

**Torture in China:  
Calls for Reform from within  
China's Law Enforcement System**[\[1\]](#)

**Prepared Statement to Accompany Testimony Before the  
Congressional-Executive Committee on China**

**Murray Scot Tanner**

**Professor of Chinese and East Asian Politics  
Western Michigan University  
Kalamazoo, Michigan  
Friday, July 26, 2002**

I would like to begin by expressing my sincere thanks to the members of the Congressional-Executive Committee on China for honouring me by with this invitation. I would also like to thank the committee staff, in particular Dr. Susan Roosevelt Weld, for their kind help in inviting me and arranging my visit to the Committee.

The purpose of my testimony today is to focus some attention on the battle within China's legal system to confront the widespread and horrific use of torture—especially tortured confessions—in the criminal law system. The prevalence of torture has been carefully documented by international human rights monitoring organizations—such as Amnesty International, Human Rights Watch, the Lawyer's Committee on Human Rights—as well as by our own State Department and the UN Human Rights Commission. Members of this committee have heard testimony on this terrific problem from representatives of many of these organizations, and I as an individual analyst can add little to their excellent work.

My testimony today instead draws on my studies of China's police and internal security system to focus on an important and unusual aspect of China's torture problem—for the past half-dozen years, a growing number of officials and scholars within China's law enforcement system—even many affiliated with China's Ministry of Public Security ("MPS"--China's police) and Supreme People's Procuratorate ("SPP"—akin to the prosecutors office)—have begun criticizing China's pervasive torture problem with increasing bluntness. A few years ago, some officials within the procuracy for the first time publicized official statistics on cases of torture—even death by torture. Experts privately stress that these official numbers still greatly understate the prevalence of torture. At the same time, these figures and other characterizations clearly concede a pervasive, systemic, problem, and they mark a significant advance in the halting, ambivalent struggle against torture in China. These law enforcement officials and scholars are also openly debating policy reforms designed to control torture—in particular they are pushing for what I would call "professionalizing" reforms of China's law enforcement system, as well as revisions to China's criminal procedure laws which they believe will create disincentives for officials to commit torture—legal revisions that, in many cases, draw explicitly on US and Western criminal procedure law. It is impossible to say for certain how numerous these officials and analysts are, and difficult to evaluate their policy influence.

I cannot stress strongly enough that my purpose here today is not to argue the brief that either China's top leadership or its law enforcement system are making adequate progress on dealing with torture— emphatically, they are not. Nor am I here to argue that this anti-torture cadre of officials and analysts is

strong enough for us to hope that this system can reform itself without major overhaul and pressure from Chinese society and the international community.

Instead, my purpose is to discuss these important policy debates and efforts at legal reform within China that I believe are important to those who must determine US human rights and legal policy toward China. A careful review of such reform debates can help US policy-makers evaluate whether or not, and to what degree, there are initial signs of progress on the problem of torture, what the sources of current or future progress might be, and also the limitations on such progress. Such analysis can also shed light on the degree to which US human rights policies and legal exchanges may be having a positive impact in China.

As we evaluate the importance and limitations of such policy battles over legal reform, we have to confront the painful distinction between the kinds of *significant improvements* that may be possible within China's current authoritarian system, and the more *fundamental improvements* that must, unfortunately, await a fundamental liberalization and democratization of that system. In my opinion there is no question that the core of China's torture problem lies in her authoritarian political system, and fundamental improvement of the torture problem will be impossible before China liberalizes and democratizes. A perusal of international human rights reports, however, makes clear that there can be significant differences in levels of torture, law enforcement abuses, and police professionalism even among authoritarian systems. Nevertheless, their fundamental shortcoming compared with democratic systems is that authoritarian systems *lack self-generating or self-sustaining* social and political institutions to fight torture—most importantly a free, competitive, aggressively investigatory press, citizen-based human rights monitoring organizations, independent, fair and accessible courts and prosecutors, and multi-party elections as an implicit threat to unresponsive leaders. Authoritarian systems such as China cannot even make significant progress against torture unless their top leaderships undertake sustained, detailed monitoring and punishment of local law enforcement who commit the crime. In many authoritarian countries—in particular China—the leadership's commitment to fighting torture is, at best, instrumental and sporadic rather than fundamental and enduring. Thus, when competing political demands cause top-level pressure and monitoring to slacken, torture inevitably reasserts itself.

