychiatric incarceration of sane dissidents in the USSR to the World Psychiatric Association at its triennial congress in Mexico City in 1971, and Gluzman was serving a seven-year sentence after becoming the first Soviet psychiatrist to oppose these unethical practices publicly. The manuscript was handwritten by the two men in conditions of great secrecy at Labour Camp No 35 in the Perm Region, whence it was smuggled out to Moscow and then typed up and distributed by fellow dissidents in *samizdat* form before being sent for publication in the West. Bukovsky now lives in the UK. A collection of his documents on Soviet-era political psychiatry is available at: <<http://psi.ece.jhu.edu/~kaplan/IRUSS/BUK/GBARC/buk.html>>.

⁸ See Pearson, V (1995) *Mental Health Care in China: State Policies, Professional Services and Family Responsibilities* Gaskell; Phillips, MR (1998) 'The Transformation of China's Mental Health Services' (39) *The China Journal* 1; Kleinman, A (1986) *Social Origins of Distress and Disease: Depression, Neurasthenia*

depth.⁹ There was, until recently, very little documentary or other evidence available to suggest that abusive medico-legal psychiatric 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, therefore, has been that the Chinese authorities, despite their poor record in many other areas of human rights concern, have at least never engaged in the misuse of legal psychiatry as a means of dealing with dissident thought and activity. A wealth of evidence has subsequently come to light, however, which clearly disproves this assumption.

From the early 1990s onwards, scattered reports from China began to indicate that political dissidents and other nonconformist individuals were being subjected to psychiatric appraisal by the police and then committed to psychiatric hospitals on an involuntary and prolonged basis. The most famous case is that of Wang Wanxing, a worker now in his fifties, who was first arrested in the mid-1970s for supporting the then officially denounced policies of Deng Xiaoping. Partially rehabilitated after the death of Mao Zedong, 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 protesting the 4 June 1989 crackdown and calling for greater human rights and democracy in China, and was immediately arrested.¹⁰ His wife was subsequently informed by the police that if she signed a statement saying that he was mentally disturbed, he would be released promptly. When she did so, however, the police then placed Wang in an institution for the criminally insane (the Beijing Ankang special psychiatric hospital) situated in the outskirts of the capital, where he remained — diagnosed by police psychiatrists as a 'paranoid psychotic' — until early 1999. In November of that year, at the end of a six-month parole period, Wang announced his intention to hold a press conference with foreign journalists to discuss his ordeal and was again detained and sent back to the same psychiatric detention facility. In August 2002, he was reportedly transferred to a ward holding psychotic murderers.¹¹ Today, 13 years after his initial detention in June 1992, Wang is still being forcibly held and 'treated' at the Beijing Ankang mental asylum.¹²

Wang Wanxing'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.¹³ Wang has

and Pain in Modern China Yale University Press; and Phillips, MR, Pearson, V and Wang, R (eds) (1994) *Psychiatric Rehabilitation in China: Models for Change in a Changing Society* (164:24) *British Journal of Psychiatry*.

⁹ For an important exception, see Pearson, V (1992) 'Law, Rights, and Psychiatry in the People's Republic of China' (15) *International Journal of Law and Psychiatry* 409; and Pearson, V (1996) 'The Chinese Equation in Mental Health Policy and Practice: Order Plus Control Equal Stability' (19) *International Journal of Law and Psychiatry* 437.

¹⁰ Several foreign reporters and television crews witnessed Wang's arrest in Tiananmen Square on 3 June 1992. When Todd Carrel, ABC's Bureau Chief in Beijing, attempted to film the incident he was viciously attacked by a group of plainclothes Chinese security officers; in the course of this beating, Carrel suffered neurological damage to his spine that has left him permanently disabled.

¹¹ O'Neill, M 'Exile Plea for Threatened Dissident: Wife Fears for Life of Political Prisoner Transferred to Mental Ward Housing Murderers' (3 August 2002) *South China Morning Post*.

¹² Wang's wife, Wang Junying, and their daughter, Meixi, now live in exile in Germany. On a visit to Washington DC in June 2004 to publicise the plight of her husband, Ms Wang issued an appeal statement on his behalf, available at: <<http://www.chinasupport.net/topbuzz85.htm>>.

¹³ See Rodley, NS, United Nations, Economic and Social Council (1995) *Report of the Special Rapporteur on*

written numerous letters and petitions to the Chinese authorities since 1992, all of them logically well-ordered and presented, protesting his sanity and asking to be released, but to no avail. According to his wife, daughter and other visitors to the police-run mental hospital over the past 12 years, Wang has at no time shown any sign of having any form of mental illness, and certainly not one that would justify his confinement in an institution for the criminally insane.¹⁴ Throughout Wang's incarceration, the Ankang hospital authorities have refused to give his wife any form of written diagnosis as to his precise mental condition or state; however, they have told her directly on various occasions that he is suffering from 'political paranoia' (*zhengzhi pianzhikuang*).

In recent years, reports of this type have steadily increased, especially in the cases of lesser-known political dissidents, but also of hitherto quite unknown complainants and petitioners (*shangfangzhe*) against local-level injustice and official corruption. Indeed, cases of the latter kind have increasingly, since early 2003, become the subject of investigative news reports in the official Chinese media itself. (A number of these cases are discussed in detail below.) The authorities' medically heterodox justification for these practices has been that the concept of 'psychiatric dangerousness' — the principal criterion used by psychiatrists around the world to decide whether a mental patient requires to be compulsorily hospitalised, and the positive determination of which requires that the person concerned be medically ascertained as posing a direct danger (usually physical) to him or herself or others — must, in China's case, be conceptually enlarged to include acts or viewpoints which the security authorities regard as posing a 'threat or danger' to the established social and political order.

If one studies the officially published legal-psychiatric professional literature in China from the 1950s to the present day together with the growing number of independent case accounts of the kinds mentioned above, it is clear that the Chinese authorities have been extensively misusing legal psychiatry for politically repressive purposes since at least the early 1960s. Indeed, the evidence clearly suggests that China's record in this respect over the past four decades or so has greatly exceeded, in both scale and intensity, the abuses which occurred in the Soviet Union prior to 1990.¹⁵

Perhaps the most striking aspect of all the relevant official documentary sources consulted is the high frequency with which they refer to 'cases of a political nature'

Torture, Submitted Pursuant to Commission on Human Rights Resolution 1992/32 United Nations, General E/CN.4/1995/34.

¹⁴ For a detailed account of Wang Wanxing's case, see Hou Jie (2002) 'Wang Wanxing de "liu hao bingfang"' ('Wang Wanxing's "Sick Room No 6"') in (14) *Beijing zhi chun* (*Beijing Spring*), available at: <<http://bjzc.org/bjs/bc/114/09>>.

¹⁵ Despite this dire record, it should be stressed that the extent to which China's psychiatric profession as a whole is currently directly involved or complicit in these abuses remains unclear. Over the past two decades or so, the wider field of general psychiatry in China has been gradually conforming, in most areas of practice, with internationally accepted standards of mental healthcare, diagnosis and treatment. The available evidence suggests that the misuse of legal psychiatry in the suppression of dissent in China is presently confined mainly to those working within the sub-specialist domain of police psychiatry — a small and still secretive field of which most regular Chinese psychiatrists appear to have little direct professional knowledge or experience. For the most part, however, this was also the case in the former Soviet Union. In both countries, it is reasonable to assume that most involuntary psychiatric inmates were, or currently are, hospitalised for authentic medical reasons. Those incarcerated solely or primarily on political grounds have formed, naturally enough, a small minority of the overall psychiatric detainee population.

(*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 and separate category among the various types of criminal defendants routinely referred by various law enforcement authorities for expert 'forensic psychiatric evaluation' (*sifa jingshenbing jianding*). Moreover, even percentage rates for cases of this type are often supplied. According to the authorities, more than half of all criminal-forensic psychiatric cases from the late 1950s through to the late 1970s and the immediate aftermath of the Cultural Revolution, were 'political in nature'; throughout the 1980s, the relevant figure fell to an average level of around 10 per cent; by the early 1990s, 'political cases' were said to form somewhere between 1 and a few per cent of the psychiatric detainee population.

In the Soviet case, no such official mention or statistics has ever been found in the relevant literature, but scholarly studies indicate that the total confirmed number of people who were sent to forensic custodial facilities in the Soviet Union during the entire period from the late 1920s to 1991 was 674.¹⁶ In China, the most conservative overall figure for cases of this type that can be extrapolated from the officially provided percentage rates cited above for the period from the late 1950s to the present is approximately 4,000.¹⁷

By the late 1990s, it had seemed that these abusive practices were steadily diminishing in frequency and could be expected gradually to disappear from China's law enforcement scene. From the second half of 1999 onwards, however, detailed and credible reports began to emerge from China indicating that practitioners of the banned spiritual sect, Falun Gong, were also being forcibly sent to mental hospitals by the police authorities. Over the course of the next few years, it became clear that China was undergoing a major new epidemic of the misuse of legal psychiatric detention for politically repressive purposes. In early May 2004, China Mental Health Watch, an overseas-based Falun Gong rights monitoring group, conducted a review of all such cases on which it had obtained detailed information since the start of the crackdown on the group in July 1999:

The results show that in the past five years of persecution, psychiatric abuse of Falun Gong practitioners took place in 23 provinces, cities and autonomic regions. At least 100 provincial, city, county and district mental hospitals took part in this persecution. The persecution is planned, is systematic and permeates all levels of governments. So far, at least 1,000 healthy Falun Gong practitioners were injected with central nervous system damaging drugs and were tortured with ropes and electric batons. At least 15 practitioners were tortured to death.¹⁸

¹⁶ In 1996, Smith and Oleszczuk summarised, as follows, the various databases on Soviet dissidents and others in similar categories who had been sent to psychiatric detention facilities: 'all records for individuals against whom definite measures of administrative or court-ordered psychiatric detention or hospitalization can be documented yields a sample of 410 individuals from 1960 to 1981, when records are most complete, and 674 from the late 1920s to 1991 when our earliest observations are included and the Koppers and Mercer data are integrated [...]. Partial records led to allegations of at least 700 [...] though some estimates attributed as many as 1,000 to a single psychiatrist [...]'. See Smith, TC and Oleszczuk, TA *No Asylum* supra note 4 at 48 and 54.

¹⁷ For full details of how this figure was calculated, see Munro, R 'A Question of Criminal Madness' supra note * at 29-45.

¹⁸ See 'Falun Gong Practitioners Suffer Mental Trauma and Death as a Result of the Jiang Group's Abuse of Psychiatry' (23 July 2004) *Falun Dafa Clear Wisdom.net*, available at: <www.clearwisdom.net/emh/articles/2004/7/23/50560.html>.

All countries have valid and necessary reasons for detaining certain criminally-active members of the mentally ill population in secure psychiatric hospitals.¹⁹ This holds true in China where there are officially said to be around ten million mentally ill people, of whom 10 to 20 per cent are regarded as posing a 'serious danger' to society.²⁰ 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. Indeed, in direct response to the public revelations about the widespread use of political-psychiatric methods of repression against political dissidents in the Soviet Union, from the late 1970s onward, the international community established a series of professional ethical codes and human rights standards which prohibit psychiatrists from issuing diagnoses or detention orders on the basis of a person's political or religious beliefs.²¹

THE ANKANG CUSTODY AND TREATMENT SYSTEM

In 1977, the psychiatrist Sidney Bloch and his academic co-author, Peter Reddaway, described the Soviet Union's countrywide network of institutes for the criminally insane, the so-called Special Psychiatric Hospitals (SPH):

See also 'Jianchi xiulian bei guan jingshenbingyuan ji shiyong jingshen yaowu de anli huibian' ('A Collection of Cases of Falun Gong Practitioners Sent to Mental Hospitals or Given Psychotropic Drugs for Persisting in their Practice') (6 October 2003) *Minghui.net*, full text in Chinese available at: <http://pkg2.minghui.org/renquan_jilu/jingshen_list/jingshen.html>. See also 'Zhongguo shang bai suo jingshenbingyuan jieshou zhengzhi renwu' ('Over 100 Chinese Mental Hospitals Accepting Political Tasks') (14 June 2004) *Da ji yuan* (Epoch Times), available at: <<http://xinsheng.net/xs/articles/gb/2004/6/14/27512.htm>>.

¹⁹ According to one source, for example, mental illness was the chief cause of crime in 20.7 per cent of all cases of murder, injury, arson, poisoning and explosions committed in a certain area of China in 1982. See Li Tianfu et al (1988) *Fanzui tongjixue* (Criminal Statistics) Qunzhong chubanshe at 45. More recent reports indicate that mental illness-related crime remains a serious national problem. See also note 33 below.

²⁰ See, eg, Li Congpei (ed) (1992) *Sifa jingshenbingxue* (Forensic Psychiatry) Renmin weisheng chubanshe at 381. 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.

²¹ The bodies chiefly responsible for defining these standards are the United Nations, the World Psychiatric Association (WPA), and the various psychiatric professional organisations of different countries. The pre-eminent or overarching relevant provisions, namely, 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 and in the International Covenant on Civil and Political Rights. The Council of Europe has also extensively addressed the issue of involuntary psychiatric committal and treatment, and has issued a series of important rules and protocols in this area. Among the key relevant documents are: the 'Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care', adopted by the UN's General Assembly in December 1991; 'Rules Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients', issued by the Council of Europe in February 1983; 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 in Vienna; and the 'Declaration of Madrid', passed by the WPA's General Assembly in August 1996. Common to all these key normative documents in the field of mental healthcare is the stipulation that (in the words of the UN 'Principles' cited above), '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'. For further details of the currently prevailing international legal and ethical regime in this area, see Munro, R 'A Question of Criminal Madness' supra note * at 109-121.

Conditions prevailing in the SPHs have, by comparison with those in the Ordinary Psychiatric Hospitals, proved consistently stark and punitive. The SPHs are essentially prison-like institutions and were in fact until recently termed prison-psychiatric hospitals. Their function is to house, compulsorily, persons who have committed serious crimes — murder, rape, arson and an array of other violent offences — and who have been diagnosed as suffering from a mental illness and declared not responsible. Following the procedure of criminal commitment, such mentally ill offenders are ordered by the court to enter an SPH for an indeterminate period, until their mental condition improves sufficiently to warrant their release. In addition to a supposed therapeutic function, the SPH also serves to protect society from dangerous offenders [...].

The SPH is under the control of the Ministry of the Interior (MVD) rather than the Ministry of Health. This is an important point as the MVD is also responsible for the administration of the ordinary police (as opposed to the secret police or KGB) and all penal institutions. The MVD's prime interest is law and order. As in its prisons, so in the SPHs, the maintenance of security is its principal concern; the health and welfare of inmates are secondary issues [...]. All personnel are employees of the MVD; the hospital director, senior administrative staff and psychiatrists are MVD officers holding a military-style rank.²²

In addition:

No matter how severe the conditions of an incarceration, the knowledge of release after a definite period gives the prisoner a sense of hope and anticipation, and the passage of each day reinforces it. Not so in the case of the patient committed involuntarily to a psychiatric hospital [...]. A person once admitted to a SPH loses all basic rights — he is powerless. No matter how unjust his view of the treatment, no matter that he be beaten or over-medicated or punished unfairly, he has no legal redress whatever. The lot of an inmate is in this respect far worse than a person held in a prison or labour camp.²³

China's present-day network of Ankang institutes for the criminally insane is functionally identical to the SPH system of the former Soviet Union and is likewise administered by China's equivalent of the MVD, the Ministry of Public Security (MPS). The only discernible discrepancy between the above account and China's case today is that no court order is required for the committal of a criminal suspect into Ankang custody; instead, all such decisions are directly made and implemented by the police. Although the term 'Ankang' only began to be used for these institutes from 1987 onwards, China's system of forensic psychiatric custody in fact had been in place since the early to mid-1950s — the era of close cooperation with the country's communist 'elder brother', the USSR. Owing to their highly secretive nature, almost nothing is known about the conditions of detention and treatment within these police-run centres during the first few decades of the People's Republic.

