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COMMENTARY

Yang Jianli's Trial of Injustice

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Today at 9 a.m., Yang Jianli, a brilliant Chinese democracy activist who was permanently excluded from his homeland after June 4, 1989, is due to be put on trial in Beijing on criminal charges of illegal return and spying for Taiwan. Although Mr. Yang contests the charges, if experience is any guide his trial may be over before noon. No member of the public, the press or even Mr. Yang's family, friends, foreign legal advisers such as ourselves or NGO representatives can attend the trial, since the Ministry of State Security has claimed that the case involves "state secrets."

Even though Mr. Yang, who holds doctorates from both Harvard and Berkeley, has long been a permanent resident of the United States, received strong support from the U.S. State Department since his detention in April last year and been the subject of both Senate and House of representatives resolutions unanimously urging his release, the U.S. Embassy will not be permitted to have an observer at the trial. Nor will the United Nations, although the U.N. Working Group on Arbitrary Detention recently determined that Mr. Yang's confinement violates minimum international human-rights standards.

Mr. Yang will be there alone with his lawyer, the able and experienced Mo Shaoping, who has been unsuccessfully trying to assist Mr. Yang for over 14 months, and was finally allowed to see him only after the secret police finished their investigation and sent the case to the prosecutor's office. Until then, the police kept Mr. Yang totally incommunicado.

Ever since the 1996 criminal procedure code reforms, suspects in China generally have a right to meet counsel soon after they are detained, but, as so often happens, the police denied Mr. Yang that right. Their first excuse was that lawyer Mr. Mo could not show them a copy of the police notice that should have informed Mr. Yang's family that he had been detained and identified the detaining authority, the reasons for the detention and Mr. Yang's location. Of course, the lawyer could not present this document because, despite frequent requests from Mr. Yang's family, the police refused to issue it.

Reports in the foreign press, a hearing before the U.S. Congressional Executive Commission on

China and U.S. Embassy protests exposed the spuriousness of this first excuse to deny counsel. So, many months after Mr. Yang's detention, after the secret police had exceeded the legal time limit for holding him on the original charge of illegal return to China, they came up with a new idea.

They added an espionage charge, which not only enabled them to start the clock again on the time limit for Mr. Yang's detention, but also gave them a new excuse for denying Mr. Yang access to counsel until they exhausted their investigation -- the case now was said to involve "state secrets." The Beijing Prosecutor's Office approved the State Security Bureau's request for prosecution, as it usually does. By indicting Mr. Yang for espionage, it transformed an insignificant illegal border-crossing case, for which the maximum penalty of one year in custody has already been served by Mr. Yang, into a major political case for which he might, in theory, even be sentenced to death.

The espionage charge alleges that in 1991, in the United States, Mr. Yang "accepted assignments" and financial support from the Mainland Work Committee of Taiwan's Nationalist Party (Kuomintang), which the prosecution brands a "spy agency." These assignments were to spread the "Three People's Principles" of democracy, human rights and social welfare (made famous by modern China's first political leader, Sun Yat-sen), to develop a wide circle of acquaintances and to "collect public opinion" in China.

In order to "develop a wide circle of acquaintances," Mr. Yang is said to have established the Chinese Youth Development Foundation in the U.S. and in 1993-94 sent membership applications to several relatives and friends in China; he allegedly delivered the completed forms to the Taiwan organization and then sent \$100 to each of the applicants. It is also said that he asked someone to obtain "inside documents" from China, but no other acts are alleged in furtherance of his "assignments."

The evidence, so far as the defense is allowed to know it before trial, consists overwhelmingly of the statements extracted from Mr. Yang during his long incommunicado detention. As usual in such cases, these statements are characterized as the "confession" of the accused, although Mr. Yang vigorously expressed his determination to challenge the charges in the three brief meetings he has recently been allowed with his counsel.

The accuracy of the statements made by Mr. Yang during more than a year in detention must, of course, be open to question. His family and colleagues would be in a good position to assist defense counsel in evaluating the defendant's statements. But, because the case supposedly involves "state secrets," lawyer Mr. Mo has been instructed not to reveal the evidence even to members of Mr. Yang's family who retained him.