We cannot expect *fundamental, self-generating and self-sustaining* progress on torture in China until China constructs the package of liberal-democratic social, political, and legal institutions to oversee, expose, and compel the punishment of torturers. But even without waiting for, or weakening our commitment to, full democratization, Western countries can and must expect, promote and support *significant* improvement in China's torture record through reform of the existing system. Studies of torture in many societies, including China, demonstrate clearly that torture is also greatly exacerbated by a severe lack of law enforcement professionalism—including compliant judges lacking even rudimentary commitment to *rule by law* and legal procedure, rules of evidence that create incentives for interrogators to obtain tortured confessions, and weakly trained police and prosecutors who lack the professional ability to solve non-political criminal cases using *legally* gathered evidence. Such rudimentary problems of unprofessionalism are, at least in part, distinguishable from whether the system is democratic or non-democratic. Sadly, the continued disturbing human rights records in such fledgling democracies as Russia, Brazil, South Africa, Indonesia, and elsewhere demonstrate that where law enforcement organs suffer from severe unprofessionalism, not even democratization and freedom of the press can alleviate torture and other abuses—at least not for a very long time. Fighting torture is a long-term struggle that must be fought out on many fronts.

Therefore, I believe that recent calls from within China's legal and law enforcement communities for reining-in torture can best be understood against the backdrop of a top leadership—Jiang Zemin's leadership—whose efforts to deal with torture and legal abuses have at best been sporadic, irregular, instrumental, and marked by profound ambivalence.<sup>[2]</sup> Under Jiang, the leadership has ordered occasional short-lived crackdowns on police abuses<sup>[3]</sup>, but only as one part of a broader strategy to use “rule by law” to revive its threatened legitimacy, stabilize its authoritarian regime, and drive a wedge between average

citizens and the politically active. Jiang's leadership is offering citizens a legal bargain to "demobilize" them politically—saying, in effect, that if the vast majority of citizens stay out of politics, eschew officially "suspect" religious groups, and do not commit crime, the Party and government will try to guarantee them an orderly, relatively low crime society coupled with gradually expanding legal protection against abuses by law enforcement officials. Jiang and his allies are, in effect, gambling that moderate legal reforms can prolong the current regime, and will not instead become a stepping stone toward expanded notions of political and legal rights and democratization.

But such a social bargain is fraught with political dilemmas. First, most reforms that could help establish "self-sustaining" institutional checks on torture risk undermining the Party's hold on power and its control over law enforcement and the press. Second, any serious effort to rein in torture risks undermining the capacity of police and prosecutors to fight crime and maintain adequate "law and order"—the other cornerstone of the "rule by law" legitimacy strategy. As in other authoritarian systems, decades of being protected by an undemocratic government have rendered China's law enforcement departments, quite simply, rather weak in modern criminal investigation skills and excessively reliant upon compliant courts, coerced confessions, and a culture of informants to obtain convictions. Jiang's legal reform strategy requires cracking down on, reforming, and undermining the morale of, the very law enforcement organs on which he relies to control crime, suppress dissent, and contain "suspect" religious groups. It is these political and institutional dilemmas that give Chinese efforts to rein-in torture their "start-stop", highly ambivalent character.

Still, this backdrop of ambivalent leadership commitment over the past half dozen years has opened enough of a window to encourage unprecedentedly frank policy discussion about torture within the law enforcement community. But because of this ambivalence, this debate has also, emphatically, not been held for the benefit or consumption of foreigners—even educated Chinese only get to glimpse it through newspaper expose articles on torture. *Clearly fearing that foreign press and governments will simply treat these discussions as an admission of China's embarrassing torture record rather than a harbinger of progress, these discussions have largely been limited to "internal circulation" (confidential) reports and documents, and unclassified journals, newspapers, and books that are rarely read by anyone outside of the criminal justice field.* [4] *In stark contrast to such heavy-handed propaganda exercises as China's various "White Papers" on legal and rights issues, the policy discussion on torture has largely been kept out of those official media most heavily monitored by foreigners.* [5] *In assessing these policy discussions, it is worth noting that these law enforcement officials and analysts have been criticizing China's extensive use of torture and debating how best to rein it in even when they had least reason to believe that foreign—or even domestic—critics were watching.*

## **New Admissions on the Prevalence of Torture**

Among the most significant steps forward has been the growing willingness of legal officials to acknowledge—sometimes in public—the widespread use of torture. In sharp contrast to the denials and linguistic dodges Foreign Ministry spokespersons employ when asked about torture cases, senior Chinese police, procuratorial, and legal officials and scholars have become increasingly frank in acknowledging the extent of the problem. [6]

In recent interviews and publications, officials and analysts have characterized the torture problem as "very serious", "rather common", "especially prominent," "a long-persistent, chronic disease among public security and other judicial organs" [7] and even claimed that "the vast majority (*jueda duoshu*) of people's police who handle cases" believe "torture is a fast and effective interrogation technique," and hence "tortured confession has existed for a long time on a large scale." [8] Professor Cui Min of China's national police college—the Chinese People's Public Security University—one of the legal system's most persistent critics of torture—has written that "using *very large amounts* of evidence derived from torture and other illegal means (especially the accused person's confession) remains, as before, a *principal basis* for proving cases." [9]

