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E-mail: hrwnyc@hrw.org

E-mail: hrichtina@igc.org

SUMMARY

Gao Yu, 51, one of China's most prominent journalists, was sentenced to six years in prison on November 10, 1994, for "illegally providing state secrets to institutions outside [China's] borders" in a series of four articles in *Mirror Monthly* and *Overseas Chinese Daily*, both Hong Kong-based publications. The "secrets" in question related to policy decisions taken by senior officials of the Chinese Communist Party (CCP) in early 1993, and those decisions had already been reported in the Hong Kong press -- including by pro-Beijing papers. Gao Yu's arrest and conviction sent shock waves through media circles in Hong Kong.

But she was only one of a string of journalists, government employees and others tried and sentenced to severe prison terms over the past two years for "leaks" judged "harmful to state security" under laws and regulations which allow the Chinese authorities virtually unlimited latitude to suppress information. These laws have often been used against individuals who have been involved in some form of dissident activity; about half of those described here fall into this category.

All those accused of leaking state secrets, including Gao Yu, have been tried *in camera*, regardless of whether or not the information involved had subsequently become public knowledge, and none of the verdicts in these cases have been made public, as required by Chinese law. But Human Rights in China and Human Rights Watch/Asia have obtained the trial documents in the Gao Yu case and, for the first time, an analysis of the treatment by China's legal system of "official secrets" cases is possible. The trial documents are attached as Appendices I-VI.

GAO YU'S "CRIMES"

The offending articles by Gao Yu in *Mirror Monthly* were two four-page assessments of the principal issues, both economic and political, before the early March 1993 Second Plenum of the Fourteenth Central Committee, and the National People's Congress and the Chinese People's Political Consultative Conference later in the month. They appeared in the March and April issues of the magazine under the pen-name Liu Jiang. The two in *Overseas Chinese Daily* were news reports on the same subjects, published on February 19 and 25, 1993, under the pen-name Huang Wanqian.

In assessing the mechanics of policymaking and its specific manifestation in the preparations for these meetings, the articles focus on a shift which Gao Yu argued had occurred between the Thirteenth and the Fourteenth Congresses of the CCP. At the Thirteenth Party Congress in 1987, an explicit commitment was made to separate the Party from government. By the Fourteenth Congress in the fall of 1992, Gao argued, this project had been abandoned, and both the policy decisions made in preparation for the March meetings and the personnel arrangements to be ratified at those meetings confirmed this orientation. The strongest example of this, Gao wrote, was the proposal, subsequently adopted by the National People's Congress, that Jiang Zemin assume the office of state president while continuing in his position as CCP general secretary. Furthermore, she said, all the major decisions to be adopted by the National People's Congress and the CPPCC had been decided in advance in meetings of the Politburo and at the Second Plenum.

The articles also focus on the role of Deng Xiaoping in determining policy. By the beginning of 1993, Deng had already retired from all his official positions, and thus in theory had no role in determining government policy. However, he continued to make pronouncements on matters ranging from economic policy to strategy for negotiations with the British government over Hong Kong. One of Gao's articles shows how a few throw-away comments from Deng Xiaoping summarily destroyed plans for action on the concern, widely shared by top leaders of the Chinese government, that the economy was overheating in late 1992.

The information on which the articles were based came from documents shown to Gao Yu by Gao Chao, a CCP General Office official (and no relation to Gao Yu). According to Gao Yu's statement to the court in her appeal (see Appendix III), these documents had no official "secret" classification on them at the time, but Gao Chao had written "top secret" on them by hand in her presence. By the time of the trial, the documents had been officially designated "top secret" by the Central Secrets Protection Bureau.¹

OFFICIAL SECRETS IN CHINA

Although the Chinese authorities have imprisoned many people for "spying" or "leaking state secrets" since 1949, the state began regularly bringing such charges against journalists and their sources in 1992. This was the year that Deng Xiaoping initiated a new wave of economic liberalization, and the move against journalists was a clear sign that no political relaxation was going to accompany the economic reforms. Most of the known cases have involved links between Chinese nationals and news organizations outside China.

The 1988 PRC Law on the Preservation of State Secrets (hereafter Secrets Law) confers the authority to classify information very broadly, stating that "the specific scope of state secrets and their grades of secrecy shall be stipulated by the state secrecy preservation departments in conjunction respectively with the foreign affairs, public security or state security and other relevant central organs... Provisions on the specific scope of state secrets and their grades of secrecy shall be promulgated within the relevant spheres."² The Implementation Regulations for the 1990 PRC Law on the Preservation of State Secrets (hereafter Implementation Regulations) further expand the scope of what should be considered secret. If certain consequences could result from its disclosure, the regulations state, an item should be classified. These consequences include: "damaging the firmness and defensive capacity of state power"; "affecting the unity of the nation, the solidarity between races and the stability of society"; and "harming the political or economic interests of the state in its foreign affairs."

¹ This body appears to be a CCP bureau, not a state organ. Article 2 of the Implementation Regulations for the PRC Law on the Preservation of State Secrets (*Baoshou Guojia Mimi Fa Shishi Banfa*, 1990) states that "the functional departments of the State Council should be in overall charge of secrets work." However, Article 3 says that "central state organs" (a designation which should refer only to organs of government, but is vague enough to accommodate other interpretations) are to be responsible for determining what should be secret, as well as the classification level of this material, within the scope of their authority. Article 13 of the PRC Law on the Preservation of State Secrets says that when there is a dispute as to whether an item is a state secret, or what its degree of classification is, "the matter shall be determined by the state secrecy preservation departments."

According to the Regulations on the Marking of Documents, Materials and Other Goods Containing State Secrets, (*Guojia Mimi Wenjian, Ziliao he Qita Wupin Biao zhi de Guiding*, in General Principles of Secrets Work (*Baomi Gongzuo Gailun*), Jincheng Publishing House, 1991) all secret documents are to be stamped with an official classification which includes the length of time for which the material in question is to be kept secret.

Three grades of classification are established: "secret" (*mimi*, "ordinary state secrets, which would cause ordinary harm to the security and interests of the state if revealed"), "highly secret" (*jimi*, "important state secrets which would cause serious harm to the security and interests of the state if revealed") and "top secret" (*juemi*, "the most important state secrets which would cause extremely serious harm to the security and interests of the state if revealed").³ The determination of what falls within these various degrees of classification is to be made by "state organs and units at various levels."⁴ However, only the national-level "state secrets preservation departments" are to classify items as "top secret."⁵

As to the scope of classified information, the Secrets Law enumerates many of the obvious areas -- national defense, diplomatic affairs, science and technology, criminal investigations. But it also includes "major policy decisions on state affairs," "secret matters in national economic and social development" and "other state secret matters that the state secrecy preservation departments determine should be preserved." Furthermore, the law adds "those secret matters of political parties" that "concern the security and interests of the state" are also to be considered "state secrets."⁶

Like many similar Chinese laws, the Secrets Law has little to say on how "harm to the security and interests of the state" should be defined. The Implementation Regulations also fail to describe how such "harm" should be demonstrated.

On another key element of these cases, the issue of when a "secret" ceases to be classified information, the Secrets Law states merely that the status of a particular item should be modified "promptly" "in the light of changes in circumstances."⁷ A document titled "Regulations on Time Limits for Maintaining the Classification of State Secrets"⁸ -- which has, to our knowledge, only been published in internal (*neibu*) collections -- states that a specific time period must be given for all secrets: "top secrets" can remain classified for up to thirty years, "high-level secrets" for up to twenty years and "secrets" for up to ten years. Article 8 of these regulations states: "The period of classification for state secret items should be altered in a timely fashion in accordance with changes in the circumstances." However, the Implementation Regulations state that secrets should be declassified if "no harm will be done to the security or interests of the state," or if disclosure would "on balance" be advantageous.⁹

THE LEGAL PROCEEDINGS

Following her detention on October 2, 1993, two days before she was to leave the country to take up a position in New York as a visiting scholar at Columbia University Graduate School of Journalism, Gao Yu was

³ *Ibid*, Article 9.

⁴ *Ibid*, Article 11.

⁵ Secrets Law Implementation Regulations, Article 10.

⁶ Secrets Law, Article 8.

⁷ *Ibid*, Article 15.

⁸ "Guojia Mimi Baomi Qixian de Guiding," in *General Principles of Secrets Work (Baomi Gongzuo Gailun)*, Jincheng Publishing House, 1991.

⁹ Implementation Regulations, Article 15.

held in the newly opened Beijing State Security Bureau Detention Center in the south of the city. Her family was presented with an arrest warrant on October 12, in accordance with the statutory requirements mandating not more than ten days of detention before formal arrest.

The careful procedural correctness of the initial actions in the case against Gao appeared to indicate that everything would be done by the book. However, the proceedings were subsequently riddled with procedural errors and inconsistencies. The Beijing Municipal People's Procuracy issued an indictment (Appendix I) on March 23, 1994, charging Gao with "spying and illegally providing state secrets" in violation of Article 4 of the State Security Law. This article refers to "endangering state security" by "stealing, prying into or illegally transmitting state secrets" "domestically in conjunction with overseas organizations or individuals, either directly or by providing assistance to others."¹⁰

On April 20, the Beijing Intermediate People's Court held a trial *in camera* at which Gao Yu and her lawyers presented forceful arguments in her defense. Then on May 5, the court returned the case to the procuracy, ruling that "the evidence in this case is partial and needs investigation and verification."¹¹

Some commentators viewed this as a hopeful sign that the court was trying to reject the case against Gao. Others saw it as mere political expediency: as the annual deadline for renewal of China's most-favored nation (MFN) status approached, President Bill Clinton was reconsidering the human rights conditions he had attached to MFN for China the previous year. Just days after Gao's April trial, prominent dissidents Chen Ziming and Wang Juntao were released from prison. This was ostensibly for medical reasons, but the move was clearly aimed at influencing Clinton's decision.

The procuracy returned the case to the court on a significant date: June 4, 1989, the fifth anniversary of the Beijing massacre. On the same day, Premier Li Peng signed into law the Detailed Implementation Regulations for the State Security Law, many provisions of which were specifically aimed at suppressing dissident activity.¹² According to Gao's lawyers, no supplementary evidence was presented, and the indictment was unchanged. Again on July 19, the court returned the case to the procuracy for "further investigation and examination of some evidence," according to the verdict in the case (Appendix II). Insisting on its position, after a month the procuracy represented the case to the court on August 25.

Finally, a verdict sentencing Gao to six years in prison was issued on November 10, a fact which Gao's husband, Zhao Yuankang, discovered when an official of the Beijing State Security Bureau Detention Center telephoned him several days after to tell him he should arrange for a lawyer to go and meet with Gao to plan her appeal against her conviction. The official did not answer Zhao's questions about when the trial had taken place or what the charges against his wife were. When Gao's lawyers asked the court why they had not been informed about the verdict, officials told them they had not been able to contact her lawyers. Since all the lawyers work for major law firms, that explanation was clearly specious.