One first-hand account of conditions at the Shanghai facility on the eve of its transformation into an Ankang centre, however, painted a disturbing picture of

²² Bloch, S and Reddaway, P *Russia's Political Hospitals* supra note 4 at 191.

²³ Ibid at 210 and 212.

widespread fear among the inmates arising from the frequent resort by warders and nursing staff to various abusive methods of punishment. A female dissident and former political prisoner, placed in the Shanghai facility in early 1987,²⁴ recounts that the ward in which she was placed held 20 women, three of whom were political dissenters of various kinds. One of the latter had been incarcerated in the asylum simply because 'She had gone onto the streets to make a speech protesting about the high increase in the cost of living. She had said that skyrocketing prices were making people's lives worse, and that political corruption nowadays meant officials could make a fortune out of their posts, something that would not have happened in Mao Zedong's day'.

The writer of the account described the regime of fear in the facility at that time:

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

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

If an inmate was marked down for punishment, 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 would be punished at once. During the daytime when everyone was working, we would look at the women's hands and feet tied to the bed. We would all keep silent, lower our heads and carry on working. In the evening when we returned to the dormitory, we would watch the bed be carried away, and see the empty space where it had stood. A cold shiver would go through your heart. You never knew 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 perhaps because you'd 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 all 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 who'd had intravenous injections whose tongues were so swollen that they bulged out of their mouths. After a few days of injections, their facial muscles went all stiff, and their eyes became fixed and staring. Their faces were like waxwork masks — they couldn't turn their heads, and would have to slowly turn their whole body around 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'.²⁵ It uses electrically controlled acupuncture

²⁴ The woman, whose handwritten account was circulated among various human rights groups in 1995, cannot be identified for reasons of personal safety.

²⁵ The treatment method of electric acupuncture, which is widespread in China (and is found also as an

needles. There are three levels of current. The higher the current, the more painful, and the amount of pain also depends on the acupuncture points used. There is the *taiyang* point (on the temple), the *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. People who have experienced this say the heart point 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 place, treatment was no longer about curing illness and saving people's lives. It had become the penal code that the doctors used to maintain control. When they wanted to punish someone, they would make all the other patients stand around her bed while the patient twitched in agony, crying pitifully: 'I won't do it next time... I won't do it again, please let me go'. After it was all over, the nurses would admonish the other patients, saying that whoever violated the rules next would suffer the same treatment as her. We would lower our heads for fear that our faces had gone pale.

According to the woman's account, 'Inmates convicted of murder were allowed to talk freely together, but the political prisoners were not permitted to do so'. An article published in the *Shanghai Archives of Psychiatry* in 1987 revealed that no fewer than 11.6 per cent of the inmates held at the same Shanghai asylum at that time had been placed there either for engaging in 'anti-social speech or action' (*fanshehui yanxing*) or for 'disrupting government offices' (*chongji zhengfu jiguan*), a clear reference to persistent complainants and petitioners.²⁶

There are also confirmed reports of four other political dissidents having been sent to the Shanghai Ankang during the 1990s. In September 1993, a 28-year-old man called Xing Jiandong was confined there after holding a peaceful one-man demonstration outside the Australian Consulate in Shanghai. According to a report issued by Amnesty International the following month:

The Public Security Bureau have reportedly informed Xing Jiandong's family that he is mentally ill, but the relatives have not been shown any documentation by doctors at the hospital to support this claim. It is further reported that the family were pressured by the Public Security Bureau to give their consent to Xing Jiandong's confinement in the psychiatric hospital and were told that Xing Jiandong would be sent to a labour camp for between one and three years if they did not give written permission. After his transfer to the hospital Xing Jiandong was allegedly tied to a bed for three days and nights, then locked up with mentally disturbed patients.²⁷

'alternative' therapy in many other countries) is to be differentiated from the use of ECT. When properly administered, electric acupuncture has no ethically abusive connotations. Like many other legitimate medical treatments, however, electric acupuncture can be misused for purposes of inflicting pain and punishment.

²⁶ See Yang Xingmei and Ge Meifang (1987) 'Yanzhong yingxiang shehui zhi'an de jingshen jibing huanzhe 81 li chubu diaocha fenxi' ('Analysis of a Preliminary Investigation into 81 Cases of Mentally Ill Persons who Seriously Affected Public Order') (1) *Shanghai jingshen yixue* (*Shanghai Archives of Psychiatry*) at 32-34.

²⁷ See 'China: Prisoner of Conscience Imprisoned in Psychiatric Hospital' (19 October 1993) Amnesty International (ASA 17/WU 16/93).

In late April 1993, a worker called Wang Miaogen, said to be an orphan, was sent to the Shanghai Ankang after staging a desperate protest action outside his local police station in Shanghai during which he hacked off four fingers from his left hand with a cleaver. Wang had spent two or three years in prison after June 1989 for helping to organise the Shanghai Workers Autonomous Federation during the nationwide pro-democracy movement of April-May that year. The charges against him at that time alleged that he had 'spread rumours, distributed leaflets and incited strikes'. After his release, he alleged that the local Public Security Bureau (PSB) had instructed his neighbours to harass him constantly, and, on the night in question, he had gone to the police station to lodge a formal protest against the latest harassment. According to Wang's friends to whom he later gave a detailed account of the incident, two police officers then took him outside into the street and gave him a severe beating, kicking him repeatedly as he lay helplessly on the ground. He then went home, got a large knife and returned to the police station and performed his act of self-mutilation in front of the police station entrance. While it is possible that Wang was temporarily suffering from an acute mental disturbance at the time, Amnesty International later reported:

According to unofficial sources, Wang Miaogen is not suffering from mental illness and there is no justification for him having been committed to hospital [...]. [Moreover,] while held in police custody before his committal to the hospital, Wang Miaogen was [reportedly again] beaten up by police, kicked in the head, tied up and gagged with a sock on several occasions.²⁸

As of April 2005, Wang Miaogen was still, 12 years after the incident, being held incommunicado at the Shanghai Ankang facility; nothing else was known about his current situation.²⁹

In 1995, another Shanghai dissident, Zhu Fuming, an activist in his early thirties associated with the Shanghai-based Association for Human Rights, which had been campaigning for over a year for Wang Miaogen's release, was himself forcibly committed to the Shanghai Ankang for several months. 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 also been involved in the May 1989 pro-democracy movement. On three separate occasions prior to his arrest in July 1998, he had stood outside the Shanghai No 1 Department Store handing out leaflets calling for the rehabilitation of victims of the 4 June 1989 government crackdown, for greater political democracy in China, and for the right to commemorate Taiwan's National Day. Voice of America briefly reported on Li Da's case in February 1999 on the basis of a letter he had smuggled out of the Shanghai Ankang facility. There has been no further news of Li since then.³⁰

²⁸ See 'Medical Letter Writing Action: Wang Wanxing, Wang Miaogen, Xing Jiandong' (22 December 1993) Amnesty International (ASA 17/44/93).

²⁹ It should not be assumed that extreme acts of self-injury or suicide are necessarily indicative of severe mental illness, or even of any mental illness. They can sometimes, as seems to have been true in Wang's case, constitute an extreme act of political protest in circumstances where all other avenues to justice have been denied. In this sense, Wang's sad case may be broadly compared to that of Jan Palach, the 21-year-old student who died after setting himself on fire in Wenceslas Square in Prague on 16 January 1969 to protest against the Soviet-led invasion of Czechoslovakia in August the previous year. Palach's action made him a national hero.

³⁰ In 2003, the US State Department reported that both Wang Miaogen and Li Da, together with two

Origins and Purposes of the Ankang Regime

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 civilisation'³¹ across the country. The purpose was to create a spiritual counterpart to China's already fairly well developed 'material civilisation', the national infrastructure and the economy. As the Chinese words for 'spiritual' and 'mental' are the same, the new movement was also an attempt to expand 'mental civilisation', 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 for almost thirty years.³² The main issue on the agenda was the sharp increase in the rate of mental illness among China's population: 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.³³ 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 being a major causal factor.

In April 1987, the three 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 persons 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.³⁴

The ministries' main policy recommendations were to speed up the passage of a national mental health law; to develop forensic appraisals work further; and to establish

previously unknown dissidents about whom nothing further is known — Wang Chanhao and Pan Zhiming — were still incarcerated at the Shanghai Ankang. See 'China: Country Reports on Human Rights Practices — 2003' (25 February 2004) Bureau of Democracy, Human Rights, and Labor, available at: <www.state.gov/g/drl/rls/hrrpt/2003/>.

³¹ In Chinese: *shehuizhuyi jingshen wenming*.

³² The first one had been held in 1958.

³³ According to a website run by the Beijing Institute of Forensic Medicine and Science (*Beijing shi fating kexue jishu jiangding yanjiusuo*), in 2000 the rate of mental illness among China's population stood at 13.47 per 1,000, see: <<http://fmedsci.com/sfjs/sfjs09.htm>>. This figure was reiterated in 'China's Mentally Ill Number 16 Million' (10 October 2002) *China Youth Daily*. According to another official source, however, the total number of mentally ill people in China that year stood at 17.4 million, of whom 1.2 million were said to pose a severe and immediate threat to public safety, see 'Tebie de guanhuai — Anhui sheng Hefei shi gong'an ju ankang yiyuan jianwen' ('A Special Kind of Care — Record of a Visit to the Ankang Hospital of Hefei City Public Security Bureau, Anhui Province') (10 November 2000) *Fazhi ribao* (*Legal Daily*).

³⁴ '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') (20 April 1987) in (1990) *Zhonghua renmin gongheguo weisheng fagui huibian 1986-1988* (PRC Compilation of Laws and Regulations on Health, 1986-1988) Law Publishing House at 366-369.

a national network of police-run centres for the custody and treatment of severely mentally ill offenders. More meetings followed. In June 1987, the First National Academic Symposium on Forensic Psychiatry was held in Hangzhou, and in December, the First National Public Security Conference on Custody and Treatment of the Mentally Ill took place in Tianjin.³⁵

At some point over the course of these meetings, it was officially decided that the name 'Ankang' (peace and health), would be used as a uniform designation for the proposed new network of custodial facilities for severely mentally ill offenders. In December 1987, the Ministry of Public Security formed a National Ankang Work Coordinating Group, a deputy chairman of which was Wang Guiyue, director of the Tianjin Ankang facility and the recent founder of a 'stereotactic brain surgery' unit there.³⁶ By May 1988, it was announced that a total of 16 Ankang centres had been established and brought into service around the country. According to psychiatrists from the Hangzhou Ankang, writing in 1996, 'Fifteen of the [Ankang] hospitals were built since the start of the 1980s'. (In fact, however, it seems likely that many of the 'new' Ankang facilities were simply either renamed or enlarged versions of the 18 institutions for the criminally insane which had been in existence in China for many years.) A series of guidance documents was then drawn up by the Ministry of Public Security.³⁷

By 1992, the total number of Ankang facilities in China had risen to 20, with several others reported to be under construction. By 2001, 22³⁸ were in service in 17 out of China's 31 major regional administrative units. By mid-2004, the total number of known facilities had risen to 30.³⁹

According to a report in the *Chinese Journal of Nervous and Mental Diseases*, 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 20 years.⁴⁰ Large Ankang centres can accommodate around 1,000 inmates;⁴¹ and the largest one, the Tianjin facility, is believed to have a considerably higher capacity. Moreover, the total number of people

³⁵ Since that time, 'National Academic Symposia on Forensic Psychiatry' have been convened in various Chinese cities approximately every two years. At the December 1987 conference in Tianjin, a '16-character slogan' was decided upon to guide China's criminal psychiatric custody work: 'Yifa guanli, kexue zhiliao, guan-zhi jiehe, wei-hu zhi'an' ('administer in accordance with the law, use scientific treatment methods, combine custody with treatment, uphold public order').

³⁶ (24 May 1988) *Renmin gong'an bao* (*People's Public Security News*) at 1. For the source of information on the brain surgery unit, see note 50 below.

³⁷ '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'. These regulations are mentioned in (18 May 1990) *People's Public Security News*, however, no copies of the documents have as yet come to light.

³⁸ See Kang Ming 'Ankang yiyuan de xingzhi, renwu, zuoyong' ('The Nature, Tasks and Function of the Ankang Hospitals'), available at the website of the Hangzhou Public Security Bureau Ankang Hospital: <www.ak-hospital.com/lwsx.htm>. The article is undated; however, it is listed elsewhere as having been presented by the author at an academic conference in Zhejiang province in 2001.

³⁹ Long Qingchun (ed) (1994) *Sifa jingshen yixue jiangding zixun jieda* (*Consultative Questions and Answers for Forensic-Psychiatric Medical Evaluations*) Chinese University of Politics and Law Publishing House at 152.

⁴⁰ Gu Xiangdong et al (1987) 'Shehui jineng xunlian dui 32 li zhuyuan manxing jingshenfenliezheng huanzhe de liaoxiao guancha' ('An Examination of the Efficacy of Social Skills Training for 32 Chronic Schizophrenic Patients') (20) *Chinese Journal of Nervous and Mental Diseases* 85.

⁴¹ Lin Huai (1996) *Jingshen jibing huanzhe xingshi zeren nengli he yiliao jianhu cuoshi* (*Capacity of Mental*

admitted to the Ankang system over the past 15 years is remarkably high. According to the Ministry of Public Security, there were 35,000 admissions during the period 1988-93; a further 75,000 admissions took place over the subsequent decade; as of 1993, the total capacity of mental hospitals of all kinds in China was only 90,000 beds, of which 6,072 were located in Ankang hospitals. So it seems clear that despite the substantial number of inmates who are held for five or more years, there is also a high turnover of shorter-term patients within the system.⁴² In addition, Ankang psychiatrists were said to have performed a total of 24,000 forensic psychiatric appraisals between 1993 and 2003, while the ministry increased the total number of police officers assigned to work in the Ankang network by 3,500 over the same period.⁴³ The entire Ankang network is directly administered by Bureau No 13 of the Ministry of Public Security (*Gong'an bu shisan ju*)⁴⁴ — the same police department that runs all the country's pre-trial criminal detention centres (*kanshousuo*) and also Qincheng Prison, the ultra-secure facility that since 1954 has housed most of China's top political prisoners.⁴⁵ Indeed, according to a recent article by two mainland Chinese psychiatrists, 'some Ankang facilities are run by the Public Security purely as prisons' (*'youde shi chun gong'an de jiansuo guanli'*).⁴⁶

Illness Sufferers for Criminal Responsibility and Measures for their Medical Guardianship) Renmin fayuan chubanshe at 54.

⁴² Many of these are likely to be drug addicts compulsorily admitted for detoxification programmes — an area of work in which, along with HIV-AIDS testing and treatment, the Ankang system has become increasingly active in recent years. The remainder are probably a mixture of voluntary non-criminal patients (both the Tianjin and Hangzhou Ankangs, for example, advertise their services to the general public) and involuntary civil commitment cases. As of February 2004, 13 Ankang hospitals had set up compulsory drug detoxification centres. According to the website of the Tianjin Ankang, more than 8,000 people have undergone drug rehabilitation there since 1992. See: <<http://www.abc-tj-abc.com/ankang/index.htm>>. On the Ankang network's role in coordinating and implementing the country's HIV/AIDS testing and treatment programme, see 'Beijing jiang dui ben shi aizibing ren shixing mianfei kangbingdu yaowu zhiliao' ('Beijing Set to Supply Free Antiviral Medical Treatment to the City's HIV/AIDS Sufferers') (14 July 2003) *Beijing wanbao* (*Beijing Evening News*).