Without question, Minister of Public Security Jia Chunwang provided the most authoritative characterization when he told a summer 1998 public security conference that police torture and related abuses was one of the two most common complaints he heard about in letters from ordinary citizens.[\[10\]](#)

This willingness to concede the pervasiveness of torture was further confirmed when the Supreme People’s Procuratorate published an open circulation volume in late 1997 entitled *The Crime of Tortured Confession (Xingxun Bigong Zui)*. This case book for procurators described hundreds of real torture cases with a sort of dispassionate but gut-wrenching detail that was reminiscent of Amnesty International reports. The book also included China’s first openly published official statistics on criminal cases of tortured confession—reporting an average of 364 cases per year between 1979 and 1989, upward of 400 cases per year for most years in the 1990s, and the striking admission that 241 persons had been tortured to death over the two-year period 1993-1994.[\[11\]](#)

Numerous Chinese experts insist that for both political reasons and statistical shortcomings, these data greatly understate the real occurrence of torture, though they note that publishing the statistics at all was a major change in policy.[\[12\]](#) Also, as Amnesty International and others have pointed out, such official reports and statistics focus almost exclusively on torture as a source of confessions—not as a form of extra-judicial punishment or abuse or intimidation. Finally, they almost never mention torture of political detainees, religious activists, or ethnic minorities.

**Table One: Official Torture Statistics (1979-1996)**

Year(s)	Tortured Confession Cases Formally Established	Persons Tortured to Death
1979-1989	over 4,000 total (avg. 364+/year)	(no report)
1990	472	(no report)
1991	407	(no report)
1992	352	(no report)
1993	398	126
1994	409	115
1995	412	(no report)
1996	493	at least 32 (Jan.-Aug., MPS statistic)

(Principal Source: Supreme People’s Procuratorate Casebook, *The Crime of Tortured Confession*, pg. 9.)

## Recognizing the Failure of Traditional Solutions

Since about 1995, law enforcement analysts have also largely ceased blaming China’s ancient feudal culture and residual leftist influence from the Cultural Revolution (1966-76) for current torture problems and conceded that the real reasons must lie in the failures of China’s post-Mao law enforcement system.[\[13\]](#) These officials are also gradually conceding that the traditional oversight mechanisms the state can most easily control—ideological education, internal police oversight, and procuratorial oversight—are grossly inadequate to China’s pervasive torture problem.

To check law enforcement abuses China, like other Leninist systems, has historically relied almost exclusively on ideological-educational campaigns to inculcate norms, and oversight by various Party and

government organs internal to local public security departments. Every department down to the county level has within Party committees and departments for discipline inspection, political work, personnel, state supervision, auditing, and the new “oversight police”—each one charged with internal oversight of some aspect of discipline and/or legality. There is, simply put, no shortage of internal oversight organs. Nevertheless, as these sources make clear, China is a textbook case of how internal police oversight can fail when local police leaders are more concerned with raising “case-cracking rates” than fighting abuses.

China primarily relies on the old Soviet institution of the Procuracy to augment internal with external oversight. But law enforcement sources stress that the Procuracy plays a contradictory triple role—prosecuting criminal cases, overseeing police investigatory procedure, and investigating government corruption cases—that often results in it paying more attention to convicting criminals than aggressively overseeing the police. Indeed, much torture is committed by procurators themselves. Moreover, Chinese legal organs are far more decentralized than their old Soviet counterparts. Local Communist Party Committees—not superior-level law enforcement officials—have primary control over local police, procurators, and judges. Thus, when the Party has promoted greater “legality”, procurators sometimes oversee police more aggressively. But during Party-led anti-crime campaigns, procurators often deliberately abdicate their oversight role or risk being criticized for “obstructionism”.[\[14\]](#)

With this lack of self-sustaining oversight institutions, it is little wonder that since 1990, the leadership has launched several short-lived official crackdowns on torture, all of which sooner lost steam or were overwhelmed by renewed fears of crime waves.

In response, many analysts have put forward new proposals aim at greater professionalization and training for police and procurators, reforming legal incentive structures (especially rules of evidence), increased publicity for torture crimes and their punishment, and encouraging lawsuits by torture victims.

## **Greater Professionalization**

Proposals focusing on “professionalization” largely begin from the assumption that police and procurators usually employ torture because they simply lack the professional skills necessary to solve many cases any other way. Professional investigators contend that most torture cases occur in basic-level police stations, where investigatory skills, technology, legal knowledge, professional norms, education, and “personnel quality” are all weakest. Many “professionalizers” lay considerable blame on local Communist Party leaders for forcing police to hire unqualified cronies, using the police as a “private army”, or funneling scarce budgetary revenues away from law enforcement training and pay into economically profitable ventures. Most local-level police get little or no training in crime scene management, fingerprinting, blood-typing, and rudimentary forensic and investigatory skills. One MPS document claims that “A few People’s Police...treat ‘beating people’ as their principal case-cracking technique”.[\[15\]](#) Advocates of professionalism also argue that many abuses are committed by the large array of untrained, non-professional citizen security activists, semi-private security guards, and “contract police” officers on whom regular Public Security officials rely to assist in protecting work units and maintaining social order.

