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Waiting on China

The long-pending case of Yang Jianli, a Boston-based democracy activist who was detained by China's security police two years ago today, offers a vivid example of Chinese-style political-legal gridlock.

Although China has no jury system, in politically sensitive cases it often has the functional equivalent of a "hung jury," decision-makers who cannot agree on a verdict despite long deliberation. In such cases, the decision-makers are not the judges nominally responsible for deciding important cases. Rather, they are unidentified Communist Party officials—frequently at the highest level. When those leaders disagree on the outcome of a controversial case, the hapless accused is simply forced to wait. The time constraints imposed by the country's criminal procedure code are swept aside amid endless debates over charges, evidence, punishment and politics, domestic and international.

Such is the case of Yang, a Chinese national with U.S. permanent residence and doctorates from Harvard and the University of California at Berkeley, who was denied the right to return to his homeland after the 1989 Tiananmen tragedy. After detention, he was investigated for entering China by using a friend's passport and was held in solitary confinement for almost a year, in-

communicado, with no notice of his whereabouts given to his family and no access to counsel.

As the generous legal time limit for criminal investigation was about to expire and his detention was to exceed China's maximum one-year punishment for those convicted of illegal entry, the authorities started the detention clock over again by launching a new investigation, this time for alleged acts of spying for Taiwan, a much more serious charge that could lead to the death penalty.

Yang's family, members of Congress, the State Department, the United Nations, human rights organizations, the media and his lawyers all subjected the Chinese government to unremitting pressure in an effort to extract him from the clutch of the security police. Not only did the U.N. Working Group on Arbitrary Detention find Yang's detention to be in violation of international law, both houses of Congress unanimously adopted resolutions calling for his release.

Yang was indicted on both the illegal-entry and spying charges and tried on Aug. 4, 2003, in Beijing's No. 2 Intermediate People's Court, the main arena for political trials. Because "state secrets" were allegedly involved, the hearing was closed to

the public, excluding even his family and representatives of the U.S. Embassy. After a half-day hearing, the three-judge panel announced that a decision would be issued in due course, and Yang was returned to his cell.

Since China's criminal procedure code normally requires a trial court to issue its judgment within a month and a half of receiving the indictment, the end of Yang's wait seemed in sight. Yet no decision was forthcoming.

The court extended its deadline a month, as allowed for difficult cases. When that proved insufficient, the court, seeking a fig leaf for the delay, asked Yang's lawyer last October to apply for another month's extension on the spurious ground that the defense needed to collect additional evidence. In the repressive Chinese context, where embattled defense counsel appear before this important court regularly, this was an offer that was hard to refuse. Yet Yang's counsel, the well-known human rights lawyer Mo Shaoping, refused to collaborate in his client's continued incarceration.

Staffers at the prosecutor's office that supervises Yang's detention center subsequently admitted that on Dec. 1, Yang's detention had officially expired and those responsible for

holding him illegally should be punished. But they also conceded that this is no ordinary case.

The Chinese government claims that last year, its strict new procedures for ending illegally prolonged detentions corrected more than 25,000 violations. Yet Mo's petitions to the Supreme Prosecutor's Office and the Supreme Court seeking Yang's release have gone unanswered, as has his family's petition to the National People's Congress.

Yang's two years of punishment without any conviction is a severe deprivation for him and his American wife and children. But it is also a blatant acknowledgment by the Chinese government that its belated campaign to end the scourge of overtime criminal detentions, which the National People's Congress has characterized as "a chronic disease," has a long way to go. Despite China's commendable efforts to create a legal system, politics is still in command.

Jerome A. Cohen is a law professor at New York University and adjunct senior fellow at the Council on Foreign Relations. Jared Genser, a Washington lawyer and president of Freedom Now, will answer questions on this piece tomorrow on www.washingtonpost.com.