

THE TRIAL OF BAO TONG

Introduction

On July 21, in the most important political trial in China in twelve years, a three-judge panel of the Beijing Intermediate People's Court sentenced Bao Tong, a leading reformer and former aide to Zhao Ziyang, to a seven-year prison term. Bao Tong had been taken into custody on May 28, 1989 and held without charge, incommunicado for much of the time, for over three years. The trial took less than six hours. Asia Watch has obtained the verdict, attached as Appendix I.

Bao was given four years for "leaking an important state secret"¹ and five years with two years' deprivation of political rights for "counterrevolutionary propaganda and incitement"² during what the judges called the "serious disturbances" in Beijing in May 1989. In accordance with Article 64 of the Chinese Criminal Code, the total sentence was reduced to seven years minus time in detention, so Bao Tong will be released in 1996. He appealed the verdict, but reversals of court decisions are extraordinarily rare in China. In such a politically sensitive case, it is reasonable to assume the sentence was pre-determined at the highest levels of the Party.

Background of Bao Tong

At the time of his detention, Bao Tong, 59, was political secretary to the Politburo's Standing Committee and a member of the Party's Central Committee. An adviser to Zhao Ziyang for ten years, first as chief of staff and later as senior aide, Bao is widely credited with being the architect of Zhao's economic and political reforms. Until 1987 he directed the State Commission on Economic Reform and from 1987 to 1989, he was Director of the Central Research Institute for the Reform of the Political Structure. In his view, political reform involved the need to respect the rule of law and separate government and party, but it did not mean the adoption of Western-style democracy. In his authorship of the Working Report of the Central Committee to the Thirteenth Party Congress (1987) which called for the phasing out of centralized economic planning in favor of a free market economy, Bao emphasized the need for accompanying political reform. As recently as January 1992, Deng Xiaoping referred to this report as the blueprint for future reform.

¹ Article 186, Section 1 of the Criminal Code.

² Article 102 of the Criminal Code.

Bao Tong has a long history of service to China. His Party career extends back to the 1940's when he joined the Communist underground as a high school student. During the 1950's, he served as Secretary to the chief of the Central Committee's Organization Bureau, and later headed its Policy Division. Bao was purged during the Cultural Revolution as a "capitalist roader." After years as a laborer on a tobacco farm in a Henan prison camp, he returned to Party work when Deng Xiaoping returned to power in 1978.

The Charge

The evidence against Bao Tong, as presented in the verdict, is disturbingly vague even by Chinese standards. Bao allegedly told some staff members on May 17, 1989 that "it was quite possible that he would no longer be able to work together with them, and that it was possible he would be investigated." He then, according to the verdict, divulged a state secret - the substance of which is not disclosed in the verdict - to a staff member who subsequently confided it to others. Later after martial law was declared in Beijing on May 20, Bao Tong allegedly attacked the government and the decree in a discussion with Chen Yizi, then head of the Research Institute for the Reform of the Economic Structure who escaped from China in July 1989 and is now living in the U.S. He and Chen agreed to make their conversation public.

Following their meeting, Chen Yizi allegedly appointed leading cadres at his institute "to draft four different leaflets...attacking the government and inciting people to resist and disrupt the execution of martial law." One of those documents, "Six-Point Statement on the Current Situation" (Appendix II), asked that the top leadership be accountable to the public, that the National People's Congress convene a meeting to examine the legality of the martial law decree, that people remain rational and orderly and that the student hunger strikers terminate their action as quickly as possible. Nothing in the statement advocated the overthrow of the government or an end to socialism.

The "undisclosed" state secret was revealed as early as June 30, 1989, when Bao Tong was labelled a "black hand" conspirator by Beijing Mayor Chen Xitong in his speech to the National People's Congress Standing Committee for demanding a full account of the party's leadership struggle, and for lobbying for an emergency session of the Congress in a bid to block the martial law decree. According to Chen,

...a few people who had access to top party and state secrets gave the information away out of their counterrevolutionary political consideration [sic]...After divulging the state secret on declaring martial law, [Bao] made a "farewell speech" [to members of the Research Institute for the Reform of the Political Structure] in which he warned the attendants not to reveal the schemes worked out at the meeting, saying that anyone who revealed them would be a 'traitor,' a 'judas.'