Many other law enforcement analysts admit, however, that many professional problems are attitudinal—many if not most police officers simply don’t believe that torture is wrong, or at least that it leads to much more good than harm. According to another police official, “more than a few” local police captains “believe that during interrogations...as long as one doesn’t beat the person to death or until they are crippled, that’s all right.” [\[16\]](#) Cui Min of the Public Security University has recounted innumerable arguments he has had with local police who bluntly insist that torture is necessary and appropriate for law enforcement.[\[17\]](#)

Police and procuratorial experts agree with the judgment of international human rights monitors that during “strike hard” anti-crime campaigns professionalism is further undermined, causing torture cases to spike.

Local Communist Party leaders, who are also under evaluated by their superiors on the state of local social order, turn up the pressure on local police to solve cases quickly.<sup>[18]</sup> According to one police official, many officers “find it hard to resist this ‘fast and effective interrogation technique’”.<sup>[19]</sup>

In recent years, professionalization advocates have stressed expanding police training programs, increasing equipment purchases, raising hiring requirements, and giving police departments (vs. local CCP committees) tighter control over their personnel. Beginning in 1997 the MPS undertook a long-term effort to professionalize criminal investigation that would eventually remove local police station officers from investigatory work, while building a nationwide network of professional investigators. The MPS’s chief of criminal investigation, however, has shown little optimism that such a large professional corps could be trained in the near future.

## Creating Legal and Institutional Disincentives

Public security and procuratorial anti-torture advocates also contend that flaws in China’s Criminal Law (CL) and Criminal Procedure Law (CPL)—both originally drafted in 1979—create powerful incentives for investigators to obtain confessions by torture. They seized on the efforts to revise both of these laws in 1996-97, launching a debate on how best to discourage torture. The reforms they recommended—and are still promoting—to change police and procuratorial incentives borrow strikingly from US legal concepts and incentive structures.

They have been especially critical of the lack of an unambiguous “presumption of innocence” (*wuzui tuiding*) and the lack of a “right to remain silent” or avoid self-incrimination (*chenmo quan*). Despite strong efforts to incorporate these presumptions, the new CPL ultimately moved only obliquely toward requiring the state to present an evidentiary proof of guilt beyond a mere confession.<sup>[20]</sup> But CPL Article 93 still tempts interrogators to press hard for confessions by *requiring* the criminal suspect to “answer the investigator’s questions truthfully.”<sup>[21]</sup> One police scholar complained that since the law encourages interrogators to believe they are dealing with guilty parties who have no right to withhold incriminating information, it clearly “creates a pretext for investigators to engage in torture.”<sup>[22]</sup> These advocates have clearly not given up, however, and in recent months the Public Security University press has brought forward volumes of essays by law enforcement scholars continuing to press for a clear right to remain silent. On this issue, however, there appears to be a fairly clear line of disagreement between the police scholarly community and the Ministry of Public Security itself.

Despite China’s longstanding insistence that “rights” are unique to each countries’ special socio-economic and cultural conditions, some police scholars have recently claimed that the numerous international legal treaties China has recently signed obligate her to incorporate these fundamental “international principles of criminal procedure,” in her domestic CL and CPL.<sup>[23]</sup>

The central focus of these efforts to reform the legal-incentive structure has been their effort to adopt an “exclusionary rule” for illegally obtained evidence—in particular tortured confessions. Cui Min of the Public Security University, with typical bluntness, argues that so long as tortured confessions remain admissible for convictions, “the clause ‘extorting confessions by torture is strictly forbidden’ essentially exists in name only.”<sup>[24]</sup> Relatedly, many law enforcement scholars continue to support at least some modified version of a US-style “fruit of the poisoned tree” rule (*du shu zhi guo*) barring the use of physical, documentary, and other evidence obtained as a result of a tortured confession. This rule has produced an enormous range of opinion among law enforcement scholars, from those favouring completely “chopping down the tree and discarding the fruit” (*kan shu qi guo*) to those who would “chop down the tree but savour its fruit” (*kan shu shi guo*), to a full range of compromise positions in between.<sup>[25]</sup>

Although reformers failed in their efforts to enshrine these principals in the revised CPL, they continue to use various means to write these rules into law. It appears that reform advocates within the Supreme People's Court and Supreme People's Procuratorate have tried to use their power to draft implementing regulations for the CPL to cautiously advance a fledgling exclusionary rule without a "poisoned fruit" exclusion. The SPC's June 29, 1998 "interpretation" on the new CPL states that illegally obtained witness and defendant testimony may not be used to decide a case.[\[26\]](#) Likewise, the SPP, in its January 30, 1997 CPL Implementing Regulations, reportedly ordered that "tortured confessions cannot serve as evidence of guilt of a crime." The SPP further reports it is experimenting with a "Miranda"-style warning to suspects.[\[27\]](#)