Any failure by Mr. Mo to comply with those instructions could easily lead to his own prosecution for "leaking state secrets," as has happened to other Chinese lawyers. Similarly, if at trial Mr. Mo assists Mr. Yang in repudiating any part of his jailhouse statements, Mr. Mo himself can be prosecuted, as many Chinese lawyers have been, under the notorious Article 306 of the Criminal Code -- known to the Chinese Bar as "the sword of Damocles" -- for submitting "false evidence" to the court.

Mr. Yang is determined to resist even the charge that he committed illegal entry by using a friend's passport to return to China. Presumably he will argue that, contrary to international law, the Chinese government arbitrarily denied him the right of every citizen to return to his homeland, giving him no alternative but subterfuge in order to avoid compulsory life-long exile.

Chinese criminal prosecutions against political dissidents offer very limited opportunity to resist the charges. Even in nonpolitical criminal cases, witnesses seldom appear in court; although the right to cross-examine witnesses was part of the 1996 criminal procedure reforms, that right, like so many others, is seldom realized.

At best, Chinese courts are weak and unreliable institutions, despite increasingly successful efforts to improve their quality. In politically sensitive criminal cases the courts simply take orders from Communist Party and government leaders.

It is possible that Mr. Yang will be sentenced before lunch today, even while his brother and sister anxiously pace the sidewalk outside the court. This is what courts did in the famous Taiwan espionage cases of Li Shaomin and Gao Zhan in 2001. Yet when the political leadership is bitterly divided over the punishment even two years might elapse between trial and judgment. The well-known lawyer Zhang Jianzhong, who reportedly offended certain leaders by the vigor of his defense in high-profile criminal cases, was put on trial in January for allegedly falsifying evidence in a business transaction and is still awaiting the outcome.

That Mr. Yang will be convicted is not in doubt. The conviction rate is close to 100% for political cases that go to trial in China. No rational observer believes that the death penalty, which is an available option, might actually be meted out. But the recent unexpected and extraordinarily harsh sentence to life imprisonment of another North American-based political dissident, Wang Bingzhang -- after a truncated "trial" -- warns us not to be complacent.

There are many distinctions between Mr. Wang's case and Mr. Yang's. The charges and evidence against Mr. Yang are much closer to and much weaker than those against Li Shaomin and Gao Zhan. Mr. Li, an American citizen, was merely sentenced to deportation. Ms. Gao, a Chinese national permanently residing in the U.S., received a stiff 10 years in prison, but was nevertheless immediately permitted to leave the People's Republic. Mr. Yang's sentence should not be as severe as Ms. Gao's, and immediate release would surely be appropriate since he has already been confined for over 15 months, in contrast to the six months suffered by Mr. Li and Ms. Gao before trial.

But Mr. Li and Ms. Gao had the good fortune to be sentenced at a time when China eagerly sought entry into the World Trade Organization. Since clearing that hurdle, Chinese leaders have brushed off U.S. Congressional pleas for leniency toward most political dissidents. Similarly, since Sept. 11 and especially during 2003, the Chinese government has been able to welsh on its human-rights commitments to the U.S. because of the need for China's cooperation on Iraq, North Korea and other problems.

That is why Rebiya Kadeer, a successful businesswoman of the Uighur minority, continues to

serve an eight-year sentence in Xinjiang province for virtually nothing more than sending local newspapers to her dissident husband in the U.S. after a trial so secret and ludicrous that even Xinjiang judges other than those who handled the case were forbidden to witness it. And that is why labor activist Yao Fuxin, who led a demonstration last year in Liaoning province for workers' rights and against corruption, is still serving a seven-year sentence for "instigating the overthrow of state power."

Ironically, it was the desire to learn more about the Liaoning labor disturbance that tempted Yang Jianli to risk return to China. And it was Mo Shaoping who sought to defend Yao Fuxin in a courtroom that was a political pressure-cooker. Will his current client fare any better today? Certainly all of us who want to see China stand tall in the world of justice as well as that of business will keep our fingers crossed.

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