¹⁰ PRC State Security Law, Article 4, Clause 2, Item 3.

¹¹ Cited in Appendix VI, Gao's appeal against her conviction.

¹² For details, see "Pressure Off, China Targets Activists," Human Rights Watch/Asia and Human Rights in China, Vol. 7, No. 8, July 1995, p. 12.

Between the April 20 trial and the verdict, Gao's lawyers had had no opportunity to examine any "new evidence," to review new arguments presented by the prosecution or to debate changes in the charges against their client. Gao was convicted of offenses under Article 186 of the Criminal Code, not the State Security Law under which she was charged, but apart from that the verdict reproduced the indictment almost verbatim. Article 186 is much more vague than the State Security Law (which itself has been heavily criticized as overly broad) stating merely that those who "violate the laws and regulations of the state on protection of secrets, disclosing important state secrets" are to be subject to criminal punishment. In serious circumstances, Article 186 states, sentences of up to seven years may be imposed.¹³ However, a later addition increased the available penalties for "particularly serious" cases to life imprisonment or even death.¹⁴

Gao appealed the verdict to the Beijing Higher People's Court. In a statement to the court (Appendix III), she described the political reasons why she thought she had been arrested. She did not hold out much hope for an impartial review of her case; apparently the fifty-odd pages of defense evidence had not even been entered into the court of first instance's dossier on the case. "You just want to aid certain people who are overriding the law in order to realize their political goals," Gao said in her statement. Her lawyers submitted a brief outlining errors of law and procedure they said the procuracy and the court had committed. Ignoring these arguments, the court announced on December 24, 1994, that it had upheld Gao's conviction and sentence.

GAO'S DEFENSE: NO HARM DONE, NO HARM INTENDED

Despite the potential consequences of representing a person in such a high-profile political case, lawyers Zhang Sizhi and Fu Kexin, attorneys at the Zhongbei Law Firm of Beijing, and Niu Bingyi, attorney at the Economic Law Firm of Shijiazhuang, mounted a spirited defense of Gao. It is worth remembering that lawyers have had their licenses revoked for insisting, as Gao's lawyers did, on asserting their clients' innocence in political cases. In the case of the Beijing Fifteen, sentenced to terms of up to twenty years in prison in December 1994 for involvement in "counterrevolutionary groups,"¹⁵ when their trial was first scheduled in September 1993 orders went out to the law firms of Beijing that there would be trouble for anyone who dared to defend them. Gao too had a struggle to find a lawyer. Zhang, who took on her case, had previously presented a strong defense in the criminal prosecution of Wang Juntao.

Gao's lawyers presented three written defense statements, two at her first trial by Zhang and Niu respectively, and one at appeal by Zhang and Fu, as well as oral statements.

Zhang Sizhi argued (see Appendix IV) that not every word of a document labelled "top secret" should be considered secret, particularly focusing on the speech by Deng Xiaoping on foreign policy which had been widely reported elsewhere. "If they face no charges for doing this, how can we find Gao Yu guilty, merely for repeating others' words?" Zhang wrote. According to the Regulations on the Marking of Documents, Materials and Other Goods Containing State Secrets, if specific parts of documents have different classification levels, these can be marked separately.¹⁶ Even if the leaders' speeches quoted by Gao Yu can be legitimately considered state secrets, if their contents had already become public knowledge prior to Gao's writing about them, can she be said to be "leaking state secrets" by repeating this information in her commentaries?

¹³ PRC Criminal Code.

¹⁴ Supplementary Regulations of the Standing Committee of the NPC Regarding the Punishment of Crimes Involving Leaking State Secrets, 1988.

¹⁵ For details on these cases, see "Pressure Off, China Targets Activists," Human Rights Watch/Asia and Human Rights in China, July 29, 1994; and News Update, *China Rights Forum*, published by Human Rights in China, Spring 1995.

Human Rights Watch/Human Rights in China

¹⁶ See note 1 for reference.

Furthermore, Gao had no intention of "spying" or "leaking secrets" but was merely carrying out the job of a journalist, Zhang said. He noted that Gao may have made a mistake in agreeing to look at confidential documents, but her act did no harm. "A mistake has been made when a criminal charge is brought for actions which were not detrimental to society," he concluded.

Niu Bingyi's defense of Gao (Appendix V) focused primarily on the content of her articles and her relationship with the publications she wrote for. He argued that Gao's reporting and writing were legitimate news gathering and did not involve any of the elements defining the crime with which she was charged. No harm was done to state security; Gao did not intend harm; and she worked for "patriotic" publications, not "hostile" organizations inside or outside China. The magazine, *Mirror Monthly*, in which some of the offending articles appeared, was published by Xu Simin, a member of the Standing Committee of China's National People's Congress from Hong Kong. The other publication that published pieces cited by the prosecution, the newspaper *Overseas Chinese Daily*, is generally considered sympathetic to Beijing.

"Gao Yu was a special correspondent for the *Mirror Monthly*, and the fact that she wrote articles for the publication reflects no more than the normal relationship between an employer and an employee. How then can we consider the act of Xu asking for an article from Gao Yu as an act instigating or financing or even colluding with Gao Yu to commit the crime of harming state security?" Niu asked.

Niu went on to list many other publications, including the Beijing-controlled Hong Kong newspaper *Wen Wei Po*, which carried information about the same "secrets" that Gao reported on, some of them before her articles even appeared. For example, Deng's three guiding ideas on foreign policy which "present Deng's long-term ideas and consistent stand" have been "confirmed and repeated many times by our leaders and government spokesmen," Niu said, citing specific speeches by President Jiang Zemin, Foreign Minister Qian Qichen, and Vice Premier Zhu Rongji, among others.

However, the defense arguments fell on deaf ears at the Beijing Intermediate People's Court. In the verdict, they are dismissed with the following cursory assessment: "During the trial, the defendant Gao Yu pleaded not guilty because she did not initially elicit the materials and documents from Gao Chao and also she had no intention of committing a crime. Defense attorneys Zhang Sizhi and Niu Bingyi insisted that Gao Yu did not intend to commit a crime, therefore she is innocent."

In the appeal (Appendix IV), Zhang and Fu Kexin pointed out all the procedural errors in the case and criticized the verdict for its ambiguity and lack of legal rigor. "The verdict of first instance only drew an abstract conclusion and failed to point out any specific state secrets divulged by Gao Yu. Does this make sense as a criminal act?" the lawyers asked. In conclusion, they reminded the Beijing Higher People's Court that no harm was shown to have been done. "We want to restate that Gao Yu's acts, namely the writing of the four articles listed by the public prosecutor in the indictment, contain no single word or sentence which endangers or harms the state's security and interests, and therefore, her acts and articles lack 'social harm.' Any act without 'social harm' should certainly not be punished under the Criminal Code."

POLITICAL REASONS FOR ARRESTING GAO YU

Charging Gao Yu with leaking state secrets may have been simply a pretext for arresting a prominent dissident. Gao was a member of the loose group of intellectuals who pushed for political reform in 1988-89 and were imprisoned or went into exile following the crackdown on the 1989 protest movement. A senior Beijing journalist familiar with the case believes Gao's political connections and activities to have been the determining factor in her conviction and sentence -- not the articles she wrote or the information she used in writing them.

During the 1980s, Gao Yu became one of China's most respected journalists, writing investigative pieces on economic issues and interviewing many of the major architects of reform. She made her name at the semi-official China News Service (*Zhongguo Tongxunshe*), and then in 1988, accepted a job as deputy editor-in-chief of *Economics Weekly*, an influential reformist newspaper run by the independent research institute set up by Chen Ziming and Wang Juntao. During the 1989 demonstrations Chen and Wang, both of whom had been involved in independent activism since 1976, tried to mediate between the authorities and the students occupying Tiananmen Square, and for their trouble, were arrested and sentenced to thirteen-year prison terms as the "black hands" behind the student protestors. *Economics Weekly* was one of the first publications to be closed down in the wake of the June 4 crackdown.

During the 1989 demonstrations, on May 19, the day before martial law was declared in Beijing, Gao Yu was delegated by former *People's Daily* chief editor Hu Jiwei to go to Tiananmen Square to persuade the occupying students to leave and return to their campuses. The withdrawal was to be conditional on a meeting between student leaders and members of the NPC Standing Committee, of which Hu was a member. Gao managed to persuade the students of the wisdom of this course, against much opposition, but the whole arrangement was derailed by the martial law declaration.

Gao was one of the first intellectuals to be arrested. She was taken into custody on June 3, 1989, at midday, hours before the massacre began. For the first four months of her detention, her family did not know where she was and even thought she might be dead. The authorities refused to give them any information about her. Chen Xitong, the former mayor of Beijing who resigned in May 1995 in a corruption scandal, marked her as a major "conspirator" in his report on the protest movement. In that report, he called an article she had written "the political program for the turmoil and rebellion." The piece, an interview with two reformist scholars entitled "Conversations with Yan Jiaqi and Wen Yuankai About the Current Situation," had been published in *Economics Weekly* in November 1988.

Never charged with any crime, Gao was released on August 28, 1990. She had developed a heart complaint during her incarceration, from which she still suffers. She is currently being held in Yanqing Prison, a facility located in a Beijing suburb which has traditionally been used for the incarceration of mentally ill inmates, and shares a cell with women convicted of ordinary criminal offenses. According to Gao and her family, she suffers from Meniere's Disease (aural vertigo), angina pectoris and severe edema in her legs. When Gao was moved to Yanqing following the rejection of her appeal, the prison authorities did not want to accept her because of her poor state of health, she told her family. However, she has not received any specialist medical attention since her arrest.

OTHER SECRETS CASES

The charge of leaking state secrets has been used against several other journalists, sometimes as a pretext for halting involvement in political activities. In one of the first major cases, Xinhua journalist Wu Shishen was arrested in late 1992 for allegedly selling an advance copy of CCP General Secretary Jiang Zemin's speech to the October Fourteenth Party Congress to Leung Wai-man, a reporter for the Hong Kong-based paper *The Express*. Wu was given a life sentence in August 1993, and Ma Tao, an editor at *China Health Education News* (and reported to be Wu's wife), received a six-year term for assisting him in this. Also in 1993, two former Foreign Ministry employees, Bai Weiji and Lily Zhao, were sent to prison for finding and translating articles from internal (*neibu*) publications for *Washington Post* correspondent Lena Sun. "Neibu" is not a classification category mentioned in the laws and regulations on secrets. Two others, former *People's Daily* journalist Wang Jun and former Commerce Ministry employee Tang Yi, received two- and four-year

terms in the case, although their specific offenses are not known. Bai, Zhao and Wang had all lost their jobs because of their activities during the 1989 demonstrations.