On January 2, 2001, the Supreme People's Procuratorates' latest (of many) confidential circulars condemning recent torture cases reflected these new proposals. It criticized what it called the outmoded traditional idea of a "presumption of guilt", and the "blind worship of confessions as evidence". The directive also called on local procurators to "clarify the principle of excluding illegal evidence", and cited article 265 of its national criminal procedure regulations for procurators to the effect that confessions or victim or witness testimony obtained by torture may not be used as the basis for prosecuting criminals.[\[28\]](#)

Current efforts among these reform advocates appear to center of the drafting of an "Evidence Law" (*Zhengju Fa*) that would attempt to unify standards of admissible evidence among China's major procedural codes (Civil, Criminal, and Administrative). Advocates want the draft law to clearly enshrine an exclusionary rule—at least for tortured confessions—although support for a relatively absolute "fruit of the poisoned tree" exclusion seems to have waned as China faces corruption, organized crime, and drug-trafficking cases that it finds harder to crack. Such a draft is not expected to be ready for National People's Congress debate for at least one to two years. Participants in drafting the law indicate their proposals still face opposition from the MPS and local police who fear that China's police are simply incapable of maintaining proper social order under stricter rules of legal procedure.[\[29\]](#)

## **Deep Ambivalence About Publicity and Lawsuits**

Several law enforcement analysts privately laud the great increase in publicity given to torture cases and the punishment of torturers. Publicizing the disturbing details of several torture cases, and spotlighting the punishment of guilty officers communicates leadership disapproval far more dramatically than any internal administrative document. It can also force officers to carefully recalculate the costs and risks of getting caught, thereby establishing powerful norms against the practice. In recent years, the cultivation of a corps of reasonably aggressive "investigative reporters" among the official press has helped extend the government's monitoring capacity and help it crack through local cover-ups of torture cases. These reporters have become popular, even heroic, symbols for the government, and citizens often compete to entice them to come report on local abuses as a way of attracting top leaders' attention.

But for the regime leadership, which fears for its stability, large-scale publicity of police abuses also risks undermining morale among the repressive forces that they rely upon for their grip on power. In the vast majority of cases reviewed for this project, officers convicted of torture have received administrative punishments, suspended sentences, or at most one-to-three years imprisonment.[\[30\]](#)

Encouraging bold investigative journalism risks further eroding regime control of the official media (reporters, in turn, have often faced retaliation by local officials, or even from the center, when policies changed). Moreover, the leadership cannot control the reaction among broader domestic and foreign audiences. Interviews with security experts indicate that government leaders have carefully debated whether publicizing torture cases will strengthen its legitimacy, or if skeptical citizens and foreign observers would simply dismiss the publicity as the regime's admission that such abuses really are ubiquitous after all. As a result, publicity of torture cases tends to come in waves, and at other times been discouraged or carefully managed. Unprecedented domestic and official publicity has also, at times, been coupled with stronger

efforts to fight international or unofficial publicity. Even while the official legal press investigates and exposes torture in unprecedented ways, police continue to arrest citizens who attempt to form autonomous “civil society” anti-torture monitoring groups. In one case, even a retired Chinese policeman was jailed.<sup>[31]</sup> Meanwhile, official spokespersons lambaste foreign reporters and human rights monitoring organizations for what they label as “lies” and “interference in China’s internal affairs”.

Through its cautious experimentation with popular lawsuits against police and procuratorial abuses over the past decade, the Party-state has tried to provide a new vehicle of popular oversight that is more self-sustaining, though still structured not to threaten the CCP’s ultimate grip on power. Partial statistics and anecdotal data indicate a growing minority of citizen plaintiffs have successfully sued for redress or compensation. Still, with the limited evidence available, it is difficult to go beyond the commonsense conclusion that plaintiffs are at least winning often enough to encourage more and more suits. And even when they do not win a court verdict, abused citizens can use these suits as a strategy to draw high level attention to their problems and force local officials to respond.

Some police officials have tried persuading their colleagues to embrace these new litigation systems as a powerful impetus to fight torture, and warned them of the problems that they will face if they fail to reform.<sup>[32]</sup> Several departments have protested that the Administrative Litigation Law has been applied far too broadly, and is obstructing interrogation and other criminal investigative work, which they insist is “non-administrative” work.<sup>[33]</sup> Still, courts nationwide have consistently found a variety of pretexts to block the use of these new legal avenues by political dissidents and religious activists, a fact which underscores the two-tiered nature of legal reforms and their strategic goal of splitting “average citizens” off from “activists”.

