

AFTER THE DETENTION AND DEATH OF SUN ZHIGANG: PRISONS AND DETENTION IN CHINA

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

OCTOBER 27, 2003

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

91-305 PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

LEGISLATIVE BRANCH COMMISSIONERS

House

JIM LEACH, Iowa, *Chairman*
DOUG BEREUTER, Nebraska
DAVID DREIER, California
FRANK WOLF, Virginia
JOE PITTS, Pennsylvania
SANDER LEVIN, Michigan
MARCY KAPTUR, Ohio
SHERROD BROWN, Ohio
DAVID WU, Oregon

Senate

CHUCK HAGEL, Nebraska, *Co-Chairman*
CRAIG THOMAS, Wyoming
SAM BROWNBAC, Kansas
PAT ROBERTS, Kansas
GORDON SMITH, Oregon
MAX BAUCUS, Montana
CARL LEVIN, Michigan
DIANNE FEINSTEIN, California
BYRON DORGAN, North Dakota

EXECUTIVE BRANCH COMMISSIONERS

PAULA DOBRIANSKY, Department of State*
GRANT ALDONAS, Department of Commerce*
LORNE CRANER, Department of State*
JAMES KELLY, Department of State*

JOHN FOARDE, *Staff Director*
DAVID DORMAN, *Deputy Staff Director*

*Appointed in the 107th Congress; not yet formally appointed in the 108th Congress.

CONTENTS

	Page
STATEMENTS	
Seymour, James Dulles, senior research scholar, Columbia University, East Asian Institute, New York, NY	2
Tanner, Murray Scot, senior political scientist, RAND Corporation, Arlington, VA	5

AFTER THE DETENTION AND DEATH OF SUN ZHIGANG: PRISONS AND DETENTION IN CHINA

MONDAY, OCTOBER 27, 2003

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 1:30 p.m., in room 2168, Rayburn House Office building, John Foarde (staff director) presiding.

Also present: David Dorman, deputy staff director; Susan Weld, general counsel; Carl Minzner, senior counsel; Steve Marshall, senior advisor; and Keith Hand, senior counsel.

Mr. FOARDE. I would like to welcome everyone to this issues roundtable of the Congressional-Executive Commission on China. On behalf of our Chairman, Jim Leach, and our Co-chairman, Senator Chuck Hagel, welcome to our two panelists and to all who are here to observe and to listen.

Our subject matter today is not the most pleasant in the world, but we think that it is important and interesting. It is particularly interesting for us, with our mandate on human rights and rule of law.

We had followed very closely the case of Sun Zhigang, a 27-year-old fashion designer and migrant worker who died 3 days after his arrest last spring in Guangzhou. The autopsy showed that he had been badly beaten before his death. As the facts came out, he was beaten because he was unable to produce a residence permit.

He was taken to a local police station and then moved to a custody and repatriation transfer center, which is part, or was part, of the nationwide system in China for the detention and control of migrant workers in urban areas. Sun died at the clinic of the transfer center on March 20.

What ensued, from our point of view, was something valuable and unique, in that a debate broke out and public pressure was brought on the government about the whole question of custody and repatriation, about conditions not only in transfer centers for urban migrants, but also in detention centers, period.

Although eventually that debate was cut off or truncated, we thought that it broke out for the first time in a number of very interesting ways. So, we wanted to get two experts on these aspects of the Chinese criminal justice system in to examine these questions.

We are delighted that we have finally been able to get Dr. Jim Seymour to come down from Columbia to talk to us about the detention system. He has done a lot of work on Chinese human

rights generally over the past 15 or 20 years, but particularly co-published or co-wrote a wonderful book on China's prisons.

And Dr. Scot Tanner, who we had the pleasure of hosting at a hearing last year, and now is down here in the Washington area permanently, who is an expert on police and police procedure in the People's Republic of China [PRC].

So, without further introduction, let me just say how we usually conduct things here at these roundtables. We normally give our panelists 10 minutes to make an opening presentation, with the understanding that you may not have time to cover everything you wanted to cover in 10 minutes.

Once all panelists have spoken, we open it up to questions and answers from the staff panel. We hope we will also be joined by personal staff to our Commission members, but given what the weather is like at present, who knows whether they will actually join us.

Everyone here will get a chance to do at least one round, if not two, of questions and answers. We give everybody about 5 minutes to ask a question and listen to the answer.

Without further ado then, let me introduce Dr. Seymour to start off with the presentation. Thank you.

STATEMENT OF JAMES DULLES SEYMOUR, SENIOR RESEARCH SCHOLAR, COLUMBIA UNIVERSITY, EAST ASIAN INSTITUTE, NEW YORK, NY

Mr. SEYMOUR. Thank you very much. I am delighted that you are holding these hearings today.

I prepared a rather detailed, and I hope comprehensive, paper. I do not know where the pile ended up, but it is available. They are back there someplace.

Anyway, I think I can see your eyes glazing over at the thought of my reading that paper, so what I thought I would do instead is let the paper stand as it is and I would just hit a few of the highlights, organizing my remarks somewhat differently, just to keep it clear and not unnecessarily complicated.

It is kind of a good news/bad news scenario. I will start with the bad news, and then I will come back to—well, it is not really good news—but better news.