⁴³ See 'Gong'an bu fubuzhang Tian Qiyu zai quanguo jingshenbing fangzhi kangfu gongzuo huiyi kaimushishang de jianghua' ('Deputy Minister of Public Security Tian Qiyu's Speech at the Opening of the National Work Conference on Mental Illness Prevention, Cure and Recovery') (13 May 1993), available at: <<http://www.cdpf.org.cn/nj/ala071/>>; 'Gong'an bu fubuzhang Luo Feng zai quanguo di sanci jingshen weisheng gongzuo huiyishang de jianghua' ('Speech by Deputy Minister of Public Security Luo Feng at the Third National Conference on Mental Health Work') (2003), available at: <<http://www.cdpf.org.cn/>>; Kang Ming 'The Nature, Tasks and Functions of the Ankang Hospitals' *supra* note 38. According to Kang, as of approximately 2001, the total capacity of the Ankang network had risen to 7,352 beds.

⁴⁴ See Liu Zhenqing and Chen Jingyi (16 February 2004) 'Zhongguo gong'an xitong de jingshen weisheng fuwu' ('China's Public Security System of Mental Health Services') (14) *Shanghai Archives of Psychiatry*, available at: <<http://www.21jk.com.cn/p>>.

The article is the most detailed currently available on the logistical aspects of the Ankang network.

⁴⁵ The MPS's Bureau No 13 used to run all of the country's prison facilities for sentenced criminals as well, but in July 1983, in an important move to separate the criminal investigative and the judicial custodial functions of the legal system, these were transferred to the jurisdiction of the Ministry of Justice (MoJ). However, the MPS retained control over Qincheng Prison and certain other 'specialised' detention units in China thereafter. The MPS also operates an unknown number of other secret facilities similar to Qincheng Prison. See 'Various Regulations by the Ministry of Public Security and the Ministry of Justice concerning the Detailed Implementation of the Central Committee's Transferral of Administrative Authority over the Work of Labour Reform and Labour Re-education' (6 June 1983) in (1991) *Zhonghua renmin gongheguo falü guifanxing jieshi jicheng* (*A Collection of Standard Interpretations of the Laws of the PRC — Supplementary Volume*) Jilin People's Press 813

⁴⁶ Liu Zhenqing and Chen Jingyi 'China's Public Security System of Mental Health Services' *supra* note 44.

Involuntary Psychosurgery

One of the most worrying features of the Ankang custody system is the considerable and growing interest that has been shown by police psychiatric specialists over the past two decades in the use of brain surgery as a means of treating severe mental illness. Chinese psychiatrists experimented with psychosurgery in the early 1950s but abandoned it under doctrinal pressure from their Soviet colleagues. Starting in the early to mid-1980s, however, mental hospitals in China once again began to develop surgical capacity and gain experience from carrying out these operations. Reportedly less drastic than those performed in the 1950s, they are still hazardous and irreversible.⁴⁷ According to a Western scholar who performed extensive field research in Chinese mental hospitals during the 1980s:

Psychosurgery is also re-emerging. 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.⁴⁸

Other studies published by Chinese psychiatrists themselves have indicated an increase in the use of psychosurgery in China since then.⁴⁹ Furthermore, much of the country's medical effort in this area appears to be hidden behind Ankang hospital walls. 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 brain surgery unit, administered by the PSB, for performing psychosurgical operations, with dozens of operations carried out each year.⁵⁰

Articles in the Chinese medical literature over the past decade have emphasised how effective the psychosurgery programme has been in reducing not only violent behaviour (*baoli xingwei*) by the mentally ill, but also what is termed merely 'impulsive behaviour' (*chongdong xingwei*) on their part. The reports also indicate that the main targets of these surgical practices have been persons subjected to involuntary psychiatric committal.

⁴⁷ Technical advances in recent decades have led to the widespread international use of less invasive forms of psychosurgery than those generally used before. Known as 'stereotactic' techniques (in Chinese: *liti dingxiang shoushu*), these allow more precise and less damaging surgical interventions such as leucotomy, cingulotomy and capsulotomy instead of the previously used 'broad spectrum' lobotomy procedure.

⁴⁸ Pearson, V 'Law, Rights, and Psychiatry' *supra* note 9 at 420.

⁴⁹ See, for example, 'Observations on the Effectiveness of Stereotactic Brain Surgery in Cases of Schizophrenia with Aggressive Behaviour' (18) *Chinese Journal of Nervous and Mental Diseases* 153; and 'A Follow-up Review of Stereotactic Brain Surgery in Cases of Chronic Schizophrenia' (8) *Zhonghua shenjing waike zazhi* (Chinese Journal of Neurosurgery) 263.

⁵⁰ The eyewitness source of this information is a doctor who wishes to remain anonymous. He was interviewed by the author on several occasions between 1993 and 2002. The existence of the unit has been officially confirmed: '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') (18 May 1990) *People's Public Security News* 1.

According to one such study published in 1993:

All the subjects were chronic mental patients who displayed extremely severe forms of impulsive behaviour, and who for many years, for lack of any effective cure, had been kept in isolation and placed in leather handcuff restraints all day long. Starting in April 1985, we performed multi-target stereotactic brain surgery on numerous patients.⁵¹ According to subsequent short-term clinical observations, either a conspicuous reduction or a complete cessation of impulsive behaviour was achieved in more than 75 per cent of the cases, along with an overall reduction in other mental symptoms.⁵²

After long-term clinical observations carried out seven years later, the success and effectiveness rate had reportedly risen to an improbable 89 per cent. The psychiatrists concluded from this study that such psychosurgery was 'uniquely effective' in treating both aggressive mental patients and also those suffering from 'intractable mental conditions characterized by impulsive behaviour'. Psychosurgery has even been used in China to 'treat' schizophrenia, a form of mental illness that in other countries is regarded as a specific contraindication for any form of brain surgery.⁵³

While psychosurgery has undergone a cautious revival in the West in recent years, the medical consensus is that it should be used only in very rare and carefully selected cases. According to a recent study by two physicians in the US, for example:

there remains a small percentage of patients with treatment refractory psychiatric diseases that might be considered for surgical treatment. However, because of the ethical, legal and social implications of psychosurgery, only a limited number of surgical procedures are carried out at a handful of medical centres in the world today.⁵⁴

In the vast majority of countries, these medical centres do not include institutions for the criminally insane, where patients' 'informed consent' to such hazardous and irreversible procedures is, by definition, impossible to obtain.⁵⁵ Any medical operations of this nature are expressly banned by Article 11.14 of the UN's 1991 *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*.

⁵¹ See note 47 above. In this case, however, the 'multi-target stereotactic surgery' (*duo ba liti dingxiang shoushu*) was far from being a minor operation, since according to the article it involved the surgical lesioning or ablation of three separate parts of the brain: the cingulum, amygdala and nucleus caudatus.

⁵² Wu Lieming (1993) 'Nao liti dingxiang shoushu zhiliao manxing jingshenbing suoban chongdong xingwei de qinian suifang' ('A Clinical Review of the Use of Stereotactic Brain Surgery to Treat Chronic Mental Illness Accompanied by Impulsive Behaviour') (5) *Shanghai Archives of Psychiatry* 134.

⁵³ See Xu Peijiang et al (1996) 'Nao liti dingxiang shu zhiliao 6 li manxing jingshen fenliezheng 7 nian suifang' ('Seven-year Clinical Follow-up on the Use of Stereotactic Brain Surgery in Six Cases of Chronic Schizophrenia') (8) *Zhongguo minzheng yixue zazhi* (China Civil Affairs Medical Journal) 145.

⁵⁴ See Cosgrove, GR and Rauch, SL (undated) 'Psychosurgery' at 2, available at: <<http://neurosurgery.mgh.harvard.edu/Functional/psysurg.htm>>. The authors work at the Departments of Neurosurgery and Psychiatry, Massachusetts General Hospital, and at Harvard Medical School. See also Williams, R (ed) (1980) *Hazardous and Irreversible Treatments in Psychiatry: Who Decides?* SK&F Publications.

⁵⁵ The rules on psychosurgery issued by the Council of Europe, Strasbourg, may be taken as indicative

The precise extent of the use of psychosurgery in China's Ankang facilities today is, of course, unknown. More than an inkling, however, can be gleaned from the official website of just one of these facilities, the Shandong Province Ankang Hospital in the city of Jining. According to an article by Chen Chengyu, a chief surgeon at the Shandong Ankang, this police-run custodial institution established a 'stereotactic brain surgery unit' in 1988. The unit, Chen states, 'was one of the earliest to be set up in Shandong province'; it currently provides 'procedures that are to be found nowhere else in the province'; its surgical ward 'occupancy rate is greater than 90 per cent' and its 'surgical treatment success rate is over 96 per cent'.⁵⁶ While there have been no reports of political dissidents or other such detainees being subjected to brain operations in China, the infliction of psychosurgery on prisoners of any kind can only be described as ethically repugnant and legally deplorable.

In addition, Ankang neurosurgeons are currently directly involved in experimental psychosurgery in China to treat drug addiction. This is particularly troubling because most or all of the country's Ankang facilities now also operate large, compulsory drug rehabilitation centres. According to a series of reports in the official news media in 2004, these surgical operations involve the partial destruction of the brain's 'reward mechanism' centre, a procedure claimed to remove the addict's craving for drugs. In July 2004, this procedure was first performed in the north-east of China by the director of the Shenyang Ankang facility, a Dr Xie, together with a neurosurgeon from the Guangzhou Airforce Hospital, in a widely publicised operation on a young female drug addict called Li Hong.⁵⁷ Numerous similar operations are reported to have been carried out at the San Jiu Brain Hospital in Guangzhou since 2001,⁵⁸ and in May 2004 *The Australian* newspaper carried the following commentary on one particular instance that had recently been performed there:

'I am not aware of it being done anywhere else in the world at the moment. It is highly experimental and I would be very sceptical about its efficacy', said Jefferey Rosenfeld, director of neurosurgery at The Alfred Hospital and Monash University in Melbourne. It sounded like a revamped version of the 'psychosurgery' used to treat homosexuals and violent prison inmates in the 1950s, he said. It also carried risks such as brain haemorrhage, infection, abscesses, meningitis and epilepsy — 'and that's just for starters', said Professor Rosenfeld.⁵⁹

of the mainstream of international legal and medical opinion on this topic. See Article 5.2 of (1983) *Rules Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients*; Article 7(ii) b of (1994) *Recommendation 1235 on Psychiatry and Human Rights*; (2000) *White Paper on the Protection of the Human Rights and Dignity of People Suffering Mental Disorder, Especially those Placed as Involuntary Patients in a Psychiatric Establishment*.

⁵⁶ See Chen Chengyu (2004) 'Liti dingxiang ji gongnengxing shenjing waike zhiliao zhongxin' ('The Stereotactic and Functional-Neurosurgery Treatment Centre'), available at: <www.jsby.cn/Article_Show.asp?ArticleID=539>.

⁵⁷ See 'Zhiji dongbei shouli jiedu kai'eshu 2 xiaoshi 45 fen shoushu chenggong wancheng' ('An Eye-witness Account of Northeast China's First Successful Frontal-Lobe Brain Operation, Lasting Two Hours and 45 Minutes, to Cure Drug Addiction') (5 July 2004) *Dongbei xinwen wang* (Northeast News Net), available at: <www.fx120.net/news/news-map/200407050950238801.htm>.

⁵⁸ See 'Will Operations Root Out Desire for Drugs?' (4 July 2004) *People's Daily Online*, available at: <www.xinhuanet.com>.

⁵⁹ See 'Brain Surgery "Cure" for Heroin Addicts' (29 May 2004) *The Australian*, available at: <www.sunnetwork.org/news/science/science.asp?ID=5266>.

By late 2004, over 500 psychosurgical operations on drug addicts had been performed by more than 20 hospitals around the country. On 2 November, the Ministry of Health issued an order temporarily banning any further such operations, on the grounds that no scientific studies had yet been conducted to ascertain their possible long-term adverse effects. The San Jiu Brain Hospital promptly threatened to take legal action against the ministry for unwarrantedly curtailing its profit-making activities.⁶⁰ For its part, the Ministry of Public Security has exclusive jurisdiction and control over all aspects of the Ankang system and is therefore not formally subject to the banning order.

The Chinese government has so far refused all requests by the World Psychiatric Association to send a delegation of independent medical inspectors to China to visit, among other things, the country's Ankang facilities. The existence of a steadily expanding programme of involuntary psychosurgery in these institutions is probably high on the government's list of reasons for refusing to permit any external scrutiny of their work and activities.

Criteria and Procedures for Admission to Ankang Custody

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, first established in May 1985.⁶¹ This institute, now known as the Shanghai Ankang, is located in the same part of the city that previously housed 'Jiangwan No 5', the facility where the female dissident whose account appears above was detained in the late 1980s; indeed, it is highly probable that they are one and the same place.⁶²

In April 1986, the Shanghai government took the national lead by promulgating a detailed set of regulations for the compulsory hospitalisation of mentally ill people who 'create incidents or disasters' (*zhaoshi zhaohuo*).⁶³ These regulations are still the

Apparently, similar brain surgery on drug addicts has been carried out in Russia in recent years. According to a recent article, the Institute of the Human Brain in St Petersburg has performed 335 such operations since 1999; however, following adverse side effects in a number of cases, in August 2002 the city's Prosecutor's Office ordered a ban on any more such operations. See Walsh, NP 'Russia Bans Brain Surgery on Drug Addicts' (9 August 2002) *The Guardian*, available at: <<http://www.guardian.co.uk/Archive/Article/0,4273,4478290,00.html>>.

⁶⁰ Zhu Hongjun 'Controversy over Surgery for Drug Addiction Continues — Does the Ministry of Health Have Authority to Order Ban?' (11 November 2004) *Nanfang ribao* (*Southern Daily*). The article includes a photograph showing a young man with his head 'stereotactically clamped' in readiness to undergo the operation, available at: <www.nanfangdaily.com.cn/southnews/zmzg/200411110898.asp>.

⁶¹ 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 centres in China.

⁶² The Shanghai Ankang was for many years located on Guoquan bei lu, just north of Fudan University; as of August 2004, however, its address was listed as being No 2 Yin gao lu, which is just around the corner from Guoquan bei lu. While this may simply be the institute's main administrative office, it is also possible that a new Ankang facility has recently been built at the Yin gao lu site.