Chen further implied that one of the objectives of the Six-Point Statement was to "hint" that the government planned military control.

On March 26, 1992, the Chinese Communist Party expelled Bao Tong. According to File No.52:

Bao Tong, member of the Chinese Communist Party, Central Committee, has leaked state secrets and propagated anti-revolutionary incitement during the counterrevolutionary rebellion of 1989. He has thereby severely violated criminal statutes and forfeits qualification for membership in the CCP. The Politburo of the CCP's Central Committee now passes a resolution to expel Bao Tong from the Party.

The decision post-dates Bao's indictment by one month and pre-dates the verdict by almost four months.

The Trial

In several important ways, Bao Tong's trial violated the standards set forth in the *Universal Declaration of Human Rights*³ and the *International Covenant on Civil and Political Rights (ICCPR)*.⁴ It was not a "fair and public hearing by a[n]...independent and impartial tribunal." In accordance with the common Chinese practice of "leniency for those who confess, severity for those who resist" (*tan bai cong kuan kang ju cong yan*), Bao Tong was pressured from the first to admit to his "crimes." The guilty verdict had been twice foreshadowed in circumstances that lend credence to the Chinese dictum, *xian pan, hou shen* (verdict first, trial second).

In spite of a report by *Xinhua* (the official Chinese news agency) implying that Bao's wife, daughter, brother and sister attended the trial along with some 230 others, they were allowed into the courtroom only to hear the ten-minute verdict. Court employees ordered to attend made up the bulk of the audience; they, too, were only permitted in when Bao's sentence was announced. Others spectators arrived and departed in government cars. It was not a public trial in any sense of the word.

Bao did not have counsel of his own choosing.⁵ He had a limited pool to choose from in the first place, since according to the *Interim Regulations of the People's Republic of China on Lawyers*, "To be eligible as a lawyer, a person must be examined and approved by the judicial department (bureau) of a province, autonomous region, or municipality...."⁶ Bao's wife had wanted a lawyer named Zhang Sizhi, who had vigorously defended Wang Juntao, another so-called "black hand," during his 1991 trial, as her husband's main lawyer, the one who actually presents the case. Instead, to the dismay of the family, another man, Yang Dunxian, assumed that role. At first the court told Bao's family that Zhang, who was out of town, would be dismissed as a defending lawyer if he did not appear in Beijing by July 10. He arrived at the last minute, and the following day, Bao's wife, Jiang Zongcao, submitted a letter to the court appointing Zhang. At the same time she asked the court to show the letter to Bao Tong. No family member had seen Bao since December 1991, and his wife and daughter had been told by the court they would not be permitted to see him until after his trial.

³ Articles 10 and 11 (1). All members of the United Nations by virtue of that membership are expected to uphold the principles enshrined in the Universal Declaration.

⁴ Article 14. China is not a party to the covenant but Asia Watch believes the ICCPR sets a standard against which government behavior can be measured.

⁵ International Covenant on Civil and Political Rights, Article 14, subparagraph 3(b).

⁶ *The Laws of the People's Republic of China*, Chapter 2:9.

On July 12, when Jiang Zongcao again went to the court to ask if the letter had been shown to Bao Tong, she was told it had been turned over to a higher authority and that Bao had signed a letter giving permission for Yang Dunxian to act as first defending lawyer. Bao reportedly was told Zhang was busy. During the course of his preparation, Yang was called to the court several times for "consultation."

Bao Tong's lawyers reportedly were warned the case was not to be discussed even with members of Bao's family and that violation of the order could result in disciplinary action against them by the Ministry of Justice, which has overall supervision of lawyers.⁷ To ensure compliance, Zhang Sizhi and Yang Dunxian reportedly were followed by plain-clothed public security personnel and their contacts with Bao's family were monitored.