In perhaps the best-known case apart from Gao's, Xi Yang, a Chinese national working as a financial reporter for the Hong Kong paper *Ming Pao*, was arrested in late September 1993, just days after China's bid for the 2000 Olympic Games had been rejected by the International Olympic Committee. Xi was sentenced in a secret hearing on March 28, 1994, to twelve years in prison for reporting on China's plans to sell gold on international markets and on interest rate policies. His family found out about the trial by telephone three days after it had taken place.¹⁷

The Criminal Procedure Law requires that "the announcement of judgement is in all cases to be made in public" regardless of whether the proceedings have been held *in camera*. Yet even Xi Yang's family has never been given a copy of the verdict.¹⁸ There has been no public information about the evidence against Xi or about the classification level of the secrets he is alleged to have "stolen" in acts of "stealing and probing into state financial secrets." Of Xi's co-defendant, Tian Ye, all that is known is that he was a clerk at the People's Bank of China and received a fifteen-year sentence. In its report on the Xi case, the Hong Kong Journalists Association asked whether a low-level "clerk" would have had access to highly classified documents.

Unlike Gao, Xi was sentenced under the State Security Law. The severity of the penalties he and Tian received goes far beyond what is prescribed under the relevant laws and regulations. Neither Xi nor Tian is known to have been convicted of "stealing, probing into, or providing evidence for an enemy," or of "particularly serious" instances of providing secrets for people or organizations outside China's borders, the only circumstances in which penalties of over ten years are to be imposed according to the relevant provisions of the Criminal Code.¹⁹ The type of financial information Xi was charged with leaking does not appear to be specifically included in any of the provisions of the Regulations on the Management of Secret Statistical Material,²⁰ which lists various kinds of statistics under their degree of classification. The information could only fall under "important statistics used in the compilation of statistical bulletins on the national economy and social development," which are stated to be of only "secret" (mimi) classification. These regulations are "to be implemented strictly by all localities, all departments and all units," according to the PRC Statistics Law.

¹⁷ For the account and analysis of the Xi Yang case, we are indebted to "An Inquiry into the Legality of the Secret Trial of Xi Yang," Hong Kong Journalists Association, April 9, 1994.

¹⁸ Article 121 of the Criminal Procedure Law states: "The announcement of judgement is in all cases to be made in public."

¹⁹ See "Attachments: Relevant Articles of the Law," selected provisions of the Criminal Code appended to the State Security Law. China's Criminal Code, Article 97.

²⁰ "Tongji Ziliao Baomi Guanli Banfa," in the internal (neibu) book *Judicial Handbook (Sifa Shouce)*, People's Rights Watch/Hong Kong Rights 98/China, 10 July 1995, Vol. 7, No. 8

In an ironic counterpoint to the Xi Yang case, at a September 1994 news conference attended by foreign journalists, Song Ruixiang, minister of geological and mineral resources, disclosed China's total gold output for 1993, a figure supposed to be "top secret" according to the regulations mentioned in the preceding paragraph.²¹ The domestic Chinese media faithfully failed to report the figure. Song is not known to have been subject to criminal sanctions of any kind, and, as usual, the law provides an out: the Secrets Law Implementation Regulations state that "in case of emergency, higher-level organs may declassify secrets directly."²²

The cases of Yu Meisun and Chen Xiaodong, both once CCP officials, show that people who "leak" information inside the country can also fall victim to these laws. Chen's problems began when in 1990, as a researcher in the Shanghai CCP General Office, he published a generally flattering profile of the new general secretary, Jiang Zemin, based on the recollections of a superior who had worked closely with Jiang. The matter was investigated, and Chen was eventually fired from his job. He was arrested on October 22, 1993, carrying the manuscript of a book he had compiled, *Shanghai Literary Circles in the 1980s: The Inside Story*, which contained his account of the affair, "The General Secretary Brought Me Bad Luck." Although this book had never been published, after spending ten months in detention, Chen was sentenced to a one-year suspended prison sentence and a one-year deprivation of political rights. Although the verdict in his case may have been given to his family, it has never been made public, so the specifics of the case against him are not known. However, a report on the case by the Shanghai Party Committee accused Chen of "leaking important state secrets."

Yu Meisun, an assistant professor of law at Beijing University and secretary to Party elder Gu Ming, received a three-year sentence for the crime of "leaking important state secrets" for allegedly giving Central Committee and State Council documents on the Party's policies to Wang Jienan, a reporter for the official Shanghai paper *Wenhui Daily*. According to Yu's defense, Wang, who was then a high-ranking CCP official at deputy bureau chief level (*fu juji*), copied the documents without his knowledge after he had let Wang read them in his office "for reference only." Wang was commended for the articles which incorporated the materials, but when the information was reported in Hong Kong, the Shanghai State Security Bureau began an investigation and traced the information back to Yu, who was arrested on January 3, 1994. He was then tried and convicted in August of the same year. Wang, although interrogated, was never charged with any crime. Yu's problems are believed to be due, at least in part, to his support for a faction of the CCP which advocates democratic and legal reform.²³

CONCLUSIONS

These cases show that the Chinese authorities are determined to stop the flow of information to journalists, particularly from the Chinese-language media outside China, and to maintain a degree of control over what is published in the media at home and abroad. Due to a combination of growing commercialism and widespread disaffection among journalists, Party control no longer operates effectively in many media organizations, so the CCP's traditional mechanism of self-censorship must be reinforced by fear of imprisonment. For this reason, the laws are implemented in a highly selective and arbitrary fashion.

²¹ "Media Keeps Silence Golden," *South China Morning Post*, September 7, 1994.

²² Article 15.

²³ For more details on the cases of Chen Xiaodong and Yu Meisun see "Sealing In Dissent: Secrets Laws Aim at Scaring Internal Critics Into Silence," Zhang Weiguo, *China Rights Forum*, published by Human Rights in China, September 1995.
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Foreign journalists, including those from Hong Kong, have not been subjected to these laws because this would cause an international outcry. As a result, Chinese nationals are the primary targets. Journalists like Gao Yu who have excellent contacts and can gain unusual access to policy-makers and politicians are prime targets, the more so if they already have "counterrevolutionary" stains on their records. The authorities may also be particularly alarmed at the prospect of professional mainland journalists like Xi Yang working for Hong Kong media. Such journalists have extensive knowledge of how to navigate the byzantine Chinese bureaucracy and how to obtain inside information.

The laws provide the authorities with convenient tools which allow them to classify virtually anything and to prosecute individuals for disclosing any information they have so classified. As the Gao Yu case shows, *ex post facto* classification appears to be perfectly acceptable, and the laws provide for no meaningful review of what is secret, whether a particular degree of classification is justified, or whether proper procedures have been followed. As with so many other Chinese laws which touch on sensitive political matters, the laws are drawn to make them as malleable in the hands of their executors as possible. At the time when the Secrets Law was promulgated, commentators called it an advance over the previous regime. In the light of its application, it does not appear to have made any difference: in the area of secrecy, rule by officials, by Party and by fiat is still the norm in China. As far as is known, the courts have not required that the prosecution in these cases demonstrate that real harm was done by the "leaking" of the secrets in question.

The implementation of the secrets laws is thus a clear sign that the Chinese government is failing to deliver on its promises of legal reform. Party interference in the judicial process appears to be a regular feature of these cases, and even the provisions of these vague and over-broad laws are repeatedly ignored.

Human Rights Watch/Asia and Human Rights in China believe the PRC laws governing secrets are inherently arbitrary and should be repealed. All those detained under the secrets laws -- including Gao Yu, Xi Yang, Tian Ye, Bai Weiji, Lily Zhao, Wang Jun, Tang Yi, Wu Shishen, Ma Tao, Yu Meisun and Chen Xiaodong -- should be immediately and unconditionally released. In the interim, the Chinese government should clarify what constitutes a "state secret" and set up a system for independent review of classification issues in secrets cases. The verdicts against the individuals mentioned here, as well as against others convicted of similar offenses, should be made public, as required by law. The Chinese government should also commit itself to making verdicts in such cases public in the future.

As an urgent matter the United Nations Special Rapporteur on Freedom of Expression and the Working Group on Arbitrary Detention should review China's secrets laws, examine how they are applied, and make recommendations about how abuses committed in their name can be prevented.

Human Rights Watch/Asia

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Ann S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Asia division was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Sidney Jones is the executive director; Mike Jendrzeczyk is the Washington director; Robin Munro is the Hong Kong director; Jeannine Guthrie is NGO Liaison; Dinah PoKempner is Counsel; Zunetta Liddell and Patricia Gossman are research associates; Mark Girouard and Shu-Ju Ada Cheng are Henry R. Luce Fellows; Diana Tai-Feng Cheng and Jennifer Hyman are associates; Mickey Spiegel is a research consultant. Andrew J. Nathan is chair of the advisory committee and Orville Schell is vice chair.

Human Rights in China

Human Rights in China (HRIC) is a non-profit organization independent of any political groups or governments. HRIC's work involves collecting information about and publicizing human rights violations in the People's Republic of China, informing Chinese people about their rights as defined in international human rights instruments, and assisting those in China who have suffered persecution and imprisonment for the non-violent exercise of their fundamental rights and freedoms. The executive committee of HRIC consists of Liu Qing, Chair; Li Xiaorong, Vice-chair; Xiao Qiang, executive director; Wang Yu, Research Director; Sophia Woodman, press director; and Liu Baopu, Fu Xinyuan and Yu Ping.

APPENDIX I: INDICTMENT OF THE BEIJING MUNICIPAL PEOPLE'S PROCURATORATE

(93) *jing jian fen shen zi* No. 432²⁴

Defendant Gao Yu, female; 50 years old; native of Beijing City; unemployed; resides at Hepingli Block No. 11, Suite 19-2-1, Dongcheng District; arrested on October 12, 1993, and currently in custody.

The investigation in the case, in which the defendant Gao Yu is charged with spying and illegally providing state secrets, has been concluded by the Beijing State Security Bureau and the case has been transferred to this procuratorate for examination in order to initiate a public prosecution. After examination of the case, this procuratorate ascertains that the following criminal acts were committed by the defendant Gao Yu:

On February 15, 1993, in the office of Gao Chao (male, 38 years old, prosecuted separately), the deputy director of the General Investigation Section of the Secretariat of the Chinese Communist Party (CCP) General Office, the defendant Gao Yu read and copied sections of documents labelled "top secret," which contained the speeches of central leaders Comrades Jiang Zemin, Liu Huaqing and Zhang Zheng at an extended meeting of the Central Military Commission. In addition, during the period between January and April 1993, Gao Yu, through Gao Chao, repeatedly obtained top state secrets including about projects for the reform of state institutions, the civil service system and the wage system, and about personnel arrangements for the Eighth National People's Congress (NPC) and the Eighth Chinese People's Political Consultative Conference. Afterwards, the defendant Gao Yu incorporated the state secrets she had copied into articles which were later published in the *Mirror Monthly* and the *Overseas Chinese Daily*. Gao Yu was paid 800 Hong Kong dollars for her articles.

Defendant Gao Yu was investigated and arrested on October 2, 1993.