⁶³ '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 29 August 1986, in (1988) *Shanghai gong'an nianjian*, 1988 (*Shanghai Public Security Yearbook*, 1988) Shanghai Social Sciences Publishing House (volume marked 'for internal distribution only') at 343. The regulations came into force on 1 October the same year. See also Shanghai's

most specific 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 is to be performed, but once a finding of legal non-imputability has been made, the public security authorities are then accorded complete authority to issue the necessary paperwork for compulsory psychiatric admission. The courts have no visible role in the process.⁶⁴

The same complete absence of any role for the judiciary can be seen from supplementary regulations issued by the Shanghai legal authorities as late as 2003:

If the public security organs discover that a criminal suspect or defendant during a stage of the criminal procedure has a mental illness and lacks the capacity to undergo trial, they should annul the case and deliver the person to the Ankang Hospital of the Municipal PSB to undergo compulsory custody and treatment in accordance with law.⁶⁵

The fact that the Shanghai Higher People's Court was itself one of the three bodies that issued these regulations only demonstrates that the complete exclusion of the judiciary from the criminal-psychiatric committals process is not the consequence of any accidental oversight or lack of adequate forethought about due process concerns. Rather, Shanghai's senior judicial authorities themselves appear to be quite uninterested in deciding or monitoring the fate of criminal suspects and defendants whom the police identify as being mentally ill and incapable of undergoing trial. In recent years, municipal and provincial governments elsewhere in China, including Tianjin, Guangdong, Shenyang, Heilongjiang and Dalian, have all issued similar regulations.⁶⁶

⁶⁴ 'Zhaoshi zhaohuo jingshenbingren de shouzhi guiding' ('Regulations on the Admission and Treatment of Mentally Ill People who Create Incidents or Disasters'), undated copy available at: <http://police.shqp.gov.cn/gb/content/2003-07/09/content_324.htm>.

⁶⁵ An argument that the courts should be given a leading role in this process is made in Lin Huai *Capacity of Mental Illness Sufferers* supra note 41 at 53.

⁶⁶ Document Hu-Jian-Fa (2003) 'Shanghai shi gaoji renmin fayuan, Shanghai shi renmin jianchayuan, Shanghai shi gong'an ju guanyu banli fanzui xianyiren, beigaoren zai xingshi susong qijian huan jingshenbing de anjian de guiding' ('Provisions of the Shanghai Higher People's Court, Shanghai Municipal People's Procuracy and Shanghai Municipal Public Security Bureau on the Handling of Cases where Criminal Suspects or Defendants Become Mentally Ill during the Criminal Process') (272) *Dongfang lüshi wang* (Eastern Lawyers Network), available at: <www.lawyers.org.cn>.

⁶⁶ 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; Guangdong Provincial People's Government (1990) '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') in Office of the Guangdong Provincial People's Government (comp and ed) *Guangdong sheng fagui guizhang huibian* (A Compilation of Guangdong Provincial Laws, Regulations and Rules [January 1989-December 1990]) at 275; 'Dalian shi jianhu zhiliao guanli zhaoshi zhaohuo jingshenbingren tiaoli' ('Dalian Municipal Regulations on the Guardianship, Treatment and Management of Mentally Ill People who Create Disasters or Incidents'), passed by the Standing Committee of the Dalian Municipal People's Congress on 4 November 1992 and effective as of 17 December 1992, available at: <www.dl.gov.cn/togov/law/local/688_15942.htm>; 'Heilongjiang sheng jianhu zhiliao guanli weihai shehui zhi'an jingshenbingren tiaoli' ('Heilongjiang Provincial Regulations on the Guardianship, Treatment and Management of Mentally Ill People who Endanger Public Order'), passed on 9 February 1996 and effective as of 1 March 1996; and 'Shenyang shi shouzhi weihai shehui shi'an jingshenbingren banfa' ('Shenyang Municipality's Methods for the Custody and

According to an article written by several Ankang psychiatrists in 1996,

Ankang hospitals [...] are meant to be specialized hospitals that serve the goals of public order by taking in and treating mentally ill people who create disastrous incidents of various kinds. As the Ministry of Public Security calculated in 1993, there are approximately 12 million severely mentally ill people in China, more than 1.3 million of whom pose a serious danger to public order; it is therefore essential that every province in China should establish its own Ankang hospital.⁶⁷

Alleged mentally ill political dissidents figure prominently on the authorities' target list of those who 'create disastrous incidents' and who must, for the protection of society, be incarcerated in Ankang facilities. The article as a whole paints a depressing picture of conditions within the Ankang hospital system as of early 1996: a very high patient-to-doctor and nurse ratio, severe underfunding by the government, and a serious lack of capacity leading to dense overcrowding of inmates. This scenario will be broadly familiar to those working in high-security institutes for the criminally insane in most countries, but in China's case it serves to dramatise the plight of the peaceful dissidents and religious nonconformists who end up being confined in such conditions alongside genuinely psychotic and dangerous offenders.

Specific criteria outlining the various types and categories of mentally ill offenders who are to be compulsorily admitted to Ankang custody 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 encyclopaedia of police work published in 1990. The encyclopaedia 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*),⁶⁸ who roam around the streets, grab food and drink from others, expose themselves naked, or look unkempt and dishevelled, 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.

Treatment of Mentally Ill People who Endanger Public Order'), promulgated by the Shenyang Municipal People's Government (date unknown), available at: <www.obv.cn/flyz/dffg/004/8841298.htm>.

⁶⁷ Tang Xiaofeng et al (1996) 'A Survey of the Current State of China's Ankang Hospitals' (8) *Shanghai Archives of Psychiatry* 24; a full translation of this article appears in Munro, R (2002) *Dangerous Minds: Political Psychiatry in China Today and its Origins in the Mao Era* Human Rights Watch and Geneva Initiative on Psychiatry at 248.

⁶⁸ 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.

The police encyclopaedia then lists the following more specific and operational criteria for dealing with mentally ill people falling within the three categories:⁶⁹

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:

- 1 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.
- 2 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.
- 3 Persons who frequently expose themselves naked, or otherwise harm social morals, in busy crowded areas or in public places.
- 4 Persons who shout reactionary slogans, or who stick up or distribute reactionary banners and leaflets, thereby exerting an undesirable political influence.⁷⁰
- 5 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.⁷¹

As was noted earlier, most countries find it necessary to maintain institutions for the criminally insane in order to protect members of the public from psychotic offenders who pose a genuine danger to society. In the modern era, however, few countries have ever regarded the kinds of 'mentally ill' people listed under points two and four above as being legitimate targets for any form of forced psychiatric custody, far less confinement in an institute for the criminally insane. 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

⁶⁹ Another important category of persons liable to be sent to Ankang facilities is that of those who develop 'prison psychoses' of various kinds during their confinement in regular 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 also sent to Ankang centres for secure psychiatric treatment.

⁷⁰ *Huhan fandong kouhao, zhangtie sanfa fandong biaoyu, chuandan, zaocheng buliang zhengzhi yingxiangde.*

⁷¹ (1990) *Zhongguo gong'an baike quanshu* (China Encyclopaedia of Public Security) Jilin People's Publishing House at 1964. A similar set of criteria for enforcing police custody of the mentally ill is listed in Zeng Wenyou et al (ed) (1992) *Jing guan bi du* (Essential Reading for Police Officials) Police Officials Publishing House (volume marked 'for internal circulation only') at 63. 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 (1990) '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. In addition, a 1996 study 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 Huai *Capacity of Mental Illness Sufferers* supra note 41 at 111.

revamped and enlarged Ankang system is performing much the same role as that of the Soviet Special Psychiatric Hospitals.

Finally, the police encyclopaedia noted: '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'. In a speech given as recently as 2003, moreover, China's Deputy Minister of Public Security specifically reaffirmed the 'necessity and importance' of these preventive custody-style operations. According to the Deputy Minister:

During major festivals or holidays and at other sensitive periods, the basic-level public security organs must, as a matter of urgent priority, increase surveillance and control over mentally ill complainants and petitioners [...] in order to prevent them from making any trouble or creating sudden disturbances [...]. The police must be ready to pounce at a moment's notice.⁷²

The Case of Wang Chaoru

As the following case serves to illustrate, urban 'clean-up operations' of the kind mentioned above are implemented with brutal thoroughness by China's police and can sometimes prove fatal for those concerned. In March 1993, 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 centres, and in the case of mentally ill targets of this 'cleanup' operation, the Beijing Ankang facility was also used for this purpose. Wang Chaoru was a 41-year-old mentally retarded man 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 called 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 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

⁷² See 'Speech by Deputy Minister of Public Security Luo Feng' *supra* note 43. 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.

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 7 March, 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'.⁷³

The Beijing Public Security Bureau has a close organisational affiliation with only two hospitals in the capital: the Binhe Penal Hospital, located until recently within the grounds of the Beijing No 1 Municipal Prison (this facility was torn down and relocated in the mid-1990s); and 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 south-west of the city.⁷⁴ Even today, very few foreigners living in China have heard of the

⁷³ Kristof, ND and WuDunn, S (1994) *China Wakes: The Struggle for the Soul of a Rising Power* Random House at 98. 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?"'

⁷⁴ A detailed official description of the organisation and functions of the Beijing Ankang facility can be

name 'Ankang', so it is unsurprising that the authors of the above account failed to identify the place of Wang Chaoru's death as being the Beijing Ankang facility. But that is undoubtedly where he died.

THE VICTIMS GO TO COURT: CASE NOTES FROM THE ANKANG, 2000-2004

One of the chief methodological difficulties in trying to interpret the copious statistical data on 'political-style' criminal psychiatric cases that have been officially published in China over the past 25 years is that the statistics, while high by any standard of judgment, nonetheless remain almost completely anonymous and impersonal. Somewhere between 7 and 15 per cent of forensic psychiatric cases dealt with by police psychiatrists in the 1980s were political, and this percentage had dropped to between 1 and a few per cent by the early 1990s. China's official literature on psychiatry and the law reports that most of these 'political cases' ended up being sent to Ankang facilities or similar places of psychiatric custody. But for the most part, there is no available information on the names or identity of the individuals concerned. Nor is there available information on details of the incidents that led to their arrest, nor of what happened to these people once they were admitted to the Ankang, nor how long they were held there.

In early 2004, this situation finally began to change. Chinese citizens started to use the internet to publicise full and detailed accounts of their wrongful incarceration in the Ankang. Journalists working in the official news media have begun investigating these cases, calling for public accountability and for the punishment of officials who have misused the Ankang system as a means of persecuting and silencing their critics. As a result of this dramatic breakthrough, the previously impermeable informational walls of the Ankang have begun to crumble, and a vital degree of transparency is at last beginning to emerge. Of equal significance is the fact that the victims have started to attempt to use the legal system to defend their rights by pursuing administrative lawsuits and tort compensation claims against the Ankang authorities and the local police for wrongful incarceration. So novel are these attempts, and so fragmentary and inadequate are the rules and regulations governing the whole system of Ankang custody, however, that the courts have been finding great difficulty in deciding not only how they should be handled under the law, but also whether they should be adjudicated at all. Finally, over the past year or so, there have even been official reports of attempts to put Ankang officials on trial for criminal wrongdoing of various kinds.

found in Lin Huai *Capacity of Mental Illness Sufferers* supra note 41 at 111. The account was written by Zhang Hu, a leading forensic psychiatrist who formerly worked at the Harbin No 1 Special Hospital (*Ha'erbin shi diyi zhuanke yiyuan*) and who, for the past ten years or so, has been based at the Beijing Ankang institute. In his article, Zhang said 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. (For a more recent account suggesting that this 'triple zone' policy is also being applied in other Ankang facilities nowadays, see Kang Ming *The Nature, Tasks and Function of the Ankang Hospitals* supra note 38.) 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 centres 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' (Lin Huai *Capacity of Mental Illness Sufferers* supra note 41 at 113). Another description of the Ankang regime can be found in Li Congpei *Forensic Psychiatry* supra note 20 at 385.

The passage from the police encyclopaedia quoted above states that two of the security authorities' prime target groups for admission into Ankang-style custody and treatment are, first, 'political maniacs', or those displaying 'dangerously' political dissident-like behaviour (including 'expressing opinions on important domestic and international affairs'); and secondly, people accused of 'disrupting the normal work of Party and government offices', a category which typically means the kinds of persistent petitioners and complainants whom the police regard as suffering from 'litigious mania'. Several cases of the latter type, where the detainees are specifically known to have been sent to Ankang forensic custodial facilities rather than to normal psychiatric hospitals, are examined below.

The Case of Qiu Jinyou

In July 1997, an elderly man called Qiu Jinyou and over 400 of his fellow farmers from the Hongshan State Farm in Xiaoshan district, Hangzhou municipality in Zhejiang province, began a public campaign to expose extensive and systematic financial corruption on the part of the state farm's Party Secretary and legal representative, Ding Yougen, and numerous other local officials. The farmers had been attempting, without success, to petition the local government authorities about these activities since the early 1990s. According to detailed allegations by the farmers that later appeared on the internet, since 1986, Ding and his cohorts had embezzled several hundred million *yuan* of the farm's funds and covertly assigned ownership of numerous major farm assets, including factories and land, to their families. According to Qiu and his fellow farmers, the leaders of the Hongshan State Farm had never once, from 1986 up to the present time, made public any of the farm's financial accounts, despite repeated demands by the farmers that they do so as required by law.⁷⁵

On 15 September 1997, while Qiu Jinyou was making his seventh visit to the office of the Chinese Communist Party Central Discipline Inspection Committee (CDIC) to call for action on the farmers' joint complaint, the head of the Xiaoshan Municipal Discipline Inspection Committee and several officers from the Hangzhou Municipal Public

⁷⁵ See: Li Xinde 'Ta huanyou "pianzhixing jingshenbing" ma?' ('Was He Really Suffering from "Paranoid Psychosis"?') (25 March 2003) *Gong-shang daobao* (Business Director); Li Xinde 'Ta shi zenmeyang chengle "jingshenbing" de?' ('How Did He End Up as "Mentally Ill"?') (26 March 2004) *Business Director*, available at: <www.yuluncn.com/Article_Show.asp?ArticleID=139>; Qiu Jinyou (11 April 2004) 'Shei boduole nongchang zhigong de minzhu quanli? (fu tu) — wode shensu zhuang' ('Who is Stripping the State Farm Employees of their Democratic Rights (illustrated with photos) — My Petition'), available at: <www.yuluncn.com/Article_Show.asp?ArticleID=211>; Employees from the Hongshan State Farm (11 April 2004) 'Shei boduole nongchang zhigong de minzhu quanli? Hangzhou shi Xiaoshan qu Hongshan nongchang de zhigong qianming' ('Who is Stripping the State Farm Employees of their Democratic Rights? List of Signatories to Petition from Employees of the Hongshan State Farm, Xiaoshan District, Hangzhou Municipality'), available at: <www.yuluncn.com/Article_Show.asp?ArticleID=210>; Li Xinde 'Shei boduole nongchang zhigong de minzhu quanli? — Laizi Hangzhou shi Xiaoshan qu Hongshan nongchang de diaocha' ('Who is Stripping the State Farm Employees of their Democratic Rights? — An Investigation Report from Hongshan State Farm, Xiaoshan District, Hangzhou City') (17 April 2004) *Zhongguo yulun jian du wang* (China Public Opinion Monitoring Network), available at: <www.yuluncn.com/Article_Show.asp?ArticleID=212>; Qiu Jinyou 'Shei yao jubao, jiu ba shei guanjin kanshousuo — du "Guanya Li Yuchun shi weile baohu haishi weile fengkou?" yiwen yougan' ('Whoever Tries to Expose Us, We'll Lock Up in the Detention Centre — Some Thoughts after Reading "Was Taking Li Yuchun into Custody a Way of Protecting Her or Silencing Her?"') (4 July 2004) *Zhongguo weiquan fuwu wang* (China Rights Protection Services Network), available at: <www.weiquancn.com>.

Security Bureau (PSB) arrived on the scene and falsely claimed that Qiu was wanted by the police in connection with a case of weapons concealment and misuse of public funds. The CDIC allowed them to take Qiu away without asking to see any evidence for this claim, and he was immediately taken to the Hangzhou Sanbao Detention Centre for questioning. Over the next month and a half, the PSB focused on their real objective, which was to coerce Qiu into revealing the names of all the sources for his and the other 400 farmers' detailed information concerning the corrupt activities of Ding Yougen and his colleagues in the local government. Qiu held out for several weeks, but in the end he broke down under the pressure and signed a PSB-prepared 'blood statement' (*xue shu*) pledging henceforth to cease all his complaint and petitioning activities against Party Secretary Ding and the others.