Bao's lawyers had no time to prepare a defense. They were not appointed until July 4, two and a half weeks before trial. Under the Chinese legal system, a defense team cannot be designated until a trial has been scheduled. This can take place as late as one week prior to actual trial. Bao Tong was officially notified on July 3 that his trial was imminent. The family was notified on July 4. Bao Tong was only able to meet with his lawyers twice before the trial began.

No provision was made for the defense to examine witnesses. The court even interfered with Jiang Zongcao's desire to appear as a witness for her husband. She was informed that if she appeared, only one lawyer (Yang Dunxian rather than Zhang Sizhi) could represent Bao Tong.

Asia Watch believes that Bao Tong was detained and convicted solely for the expression of his political views and that he was given an unfair trial. He should be immediately and unconditionally released.

⁷ Hong Kong Standard, July 18, 1992.

APPENDIX I

CRIMINAL VERDICT

returned by

The Beijing Municipal Intermediate People's Court
(1992) Intermediate/Criminal No.1582

Public Prosecutor:

Li Lianjia, Procurator of the Sub-Procuratorate of the Beijing Municipal People's Procuratorate

Defendant:

Bao Tong, male, 59, born in the Municipality of Suzhou, Jiangsu Province, former director of the Political Reform Research Center of the Central Committee of the Chinese Communist Party. Arrested on January 15, 1992 on charges of leaking an important state secret and conducting counterrevolutionary propaganda and incitement. Currently in custody.

Defenders:

Yang Dunxian, Attorney, Beijing Xuguang Legal Affairs Office

Zhang Sizhi, Attorney, Beijing No.5 Legal Affairs Office

The Sub-Procuratorate of the Beijing Municipal People's Procuratorate, on June 29, 1992, brought an indictment in this court against the defendant Bao Tong, who was charged with leaking an important state secret and conducting counterrevolutionary propaganda and incitement. This court formed a collegial panel in accordance with law and conducted a hearing not open to the public on July 21, 1992. The collegial panel heard the procurator, who spoke in support of the prosecution; tried the defendant, heard his testimony, defense and final statement; heard the defenders, who spoke in defense of the defendant; and checked the evidence directly relevant to this case. The following facts were ascertained:

1. The defendant Bao Tong, at 20 hours on May 17, 1989, called a dozen staff members to a meeting at the Political Reform Research Center of the Central Committee of the Chinese Communist Party. Bao Tong told those present it was quite possible that he would no longer be able to work together with them, and that it was possible that he would be investigated. At 22 hours, Gao Shan (Prosecuted separately), a staff member, having heard Bao Tong's talk, asked the latter about an important secret. Bao Tong divulged that important state secret to Gao Shan. On the morning of May 19, Gao Shan spread that important state secret he learned from Bao Tong in a speech he gave at a meeting called by Chen Yizi (at large), former director of the Research Institute for the Reform of the Economic Structure, and attended by members of the Development Institute of the China Rural Development Research Center under the State Council, the Institute on International Studies of the China International Trust and Investment Corporation, and the Beijing Young Economists Association.

2. The defendant Bao Tong, at 10:00 in the morning of May 20, 1989, not long after the proclamation of martial law by the State Council for parts of Beijing, in his conversation with Chen Yizi, former director of the Research Institute for the Reform of the Economic Structure, at the Political Reform Research Center of the Central Committee of the Chinese Communist Party, attacked the government and the martial law imposed on parts of Beijing. When Chen Yizi indicated that he would make their conversation public in the form of a written statement,

Bao agreed. Chen Yizi, upon returning to the Research Institute for the Reform of the Economic Structure, immediately called leading cadres at the department and section levels to a meeting. At that meeting, Chen told about his conversation with Bao Tong, and appointed those present to draft four different leaflets, including "An Urgent Appeal to Fellow Countrymen," attacking the government, and inciting people to resist and disrupt the execution of the martial law. More than 1,000 copies of the leaflets were printed and were then distributed at Beijing University.