The above facts were verified by the physical evidence and witnesses' statements which are on file with this procuratorate. The facts of this case are clear and the evidence is sufficient and conclusive. Therefore, the case can be concluded.

This procuratorate is of the opinion that defendant Gao Yu ignored state law by spying and illegally providing state secrets for institutions outside China's borders. She committed the crimes of spying and illegally providing state secrets to institutions outside China as defined under Article 4, Clause 2, Item 3 of the State Security Law of the People's Republic of China (PRC) and the Supplementary Decision of the Standing Committee of the National People's Congress Concerning Punishing the Crime of Leaking State Secrets. Pursuant to Article 100 of the PRC Law of Criminal Procedure, in order to secure the authority of law and defend the interests and security of the state, as well as to crack down on criminal activities, this procuratorate brings a public prosecution and seeks a legal penalty against the defendant.

March 12, 1994
(Seal of the Beijing Municipal People's Procuratorate)

To: The Intermediate People's Court of Beijing
Acting Prosecutor: Zhou Xiaoyan Clerk: Zeng Hui

Supplementary Notes:

1. Defendant Gao Yu is currently detained at the Beijing State Security Bureau Detention Center;
2. Two volumes of files from the preliminary investigation;
3. Physical evidence and 800 Hong Kong dollars.

²⁴The whole document is in Chinese. The codes for the type of document and its serial number are not readily translatable, since they contain abbreviations of names and other words.

APPENDIX II: VERDICT OF THE BEIJING INTERMEDIATE PEOPLE'S COURT

(1994) *zhong xing chu zi* No. 862²⁵

Public Prosecutor: The Beijing Municipal People's Procuratorate.

Defendant: Gao Yu; 50 years old; native of Beijing City; unemployed; resides at Hepingli Block No. 11, Suite No. 19-2-1, Dongcheng District, Beijing; detained on the charge of "illegally providing state secrets to personnel outside the borders" on October 2, 1993; arrested on October 12, 1993; currently detained at the Beijing State Security Bureau Detention Center.

Defense attorneys: Zhang Sizhi, attorney at the Zhongbei Law Firm of Beijing; Niu Bingyi, attorney at the Economic Law Firm of Shijiazhuang.

The Municipal People's Procuratorate brought an indictment against Gao Yu in this court and accused her of "spying and illegally providing state secrets to institutions outside China." This court formed a collegiate panel after receiving the indictment on March 23, 1994, and adjudicated this case *in camera*, in accordance with law. The Beijing Municipal People's Procuratorate sent Zhou Xiaoyan, acting prosecutor, to present a public prosecution in court. The defendant Gao Yu and her defense attorneys, Zhang Sizhi and Niu Bingyi, also appeared in court. After adjudication, the case was returned to the procuratorate on May 5, 1994, for supplementary investigation because the evidence was unclear. On June 4, 1994, after supplementary investigation the Beijing Municipal People's Procuratorate again brought this case before this court. On July 19, 1994, after retrial, the case was returned again to the procuratorate for further investigation and examination of some evidence. On August 25, 1994, the Beijing Municipal People's Procuratorate branch office sent the case back to this court. This case was concluded with a decision after discussion by the collegiate panel.

The indictment accused defendant Gao Yu of reading and copying sections of two documents of top secret (*juemi*) level in the office of Gao Chao, an employee of the central organs of the CCP, on February 15, 1993. From January to April 1993 the defendant also repeatedly obtained state secrets, including about state institutional reform projects, and incorporated those state secrets into articles published in a newspaper and a magazine outside China. She received remuneration of 800 Hong Kong dollars for these articles.

During the trial, defendant Gao Yu pleaded not guilty because she did not initially elicit the materials and documents from Gao Chao²⁶ and also because she had no intention of committing a crime. Defense attorneys Zhang Sizhi and Niu Bingyi insisted that Gao Yu did not intend to commit a crime, therefore she is innocent.

After adjudication, this court established:

²⁵ The Chinese characters in the original are the code for the type of document and its issuing organ. These codes are not readily translatable, since they contain abbreviations of names and other words.

²⁶ This was the first time that Gao Yu was charged to give Gao Yu the documents without her. July 1995, Vol. 7, No. 8

Gao Yu and Gao Chao (prosecuted separately) met each other in January 1993. At the time when Gao Yu went to Gao Chao's office on February 15, 1993, Gao Chao showed Gao Yu the documents and permitted her to copy sections from the two documents labelled top secret, which included the speeches of central leaders to "The Extended Meeting of the Central Military Affairs Commission" and the "Outline Report from the Office of the Committee on Organizational Structure of the Central Organs Regarding the Reform Project of the Administrative Management System and Institutions."²⁷ From January to April 1993, Gao Yu repeatedly acquired from Gao Chao state secrets, including about state institutional reform projects (all top secret), and incorporated those secrets into her articles, which were later published in Hong Kong magazines and newspapers. Gao Yu received remuneration of 800 Hong Kong dollars for these articles.

This court is of the opinion that the defendant Gao Yu ignored state laws and violated the regulations concerning protection of state secrets by writing and publishing the articles which contained the state secrets obtained from Gao Chao. Her acts were serious enough to qualify as the crime of "leaking important state secrets" and should be punished. The facts presented in the indictment of the Beijing Municipal People's Procuratorate are clear and furthermore the evidence is authentic and conclusive. In the light of the circumstances of this case, the charge of "leaking important state secrets" is warranted. Gao Yu's defense statement should not be accepted by this court since it is without basis. The opinions given by her defense attorneys are not based in fact or law and so this court does not find them convincing. According to Article 186, 52, 51(a) and 60²⁸ of the Criminal Code of the People's Republic of China, this court rules as follows:

1. Defendant Gao Yu is sentenced to a fixed-term imprisonment of six years, plus deprivation of political rights for one subsequent year, on the charge of leaking important state secrets. In calculation of the sentence, the period she was detained before sentencing should be offset on a day-per-day basis, which means that her sentence will run from October 2, 1993, to October 1, 1999.

2. The illegally acquired 800 Hong Kong dollars are to be confiscated.

If she does not accept this decision the defendant can, within ten days from the day after receiving the verdict, lodge an appeal to the Beijing Higher People's Court by submitting to this court a statement of appeal in duplicate.

Presiding Judge: Zhang Cunying
Judge: Zhang Zhizheng

November 10, 1994
Acting Judge: Li Yongjing
Clerk: Gao Jie

This copy has been checked against the original and contains no error
(the seal of the Beijing Intermediate People's Court)

²⁷ The two items in quotation marks are the titles of the two documents.

²⁸ For Article 186, see the introduction to this report, page 6. Articles 51 and 52 provide for the deprivation of political rights subsequent to completion of a prison sentence for "counterrevolutionary elements" or "a criminal element who seriously undermines social order." Article 60 allows the authorities to confiscate property obtained in the crime.
~~Human Rights Watch~~ Human Rights in China 16 July 1995, Vol. 7, No. 8

APPENDIX III: MY PERSONAL STATEMENT TO THE COURT

GAO YU

I do not accept the verdict (*zhong xing chu zi* No. 862) issued by the Beijing Intermediate People's Court on November 10, 1994. This verdict is unfair and illegal. Therefore, I lodge an appeal with the Beijing Higher People's Court pleading my innocence.

First, the two criminal offenses the verdict of the first instance states I committed are false. On February 15, 1993, my purpose in going to see Gao Chao at the CCP General Office was legitimate. Gao Chao himself invited me into his office, which is actually fully in line with the rules of the CCP General Office. In his office, Gao Chao initially showed me the two documents. I obtained his permission to copy sections as well as to make those extracts public. Everything I did was in accordance with current journalistic principles in China. How could my acts, as described above, be sufficient for the Beijing Intermediate People's Court to decide to prosecute me for the crime of "leaking state secrets"?

One point which needs more explanation is the statement that one of the documents Gao Chao showed me was a speech by Jiang Zemin. I do not think he was deliberately breaching the law or the rules since the contents of the document were the same as the relevant part of The Report of Jiang Zemin at the Fourteenth National Congress of the CCP, which contained nothing secret. Although Gao Chao bragged that this speech of over ten thousand words could easily be summarized in five thousand words, he could not answer when I asked whether there was anything new in it. But after my perusal of the speech, he himself wrote the words "top secret" on the document, something which was a formality of his working style but did not mean that this document really was top secret. Therefore, the assertion of the verdict of the Beijing Intermediate People's Court in this regard is far from the truth.

As to the contents I copied from the first document, of a total of thirty to forty thousand words, under Gao Chao's guidance, I only took excerpts about the adjustments to be made in ministries and commissions, a subject I had investigated and fact-checked long before. Some concerned departments had been preparing for this restructuring of ministries and commissions for approximately one or two years, and others for at least several months. From the second document of seventy or eighty thousand words, I merely copied the three guiding ideas of Deng Xiaoping quoted by Jiang Zemin which are related to our foreign policy and the fundamental principle of "one country, two systems." With the passage of time, these ideas had become policy, as well as a part of Deng Xiaoping's scientific theory, rather than state secrets.

How can the collegiate panel of the Intermediate People's Court possibly show that the policies of the State Council which we are discussing need not undergo scientific and democratic decision-making processes, and that the ministries and commissions involved need not be consulted or that their employees at all levels have no right to know about these policies? How can the collegiate panel present evidence that Deng Xiaoping's three guiding ideas are not actually behind the Chinese government's long-term foreign policy and the general principle of "one country, two systems"? Are these guiding ideas not the principles on the basis of which the Chinese government has conducted face-to-face negotiations with the British Hong Kong government? Is it not true that Li Peng, Qian Qichen, Lu Ping and Zhou Nan all openly explained the guiding ideas in speeches to the Fourteenth National Congress of the CCP and the Fifth Plenum of the Seventh National People's Congress? In my opinion, the answers to my above questions to the collegiate panel should be that it cannot prove these things. It is unscrupulous to incriminate people by obstinately alleging that information which a journalist can obtain through ordinary reporting and from Deng Xiaoping's publicly-available guiding ideas are important state secrets.

From February to March 1993, the four commentaries I wrote at the request of the *Overseas Chinese Daily* and Xu Simin, the chief of the *Mirror Monthly*, do not contain any state secrets. Take the example of

"wage system reform," which had been public knowledge domestically for some time while the full text of the document on the subject had been published by the Hong Kong-based *Wen Wei Po*.²⁹ The others, such as the State Council's 1993 project to restructure ministries and commissions and the personnel arrangements for the Eighth National People's Congress and the Eighth Chinese People's Political Consultative Conference, had been widely reported in the Hong Kong media for some time. My commentaries on this issue were just a repetition of old talk and had no news value worth mentioning. So what "secrets" could I have divulged? The fact that the Beijing Intermediate People's Court, in violation of the mandatory legal requirements, refused to include into the court dossier the forty to fifty pages of evidence collected by my attorneys proves nothing but that it was unwilling and afraid to face reality.