On 29 October, as soon as Qiu had signed the document, however, the police transferred him from the detention centre and placed him in the custody of the Hangzhou City Ankang Hospital. Several Ankang psychiatrists, including the director of the Hangzhou facility, Kang Ming, performed a forensic psychiatric evaluation on Qiu and declared him to be suffering from both 'paranoid psychosis' and 'litigious mania'. Five weeks later, the Xiaoshan City PSB issued the following post hoc certification for Qiu's committal:

To the Hangzhou Municipal Ankang Hospital:

On 31 October this year, the Hangzhou Municipal Public Order Department (*Zhi'an Chu*) authorized the sending of one of this city's mentally ill people, Qiu Jinyou, to your hospital to undergo compulsory medical treatment. In view of the fact that his illness is in an active phase at present, we recommend that Qiu Jinyou be given forcible drug treatment (*qiangzhi yaowu zhiliao*), and we hereby undertake that all costs and expenses will be paid by this PSB office.

Xiaoshan City Public Security Bureau [official seal]
4 December 1997

Qiu was held at the Hangzhou Ankang for 208 days. None of his family was told where he was. His account of the treatment he endured follows:

I was forcibly drugged with large quantities of medicines that badly damaged my nervous system,⁷⁶ and I truly feared that they were trying, under the pretext of 'treating my illness', to kill me [...]. During my time in the Ankang, I was forcibly administered 63 pills of one type and 144 pills of another type, which caused me to experience great pain in my brain, liver and kidneys. My hair began falling out, and I suffered from spasms and tremors, insomnia, nervous despair, memory loss and forgetfulness, food intolerance, and other such symptoms [...]. It was just like the experiments carried out on live human beings by the Japanese fascists' 731 Army Unit.⁷⁷

⁷⁶ Qiu named two particular medications in his statement, but the English names for them have not been found.

⁷⁷ This was a secret medical experimentation unit operated by the Japanese Army in the vicinity of Harbin during the Second World War; thousands of Chinese prisoners were killed in these 'experiments', which often involved vivisection. See 'World War II in the Pacific: Japanese Unit 731 Biological Warfare Unit', available at: <<http://www.ww2pacific.com/unit731.html>>.

After Qiu's discharge from the Ankang, he embarked on a five-year-long effort to bring an administrative lawsuit against the hospital and the local PSB for wrongful psychiatric incarceration. He was greatly hampered in this effort, however, by the Hangzhou Ankang's consistent refusal to provide either him or his lawyer, Zhang Jinping from the Shanghai City No 1 Law Centre, with his hospital medical records. As an alternative, his lawyer then obtained numerous affidavits — from the head of the township committee where Qiu lived, from his employer, and also from his relatives, neighbours and friends — all stating that Qiu had never displayed even the slightest sign of being mentally ill.

On 10 November 2001, the Yuhang District Court⁷⁸ rejected Qiu's application for an administrative lawsuit against the Hangzhou Ankang and PSB because: 'The case does not fall within the scope of administrative litigation, nor do the various particulars of the case permit us to accept it for an administrative hearing'. On 22 November, the Xiaoshan District Court rejected his application for a court hearing on the same grounds. On 5 December, Qiu submitted an administrative appeal lawsuit to the Hangzhou Intermediate Court claiming that the Hangzhou Ankang and PSB authorities had wrongfully deprived him of his liberty and subjected him to forcible medical treatment, along with a supplementary suit claiming compensatory damages. On 22 February 2002, that court ruled: 'The evidence provided by the Appellant is impossible to verify, and the applicable time limit for bringing suit in this case has now expired [...]. The appeal is dismissed and the original ruling is upheld'.

As of early 2004, the Hongshan State Farm authorities, led by Party Secretary Ding Yougen, were still pursuing a systematic campaign of intimidation against the farmers in an attempt to maintain their 18-year-long cover-up of financial corruption and wrongdoing at the farm. Even then, however, Ding and the others apparently still regarded Qiu Jinyou as being the 'weakest link' in their wall of defence against the corruption allegations. On 16 April, upon learning that a journalist from the *China Procuracy Daily* would shortly be arriving to investigate the Hongshan State Farm corruption story, the local Discipline Inspection Committee chief summoned another of the protesting farmers' leaders, Qi Mingxian, and told him: 'You have to guarantee that you'll tell [the journalist] that Qiu Jinyou was mentally ill. Everything else, we can compromise on'.⁷⁹

The Case of Han Zhenxi

In 1991 in the north-eastern city of Dalian, a policeman called Han Zhenxi, who along with his sister had recently started operating a private restaurant, became involved in a dispute with one of his neighbours, a local pig farmer called Ma Jingkui, who had close business connections with the local government. On 18 July that year, according to the court ruling in an administrative lawsuit that Han was later to bring against his employer, the local county PSB, claiming wrongful incarceration in the Dalian Ankang:

⁷⁸ The Hangzhou Ankang is located in the Anxi township of Yuhang district, so this was the court of jurisdiction in Qiu's case.

⁷⁹ That evening, Qi Mingxian wrote a desperate letter to the *China Public Opinion Monitoring Network*, one of China's foremost citizens' rights websites, appealing for help. 'I'm afraid they're going to arrest me, ransack my house, and kill me to shut me up', wrote Qi. 'Please come and save me!' (See Li Xinde 'Who is Stripping the State Farm Employees of their Democratic Rights?' supra note 75).

The Judicial Appraisal Group, acting on a referral by the Defendant (under the latter's former name of Xinjin County PSB), but without the Plaintiff's knowledge of what was being done to him, performed a psychiatric evaluation of the Plaintiff and completed a 'Certificate of Judicial Medical Appraisal for Psychiatric Illness' (*Jing-Jian-Zi* No 91060). The diagnostic conclusion was: 'Paranoid state; recommend the adoption of medical measures to prevent any unforeseen problems or events from arising'.⁸⁰

Although the official press reports on Han's case do not explain the precise nature of his dispute with Ma Jingkui and the local government,⁸¹ it is clear that his conflict with them worsened considerably after this psychiatric assessment was surreptitiously performed on him. Ma Jingkui began 'petitioning' the government, and Han responded by visiting and complaining to the local PSB and government offices, where he is said to have got into various arguments with the staff. Finally, according to the court ruling mentioned above, sometime in the first half of 1997, Han 'kicked open the door of the PSB Bureau Chief' and (curiously enough) 'hung a bundle of grass on the PSB building's exterior wall' — thereby 'seriously disrupting normal office work'. Shortly after, the municipal government and PSB met to discuss Han's case, and they decided that his behaviour met the criteria laid down in the Dalian City regulations governing the compulsory custody and treatment of the dangerously mentally ill. On 28 December, a second judicial psychiatric evaluation was performed on Han, the findings of which were as follows:

Paranoid psychosis. The subject of appraisal, Han Zhenxi, over the past few years has carried out numerous petitioning and complaint activities, indulged in intemperate language and behaviour (*yanxing pianji*) and obstructed the exercise of public duties. There is a direct causal relationship between these activities and the illness from which he is suffering. He has lost the capacity to recognise and control his actions and should therefore be deemed not legally responsible for them. Since his illness is presently in an active phase, we recommend that he be taken into [legal] guardianship (*caiqu jianhuxing cuoshi*).

The reference here to Han's being 'not legally responsible' meant that he would otherwise have faced criminal charges for his disruptive petitioning activities, and on 2 March 1998, he was compulsorily admitted to the Dalian City Ankang Hospital. The court document gave no indication of what Han's treatment or experiences in the Ankang had been, but it did note that he was an 'Injured and Disabled Revolutionary

⁸⁰ See Qin Xudong (2003) '*Cong yi fen qiqiao de xingzheng panjueshu shuoqi*' ('Reflections on a Suspiciously Strange Administrative Case Judgment') (6) *Xingzheng yu fazhi* (*Administration and the Legal System*). See also '*Zhewei jingcha you mei you jingshenbing?*' ('Was this Policeman Mentally Ill?') (22 January 2002) *Beijing Qingnian Bao* (*Beijing Youth News*) at 23; and He Haibo '*Quru de sifa — ping Han Zhenxi an yishen panjue*' ('An Insult to the Judiciary — Assessing the Judgment of First Instance in the Case of Han Zhenxi') (undated) *Beida falü xinxī wang* (*Beijing University Law Information Network*), available at: <211.100.18.62/research/lgyd/details.asp?lid=1955>.

⁸¹ One possibility is that the government (or an official thereof) wanted to evict Han from his restaurant premises, either for city redevelopment purposes or because they simply wanted to take over his restaurant. The destruction of homes (*chaiqian fangwu*) of urban residents and their forced relocation by local governments around China is becoming an increasingly serious civil rights problem.

Armyman', a status generally attracting great public respect in China. When he was eventually discharged from the Ankang on 1 December⁸² and soon thereafter proceeded to bring his administrative lawsuit against the PSB and Ankang authorities, it was doubtless Han Zhenxi's membership of this elite social group that explained why the court, despite obvious pressure upon it from the local government, seemed to go out of its way to try to meet his demands for vindication and justice.

Han's administrative lawsuit requesting the annulment of the PSB's action in forcibly hospitalising him was heard by the Pulandian Municipal People's Court of Liaoning province on 20 July 2000. The court's ruling on the case was in many respects astonishing, both for what it said, and for what it did not. Also interesting is the fact that the question of whether Han had genuinely been in need of custodial psychiatric treatment hardly figured at all in the court's final arguments. Instead, the court hearing focused overwhelmingly on the procedural aspects of his case. As noted above, the court pointed out that the 18 July 1991 police psychiatrists' appraisal of Han's mental state had been carried out without his knowledge. But, according to the judges' summing-up statement, there was a great deal more:

- Only five days prior to the police psychiatrists' surreptitious evaluation of Han's mental state, psychiatrists at a regular mental hospital had examined him openly (also at the PSB's behest) and 'concluded that Comrade Han Zhenxi's mental state is quite normal'.
- Neither Han nor any member of his family had been informed of the results of the 28 December 1998 judicial appraisal, in which the police psychiatrists had diagnosed him as a 'paranoid psychotic' requiring compulsory hospitalisation in the Ankang.
- Neither of the two psychiatric appraisal certificates from 1991 and 1998 had been stamped with the official seal of the Judicial Appraisal Group (or of any other body), contrary to the requirements of law. The two documents were therefore, according to the court, 'for this and other reasons [...] both legally invalid'.
- The Dalian Ankang authorities had failed to complete any of the required formal documentation either for Han Zhenxi's admission to the hospital or for his eventual discharge. As a consequence, his repeated requests to be given copies of these legally required documents had gone unanswered by the Ankang authorities — and this despite the fact that no less powerful a body than the Liaoning Provincial Department of Public Security's Discipline

⁸² The court stated that Han had been 'released on bail for medical treatment' (*baowai jiu yi*) and that this was still his legal status as of July 2000 when his administrative lawsuit was being heard. There is a certain irony in the use of this term in the context of the Ankang. It is an expression from the criminal law normally used when sentenced criminals fall sick in prison and need to receive medical care in an outside hospital; in Han's case, he was imprisoned in what purported to be a psychiatric hospital because he was deemed to be criminally insane, but then when his alleged mental state improved he was 'released on bail for medical treatment'. This inappropriate use of concepts from the criminal law to describe the situation of Ankang inmates is indicative, more generally, of the legal system's ambiguity and uncertainty as to whether they are in fact being punished or medically treated.

Inspection Committee had 'specifically instructed them to provide Han with the documents'.

- In October 1997, moreover, 'A Joint Investigation Team, consisting of the Municipal Politics and Law Committee, the Party Discipline Inspection Committee, the Public Security Bureau, the Municipal Procuracy and the Taiping Township People's Government, studied and examined the various petitions submitted by Ma Jingkui; it then repudiated the Defendant's [ie the PSB's] finding that the Plaintiff [Han] had been in violation of the law in this matter. The Plaintiff is a Grade A-2 Revolutionary Injured-Disabled Armyman; in the course of his work he has frequently received the accolade of "Exemplary Communist Party Member", "Civilised People's Policeman", and other such awards and distinctions'.

In their closing remarks before announcing judgment, the judges made the following devastating pronouncement:

This Court finds that the Defendant, a public security organ, is empowered to order the punishment of persons whose behaviour violates the security administration regulations. [However,] the medical appraisal performed on the Plaintiff was carried out by a Judicial Medical Appraisal Group which had not been entrusted and authorised to perform such a task by any Appraisals Committee; it was performed on a party implicated in a case in which no case file existed, no criminal grounds had been identified, and no case number had been assigned; and the certificate of its findings bears no official seal. The medical appraisal was therefore legally invalid, and the Defendant's subsequent action in dispatching the Plaintiff to the Dalian Municipal Ankang Hospital to undergo guardianship-based psychiatric treatment was a violation of the law.

Astoundingly, the judges then proceeded to declare that the Dalian municipal regulations,⁸³ under which the local PSB was empowered to detain 'mentally ill persons who create incidents or disasters' and then send them to the Ankang, were themselves 'legally invalid'. As mere local-level regulations (*difangxing fagui*), they argued, they were at variance with China's 1996 Administrative Punishment Law, according to which any punishment involving the restriction of personal liberty has validity only when specified in law (*falü*). Since China's judges have no authority at all to comment or adjudicate upon the validity of existing laws and regulations, one can only assume that these particular judges had reached some kind of a breaking point in their forbearance with the system as a whole, that the case before them was somehow the 'straw that broke the camel's back', and that they were determined to express their views about it and put them on the record in the strongest possible terms.

However, having courageously dismissed all the relevant legal procedural arguments of the Dalian PSB and its Ankang Hospital colleagues, the judges then performed an

⁸³ 'Dalian shi jianhu zhiliao guanli zhaoshi zhaohuo jingshenbingren tiaoli' ('Dalian Municipal Regulations on the Guardianship, Treatment and Management of Mentally Ill People who Create Disasters or Incidents'), passed by the Standing Committee of the Dalian Municipal People's Congress on 4 November 1992 and effective as of 17 December 1992, available at: <www.dl.gov.cn/togov/law/local/688_15942.htm>. For details of other similar municipal and provincial-level regulations, see notes 63 and 66 above.

extraordinary, abject 180-degree turn when it came to the actual judgment. First, they delivered a Parthian shot:

According to Article 17 of the PRC General Principles of Civil Law, ‘If mentally ill people suffer full or partial loss of civil capacity because of their illness, the following persons shall assume guardianship over them: 1) their spouses, 2) their parents, and 3) their adult sons or daughters [...]’ It is indisputable that the Plaintiff already had such guardians available to him. The action of the Defendant, who is the employer of the Plaintiff, in failing to seek the permission of the Plaintiff’s guardians for a change of guardianship to be effected, and in then privately assuming that role itself, was in itself a violation of the law. For it then to have dispatched the Plaintiff to the Dalian Municipal Ankang Hospital to undergo guardianship-based medical treatment was a still greater violation of the law.

But then, immediately afterwards, came the jaw breaker:

However, the Defendant asserts that its action in dispatching the Plaintiff to the Dalian Municipal Ankang Hospital to undergo guardianship-based psychiatric treatment was an action involving its own internal affairs (*shuayu qi neibu xingwei*), and the Court hereby upholds this assertion.