## **Weak Leadership Commitment, Frustration Among Reformers**

Since the late 1990s, the leadership’s ambivalent, sporadic commitment to fighting torture, along with the limitations imposed by its fear that police won’t be able to solve crimes, or that the state will lose its political control, appear to be causing growing frustration among anti-torture advocates. Anti-torture advocates seem resigned to a very long, politically difficult battle over years and decades, requiring repeated persuasion of political leaders, the retraining of current law enforcement officials, the recruitment of new, better ones, persistent efforts to get procurators and judges to use their authority with greater independence. Many officials and scholars—who are very realistic that it might take China decades to really root out torture—are daunted by powerful enduring attitudes favouring or excusing torture at local levels, especially during anti-crime campaigns. It remains to be seen whether this frustration might push reformers to yet another level of even bolder proposals.

In a recently published speech before other criminal justice experts, Cui Min let his frustration at the start-stop pace of change show through:

“It is not just a few police officials at basic levels who have the confused belief that ‘tortured confession has many benefits and only does a little harm’—in fact, this also represents the views of a few middle and high-ranking leaders. Since the 1980s, when it comes to fighting tortured confession and other violations of law and discipline, even though we have tried to grasp this work many times, it has often been a case of ‘a lot of thunder, but very little rain’—we’ve been strict for a while, then we’re loose for a while. The focus and opinions of our leaders change especially during ‘strike hard’ periods—even to the point of finding various methods to overlook and excuse torture by lower level police. These past few years, torture problems haven’t just occurred in public security organs, even some people’s procuracies—the organ of legal oversight—have committed torture while doing their own investigations; it has even reached the point that the Discipline Inspection Committees of the ruling party are committing torture during their “two requireds”<sup>[34]</sup>—all of which has caused the trend of torture to get worse and worse.”<sup>[35]</sup>

In closing, Cui, in effect, threw up his hands in frustration and asks his colleagues rhetorically “*Do we really want to get rid of torture?*”

## **Implications for the West**

A key goal of this presentation has been to outline the proposals of analysts and officials in, of all places, China’s law enforcement system, who have been highly critical of China’s torture problem, and are fighting to rein it in. For US observers, it is striking to note their advocacy of rules and institutions borrowed from Western law—and occasionally US law of the Warren Court-era—to reform the incentives for police and prosecutors to commit tortured confessions. Demonstrating intellectual influence on something as complex as China’s legal reform is extremely difficult, and we certainly do not want to overestimate the degree of that influence. But it is important for the West and the US to recognize the impact that exposure to these legal notions appears to be having in Chinese law enforcement policy debates over how to fight torture.

Until China undergoes a systemic transition to a system with the type of self-sustaining, self-generating oversight mechanisms needed to fundamentally root-out torture, it may be that the best that can be hoped for is a change in the legal incentives to commit torture, greater professionalization, increased punishment of torturers, greater publicity, continued reforms with lawsuits, and related reforms within the current authoritarian system. Of course, no one can forecast when or if such a transition might occur.

This situation has always raised for the West an extremely complex and morally difficult issue of how best to support such legal reform. There is no avoiding a brutal conundrum—that strengthening some aspects of professionalism in law enforcement is an essential prerequisite to decreasing the incidence of torture in any country, not just China. But while improving the ability of law enforcement officials to solve real, non-political crime without resort to forced confession will very likely—in the *long* term—contribute to the rule of law and the Chinese people’s sense of their legal rights, in the short term, it risks contributing to the institutional strength of the current flawed legal system.

The institution of the Procuracy demonstrates this policy conundrum very well. In recent years, the Supreme People’s Procuratorate has actively and wholeheartedly encouraged procurators to support the suppression of democracy and rights advocates, and officially suspect religious groups. But there is also significant evidence in this study that the SPP is one of the most important institutional “homes” for those advocating strengthened legal procedures to fight torture, including stronger evidence laws and exclusionary rules, strengthened oversight of police interrogations, expanded prosecution of torturers, and greater public acknowledgement of the scale of the problem. The evidence in this study raises the question of whether expanded legal exchanges between carefully selected procuratorial scholars and analysts and US and other Western legal training programs might contribute to some of these anti-torture policy recommendations.

---

[1] This presentation includes sections revised and adapted from Murray Scot Tanner, “Shackling the Coercive State: China’s Ambivalent Struggle Against Torture”, *Problems of Post-Communism*, Sept-Oct, 2000.

[2] In its most recent report on torture in China, Amnesty International described these leadership efforts as betraying an attitude of “indifference”, and I would not dispute that characterization.

[3] Perhaps the most prominent such crackdown on torture, abuses, and corruption within law enforcement organs occurred between late 1997 and Fall 1998, as part of the so-called “Education and Rectification” campaign.