Secondly, neither the physical and documentary evidence presented to the court of the first instance, nor Gao Chao's mendacious confession and the statements of two witnesses, can establish that I committed the crime of leaking state secrets. One point that deserves special mention is that the two witness statements by my husband and son, secured through the coercion of the State Security Bureau, contain nothing to prove the "two criminal facts" asserted by the verdict. Moreover, even the timing does not correspond. Namely, my son only testified that I sent a fax through him to Lin Wen in September 1993, which was erroneously exploited by the court as proof that I sent the two commentaries to the *Mirror Monthly* in February and March 1993 respectively. Aren't they playing an absurd game matching things which have no relation to each other? Where is the fairness and seriousness of the law? This is malicious!

During the hearing of the first instance, the Intermediate People's Court twice sent my case back to the Beijing Municipal People's Procuratorate to demand supplementary investigation on the pretense of "lack of evidence." But after more than two months passed without any change in the evidence, the Procuratorate twice returned the case to the court to force a "court trial." And the court actually went so far as to meet the demands of the procuratorate, which shows that the verdict in my case in the first instance obviously deviated from, as well as overrode, the law and was reached because certain people willed it so. Therefore, this is a political case, which could never have been more manifest than in the proceedings of my first trial. Premier Li Peng has claimed several times that "the June 4 incident has passed" and "we have forgotten it." But how could the prosecutor then go against this by publicly reminding the court of "Gao Yu's performance in the June Fourth incident and her bourgeois liberal ideas which are the origins of her crime." The prosecutor, with powerful backing which I will describe later, purposefully framed a political case against me. It is unfair to bring false political charges against me by charging me with "the crime of divulging top state secrets." Meanwhile, it is preposterous to view the CCP General Office erroneously as a forbidden location, where people commit a crime simply by wrongfully entering it. Even after being sentenced by the court, I still feel no shame towards this country and its people since I have consistently, now and in the past, upheld the country's best interests with my pen.

We are now again at the turn of a century. At the turn of last century, six pioneers of Chinese intellectual reform sacrificed their lives at Caishikou in Beijing in the first massacre of the reform movement in China's modern history. For this sacrifice we have remembered them for one hundred years. However, what is most distressing is the fact that Chinese intellectuals still suffer political prosecution.

At the beginning of the twentieth century, the government of Northern warlord Duan Qirui gunned down over forty patriotic youths, including Lu Xun's student Liu Hezheng, in front of the premier's residence. Half a century later, that residence became the campus of Beijing University where I studied.

The Chiang Kaishek government massacred numerous intellectuals as well as killing eight young revolutionaries, Rou Shi, Hu Yeping, Feng Keng, Lin Yunan, Li Qiushi, He Mengxiong, Ying Fu and Ouyang Lian, in Longhua prison, and later assassinating the instructors of these youths, including Wen Yiduo and Li

Gongpu. Such atrocities prompted Chinese intellectuals to participate in the armed struggle and the democratic movement which, under the leadership of the CCP, finally overthrew Chiang's government.

"It is dawn, we are liberated." This was the people's power that everybody had been hoping for. My parents were excellent intellectuals. During the Battle for Beijing and Tianjin, my father was left in Tianjin to prepare for liberation. The CCP's underground organization sent my mother, my new-born brother and me to Beijing where we lived in a doctor's home. When we left for Beijing, Tianjin was buried in a sea of fire and we had no knowledge of my father's fate. In Beijing, we were short of food. Due to lack of breast milk, my mother could only buy some biscuits from the grocery nearby to feed my younger brother. Sometimes I got a share of one piece of biscuit which I would leave for several days without the heart to take a bite. Under such harsh conditions, my mother wished for the liberation of Beijing. I still remember the day of the liberation precisely. My mother brought my brother and me to Qianmen Boulevard to welcome the Liberation Army. To celebrate, my mother bought me a bag of peanuts, but the peanuts dropped and rolled over the ground when I fell down in the crowd. These memories are still vivid in my mind although I was only four then.

But what about the political fate of contemporary intellectuals under our own regime? By the beginning of the fifties, the famous writer and veteran party member, Hu Feng, had been charged as the head of a counterrevolutionary group. Hu, a close comrade of Lu Xun, was imprisoned for about twenty years and driven into madness. In 1957, hundreds of thousands of intellectuals, including batches of journalists and lawyers, were labelled "bourgeois rightists." Among those persecuted were three famous female journalists, Peng Zigang, Pu Xixiu and Ge Yang, all of whom had made important contributions, under the guidance of Premier Zhou Enlai, to the journalism of new China. Most of them were charged with crimes and incarcerated while many were killed. Following this, the ten years of the Cultural Revolution threw intellectuals into the darkest abyss of the century. They were collectively labelled "the stinking ninth category." Countless numbers of them were locked in prison, put in cowsheds³⁰ and beaten to death. The most brutal and shocking was the savage death of Zhang Zhixing, whose mother was required to pay the cost of the bullet which took her daughter's life.³¹

³⁰ Intellectuals disgraced during the Cultural Revolution were sent to "cowsheds" in the countryside.

³¹ Zhang Zhixing, perhaps the most famous martyr of the Cultural Revolution (1966-76), had her windpipe cut before she was shot as a "counterrevolutionary" so that she would be unable to shout out her loyalty to Chairman Mao. Mamam Rights Watch/ Human Rights in China 19 July 1995, Vol. 7, No. 8

"Overthrow the Gang of Four, welcome the nation's second spring." This reflected the heartfelt wishes of the people. In 1977, I was invited to be the screen-writer of a color art film "Spring," photographed by the Beijing Film Studio and the Central News Documentary Studio. I wrote a poem for this film, which was about a large group of artists, poets and actresses just liberated from the cowshed who were well-known and loved by the people. Now old and grey, they were celebrating the second spring of the century. The poem was formally incorporated into the film and read by Sun Daolin, a noted actor. As the open-door reforms brought intellectuals into a splendid part of the century, I commenced my journalistic career. I interviewed many eminent intellectuals and covered their rehabilitation. I reported the introduction of every important decision on economic reform. I also wrote about Hu Yaobang, Zhao Ziyang and Deng Xiaoping. More than that, I wrote that the "influence of leftist ideas" remained the crucial danger facing intellectuals. Hu Yaobang, a good general secretary of the CCP with the closest relationship with intellectuals, proposed to provide the intellectuals with what he called the three-relaxes policy, which abolished the political restrictions on them so as to give them more freedom. For this tolerance, Hu was ousted from his position. On April 15, 1989, Hu died of a heart attack. On April 22, over one million Beijing citizens spontaneously gathered along Chang'an Boulevard to see his bier off, a scene reminiscent of the previous "ten miles of Chang'an Boulevard weeping for Premier Zhou."³² However, the June Fourth massacre later saturated Beijing with the thick blood of the students, citizens and a few soldiers. This was the most severe tragedy of China's reform history, and it did not end with the killing.

On the morning of June 3, 1989, on my way to work, I was kidnapped by the Beijing Public Security Bureau, which neither followed any legal procedure nor notified my family. Several days later the reason for my arrest was made clear. Then Beijing Mayor Chen Xitong presented to the Standing Committee of the National People's Congress a report concerning the "turmoil and riot"³³ which had occurred in Beijing, in which he characterized one of my exclusive articles of November 1988 as "the political program for the turmoil and riot." This was an attempt to frame me politically. The title of the article was "Dialogue Between Yan Jiaqi and Wen Yuankai About the Current Situation." The dialogue was held in the form of a seminar by the two scholars and several journalists from different Beijing news agencies. The first part focused on the then severe economic situation in China, expressing the view that the open-door reform policy was the way to solve the economic problems, a view in total accordance with the speech given by Deng Xiaoping during his southern tour three years later. If the Chinese leaders had accepted this view then, the Chinese economy would have avoided the drastic economic downturn of the three following years. In the second part, which focussed on the goal of political reform in China, Yan Jiaqi suggested amending the Constitution and establishing its absolute authority, arguing that China needed a good constitution, a proposal consistent with the political objectives outlined at the Fourteenth National Congress of the CCP to establish socialist democratic politics. Nevertheless, based on Yan Jiaqi's statement that "China should abandon the non-procedural transition of power," Chen Xitong concluded that my article represented the "political program of the turmoil and riot." I still believe that what Yan Jiaqi advocated was correct; could Chen Xitong really support "the non-procedural transition of power"? I believe that my article will definitely find a place in the history of the development of Chinese thought, and that its ideas will not lose their sharpness in the next century. However, Chen Xitong's attempt to frame me politically has caused me and my family to pay a high, painful price.

³² Gao refers here to the demonstrations on Qing Ming (grave-sweeping day) in 1976 commemorating Premier Zhou Enlai, who had died in January of the same year. These demonstrations were the largest spontaneous outpouring of popular resentment against the authorities ever before seen in the People's Republic of China.

³³ *Human Rights Watch* (Human Rights in China) is the 20th anniversary of the June 4, 1989 Tiananmen Square protests. The Chinese authorities attached to the 1995 Nobel Prize, No. 8 demonstrations.

On June 3, 1989, a date known to everyone, my family waited for me the whole day and night. During the early morning of June Fourth, my younger brother put on street clothes and returned home from his army residence. Seeing my brother returning, the neighbors noticed my day long absence and gathered around him, wondering how he could have come back. He answered, "I walked through the whizzing bullets and I came back." My family began to search for me throughout the city, checking over forty hospitals and searching through the mortuaries. Not until three and a half months later did the Public Security Bureau notify my family after they had officially decided to put me under "residential surveillance."³⁴ They investigated me for one year but failed to obtain any evidence of illegal acts. A group of well-known figures of the June 4 movement were released from custody, but I stayed in jail. Beginning on New Year's Day 1990, I began to suffer from angina pectoris, which quickly developed into heart disease by August 10 due to lack of timely treatment. On August 28, 1990, I was finally released from "residential surveillance" and freed without any written conclusion attached. I did not hear the gunshots of June 4, but I heard my neighbors' stories on the night of my release when all my neighbors gathered in my backyard and waited for my return just as they had done the night of June 3 one year before. But the suffering of my family did not come to an end with my release.

On the night of August 28, my eighty-one-year-old mother managed to get up from her sick-bed and run trembling after the man handling my case, asking, "are you going to take my daughter away again?" A few days later, my mother suddenly fell down right in front of me and crushed her whole right leg. This is the woman who gave me life and taught me morals and was with me for most of my life. In the year that the Northern Expeditionary Army liberated my mother's hometown in Changyuan County, Hunan Province, the new government, in order to train female principals for middle schools, called for girls to attend school. My mother, the top student during the county's general examination, was sent to Tianjin to finish her middle school and college studies. During her eighty-one years, she weathered various political storms. But she was destroyed by the June 4 massacre. After her recovery from the faint, she lost her ability to speak. Only as I watched her life gradually slip away from her body, did I realize how strong my mother had been. She pulled through diverse political attacks and managed to see me return home.