In order to uphold and supervise the administrative organs’ lawful exercise of government, and to defend the lawful rights and interests of the parties concerned, this Court now rules, in accordance with Article 54 (Para 1) of the PRC Administrative Litigation Law,⁸⁴ as follows: The administrative action taken by the Defendant, Pulandian Municipal Public Security Bureau, in dispatching the Plaintiff, Han Zhenxi, to the Dalian Municipal Ankang Hospital to undergo guardianship-based psychiatric treatment is upheld.

This judgment had no legal sense or logic to it. Everything the judges had said prior to pronouncing judgment showed that they believed the municipal PSB and the Ankang authorities had broken virtually every rule in the book in having Han committed to the asylum. They then, however, did the one thing that the law did not permit them to do — namely, to challenge the legality of an existing administrative regulation — and they failed to do the one thing which, in view of the facts and evidence, the letter of the law virtually required them to do — which was to quash all or part of the PSB’s handling of

⁸⁴ According to Article 54 (Para 1):

After the People’s Court has heard a case, it shall make one of the following rulings, depending upon the circumstances of the case:

- 1) if the evidence for a specific administrative action is clear and solid, and if the law or regulation has been applied correctly and in accordance with legally prescribed procedure, then the [administrative action] should be upheld;
- 2) if one of the following circumstances applies to the specific administrative action, then it should be either wholly or partially quashed, or alternatively the defendant can be ordered to carry out a new specific administrative action:
 - a) the primary evidence was insufficient; b) the law or regulation in question was improperly applied;
 - c) there was a violation of legal procedure; d) [the administrative body] exceeded its powers; or e) an abuse of power occurred.

Han's case. The judges' final unqualified acceptance of the defendant's chilling assertion that the entire matter had simply been 'an internal affair' of the PSB was tantamount to a judicial ruling that China's police force is, quite literally, a law unto itself.

Significantly, the press reports on this case specifically noted that 'the judgment had been discussed and agreed upon by the adjudication committee beforehand', thus explaining why the judges had been powerless to render the judgment that they favoured.⁸⁵ However, it would be wrong to assume that the buck had stopped, in this case, with the court's adjudication committee. For as one Chinese legal commentator subsequently observed,

We are justified in suspecting here that the judges were undoubtedly toiling under some inexpressible burden of difficulty. Under pressure from the powers that be, both they as individuals and the Court as an institution were left powerless to accord the law its proper role and place. From the more subtle aspects of this case, we can clearly discern the state of awkwardness and embarrassment to which judicial dignity and legal rationality are consigned under the harsh realities of China's present legal system. As long as the judiciary continues to lack independence, the courts will be unable to play the role of a fair and impartial adjudicator and supervisor, and social justice will remain but a distant hope.⁸⁶

The Case of Wang Henglei

On 7 January 2000, Wang Henglei, a man in his fifties and teacher at the Changrenli Primary School in the Xincheng district of Xi'an, suddenly went missing. For several days his wife searched frantically for him, until eventually the local police told her that Wang had been forcibly admitted to the Xi'an Ankang mental asylum. He had been in a long-running dispute with the headmaster of the Changrenli Primary School over the housing that he and his wife had been allocated by the school, and lately he had been petitioning the local government about his case. On the morning in question, Wang had made a protest speech to the other teachers in the school yard, and the headmaster had called in the police to stop him. On arrival at the school, an officer from the Xincheng district police station classified the incident as a 'public order disturbance' and Wang was then detained.⁸⁷ After a brief discussion with the headmaster, the policeman then telephoned the deputy director of the Xi'an Ankang facility, Ning Laixiang, who promptly sent two of the hospital's psychiatrists to the school. After learning that it

⁸⁵ The 'adjudication committee' (*shenpan weiyuanhui*) in Chinese courts is a group of judges, usually led by the Court President, responsible for discussing and deciding the verdict (and the sentence, if any) in advance of the actual trial in all 'difficult or thorny cases' (*yinan anjian*.) Its role is closely linked to the phenomenon of 'verdict first, trial second' (*xian pan, hou shen*), a widely deplored practice in Chinese criminal courts since the 1950s. See Lubman, S (1999) *Bird in a Cage: Legal Reform in China After Mao* Stanford University Press at 164.

⁸⁶ Qin Xudong 'Reflections on a Suspiciously Strange Administrative Case Judgment' *supra* note 80.

⁸⁷ A number of reports emerged around the same time saying that the Xincheng district PSB Sub-Bureau leadership was completely corrupt, and that they were the subject of fear and loathing by the local population. See, for example, Lan Tongren 'Xi'an shi Xincheng gong'an fen ju ba yi wugu funü Meng Xiaoxia baibai guanzai jingshenbing yuan changda shi nian!' ('Xi'an City's Xincheng PSB Sub-Bureau Incarcerates Innocent Woman Meng Xiaoxia in Mental Hospital for as Long as Ten Years!') (27 July 2004) *Boxun xinwen wang* (Boxun News Net), available at: <peacehall.com/news/gb/yuanqing/2004/07/200407272240.shtml>.

was a public order disturbance and asking Wang Henglei a few simple questions, the psychiatrists diagnosed him as suffering from 'schizoid personality disorder and paranoid psychosis'. Wang was bundled into a police van and dispatched to the Xi'an Ankang. No proper forensic-psychiatric evaluation of any kind was conducted on Wang. No formal committal papers were completed or signed by the asylum authorities.⁸⁸

Upon learning what had happened, Wang's wife hired a lawyer, who swiftly filed an administrative lawsuit against the Xi'an Ankang Hospital, the Xincheng district PSB Sub-Bureau, and the District Bureau of Education, requesting the court to annul the PSB's administrative action in having Wang committed to the asylum and to award compensatory damages. Meanwhile, Wang remained in the asylum, and only on 15 May, more than four months after his initial incarceration there, and only three days before the court hearing, did the Xi'an Ankang Deputy Director arrange for him to undergo the formal forensic psychiatric evaluation which, under Ankang regulations, was a necessary prerequisite for carrying out an involuntary committal in all but the most urgent and dangerous of cases. (Making an impromptu speech in a school yard hardly qualifies as such, even in China.)

On 18 May, the court convened to hear the administrative suit. His lawyer argued that the question of Wang's mental state was immaterial to the case, and that the only pertinent issue for adjudication was whether or not the Ankang and local police authorities had followed due procedure in having Wang involuntarily committed. Since no formal procedures at all had been followed in his committal, the case was clear. The court ruled as follows:

The primary function of Ankang Hospitals is to compulsorily take in and treat mentally ill people who threaten public order. [In Wang Henglei's case,] however, without first requiring the police to produce a written 'Decision to Apply Compulsory Medical Treatment' and without informing his relatives, and relying only upon materials shown to them by the school authorities and on their own brief interview with Wang, the Ankang Hospital made a purely subjective decision that he was mentally abnormal [...]. The Ankang Hospital's behaviour in subjecting him to forcible medical treatment and in restricting his personal freedom thus constitutes a violation of due process (*qi xingwei weifan le fadeng chengxu*). The court upholds Wang Henglei's litigation request for revocation of the compulsory treatment measures, and orders the defendants to compensate him and apologize to him for the damage caused.⁸⁹

Wang was awarded 32.85 *yuan* compensation for each day of his confinement. The institute's Deputy Director, Ning Laixiang, lodged an appeal, so Wang had to remain in the Xi'an Ankang until the appeal hearing on 16 November, six months later. On that

⁸⁸ For a report on another teacher (a university professor) sent to a mental hospital to prevent him complaining about his superiors, see 'Shei you quan ba zhengchang ren songjin jingshenbingyuan?' ('Who Has the Right to Have a Normal Person Confined in a Mental Hospital?') (4 June 2001) *Zhongguo qingnian bao* (China Youth Daily). For a brief summary of several other similar cases, see Yang Qu, 'You bing' ('Sick') (2 December 2001) *China Youth Daily*.

⁸⁹ See 'Meng Xiaoxia beiju xia-pian (tu): zhuitao gongdao de lu hai yao zou duo jiu?' ('Meng Xiaoxia's Tragedy, Part Two (With Photos): How Much Farther Must She Journey in Search of Justice?') (8 March 2004) *Hua shang bao* (China Business View), available at: <http://hsb.huash.com/gb/newsdz/2004-03/08/content_882580.htm>. The above-quoted passage on Wang Henglei's case appears at the end of this article.

day, Deputy Director Ning announced to the court that Wang Henglei had experienced 'sudden death' (*cu si*) at the Xi'an Ankang on the previous evening. (A post-mortem report by the procuracy later found that Wang had died of a ruptured blood vessel in the brain.) The appeal hearing went ahead that day, and the court upheld the original ruling on all points.

Unsurprisingly, Wang's untimely death provoked widespread suspicion among the local community, and even the local procuracy was convinced that the Xi'an Ankang's Deputy Director Ning had had a direct hand in it. But the police investigation against Ning proceeded with excruciating slowness. According to a report published by the Xinhua News Agency in March 2003, more than three years later:

On 16 April 2002, a case was filed against Ning for the crime of abuse of official power, and he was taken into police detention the following day. On 30 April he was formally placed under arrest; and on 28 May he was released on bail to await trial.

The procuracy has stated that the defendant, Ning Laixiang, an official in a state organ, failed to exercise his duties diligently and responsibly and wantonly abused his official powers, thereby harming the normal operation of the state organs and violating citizens' personal rights and interests. The facts of his crimes are clear, the evidence is solid and sufficient, and he should be held legally responsible for committing the crime of abuse of official power.⁹⁰

According to a newspaper report of one year later, however,

When our reporter enquired into this case, we learned that the procuracy had withdrawn its case against Ning Laixiang. The procuracy was unwilling to reveal to us the specific reason for this. Nonetheless, the fact that Ning Laixiang was earlier indicted on charges of abusing his power affords an indirect insight into the kinds of wrongdoings that have been going on at the Ankang Hospital.⁹¹

One other important point should also be mentioned. As his lawyer pointed out at the administrative trial challenging his psychiatric detention, if Wang had indeed created a 'public order disturbance' at the primary school by making his speech on the day in question, then the police had a perfectly viable range of alternative options available to them, from issuing Wang with a written warning or imposing a fine on him, to sentencing him to up to 15 days in administrative detention under the Security Administration Punishment Regulations. However, in the case of persistent complainants and petitioners, such punishments probably fail to achieve the PSB's objective of deterring the troublemakers. Each short-term punishment is added to the original litany of grievances and injustices that the complaint and petitioning activities were intended to resolve, which in turn leads to still more activities of this type. Sterner police measures are thus required in order to silence such people. Re-education through labour (a police-imposed 'administrative punishment' involving up to three years'

⁹⁰ See Wu Wei and Qin Juan 'Xi'an shi ankang yiyuan fuyuanzhang shexian lanyong zhiquan bei tiqi susong' ('Deputy Director of Xi'an Ankang Hospital to be Prosecuted on Suspicion of Abuse of Official Power') (18 March 2003) *Xinhua wang* (*Xinhua News Net*), available at: <www.xinhuanet.com>. The article was originally published in *Hua shang bao* (*China Business View*) on the same day, available at: <http://hsb.huash.com/gb/newsdzb/2004-03/08/content_882580.htm>.

⁹¹ See 'Meng Xiaoxia's Tragedy' *supra* note 89.

detention without trial) would seem to be an obvious option or tool for this purpose, but this requires a modicum of due process, and the defendant has a statutory right of review and appeal. Ankang-style psychiatric custody has none of these procedural drawbacks and complexities — and it can be extended indefinitely.

The Case of Meng Xiaoxia

The next case, which also took place in the Xincheng district of Xi'an, was reported in extensive detail in China by numerous national and provincial-level newspapers from March 2004 onwards, and in June that year it even became the subject of a major 'CBS 60 Minutes' style investigative feature programme on Chinese Central Television (CCTV). It provoked an outpouring of public anger, on websites and bulletin boards around China, and led to widespread calls for the officials responsible to be swiftly brought to justice.⁹²

On 21 September 1986, Meng Xiaoxia, a 34-year-old woman who worked as a supervisor at the Xi'an Shunda Plastic Shoe Factory, upbraided a young male worker, Tang Lanzhong, for breaking regulations by failing to let her inspect a batch of coal that he was bringing into the factory. Tang, who was the son of the factory's former director and who was on good terms with the current manager, refused to follow Meng's instructions and, moreover, threatened to 'do her in'. When the same situation arose two days later and Meng again upbraided him for disobeying the factory's regulations, Tang knocked her to the ground with a chair and then struck her unconscious with a metal hoe. She was found several hours later by another worker. She spent the next two to three months in hospital in a critical condition and was left permanently lame as a result of her injuries.

Upon returning to work, she found that the manager had not disciplined Tang and she insisted that action be taken against him. Eventually, a year and a half later, the manager announced that one month's bonus would be deducted from Tang's salary as a punishment for assaulting Meng. Understandably dissatisfied with this outcome, Meng then submitted a complaint to the local court accusing Tang of criminal wrongdoing. The factory hired a lawyer, and many months later the court reached a 'mediated' judgment characterising the incident as an 'industrial injury' case. Incensed by this, Meng began petitioning (*shangfang*) the higher authorities.

On 24 October 1989, someone slipped a note under Meng Xiaoxia's dormitory door warning her to back off, and saying that the factory leadership was planning to have her committed to a mental asylum. Two days later, in the afternoon, around a dozen unknown men burst into her room, thrust her into a van and drove her to the Xi'an Ankang Hospital, where the staff tied her to a bed in one of the locked wards. She was

⁹² For a representative selection of articles on Meng Xiaoxia's case, see: CCTV.com "'Jishi": jingshenbing huanzhe' ('"True Record": A Victim of Mental Illness') parts one and two (25 June 2004; 13 July 2004), both available at: <www.cctv.com>; 'Meng Xiaoxia's Tragedy' supra note 89; Lin Tongren, 'Wei gong zao da zhi can, tao gongdao bei qiangsong jingshenbing yuan shi nian' ('Beaten and Crippled for Upholding Truth, and Forcibly Sent to a Mental Hospital for Ten Years for Seeking Justice') (27 July 2004) *Da ji yuan* (Epoch Times); Yao Peng and Zhu Qian 'Yige nüren de shiba nian shanghen' ('A Woman's 18-Year-Long Wounds') (2 August 2004) *Nüxing wang* (Women's Network), available at: <www.china-women.com/gb/2004/08/02/zgfnb/zhxw/2.htm>; and Yao Peng and Zhu Qian 'Guanyu jingshenbing jianding de "jianding"' ('An "Evaluation" of Judicial Evaluation') (4 August 2004) *Women's Network*, available at: <www.china-women.com/gb/2004/08/04/zgfnb/zhxw/6.htm>.

placed on a daily drip-feed injection of psychotropic drugs and made to take additional medicine orally, but she devised ways to remove the needle and to spit out the pills when the staff were not looking. After a month, Meng went on a hunger strike to protest against her confinement. She was promptly subjected to a forensic psychiatric examination and declared to be suffering from 'hysteria' (*yi zheng*). This was the first and only medical diagnosis of any kind that she was to be given by Xi'an Ankang psychiatrists during a series of six forced incarcerations at the hospital that amounted, in all, to no less than ten years out of the subsequent 18-year period.

On the first occasion, Meng Xiaoxia was released after six months, but on 5 June 1990, after she lodged a complaint with the Xi'an city government about her treatment, Meng was abducted in broad daylight by Shunda Shoe Factory officials and locked in a room at the factory for 21 days, bound to a chair with her hands tied behind her back. On the final evening, an unknown man came into the room and knocked her out by banging her head against the wall. When she awoke, she found her trousers undone and discovered that she had been raped. She then escaped from the factory, bought a bottle of DDT, went to the Xi'an Mayor's office to report the incident to officials there, and swallowed the contents in front of them. She awoke in a hospital bed several days later. She was discharged and sent home on 25 August.