The above-mentioned facts are attested to by written evidence and witnesses' testimony. The facts are clear, the evidence solid, complete, and sufficient to prove the case.

This court is of the opinion that the defendant Bao Tong leaked an important state secret during the serious disturbances that occurred in Beijing in 1989. The case is serious and his actions constitute the crime of divulging an important state secret. The defendant Bao Tong, together with others, conducted counterrevolutionary propaganda and incitement. His activities also constitute the crime of conducting counterrevolutionary propaganda and incitement. Both crimes are serious and should be punished according to law. In order to consolidate the political power of the people's democratic dictatorship and the socialist system, uphold social order, and, in accordance with Section 1 of Article 186, Article 102, Article 64 and Article 52 of the Criminal Law of the People's Republic of China, this court renders the following judgement:

The defendant Bao Tong committed the crime of leaking an important state secret and is sentenced to a fixed-term period of four years' imprisonment. He committed the crime of conducting counterrevolutionary propaganda and incitement and is sentenced to a fixed-term period of five years' imprisonment, with two years' subsequent deprivation of political rights. It is hereby decided that he will serve a total fixed-term period of seven years' imprisonment (the period of imprisonment began on May 28, 1989 and will end on May 27, 1996), with two years' subsequent deprivation of political rights.

If the defendant does not submit to this judgement, he may, within a 10-day period starting from the day following the receipt of the judgement, lodge with this court a petition, plus one duplicate copy, as an appeal to the Beijing Municipal High People's Court.

Chief Judge:	Ding Fengchun
Judge:	Zheng Weiyang
Acting Judge:	Bai Xibin

July 21, 1992

(Official seal of the Beijing Municipal
Intermediate People's Court)

This copy has been checked against the original and contains no error.

Clerk:	Xu Jiming
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SIX-POINT STATEMENT ON THE CURRENT SITUATION

1. This patriotic pro-democracy movement spearheaded by college students and participated in broadly by people of nearly all social strata has written a most glorious page in the annals of China's pro-democracy movement.
2. The situation has deteriorated so seriously today solely because of the mistakes and procrastination on the part of the Party and government in their decision making.
3. Never since the founding of the People's Republic have the top Party and government leadership become so divorced from the people, so unconscionable, and so directly antagonistic to the will of the people. The reason lies in the fact that the traditional political institutions are incapable of operating according to the legal system. They lack political openness. So that a situation has emerged in which people are only concerned with high level power struggles to the neglect of the national interests and the future of the country.
4. The situation is still deteriorating. (The authorities) persist in their error and continue to make mistakes, to the point of taking extreme measures (such as military control). This will lead to real turmoil and even a national break up. That dark prospect is unacceptable to the Chinese People, who had experienced a decade of the Cultural Revolution.
5. We therefore
 - * Call on the top leadership to make public the inside story of their decision making and their differences.
 - * Ask that a special session of the National People's Congress be convened immediately to exercise its constitutional powers to intervene.
 - * Call on the Chinese Communist Party immediately to convene a special congress to examine the recent work of the Politburo.
 - * Appeal to people from all walks of life to remain rational and orderly in their support of the student movement, and treasure the results it has already achieved.
 - * Call on people of every social stratum to organize and help the college students in maintaining order and in logistics.
 - * Call on those on hunger strike to take good care of their health and terminate their hunger strike as soon as possible. You have already won a very great victory. Our motherland needs you to win new victories by new and more lasting methods.
6. Our country belongs to the people; our government is the people's government, and our army is the people's army. No force on earth can stem the historical tide of China's modernization:

Research Institute for the Reform of the Economic Structure
Development Institute of the State Council Agriculture Research Center
International Research Institute of the China International
Trust Corporation Beijing Young Economists Association

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News from Asia Watch is a publication of Asia Watch, an independent organization created in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair of Asia Watch is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. Sidney Jones is Executive Director.

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