When my mother passed away, I was so upset that I suddenly got Meniere's Syndrome. This past November was the third anniversary of my mother's death. It was also the date when the court handed down the final decision in my case. I could commemorate my mother only by making an appeal to your court.

The judgment of the Intermediate People's Court was a political judgment. It is about me, but also about the June 4 movement. Five years ago, Chen Xitong framed me politically; based on this assessment the Municipal People's Procuratorate illegally brought an indictment against me. Thus the court reached a wrongful verdict. Our government never admits that it holds political prisoners, and Hu Feng and Zhang Zhixing were both charged as criminals. However, the history of our country proves that there have unquestionably been political prisoners. Today you shame our country once again by sentencing me to jail for a six-year fixed term of imprisonment plus depriving me of my political rights for one subsequent year, which could force me to spend the rest of this century in custody and to greet the new century from behind bars. It is evident that to sentence me to jail is simply to substitute me for the man you labelled "the principal criminal of the June 4 movement," Wang Juntao, who was given a sentence of fixed-imprisonment of thirteen years three years ago, and is currently in the United States. Does this need any more explanation?

For the past fifteen years I have done my duty for journalism. Who does not have feelings? Who does not have parents? Who does not have sons and daughters? Who does not have brothers and sisters? But I am willing to sacrifice all I have for the country's modernization and journalism. After June Fourth, the Chinese

³⁴ Persons under "residential surveillance" (*jianshe juzhu*) "may not leave a designated area," according to the Criminal Code. Some authoritative commentators have argued that this should be at the suspect's home, but others have said that it can be at a place chosen by the authorities carrying out the surveillance.

Academy of Social Sciences (CASS)³⁵ sent people to investigate me. They did not assign me to a new job. For four years I did not get one penny of salary, and I did not ask CASS for anything.

This sentence can devastate my health but not my spirits. During my one year in prison my condition has deteriorated. Every day I have to take large doses of medicine. The state of the illness has caused edema, and my calves are blue and swollen. Before I step through the prison gates with my ruined body, I would like to say that I believe that history will prove my innocence and it will not be necessary to wait one hundred years for its judgment.

Finally, I want to say a few words to the three lawyers who have successively defended me. At present, not every lawyer is able and willing to act in my defense. These three lawyers have successfully done their job. In their defense briefs, I find the real power of Chinese law. Also during my communications with them, I felt the extraordinary power of the character and morals of Chinese intellectuals. Here I express my deep gratitude to them.

I do not have any hope the Beijing Higher People's Court will reverse the verdict. You just want to further blacken the blemish that the Beijing Intermediate People's Court has left in Chinese judicial history. You just want to aid certain people who are overriding the law in order to realize their political goals.

This is all I have to say.

December 23, 1994

³⁵ *Economics Weekly* was formally registered as an affiliate of CASS. As Gao's "work unit" it was responsible for watching human rights in China. Crackdown on the 1989 demonstrations. July 1995, Vol. 7, No. 8

APPENDIX IV: DEFENSE STATEMENT OF ZHANG SIZHI

Presiding Judge:

With reference to the opinions of the public prosecutors during the debate, I present the following views to the court in order to further defend the accused.

First, the Deng Xiaoping speech which Gao Yu copied from the documents is not classified as a state secret.

We cannot agree with the public prosecutors' opinions which seemingly indicate that every word in a "top secret" document is secret. In our opinion, whether a document is considered to be top secret depends on its relationship to the state's security and interests. Namely, the doctrine of totality should be applied when we decide a document is a state secret, which means that not every part of a "top secret" document should be regarded as a state secret. In short, the doctrine of totality should be the key standard we use to decide if an item is a state secret. Take the instance of this case. Some parts of the speeches of the central leaders at the Extended Meeting of the Central Military Commission, such as those about strengthening the solidarity of the Liberation Army, anti-corruption and stressing ideological construction, which Gao Chao (prosecuted separately) handed to defendant Gao Yu and let her read, can by no means be categorized as "secret." No matter whether or how a person cites these parts of the speeches, he simply could not commit the crime of "illegally providing state secrets." Therefore, we have to analyze the specific situation in which the behavior of Gao Yu occurred, which is described in the indictment as "Gao Yu skimmed and then copied...parts of the 'top secret' documents." Namely, we have to analyze these parts of the speeches comprehensively in order to decide if they fall into the sphere of state secrets.

According to the record in the dossier, the "parts" Gao Yu excerpted and quoted in her articles were Deng Xiaoping's three guiding ideas on foreign policy. These three ideas are organic parts of Deng's foreign policy. It is the kind of theory which is supposed to be understood by the people and used to guide the practice of our country. Before Gao Yu quoted them, some other people had already mentioned these ideas and publicized them in newspapers and magazines. If they face no charges for doing this, how can we find Gao Yu guilty merely for repeating others' words? This is extremely unfair. So on this point we disagree with the public prosecutors.

Secondly, a clear line should be drawn between news coverage and "spying."

Since Gao Yu was a journalist, it is crucial in determining the nature of her acts to make the distinction between news coverage and "obtaining information through espionage." We do not generally disagree with the statement made by the prosecution: In practice, some people do obtain information through espionage in the name of covering the news, or do both at the same time. But in this case, the indictment enumerates four so-called items obtained through espionage: those on state institutional reform, civil service system reform, wage system reform and personnel arrangements for the National People's Congress and the Chinese People's Political Consultative Conference. Supposing a journalist was involved in gathering this information, how could one decide if it is legitimate coverage or spying? In our view, the intention of the behavior is decisive in determining the difference, and this must be judged from the object pursued by the actor or the outcome resulting from the behaviors and should not be based on mere speculation. Taking an overall view of Gao Yu's case, we see nothing in her four articles which harmed the state's interests or security. Her acts were nothing more than ordinary news coverage, and it is easy to prove that she also had no intention of stealing state secrets.

Of course, some items cannot be viewed only in and of themselves. But as far as this case is concerned, two questions need clarifying. First, as to the nature of the items indicated by the prosecution, the huge volume of reports being issued at the time on these subjects, including wire stories from Xinhua News Agency, do not reveal much evidence that these items could not be acceptable as news coverage. Secondly, even if covering certain items constitutes spying, we still have to make a concrete analysis. Let us look back several years to when Deng Xiaoping toured the south and made his famous speech which the state news agencies delayed releasing. It was a few brave and insightful young journalists who first publicized the exciting and shocking news reports about Deng's southern tour. Who accused them of gathering "top state secrets"? Journalists have a responsibility to gather information, write reports and make comments about the problems that concern the Chinese people as well as those overseas. How could one equate such work with the act of spying? Moreover, the actions for which Gao Yu is charged almost all took place during a chat with an acquaintance which cannot be classified as a news interview but simply as a chat. Here we would like to remind the court of this point because it is important in determining and clarifying the nature of Gao's actions and liabilities.

The third point is our assessment of the main evidence in this case. We are not in agreement with the prosecution on the testimony of the CCP Secretariat concerning the secret ranking of these items which the prosecution relied on to ascertain the guilt of the defendant.

The "testimony" provided by the CCP Secretariat is precisely-worded and official. But please pay attention to what it says: "the materials Gao Yu quoted in her article correspond to the speeches made by central leaders which were published in Central Newsletter No.4."

What does it mean by "correspond"? This is a conclusion made or drawn by comparing two similar kinds of objects or things. Although the two items appear to be similar, they are by no means the same thing. You can not simply equate one thing with the other. As in this case, it is absurd to assume B is top secret merely because it corresponds to A which is top secret.

Another piece of "testimony" given by the CCP Secretariat reads: "A certain document regarding wage reform is top secret; and the articles written by Gao Yu contain certain information from this document" (cited from the testimony of the CCP Secretariat). This is also a conclusive assessment.

The key element here is the exact meaning of the words "certain information" in Gao Yu's articles. As the evidence shows, certain information in Gao's articles were already a common topic in the media and were public knowledge domestically and internationally long before Gao's articles were published, as demonstrated by the sections of the wire service reports we just read to the court a moment ago. Therefore, there were no "secrets" in Gao's articles to be leaked. Some may argue that evidence from reports of media known to be "hostile towards China" cannot be used as fair evidence. Even if this is true, how about our own media such as the Hong Kong *Wen Wei Po*? On February 15, 1993, before Gao had even shaped the outline for her article, the *Wen Wei Po* reported in detail the wage system reform project. Besides, in comparison to the *Wen Wei Po* report, Gao's article gives much less detail. This is indisputable evidence in favor of our point of view.

Another point worth mentioning is that the "testimony" given by the CCP Secretariat does not state whether in "illegally providing state secrets" Gao Yu's articles actually did provide the secrets to institutions or persons outside China. We disagree with the public prosecutors claim that their conclusions are in accordance with the "testimony."

Fourth is our basic view of this case. Prior to her arrest, as an experienced journalist Gao Yu had published hundreds of articles, commentaries and news reports in foreign magazines and newspapers without any record of illegal actions. But during her contact with Gao Chao, Gao Yu did make some mistakes, such as when Gao Chao, whose position was very sensitive, handed her "confidential" documents to read and even to

copy sections of, she did not realize that Gao Chao was divulging information because of their personal friendship and she ought to have refused it. This was a reflection of her insufficient awareness of the law and the preservation of state secrets, which should be criticized and from which a lesson should be drawn. On this point, our views do not diverge significantly from those of the public prosecutor.

However, a conclusion can be reached through the examination of the four articles by Gao Yu which the public prosecutor submitted to the court. They do not contain a single sentence which could endanger the state's security and interests. Therefore it is clear that Gao Yu's articles do not contain anything detrimental to society — on an objective level, no actual harm has been done; on a subjective level, no person has been endangered. And there is no doubt that harm to society is an essential feature of a crime. In other words, a mistake has been made when a criminal charge is brought for actions which are not detrimental to society.

Presiding judge, concrete analysis should be applied to concrete problems. "Everything changes with the shift of time, place and conditions." This ideological principle and methodology should guide us toward a solution of the issues in Gao Yu's case. We sincerely plead to the court to take our opinions into careful consideration and to accept our correct conclusions.

Defense Statement in the Case of Gao Yu

Zhang Sizhi (signature)
April 20, 1994, in the courtroom

APPENDIX V: DEFENSE STATEMENT IN THE CASE OF GAO YU CHARGED WITH SPYING AND ILLEGALLY PROVIDING STATE SECRETS

Presiding Judge and Judges:

As the defense lawyers of the defendant Gao Yu in this case, today we present ourselves to the court to do our duty according to the law. Now we render our defending opinions as follows.

The indictment charges the defendant Gao Yu with committing the crime of "spying and illegally providing state secrets to institutions outside the borders." After intensive investigation, we do not think this charge is tenable.