Only a few days later, however, several more unknown men came to her home, handcuffed her, and forcibly put her back inside the Xi'an Ankang facility. Shortly after, she discovered that she had become pregnant as a result of the rape, and she informed her father of this. After he complained to the factory manager, a police officer arrived at the Ankang hospital to interview Meng, but no police action was taken and she received no further news from the legal authorities. On 30 December that year, she was released from the mental asylum for the second time. She caught a train to Beijing and began frequenting the 'visits and complaints' offices in the capital in a further attempt to get the government to take action on her behalf. The Beijing authorities' response was to notify the Shunda Shoe Factory, which promptly dispatched a group of men to bring her back to Xi'an. Soon afterwards, on 14 March 1991, Meng had a bad fall and, in her ninth month of pregnancy, suffered a miscarriage.

On 30 May 1991, for continuing to petition the government about her case, Meng Xiaoxia was once again, without any semblance of legal or medical due process, forcibly incarcerated in the Xi'an Ankang institute for the criminally insane. Although locked in a secure ward with seriously disturbed patients, she managed to have a friend smuggle in a small, metal saw blade, and whenever the wind blew strongly or it rained loudly enough to cover the noise, she would slowly cut away at one of the bars on the window of her room. On the night of 25 July, she finally succeeded in cutting through the bar and was able to make her escape from the asylum. Once again, she went to the city government offices to lodge her complaint, and once again, only two days after her escape, the factory manager, having been notified by the government, sent men to return her forcibly to the Xi'an Ankang.

This time, she was locked in a special high security ward and held at the asylum for a full five years.⁹³ In July 1996, she escaped for a second time, again by using a saw blade to cut through the bars of a window. Once more, she travelled to Beijing, where she

⁹³ The published CCTV account of Meng's case states that she was held at the Ankang for 'three years' on this occasion; but from the relevant dates given in the article (30 May 1991 until July 1996) it is clear that she was actually held for more than five years

survived for the next year and a half by begging and living rough on the streets. Upon returning to Xi'an, she continued to live and sleep on the city streets, afraid to return home in case the Shunda Shoe Factory authorities should learn of her whereabouts and come after her again. Eventually they did so, however, and, on 24 February 1998, they seized her and took her back to the Xi'an Ankang for the fifth time. Ironically, but quite revealingly, in June that year she was discharged and allowed to go home for almost two months because the factory manager had stopped paying her 'medical and accommodation' bills at the Ankang; but when he rectified this oversight Meng was promptly taken back to the asylum for the sixth and last time.

Her final escape from the Xian Ankang took place on the afternoon of 15 September 2000, when she took advantage of a rare outside exercise period to slip out of the hospital gates and hide until nightfall in a nearby field.

Over the next two years, Meng Xiaoxia brought a series of administrative lawsuits in the Xi'an courts against the three main parties who had conspired to persecute her in this grotesque way over the previous decade and a half. The parties in question were the Xi'an Shunda Plastic Shoe Factory, the Xincheng District Sub-Bureau of the Xi'an Municipal Public Security Bureau, and the Xi'an Public Security Bureau's Ankang Hospital. Meng's first attempt to bring legal suit was at the Xincheng District Court on 14 December 2000, but the court rejected the suit on the grounds that what had been done to her by these various bodies had not constituted a 'specific administrative action' (*juti xingzheng xingwei*), in the sense defined by the Administrative Litigation Law. After several more failed applications to bring suit, Meng finally succeeded in having her case accepted by Xi'an's Lianhu District Court. However, the latter ruled that it fell under the local jurisdiction of the Xincheng District Court, and so returned it to that court for adjudication.

Four months later, the Xincheng District Court gave its ruling on the case. Meng Xiaoxia's hospitalisation at the Xi'an Ankang, it asserted, had been a 'civil referral action' (*xingzheng weituo xingwei*) carried out by the Xi'an Shunda Plastic Shoe Factory; it had not been 'an act of compulsory medical treatment' (*qiangzhi zhiliao xingwei*) carried out by the public security organs. For that reason, the court ruled, 'it did not constitute a specific administrative action' and so: 'The case does not fall within the scope of acceptance of administrative cases'. So, the court again rejected her suit. Meng then appealed to the Xi'an Intermediary Court, which in due course upheld the judgment of first instance. By this time, however, Meng's case had begun to attract widespread sympathy and support from the residents of Xi'an, and an elderly lawyer, Zhang Jinji, from the Shaanxi Ji Si De Law Firm, came forward to offer her legal assistance in lodging petitions for a retrial to be carried out. In early 2003, the Xi'an Intermediary Court held a formal hearing to consider this request, but eventually ruled to dismiss it.

In essence, the courts had ruled that Meng Xiaoxia's ten-year incarceration in the Xi'an Ankang, an institution owned and operated by the Public Security Bureau, had had nothing to do with the police, and that it had instead been a case of civil psychiatric committal carried out by the police on the 'authorisation' of the Shunda Shoe Factory manager. In principle, therefore, Meng should have been able to sue the shoe factory through the civil courts. However, by the time the various administrative courts had finally ruled that the case was none of their business, the applicable time limits for filing a civil tort lawsuit against the shoe factory had long since passed. The end result of all this was that none of the three parties directly responsible for Meng's cruel mistreatment since 1989 has ever received any form of legal censure or punishment for their actions. Nor has Meng received any apology or compensation from the PSB or Ankang authorities.

Even having her story splashed all over CCTV prime time appears to have brought her no closer to a just and final outcome.

Legal Debate on Meng's case

In the aftermath of the dramatic nationwide coverage of Meng Xiaoxia's case on CCTV, four lawyers and legal scholars in Xi'an were invited by a national newspaper to discuss and analyse the case from the legal perspective. All four agreed, to a greater or lesser extent, that the Xi'an courts' handling of the various lawsuits brought by Meng had been a dismal travesty of justice. In the course of the debate, fundamental legal issues relating to the Ankang system of forensic psychiatric custody came to light and were openly debated in China, apparently for the first time ever. The highlights of the discussion by the four law experts were as follows:⁹⁴

- Although officially claimed to be a form of 'coercive shelter and treatment' (*qiangzhi shouzhi*) for the mentally ill, in practice the Ankang system 'contains an essentially punitive element [...] involving the deprivation of personal liberty'. To this extent, 'It resembles the now-abolished system of custody for investigation (*shourong zhidu*)'.⁹⁵
- If Meng's committal to the Xi'an Ankang had indeed, as the court ruled, been a 'civil referral action', then under the terms of the Civil Procedure Law it should have been carried out by her parents, acting in their capacity as her immediate guardians. The Shunda Shoe Factory had no legal authority to usurp the parents' role in this regard; and in the absence of any such move by the parents, the Ankang authorities themselves 'had no legal grounds for implementing an involuntary civil committal'.
- Since it was actually, however, a police action and not a civil committal, then a forensic psychiatric evaluation should have been performed before the committal. Secondly, for Meng's compulsory admission to the Ankang to be lawful, her case should have fallen under one of the five main headings of 'dangerously mentally ill' persons as laid down by the Ministry of Public Security,⁹⁶ but it manifestly did not.

⁹⁴ See She Jianguo et al 'Meng Xiaoxia anjian: kaowen jingshenbingren shouzhi zhi' ('The Meng Xiaoxia Case: An Interrogation into the System of Custody for the Mentally Ill') (6 July 2004) *China Business View*. The participants in the discussion on Meng's case were: Zheng Shengxun, a professor at the Xi'an College of Industry; Li Jie, a lawyer at the Shaanxi Xu Xiaoping Law Firm; Zhang Xi'an, a lecturer at the Northwest College of Politics and Law; and Zhang Maichang, a lawyer at the Shaanxi Qin Li Law Firm. The summary provided above should be taken as a rough guide only to what was a highly complex legal discussion among the four participants.

For a summary of the legal views and arguments of Meng's own lawyer, Zhang Jinji, see Yao Peng and Zhu Lian 'An "Evaluation" of Judicial Evaluation' supra note 92.

⁹⁵ Formerly the most widespread form of administration detention in China, 'shelter for investigation' (*shourong shenchu*) was a measure whereby criminal suspects whose identities were unclear, or who were thought by the police to be engaged in cross-province criminal activity, could be detained in police holding centres or camps for up to three months. In practice, this measure was often unlawfully used by the police as a convenient substitute for criminal detention (which involves a degree of supervision by the procuracy), and frequently for much longer than three months. Although the revised Criminal Procedure Law of 1996 abolished this form of administrative detention, it incorporated the same general principle under a different heading and preserved several of its original defects.

⁹⁶ For the MPS list of these five categories, see 61 above.

- Meng's confinement in the Ankang was unquestionably an 'act of compulsory medical treatment' (*qiangzhi zhiliao xingwei*) carried out by the police, for the following reasons:
 - 1 The Xi'an Ankang authorities claimed they had merely 'accepted a civil referral to perform medical treatment'. However, the fact that the hospital had an unofficial policy of accepting voluntary civil referrals from society was irrelevant to this case, because it had clearly acted against Meng's own wishes in the matter.
 - 2 The Xincheng District Court's various rulings should have been legally consistent with each other, but they were not, because in a recent similar case relating to the Xi'an Ankang — that of Wang Henglei⁹⁷ — the court had ruled that 'the primary function of Ankang Hospitals is to compulsorily take in mentally ill people who threaten public order'; for the same court now, in Meng's case, to argue that the Ankang 'serves a dual role' (namely the provision of both voluntary and involuntary treatment) was 'clearly most unconscientious' of it (*xianran shi ji bu yansude*).
 - 3 In December 1987, when the Ankang system was founded, the Ministry of Public Security issued a 'Conference Key-Point Summary'⁹⁸ stating that all Ankang facilities belong to and are part of the public security system; that its doctors and nurses were police officers and paid on the PSB salary scale; that Ankangs are institutions for compulsory custody and treatment; and that only persons falling under one of the five stipulated categories should be admitted for such treatment. Nowhere had the ministry ever specified that Ankang facilities were permitted to 'admit and treat patients from society at large' (*mianxiang shehui shouzhi bingren*). The court was thus doubly wrong in accepting the Xi'an Ankang's claim that this had been the basis of Meng's treatment. Since Meng's case did not fall within the five stipulated categories, moreover, her committal 'was obviously unlawful'.

On the key legal question of whether Meng's incarceration had constituted a 'specific administrative action' by the PSB, the lawyers and legal scholars were unanimous in stating that that, despite the court's finding to the contrary, it undoubtedly did so:

- Although the sum total of the medical certification in Meng's case was one Ankang document stating that she suffered from 'hysteria', both the PSB and the Ankang authorities had nonetheless issued a series of other official documents specifically 'agreeing to', 'authorising' and 'endorsing' each of Meng's six involuntary committals to the Xi'an Ankang over the years. Moreover, each of these various documents had been stamped with the

⁹⁷ For details of Wang's case, see 72 above.

⁹⁸ The document referred to here is the MPS's '*Quanguo gong'an jiguan di'yi ci jingshenbing guan-zhi gongzuo huiyi jiyao*' ('Key-Point Summary of the First National Public Security Conference on Custody and Treatment of the Mentally Ill'), issued on 13 December 1987. For further details of this key event, see 53, and notes 34 and 35 above. Since no copy of the 'Key-Point Summary' document has thus far publicly come to light, it was presumably issued as classified; the extracts from this document cited by the lawyers and legal scholars in the present debate are thus of considerable value and interest.

Ankang's official seal and signed by the institute's director. The court had examined these documents. The Ankang was a purely PSB entity, and the court's ruling that the police had 'taken no administrative action' against Meng was thus without legal foundation.

- Moreover, local police had acted as 'the evil accomplices' (*bang xiong*) of the Shunda Shoe Factory in having Meng forcibly sent to the Ankang on numerous occasions. Indeed, so severe were the circumstances of this case that Meng would be fully justified in taking out a private criminal prosecution against the Ankang, the PSB and the shoe factory leadership.
- The court's most fundamental area of legal confusion had been in construing the 'dual role' principle and axiom of the Ankang system's work, the 'combination of custody and treatment' (*guan-zhi jiehe*), as meaning 'custody for involuntary patients' and 'treatment for voluntary patients'. It was this that had led the court wrongly to accept the Ankang authorities' claim that Meng's case was one of 'voluntary civil referral'. What the 'dual role' principle in fact meant was that only involuntary patients were to be admitted to the Ankang, and all such people were to be subjected to custody and treatment simultaneously. Thus, the Ankang authorities' claim that they only had Meng 'in treatment' and not 'in custody' was false.

The legal experts concluded their public discussion of Meng Xiaoxia's case by saying that since the Ankang system's formal legal foundation went no further than the Ministry of Public Security's 'Conference Key-Point Summary' of December 1987, a purely administrative document which appeared to be 'in conflict with certain other laws' (an apparent reference to the Administrative Punishments Law and the Law on Legislation), consideration should now be given to abolishing the Ankang system and to 'replacing it with something more humane'.

The Case of Wang Fenglai

In 1985, a young woman called Liang Caixia, from a well-off family, fell into the Zhujiang [Pearl] River in Guangzhou, Guangdong province, and almost drowned. She was saved by a young man, a lower middle-school graduate called Wang Fenglai.⁹⁹ Out of gratitude, she agreed to marry him, but after a few years of marriage the educational gap between them grew wider and Liang began to treat her husband with contempt. He was quiet and introspective, while she was outgoing and lively. He worked as an orderly in a funeral parlour, while she went into business and eventually became the general manager of a successful company. She made Wang do all the cleaning and other housework, but he tolerated it patiently and out of a sense of debt since she had 'married below her status'. Liang eventually started openly bringing lovers home in the evenings.

In May 2003, a sudden and dramatic change arose in his wife's general behaviour towards him. She began to treat Wang warmly and kindly again for the first time in many years. One evening, she broached the topic of their retirement plans and said

⁹⁹ See Zheng Rong, "'Feng" zhangfu zhuanggao "Pan Jinlian" — quan zhangfu bingtui, "chu xin ji lü" ("A "Mad" Husband Sues "Pan Jinlian" — Wife Concocts Weird Scheme to Make Husband Take Disability Retirement') (7 June 2004) *Fazhi kuaibao* (*Legal System Express*), available at: <www.fzkb.cn.> and <skb.hebeidaily.com.cn/200429/ca391213.htm>.

that he should consider quitting his job so that he could spend more time at home. Her monthly salary of 8,000 *yuan* would be more than enough for both of them. She then unfolded her plan of action to Wang Fenglai. If he could succeed in convincing his manager at the funeral parlour that he was mentally ill, he would be able to apply for early retirement on a full pension. All he needed to do was to act in a conspicuously strange manner at work for a few weeks, and eventually his manager would have to call in a psychiatrist to have him examined. Wang was highly taken with the plan, and he began to think up various kinds of odd behaviour to practise at home.

When the big day arrived, on 20 June, the normally quiet and inhibited Wang arrived at work in inordinately high spirits. During the solemn funeral proceedings on that day and during the rest of the week, he giggled and made odd gestures in front of the assembled mourners. The funeral parlour office began receiving numerous complaints from angry and indignant customers, and when the manager called Wang into his office to upbraid him, Wang laughed loudly throughout the meeting. The manager then called Wang's wife, Liang Caixia, who promptly suggested that it might be a wise idea to send her husband over to the Ankang hospital for a psychiatric examination. An appointment was duly made, and, on 30 June, Wang Fenglai was examined at the Guangzhou Ankang Hospital by a chief psychiatrist (*zhuzhi yisheng*) called Jia Ruowang.¹⁰⁰ Wang began to suspect that things were not quite going 'according to plan' when Jia summoned two burly orderlies who proceeded forcibly to administer him with heavy medication. He woke up several hours later alone in a room, but was able to take advantage of a change of shifts at the entrance gate to slip out of the hospital and return home. His freedom was short-lived, however, because later that evening his wife arrived at the front door with the same two Ankang orderlies who had earlier doped him. The men bundled him into a waiting van and took him back to the hospital, where he was locked up for the next month.