[4] An excellent example would be the large number of articles on fighting torture in *Gongan Yanjiu* (English Titles: *Public Security Studies* or *Policing Studies*), the chief theoretical and policy journal of the Ministry of Public Security and of its Number Four Research Institute. Despite having converted to open circulation over a decade ago, and containing rich materials on China's police, the magazine is rarely read in China and almost never cited in international human rights monitoring reports or foreign analyses of China's legal system. The major exception to this relative anonymity has been the prominent role played by *Fazhi Ribao* (*Legal System Daily*), the highly respected and rather widely read flagship paper of the Party's top legal policy organ, the Central Political-Legal Committee. In recent years few papers have more regularly published investigatory articles on law enforcement abuses of all types, including torture.

[5] The mass media most heavily monitored by foreigners would include *People's Daily*, *China Daily*, the New China [Xinhua] News Service English reports, Radio Beijing International, China Central Television [CCTV], and so on.

[6] See, for example, the Foreign Ministry's dodgy response to the Canadian Broadcasting Corporation's (CBC) filming of Shanghai police beating several suspects: Agence France Presse (AFP) May 21, 1998; *Ta Kung Pao*, May 25, 1998, pg. A2; Kyodo News Service May 21, 1998, in BBC Summary of World Broadcasts (BBCSWB) May 23, 1998. By contrast, during the same period, *Fazhi Ribao* (*Legal System Daily*) and *Renmin Gonggan Bao* (*People's Public Security Daily*) were publishing numerous expose articles on police and procuratorial torture as part of the "Education and Rectification" campaign. See Tanner, "China's Ambivalent Struggle Against Torture".

[7] These phrases come from interviews with the author and various articles. See, for example, Xu Deming, "Gongan Minjing Zhiwu Fanzui de Tedian Yuanyin de Duice" (Crimes Committed by Public Security People's Police in Performance of their Duties, their Special Characteristics, Origins, and Policies to Deal with Them), *Gongan Yanjiu* (*Public Security Studies*), 1998, Issue 4, pp. 75-77.

[8] Du Jingji, "Qianlun Xingxun Bigong de Chansheng ji qi Duice" (A Superficial Discussion of the Sources of Tortured Confession and Policies to Deal with it), in Wang Huaixu, ed., *Zhencha Xunwen Yanjiu yu Yingyong* (*Research and Practise of Investigation and Interrogation*), (Beijing, China People's Public Security University Press, 1998), pp. 372-376, esp. pg. 374.

[9] Cui Min, *Zhongguo Xingshi Susongfa de Xin Fazhan: Xingshi Susongfa Xiugai Yantao de Quanmian Huigu* (*New Progress in China's Criminal Procedure Law: A Comprehensive Look Back at Research and Discussions of Reforming China's Criminal Procedure Law*), (Beijing, China People's Public Security University Press, 1996), pg. 216. Because of Cui's prominent role in revising the Criminal Procedure Law, this unclassified source is rather widely read in China's legal community.

[10] Jia told the meeting:

"The problem of forced confessions--in a number of areas, it absolutely exists. Recently, while I was visiting basic level public security organs, talking with *university student trainees*, some of them told me that *they themselves had beaten people*. Of all the letters I have received from the masses since coming to the MPS, two types are most common. The first says that in some area, the social order is bad and the criminals are ferocious. *The second type says that the people's police are breaking the law as they enforce the law. By committing forced confessions, they have turned someone who has committed no crime into a criminal, or turned someone who committed a minor violation into a serious criminal violator, and harmed the masses terribly.*" See "Minister Jia Chunwang's Speech" to the Dalian conference on building the Public Security corps, June 12, 1988, in *Gongan Duiwu Zhengguihua Jianshe Lilun yu Shijian* (Beijing, China People's Public Security University Press, 1998), pg. 7.

[11] *Xingxun Bigong Zui*, pg. 9.

[12] Owing to the narrow definition of "tortured confession" in Chinese law, these statistics only include torture aimed at extorting confessions (thereby excluding wanton assaults by the police) and only torture committed by "judicial officials" or those deputized by them (thereby excluding civilian legal activists, who according to these sources are a major part of the problem). Annual fluctuations reflect not only changing *actual* rates of these crimes, but also the changing *willingness* of victims to come forward, and of procurators to prosecute these sensitive cases. Finally, the fact that the 1993-1994 statistics on persons tortured to death (241) represents such an enormous percentage of all torture

cases (between a fourth and a third) suggests strongly that most torture cases do not even get reported or prosecuted unless they result death or detectable serious injury.

[13] See, for example, Du Jingji, esp. pp. 372-373.

[14] For analysis of the procuracy and how its role can be undermined by campaigns, see Murray Scot Tanner, "State Coercion and the Balance of Awe: The 1983-1986 'Stern Blows' Anti-Crime Campaign," forthcoming in *The China Journal*, July 2000; also Harold M. Tanner, *Strike Hard! Anti-Crime Campaigns and Chinese Criminal Justice, 1979-1985* (Ithaca, N.Y., Cornell University East Asia Series, Number 104, 1999), esp. pp. 42-47.