Pursuant to the State Security Law of the People's Republic of China, Article 4, Clause 2, "This law defines 'behavior that endangers state security' to mean any of the following types of activity by institutions, organizations or individuals abroad, or carried out domestically in conjunction with overseas organizations or individuals, either directly or by providing assistance to others." Therefore, actions of endangering state security are a criminal act of the "intentional" kind, which means that intent to commit a crime is a necessary condition for determining that this crime has been committed. In reference to this case, no matter which side, whether it be the instigator or the person to whom the information is given, commits the acts, he or she must not only have the intention of committing the crime, but must actually commit the relevant acts which harm state security.

According to the charges in the indictment, the defendant "wrote the state secrets into her articles and published them in the *Mirror Monthly* and the *Overseas Chinese Daily* to get compensation of 800 Hong Kong dollars." However, the facts of writing the articles and being paid 800 Hong Kong dollars have already been determined during trial as not having been "instigated or financed by or in collusion with institutions outside China." Also the court has clarified at trial that there were no such institutions or individuals instigating or financing or colluding with the defendant to commit the crime. In a word, none of the institutions or individuals defined in the State Security Law are involved in this case.

It is public knowledge that the Hong Kong-based *Mirror Monthly* magazine and the *Overseas Chinese Daily* are influential and patriotic publications. Take the example of Xu Simin, the publisher of the *Mirror Monthly*. He was a member of the Chinese People's Political Consultative Conference from its first to its seventh session. He is also a member of the Standing Committee of the Eighth National People's Congress and an adviser on Hong Kong affairs, positions which reveal his undoubted patriotism. Gao Yu was a special correspondent for the *Mirror Monthly*, and her writing articles for the publication reflects no more than the normal relationship between an employer and an employee. How then can we consider the act of Xu asking for an article from Gao Yu as an act instigating or financing or even colluding with Gao Yu to commit the crime of harming state security? Not to mention that Xu is a patriotic overseas Chinese who has long held a key position in the Chinese People's Political Consultative Conference as well as being an experienced journalist.

The investigation of the court shows that Gao Yu did not have "the motivation to spy and illegally to provide state secrets in order to harm state security." Gao Yu grew up in the new China and is an experienced journalist with a good educational background and extensive political knowledge. As a special correspondent for the China News Service (Zhongguo Tongxun She), she was appointed to cover news exclusively for the foreign media. Her achievements have been publicly recognized. During her contacts with Gao Chao, she did not utilize in her articles all the information which Gao Chao supplied. Out of sensitivity for her profession, although she did notice the value of some of the information, such as about the Daqiu Zhuang incident and the potential political value of the military parts of the speeches of the central leaders, Gao was motivated to use

only part of the information because she maintained high standards in writing news reports. Her standards and principles of selection, as she has stated in the court, are: A. the material in question should have been subject to some degree of openness, and the matter should be investigated and examined by herself; B. information that could possibly be harmful to the state's interest would be excluded, which means that in her mind state interests simply take precedence over news value; C. before publicizing any information, in accord with her professional discipline, she would always get permission from the people concerned. She also stated that she copied several quotations from Deng Xiaoping's speech because her interest and long-term research into Deng Xiaoping's ideas had created a habit of collecting materials concerning Deng Xiaoping. Therefore, she ignored and did not copy the parts about army-building and adjustment in the documents, since these fell outside her interests and focus. The proof of Gao Yu's statement is in her articles. Both her statement and her articles prove that she did not have the motivation to spy and illegally provide state secrets so as to harm the interests of the state.

Analysis of and research on Gao Yu's four articles reveal that Gao Yu did not commit any act which endangered state security.

The indictment accuses the defendant of spying and illegally providing state secrets. But when the defendant was preparing her articles, the above-mentioned state secrets had already been widely disseminated by domestic as well as foreign magazines and newspapers. Here are some examples:

1. As to the reforms of the civil service and wage systems: Gao's articles were published respectively in the *Mirror Monthly* No.3 on March 5 and in the *Overseas Chinese Daily* on page 5 on February 19, 1993, while other newspapers and magazines published similar articles as follows:

a. On February 15, 1993, the Hong Kong *Wen Wei Po* published an article entitled "Structural Reform of Cadre Wages Mean More Than Ten Million Waiting for Determination of Status as Either Officials or Business People" which reported the reform of the wage system.

b. On February 20, 1993, *Ming Pao* published an article "Major Reform of the Administrative System of the PRC," which discussed in great detail the scheme for the reform of the civil service system, along with a table on the rank system.

2. On the issue of institutional reform, Gao's articles on the subject were published in the *Mirror Monthly* No. 3 released on March 5, 1993, while the other reports were:

a. On January 30, 1993, the Hong Kong *Wen Wei Po* published "Prospects for the Eighth National People's Congress Session in Mid-March," focusing on the State Council's institutional simplification program and its contents.

b. *The Nineties* magazine of February 1993 published an article entitled "Institutional Reform by the State Council Strikes a Reef," publicizing the contents of the No.1 and No.2 reform scheme plans.

c. *Ming Pao* of February 12, 1993, published the article "Seeking a Cautious Solution in Institutional Reform, Only One in Hundreds of Ministries And Commissions Will be Cut," claiming that an institutional reform program had already been decided which would eliminate only one of a total of forty-one ministries and commissions.

d. *Wen Wei Po* [date unclear] published an article on large scale reform of the State Council, including plans to eliminate one third of its personnel and other details.

3. As to the Extended Meeting of the Central Military Commission, Gao's article only referred to the three guiding ideas of Deng Xiaoping quoted by Jiang Zemin, while others published reports as follows:

a. *Ming Pao* of February 3, 1993 published a report, "Extended Conference Held Before the Liberation Army Day Focuses on Army-wide Unity and Anti-corruption," which reported on the speeches of Jiang Zemin, Liu Huaqing and Zhang Zheng at the Conference. In the same issue, another article entitled "In Thoroughly Eliminating the Influence of Yang Baibing, Officers at Division and Army Level Will Be Subject to a Great Purge," gave an exhaustive report of Jiang Zemin's speech at the conference. It also reported the instructions of Deng Xiaoping to Zhang Zheng and Liu Huaqing.

b. In its first issue of 1993, the *Mirror Monthly* published "Mainland China Steps Into the Post-Deng Era," covering the Central Military Commission Document No.13, which enumerated the various unhealthy tendencies within the Army. It also reported Deng's speeches to Jiang Zemin, Liu Huaqing and Zhang Zheng.

4. As for the candidates for leadership positions at the Eighth National People's Congress and the Eighth Chinese People's Political Consultative Conference, Gao's articles on this were published in the third and fourth issues of the *Mirror Monthly* dating to March 5, 1993, while other articles are:

a. *Hsingtao Daily* of February 10, 1993, released "The Political Consultative Conference and the National People's Congress Will be Convened Next Month, Will Focus on Personnel Arrangements, and Emphasize the Hong Kong, Macao and Taiwan Problem," mentioning that the first four leaders of the CCP Politburo Standing Committee would respectively assume the four crucial leading positions of President, Premier, the Head of the National People's Congress and the Chairman of the Political Consultative Conference.

b. *Ming Pao* of February 1993 had an article entitled, "The Name List of the Eighth Political Consultative Conference has been Decided, Li Ruihuan is Expected to be the Chairman."

c. *Hsingtao Daily* of February 21, 1993, also had a report, "The Appointment of Yuan Mu, He Jingzhi and Gao Di to the Political Consultative Conference Attracts the Attention of the Public, the Major Officers in Charge of Hong Kong and Macao Affairs Also Enter into the Selection," which provided a long list of the main leaders and incoming leaders of the NPC and the Political Consultative Conference, as well as those of the State Council and of the office of State President.

5. As for Deng Xiaoping's three guiding ideas, Gao's article concerning these was published in the *Overseas Chinese Daily* on February 25, 1993. Even if the speeches of Jiang Zemin are important state secrets, this absolutely does not mean that every word or line in his speeches are state secrets. Gao's articles avoided mentioning any information regarding the military and other important parts of the speeches, regardless of whether these parts were state secrets. The three guiding ideas copied by Gao Yu actually present Deng's long-term ideas and consistent stand, and have been confirmed and repeated many times by our leaders and government spokesmen in various settings. This is quite well known outside China. Here are some examples:

- Qian Qichen's speech to a news conference held on February 16, 1993;
- Wan Li's speech at a briefing of the Standing Committee of the NPC in mid-December 1992;
- Zhu Rongji's speech at a briefing of the State Council;
- Ding Guan'gen's speech to bureau-level officials of ministries and commissions of the CCP Central Committee on December 2, 1992;
- Hong Xuezhai's speech at a briefing of the Political Consultative Conference and at an invitational meeting of major figures outside the CCP (all the above appeared in the *Mirror Monthly* No.2, 1992); and
- Jiang Zemin's January 11, 1992, speech (published in *Mirror Monthly* No.2, 1992).

In the report published in the *Mirror Monthly* No.2, 1993, entitled "Deng Pushes the British Government into Cooperation," Deng was quoted as saying in December 1992, "Suppose the British-Hong Kong government wants to confront us, we have to pick up the glove and play with them to the end." Zhou Nan, the head of the Hong Kong branch of the Xinhua News Agency, said in an interview, "Deng Xiaoping has said many times...we should never give up an inch, let alone a foot," and "Deng Xiaoping told Hong Kong people several years ago that we had conceded too much in the Hong Kong Basic Law. The more ground we concede, the more complicated the situation is, and it could eventually cause disorder." (All the above quoted from the *Mirror Monthly* No.2, 1993.)

Thus Gao's articles did not leak any state secrets since the instructions from Deng she quoted had already been publicized and spread widely long before her articles came out; therefore, it is groundless to assert that Gao illegally provided state secrets and caused harm to state security.

Presiding judge and judges, the defendant Gao Yu has long been engaged in journalistic work. In analyzing her actions, we have to distinguish her legitimate professional work from acts of spying and illegally providing state secrets. We also have to distinguish between the legal relationship between her and the patriotic news institutions outside China which hired her to cover news for them in a normal working relationship, and a criminal relationship which involves harming state security through links to or direction from organizations or publications abroad hostile to the PRC government. These two relationships are entirely different. By being aware of these factors, we can draw a distinction between guilty and not guilty, so as to prevent incriminating innocent people.

Niu Bingyi (signature)
April 20, 1994

APPENDIX VI: WRITTEN DEFENSE ARGUMENT IN THE CASE OF GAO YU TO THE COURT OF SECOND INSTANCE

To the Beijing Higher People's Court Collegiate Panel for the case of Gao Yu:

The verdict in Gao's case, *zhong xing chu zi* No. 862, issued by the Beijing Intermediate People's Court contradicts itself in its assessment of the facts. Basically, it fails to provide a cogent argument to prove that the defendant, Gao Yu, committed the "crime of leaking important state secrets." It also errs in the application of the major legal provisions. Thus, the two main conclusions drawn in the verdict are completely untenable and should therefore be reversed. Please permit us to make the following statement:

PART I

The court of first instance conducted the investigation and the trial debate in accordance with the Criminal Procedure Law of the PRC. The defendant made her concluding statement. Afterwards, ruling that "the evidence in this case is partial and needs further investigation and verification," the collegiate panel twice "return[ed] the case to the Beijing General People's Procuratorate for investigation and verification." This is certainly a significant step in the trial procedure. Regardless of the complications of the case itself, Article 108 of the Criminal Procedure Law of the PRC should be considered: "...where the principal facts are not clear and the evidence is insufficient, [the court] may remand the case to the people's procuratorate for supplementary investigation..." We can also assert that the facts "needing further investigation and verification," suggested by the collegiate panel of first instance, are evidently crucial to decide on conviction and any possible penalty. Ignoring this "suggestion" would lead to great difficulty in reaching a decision. For us, this ruling is understandable as well as necessary.