On 18 July, his wife made her first visit to the hospital to see him. To his dismay, instead of pleading for his release as he had still been hoping she would, she calmly informed the medical staff that Wang was 'frequently violent' towards her at home, that he often 'came to her office and caused disturbances', and she added for good measure that he had 'sexually abused' her. Wang's outraged and angry response to these allegations was duly noted down by Chief Psychiatrist Jia as supporting a diagnosis of serious mental illness. Five weeks later, Wang was allowed home on medical parole, but his wife made a point of bringing a lover home that evening and of spending the night with him in the marriage bed, causing Wang to start throwing objects around the apartment in a fit of anger. Again, the orderlies were sent for to return him forcibly to the Ankang. He continued to be heavily medicated at the hospital, but after several weeks he succeeded in persuading a nurse to smuggle out a letter to his colleagues at the funeral parlour, begging them to inform his relatives of his plight.

Soon both the relatives and the colleagues turned up at the Guangzhou Ankang, demanding that a fresh psychiatric examination be carried out on Wang Fenglai. The hospital director gave his assent, and Wang's medical records were carefully re-examined and a series of new medical tests were performed on him. When the results showed that Wang was in fact completely mentally normal, Chief Psychiatrist Jia had no option but to confess that he had accepted a 3,000 *yuan* bribe from Liang Caixia in exchange for agreeing to 'take good care' of her husband. Wang was then discharged from the

¹⁰⁰ The newspaper report indicated that this name was a pseudonym.

Ankang, and Jia was promptly sacked from his job. However, neither the psychiatrist nor the wife received any legal sanction or punishment, from either the police or the courts, for conspiring together to have a mentally normal person incarcerated in an institute for the criminally insane. The only adverse consequence for Liang Caixia was that she failed to have her husband declared as having lost his capacity for civil action because of mental illness, and therefore was unable to seize his entire savings, together with their apartment, and then divorce him.¹⁰¹

It was thus left to Wang to seek justice on his own initiative for what had been done to him. On 6 February 2004, with the help of a lawyer, he brought a civil tort suit against Liang Caixia, the Guangzhou Ankang, and Jia Ruowang and other hospital employees, claiming a total of 80,000 *yuan* in compensatory damages. There have been no further reports on the case, however, so the outcome of the lawsuit remains unknown.

Significantly, in late April 2004, several months before the first press reports on Wang Fenglai's case, several articles appeared in the Chinese news media stating that a delegation of legislators from the Guangzhou Municipal People's Congress had recently made an inspection visit of the Guangzhou Ankang, a relatively new Ankang, which came into commission in October 2002, but 'formally commenced operations only in 2003' (the year that Wang Fenglai was sent there). After touring and inspecting the asylum, the Guangzhou legislators voiced surprisingly outspoken criticisms of the way it was being run, 'questioning both its present status and the form of management being used', according to the *Southern Daily*. As the newspaper then noted, 'Currently, the Public Security Bureau is managing the hospital patients in accordance with the PRC Regulations on Detention Centres (*Kanshousuo tiaoli*)'.

According to the reports, out of the Guangzhou Ankang inmate population of 105, no fewer than 95 were prisoners who until recently had been held in a temporary psychiatric ward at the Guangzhou City No 2 Detention Centre. The Guangzhou Ankang was said to occupy 30,000 square metres of land and to consist of 13 buildings, only four of which contained patient wards and other medical facilities, the other nine being used to accommodate security personnel and administrators. As Zheng Guoqiang, Vice-Chairman of the Guangzhou People's Congress Standing Committee, remarked after inspecting the new facility, 'Such a large logistical base and such a small front line!' He continued:

The Ankang Hospital [...] should be run as a psychiatric institute rather than a jail [...]. Although these mental patients committed crimes, they should not be held legally responsible. It is inappropriate to treat them as prisoners and to run the hospital like a detention centre [...]. Instead of using the regulations on detention centres, a new mechanism should be introduced so that the place can be run like a hospital.¹⁰²

¹⁰¹ In the event, it was Wang Fenglai himself who sued for divorce. On 30 November 2003, the Haizhu District Court in Guangzhou annulled the marriage and ordered that the couple's property be split between them on an approximately equal basis.

¹⁰² See Chen Jiena 'Shi jingshenbingyuan haishi kanshousuo? Shi ren-da daibiao shicha ankang yiyuan tichu piping [...] yong kanshousuo tiaoli guanli jingshenbingren qiantuo' ('Is it a Mental Hospital or a Prison? After Inspection Visit to Ankang Hospital, People's Congress Delegates Raise Criticisms [...] Calling it Inappropriate to Manage Mental Patients in Accordance with Detention Centre Regulations') (28 April 2004) *Nanfang ribao* (*Southern Daily*), available at: <www.nanfangdaily.com.cn/southnews/jwxy/200404280630.asp>. See also: 'Guangzhou shi shouzhi shubai zhong an jingshenbingren — bingren ruyuan yi, chuyuan nan' ('Guangzhou City Takes Hundreds of Mentally Ill People who Commit Serious

A Legal Legerdemain

Perhaps the most significant and intriguing aspect of the various case accounts from 2000-04 discussed above was the argument put forward by the Ankang and PSB authorities, when challenged in the administrative courts by their victims, that they had no case to answer because the 'patients' concerned had all been 'civil psychiatric referrals' carried out by third parties (although almost never, significantly, by the persons' relatives) and that consequently 'no administrative action' had been taken by the PSB itself. What permits Ankang officials to make this claim with a relatively straight face in court is the adoption by the Ankang system in recent years of an ad hoc policy of providing 'society-oriented reception and treatment services' (*mianxiang shehui shouzhi fuwu*) to the general public. Essentially, this is a money earning operation whereby the Ankang asylums admit fee-paying patients from the local community as a means of boosting the no doubt quite inadequate operating funds that they receive from the government. Little is known about the nature and composition of such cases. Many of them are doubtless voluntary admissions, but many, perhaps a majority, are likely to be involuntary civil committals carried out on the instructions of the patient's families, as provided for in the relevant sections of the General Principles of Civil Law and the Civil Procedure Law. However, as one of the lawyers who commented on Meng Xiaoxia's case pointed out, the Ankang system is not actually authorised, under the terms of its 1987 mandate from the Ministry of Public Security, to accept either of these two types of patients. Its role and activities are supposed to go no further than providing custody and treatment for the 'five types' of dangerous mentally ill criminal offenders.¹⁰³

The fact that the Ankang system provides these 'society-oriented services' without having the slightest legal mandate for doing so, however, means that if challenged in court over cases where, as in the examples presented above, the individual concerned was a de facto criminal detainee, but one whose admission for Ankang psychiatric treatment had been procedurally unlawful because none of the requisite legal formalities was carried out, then the police can always claim that the patient was 'only' an involuntary civil committal case. What seems to be the primary advantage of this approach, from the point of view of the Ankang authorities and other officials who are the principal authors of such people's misfortune, is that the various facts and elements of the conspiracy can later be presented to the court in such a way as to support the police's case that the committals were lawful, when in fact the points in question constitute the principal evidence of official wrongdoing.

Take, for example, the frequent lack of any formal legal-psychiatric evaluation documents. The purported reason for this is that the cases at issue were 'not criminal ones' and so there was no need for the authorities to ascertain the detainees' capacity for

Crimes into Custody for Treatment — Going in is Easy, But Getting Out is Hard') (28 April 2004) *Xinxi shibao* (Information Times); Chan Siu-sin 'Mental Hospital Should Not be Run as Jail, Says Official' (29 April 2004) *South China Morning Post*; and '"Ankang yiyuan" xia yue choujian' ('"Ankang Hospital" to be Built Next Month') (20 October 2000) *Southern Daily*.

In addition, during the visit to the Guangzhou Ankang, the Secretary-General of the People's Congress Standing Committee, Yang Yongbi, rejected the view of the Deputy Director of the Guangzhou Public Security Bureau on the question of how many doctors would be required to run the new Ankang facility. According to Yang, 'The size of the medical staff should be based on the number of patients in the hospital and not its capacity'. (See Chen Jiena 'Is it a Mental Hospital or a Prison?' supra note 102.

¹⁰³ For details of the five categories, see 61 above.

legal responsibility. Likewise with the absence of documentation from the police officers who delivered the patients into Ankang custody. The official claim is that they failed to complete, sign and put the PSB's seal on the requisite forms not through any procedural omission on their part, but because the nature of the case did not require them to do any of these things. They were merely 'assisting the guardians' of the patient in question (for which read the work unit, manager or local official with whom the person was having a major dispute at the time) to carry out an urgently needed civil psychiatric committal. In a deft but unamusing version of the 'look, no hands' routine, the PSB's defence in court then became that 'no specific administrative action' was undertaken by it throughout the entire process. In short, everything fits neatly together in the shadowy world of the Ankang system and everything is officially deniable.

CONCLUSION

The cases discussed are shocking and the lessons to be learnt from them clear. The Chinese government, which in recent years has frequently expressed a commitment to 'improve and perfect' the rule of law, should realise that it is contrary to the interests of society as a whole for the police and security services to continue using psychiatric custody, or any other form of arbitrary detention, as a means of silencing either the many courageous citizens around the country who are trying to blow the whistle on rampant corruption within the Party and government, or the still larger numbers of complainants and petitioners at the grassroots level who are seeking nothing more than an end to the despotic abuse of power in their communities. If civil society in China is to advance significantly beyond its present delayed and stunted level of development — in which, for example, well-connected private entrepreneurs are granted all the freedom of association they can use, while ordinary working people enjoy virtually none; if the rule of law is to be given greater authority and substance through the progressive abolition of arbitrary or 'administrative' forms of detention and punishment; and if social justice is to become more than a slogan voiced at high-level Party conferences, then it is outspoken and public-spirited citizens like Qiu Jinyou, Wang Henglei and Meng Xiaoxia — people who have challenged the system, paid the price and still come out fighting — who will deserve much of the credit for having brought these goals a step closer to reality.

Certain aspects of the above cases do provide, however, some ground for optimism. An unexpected degree of openness suddenly became evident in the Chinese news media, from early 2004 onwards, on the previously off-limits subject of the country's institutes for the criminally insane. Several disparate factors can be identified as reasons for this new candour. Here, as in a growing range of other areas of life in China today, such factors appear to be interacting with one another to produce an important new kind of social synergy for China. First, a more combative and independent-minded press, staffed by a growing number of reporters willing to go out and find controversial news stories about officials who violate citizens' basic rights and freedoms; secondly, a hesitant but still emboldening sense of confidence on the part of the victims themselves that someone out there, be it the local government, the courts, the news media or simply 'public opinion', might be willing and able to take action on their behalf; thirdly, an increasingly influential and self-assertive community of lawyers and law firms willing to represent clients of this kind and to wage politically sensitive lawsuits on their behalf; and fourthly, a steadily emerging trend towards greater public accountability within hitherto closed and autonomous sectors of the government, in particular the police force, along with initial moves by local legislatures towards monitoring and investigating

matters previously seen as being the latter's purely internal and confidential affairs.

While these encouraging new developments are surely not going to lead to the demise of one-party rule and the arrival of democracy in China any time soon, they are nonetheless contributing to the creation of a vital new political space in Chinese society, one with potentially wide implications for the country's future development. In particular, the breaching of the long-standing taboo on public reporting and discussion of the Ankang system can be seen as cautiously indicative of a new kind of 'social contract' between government and citizens which is discernible in China today. The experience of the former Soviet Union and other such countries would suggest that the willingness of a dictatorial government to open up its prison system to public scrutiny serves as a harbinger of moves towards more general forms of public accountability. If this is the case, then the Chinese government's apparent readiness to start letting some sunlight into what has hitherto been probably the darkest corner of its criminal custody system may, in retrospect, prove to have been a turning point of wider significance.

GLOSSARY OF CHINESE TERMS

English Translation	Chinese Characters	Pinyin Romanisation
act of compulsory medical treatment	强制治疗行为	qiangzhi zhiliao xingwei
admit and treat patients from society	面向社会收治病人	mianxiang shehui shouzhi bingren
at large	武疯子	wu fengzi
aggressive maniacs	安康	
Ankang	反社会言行	fanshehui yanxing
anti-social speech or action	滨河医院	Binhe yiyuan
Binhe Penal Hospital		
Bureau No 13 of the Ministry	公安部十三局	Gong'an bu shisan ju
of Public Security	主治医生	zhuzhi yisheng
chief psychiatrist	行政委托行为	xingzhengweituo xingwei
civil referral action	显然是极不严肃的	xianran shi ji bu yansude
clearly most unconscientious	强制收治	qiangzhi shouzhi
coercive shelter and treatment	管治结合	guan-zhi jiehe
combination of custody and treatment	违反法定程序	wEIFAN fadIng chengxu
constitute a violation of due process	肇事肇祸	zhaoshi zhaohuo
create incidents or disasters	邓小平	
Deng Xiaoping	看守所	kanshousuo
detention centre	冲击政府机关	chongji zhengfu jiguan
disrupting government offices	帮凶	bangxiong
evil accomplices	法轮功	
Falun Gong	强制药物治疗	qiangzhi yaowu zhiliao
forcible drug treatment	司法精神病学	sifa jingshenbingxue
forensic psychiatry	司法精神病鉴定	sifa jingshenbing jianding
forensic psychiatric evaluation	韩振铎	
Han Zhenxi	癔症	yizheng
hysteria	冲动行为	chongdong xingwei
impulsive behaviour	言行偏激	yanxing pian ji
intemperate language and behaviour	亢明	
Kang Ming	李达	
Li Da	梁彩霞	
Liang Caixia	毛泽东	
Mao Zedong	孟晓霞	
Meng Xiaoxia	宁来祥	
Ning Laixiang	偏执性精神病	pianzhixing jingshenbing
paranoid psychosis	政治偏执狂	zhengzhi pianzhikuang
political paranoia	上访者	shangfangzhe
petitioners	政治性案件	zhengzhixing anjian
political cases	政治疯子	zhengzhi fengzi
political maniacs		
PSB Ankang Institute for the		
Custody and Treatment of the	公安局安康精神病管治院	Gong'an ju ankang jingshenbing
Mentally Ill	治安处	guan-zhi yuan
Public Order Department	秦城监狱	Zhi'an chu
Qincheng Prison	裘金友	Qincheng jianyu
Qiu Jinyou	看守所条例	
Regulations on Detention Centres	花疯子	Kanshousuo tiaoli
romantic maniacs		hua fengzi
society-oriented reception and		
treatment services	面向社会收治服务	mianxiang shehui shouzhi fuwu
specific administrative action	具体行政行为	juti xingzheng xingwei
sudden death	猝死	cu si
take into [legal] guardianship	采取监护性措施	caiqu jianhuxing cuoshi
violent behaviour	暴力行为	baoli xingwei
Wang Fenglai	王凤来	

Wang Henglei
Wang Miaogen
Wang Wanxing
Workers Autonomous Federation
Xing Jiandong

王恒雷
王妙根
王万星
工人自治联合会 Gongren zizhi lianhehui
邢建东