[15] *Zhifa Shouce* (1996), pg. 380-381.

[16] Du Jingji, pg. 374.

[17] Cui Min, "Zai Lun Jiezhi Xingxun Bigong" (Yet Again Discussing the Abolition of Tortured Confession), in *Xingshi Susongfaxue de Xueke Qianyan Wenti* (Beijing, Chinese People's Public Security University Press, May 2002), pg. 255-256.

[18] *Xingxun Bigongzui*, pg. 9; see also James Seymour "Cadre Accountability to Law," Australian Journal of Chinese Affairs, No. 21, January 1989 on torture during the 1983-86 campaign.

[19] Du Jingji, pg. 374.

[20] According to the revised CPL "No person shall be found guilty without being judged as such by a People's Court according to law" and "A defendant cannot be found guilty and sentenced to a criminal punishment if there is only his statement but no evidence" (Articles 12 and 46).

[21] All quotes are from the official English translation, *Zhonghua Renmin Gongheguo Xingshi Susong Fa [Zhong Ying wen ban]* (Criminal Procedure Law of the People's Republic of China [Chinese-English Edition]), (Beijing, China Procuratorial Press, 1997). For a side-by-side comparison of the 1979 and 1996 CPLs, see Cui Min, pp. 267-353.

[22] Zhou Guojun, "Yanjin Xingxun Bigong de Sikao," (Pondering the Prohibition of Extorting Confessions), *Gongan Yanjiu* (Public Security Studies), 1999, Number 1, pp. 26-29, 43.

[23] Zhou Guojun, pp. 27-28.

[24] Cui Min, pg. 216. Professor Cui was a key participant in drafting the revised Criminal Procedure Law.

[25] This complicated debate is summarized in some detail in Tanner, "China's Ambivalent Struggle Against Torture", pp. 21-24.

[26] Zhou Guojun (pp. 29-43) indicates the SPC first issued this directive in its March 21, 1994 regulations on investigatory procedure. This document is unavailable to the author. The June 1998 Supreme People's Court Explanation of Several Questions of Carrying Out the "People's Republic of China Criminal Procedure Law", Court Interpretation No. 23 [1998], Article 61, states "It is strictly forbidden to use illegal methods to collect evidence. Any witness testimony, defendant statement, or defendant confession which, through investigation, is confirmed to be obtained by using torture, threats, inducements, deception, or other illegal methods, cannot serve as a basis for deciding a case." in *Gong, Jian, Fa Jiguan Zhixing Xingfa Xingshi Susongfa Xin Guiding* (Beijing, Qunzhong Chubanshe, 1999) pg. 428.

[27] Zhou Guojun, pg. 29-43; Beijing Xinhua English, Jan. 5, 1999, translated by FBIS-CHI, Jan. 5, 1999.

[28] "Zuigao Renmin Jianchayuan guanyu Yanjin jiang xingxun bigong huoqu de fanzui xianyiren gongshu zuo wei ding'an yiju de tongzhi" (Circular of the Supreme People's Procuratorate on Using Crime Suspect's Confessions

Obtained Through Torture as the Basis for Deciding Cases), January 2, 2001, in Ministry of Public Security, comp., *Gongan Jiguan Zhifa Xuzhi*, 2001 edition, pp. 526-528.

[29] Interviews with legal experts, Beijing, December 2001, June 2002.

[30] For a complaint about courts' unwillingness to mete out tough punishments, see Cui Min, "Zai Lun Jiezhi Xingxun Bigong".

[31] "Ex-China Cop Punished for Report," *Associated Press*, March 25, 1999.

[32] Lu Quanzhen, (Jilin Province PSB Deputy Chief) "Renzhen Xuexi Guanche 'Guojia Peichang Fa' Dali Tuijin Gongan Fazhi Jianshe," (Resolutely Study and Implement the "State Compensation Law" to Powerfully Promote Public Security Legal System Construction), *Gongan Yanjiu*, 1994, No. 6, pp. 16-18; also Zhou Zhenbo, *ibid.*, pp. 13-15.

[33] Jiang Jianming and Wang Jing, "Lun Gongan Xingzheng Suosong Shou'an Fanwei de Zhengyi," (On Debates Over the Scope of Cases of Public Security Administrative Litigation) *Gongan Yanjiu*, 1993, No. 6, pp. 33-35.

[34] The "two requires" are a stipulation that Party anti-corruption investigators can place on a suspected corrupt official—that they be available for questioning by authorities at *any time they are required*, and at *any place they are required*—an often brutal interrogation regimen effectly somewhat similar to house arrest.

[35] Cui Min, "Zai Lun Jiezhi Xingxun Bigong" pg. 256.