Based upon the above ruling by the court of first instance, the Beijing General People's Procuratorate twice sent the case unchanged back to the Intermediate People's Court for "a determination to be made according to law," stating that "after our examination, we are of the opinion that the facts are clear, and the evidence is sufficient and accurate." The only alteration to the original indictment was made in the two comments by the Beijing General People's Procuratorate on returning the case, when rather than asking for "adjudication of the case" it changed to requesting that "a decision be made." The request by the court of first instance for supplementary investigation was thus ignored.

Following this, without obtaining any further "investigation and verification," the court of first instance made a judgement on the charges in the indictment. What is referred to as insufficient evidence actually means that the facts on the basis of which the defendant was found guilty are unclear. Thus the verdict cannot be convincing. Contradicting its first ruling, the court of first instance stated in its verdict that "in the case charged by the General People's Procuratorate against Gao Yu, the facts are clear and the evidence sufficient." What is there to argue about? But how can it be persuasive to draw such reckless conclusions by ignoring the conspicuous conflicts in the case? Moreover, in the light of such erroneous judgements, how can the people maintain their faith in the law? If a correct decision is not reached in this case, the impact could be felt far beyond this case and this defendant and have nationwide influence. Therefore, we sincerely ask for a correction to safeguard the sanctity of our laws.

PART II

According to the Intermediate People's Court's Verdict No. 862 mentioned above, a total of two items of fact were "established through the adjudication process":

A. "On February 15, 1993,...Gao Chao (note: prosecuted separately) handed Gao Yu to read and permitted her to copy excerpts from two confidential documents known as the 'Speeches to an Extended Session of the Military Affairs Commission by Central Leaders' and 'Outline Report from the Office of the Committee on Organizational Structure of the Central Organs Regarding the Reform Project of the Administrative Management System and State Institutions.'"

This statement and assessment in the judgement are correct. This fact includes the two actions of the defendant, that is, reading and copying sections of the two documents given to her by Gao Chao. What we should make clear here is: neither the act of reading nor that of copying sections has anything to do with the charge of "leaking state secrets" determined to be valid by the court of first instance. Even supposing that by their very nature both "reading" and "copying sections" seem to have involved a breach of the rules, that is clearly different from "committing a crime." This is without doubt. Thus, this first item of fact investigated and accepted by the court of first instance cannot prove the defendant Gao Yu's guilt.

B. "From January to April 1993, Gao Yu repeatedly acquired from Gao Chao state secrets (all top secret classification), including about state institutional reform projects and so on, and incorporated these secrets into her articles, which were later published in Hong Kong magazines and newspapers. Gao Yu received remuneration of 800 Hong Kong dollars for these articles." In this assessment, there are two essential points. First, what exactly does "acquired from Gao Chao state secrets... and so on" refer to? Does the phrase "and so on" indicate that the enumeration has been completed or still goes on? The latter appears to be the obvious answer. But, since a crime is determined to have been committed, how can such an ambiguous wording be used to describe concrete criminal facts? How can a specific legal provision be applied to such a vague wording? We should never apply any legal provision without basing it on specific facts. This is beyond argument. Secondly, what specific top state secrets were divulged by the articles written by Gao Yu? The verdict of first instance only drew an abstract conclusion and failed to point out any specific state secrets divulged by Gao Yu. Does this actually make sense as a criminal act?

It could be argued that the defendant published articles in Hong Kong newspapers and magazines which leaked state secrets about reform of state institutions, and this secret information was obtained from Gao Chao. In this regard, the defense has already provided sufficient evidence to the court of first instance to prove that prior to the publication of Gao's articles, the Hong Kong media had been flooded with articles which addressed the same issues, including the outlines and the draft plans for state reforms. For instance, *The Nineties* monthly published a special report on the "Massive shifts in reform of central institutions." Also, from February to March 1993 the *Mirror Monthly* published a series of articles and news reports on the details of institutional reform. The state-run *Wen Wei Po* did not lag behind. As early as January 29, 1993, it published a Beijing telegram "disclosed by a well-informed source" about "the State Council's program of institutional simplification." The telegram mentioned that "the program would reflect the following idea: institutional reform should primarily transform the function of government...; it should be comprehensive, and the relationship between the functions of the state and military institutions should be clarified; the duties of the administrative organs and military institutions should be clearly differentiated." On March 14 and 15, *Wen Wei Po* published articles quoting a reliable source which, from different angles, considered the "the State Council's program of institutional reform" and announced the process through which the reform would be carried out, as well as a timetable. As for the articles by defendant Gao Yu, she merely wrote commentaries about the institutional reform to express her own opinion on the information which had been widely publicized by others. How can her behavior be viewed as "leaking state secrets"?

Overall, it is untenable to accuse the defendant of committing the "crime of leaking state secrets" merely by relying on the above-mentioned facts stated in the verdict of first instance. Another point might be proposed: the facts in the verdict of first instance are presented as inextricably connected. For example, first Gao Yu read and copied sections of "the speeches by the central leaders to the extended session of the Central Military Affairs Commission" at the office of Gao Chao. She then "wrote the state secrets into articles which were later published in Hong Kong newspapers and magazines."

Please allow us to raise question here about this: what parts of the articles Gao Yu published in Hong Kong are quoted from the "confidential speeches"? According to the case file, Gao Yu only "quoted" Comrade Deng Xiaoping's speech containing his three points on foreign policy. In the trial of first instance, the defense made clear to the court that these ideological speeches are an integral part of Deng Xiaoping's foreign policy and of his theoretical thinking. Since this is a theory, it should already have been made public before Gao's articles. Since Gao Yu merely spread Deng's theoretical ideas through her writing, how can this be regarded as a crime? Although the court of first instance rejected the charge of "spying and illegally providing state secrets for parties outside the border" which was originally brought against Gao by the public prosecutor, it still fell short of the rule of "taking facts as the basis" in reaching its judgement that "Gao Yu did commit the crime of leaking important state secrets (*jimi*)," and thus the court of first instance did not actually rectify the mistakes made by the public prosecutor.

The defense arguments above pointing out the flaws and deficiencies in the verdict of first instance can be summarized as follows: the assessment of the facts in the verdict falls short of a concrete and objective analysis. Hence it fails to reach a correct and realistic conclusion. We suggest and also believe that the court of second instance should make the necessary correction to the above-mentioned flaws.

PART III

The defects of the verdict in the description and evaluation of evidence

Setting aside the issue of "supplementary investigation" being required by the court of first instance and no further investigation actually being conducted, let us consider only the justification for the evidence cited in the verdict, as follows:

1. What is the exact meaning of the statement in the verdict that "the above facts were proved by the physical and documentary evidence"? What is the physical and documentary evidence supposed to show? As to "physical evidence," we do not know what this refers to. The so-called "documentary evidence" refers only to Gao Yu's articles and the "corresponding testimony" concerning the ranking of secrets given by the Central Secrets Bureau. Just as the lawyers pointed out in the trial of first instance, this is a very important "assessment." However, it shows nothing but the secret ranking of a certain document, and it certainly does not establish that Gao performed the act of "leaking secrets." There is no doubt about this defense argument and therefore we restate it.

As to other evidence, the verdict states "...the criminal facts of Gao's case) can be corroborated by the testimony on file of Gao Chao, and of witnesses Zhao Yuankang and Zhao Meng." Here, it should be pointed out that the testimony of Gao Chao and other witnesses does not establish anything concerning Gao Yu's "act of leaking secrets." Although one witness, Zhao Yuankang, is Gao Yu's husband, and the other, Zhao Meng, is her son, they knew little about and were never involved in Gao's writing, so how can they testify about Gao's act of "leaking secrets"? Therefore it is clear that the facts numerated in the verdict are groundless.

2. The dozens of pages of documentary evidence submitted by defense lawyers to the collegiate panel of first instance were not put into the court's file on the case and transferred to the court of second instance, a direct violation of the mandatory requirement contained in the legal document numbered "*Si fa gong zi* No. 196," jointly issued in 1986 by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Justice and the Ministry of Public Security. This states clearly that "...the evidence submitted formally to the people's court by lawyers must be included in the court's files." This situation is not conducive to clarification of the case. As well as excluding the defense's evidence from the file, the court also concluded that "the defense opinion lacks factual support," which is definitely too arbitrary and a lame argument.

In summary, on the one hand the verdict itself lacks evidence to demonstrate Gao's act of "leaking secrets," while on the other hand the available evidence has established that Gao did not leak secrets.

PART IV

Among the four clauses from the Criminal Code cited in the verdict, the most important one is Article 186. Article 186 contains two sections, which respectively stipulate two different subjects who could commit this crime. The first section of this article refers to subjects who are "state functionaries," and the second refers to those who are "not state functionaries." It is evident that the defendant is not a "state functionary" since, as the verdict states, she was unemployed, therefore the first section cannot apply to her. However, if, as the article stipulates, the second section is applied, the circumstances indicate that the possibility of a mitigated penalty should be taken into consideration. Probably because it was unwilling to apply this possibility, the court purposely applied the whole article without specifically indicating which section it was employing. This gives an indication of the arbitrariness and indifference which created the verdict of first instance. From the perspective of the defense, we consider the application of either of these two sections to be improper, but this is another issue and should not be considered in detail here.

PART V

Finally, we want to restate that Gao Yu's acts, namely the writing of the four articles listed by the public prosecutor in the indictment, contain no single word or sentence which endangers or harms the state's security and interests. Therefore her acts and articles lack "social harm." Any act without "social harm" should certainly not be punished under the Criminal Code. Permit us to ask you, honored judges, when you review the file of the court of first instance, to take into account the five aspects of our defense brief, even if you do not regard these as forming the basis for your decision. Moreover, we also hope that by considering the direction pointed out by our brief, basing your view on the facts of the case you are able to take into consideration all the details, the available evidence and opinions, so as to reach a correct decision and rectify the errors of the court of first instance, hence to ensure completely an accurate implementation of state law as well as to defend the rights of the citizen to law and justice.

We count on the court of the second instance to take a sincere and serious attitude to the implementation of law. Please review this case.

Beijing
December 14, 1994

Gao Yu's lawyers at trial of second instance:
Zhang Sizhi
Fu Kexin (signatures)