The bad news is pretty well known. This is a very large prison system, upward of 2 million prisoners. It is erratically managed. It is often very poorly managed, although there are, of course, also some better managed institutions. Conditions are often very harsh. Even when administrators have the best of intentions, they lack the resources to maintain the prisons according to decent standards.

Then, of course, there is the separate problem that many of the people in these prisons do not belong there. This is really outside the scope of my paper, but something that one has to keep in mind. There are arbitrary arrests, no judicial review of arrests, per se, and many miscarriages of justice. Even if people are guilty, they are sometimes "guilty" of something that we would not recognize as a crime, but rather of a political or religious offense.

A third problem, is that often there are no trials. This brings us to the subject of administrative detention, that is to say, cases han-

dled outside of the criminal justice system, which I will just touch on briefly.

There is a whole constellation of regimes of administrative detention. For instance, there is one for handling people involved in drugs, another one for people involved in prostitution. Then there is the whole question of people incarcerated in mental institutions.

The big issue is the so-called labor re-education. Now, the number of re-education prisoners has fluctuated widely over the years. There were about 400,000 such prisoners 20 years ago.

Then the authorities seemed to want to reduce the size of this labor re-education, that is to say, people who were imprisoned without trial, apparently aiming at about 200,000, but in recent years it has usually been a little bit above 200,000, maybe 230,000, 260,000, in that general range. People are held in 280 labor re-education camps, of which 86 are for drug offenders.

Now, because the courts are meting out fewer intermediate length sentences and more shorter sentences, this may have the effect of pushing more people out of the prison system and into the labor re-education system. Also even though labor re-education is normally an administrative punishment, meaning that they do not have to give suspects a trial, but nonetheless sometimes the courts will send people to labor re-education rather than to prison.

I think I should perhaps move on and we can come back to this question of labor re-education. You will probably have questions. It is quite controversial, what should be done with it. What should foreign human rights advocates advocate in the case of labor re-education? I dare say that will come up in the discussion period.

The better news can be found in five areas. I would just list them and then I will let you raise questions about whatever you are interested in.

The first is that of the seven or eight forms of administrative detention, two have been eliminated, most importantly what Mr. Foarde referred to: the detention and repatriation regime that Sun Zhigang got caught up in. Because he was an intellectual and college graduate and so forth, when he died, that case got a great deal of attention. One likes to think he did not die in vain, because they did eventually, more or less, eliminate that practice. There had been large numbers of prisoners held under that regime. I can go into the details later on. So, we should be thankful for small favors. They have gotten rid of certain aspects of administrative detention.

Second, the rate of imprisonment. Although I said that the numbers of prisoners is very large, 2 million, then you have to ask, well, is that a lot or a little, and it depends upon to what you compare it. If you compare China to Scandinavia or Japan, of course, this is a horrendously high rate of imprisonment.

If you compare it to Russia or, God forbid, the United States, then all of a sudden it does not look like such a high rate of imprisonment. In the case of the United States, our prison population is very close to the prison population of China in size, but China has a population four or five times ours. So, if you do the math, you will realize that, compared to the United States, the size of the prison population in China is not great.

The third point. I am not too comfortable putting this under "good news," but sometimes the problem, which is indeed a very se-

rious problem, of people being imprisoned for their religious views, political views, or activities, gets somewhat overstated. Some people are under the impression that this is a major part of the incarceration system in China, a huge percentage of prisoners being there for political or religious reasons.

Actually, it is not a large percentage. It is hard to put a figure on it because it depends upon how you define political, how you define religious. But the great majority of the prisoners in China's prisons are there because the regime believes that they have committed something that we would all recognize as a crime. I put it that way because the regime may believe wrongly, and there are many miscarriages of justice.

The fourth point, is that they have completely changed their thinking regarding the economics of the prison system. It used to be they hoped it would make a profit, or at the very least, that the prison system would be self-supporting, and they have given up on that idea and step-by-step moved away from that kind of thinking.

Just last month, they began what one hopes is going to be the wave of the future. They are trying, in six provincial level units—two municipalities and four provinces—completely separating the prison enterprises from the prisons themselves. Not only that, but the funding of the prisons is all going to come from the government. None of the funding has to come from these enterprises. That should mark an improvement, for reasons that we can talk about.

Finally, I think there is a realization in high places in China that the system needs to be reformed, and not just financially. In particular, inmates' living conditions need further improvement.

A year ago, the Ministry of Justice held a work meeting on the upgrading of the administration of the prisons and their re-education regime. It was admitted that "our efforts to build a core of gangzhang,"—that is to say, the administrators and guards in the prison—"have yet to completely meet the demands of the new situation and new tasks. The overall quality of the force still needs further improvement, and they need to constantly strengthen their law enforcement in a strict, fair, and civilized manner." Then they proceed to lay out an extremely ambitious 3-year program, and I have attached to my paper an account of that program as an appendix.

This, of course, is not going to be easy for them to implement. One could detect a note of frustration on the part of Justice Minister Zhang Fusen. He cited on the need to address "the sharp struggle in reform and anti-reform, as well as the struggle between corruption and anti-corruption." He obviously knows that he has a problem.

Thus, improving this vast system is an awesome challenge and not simply a matter of rewriting laws and regulations. With the important exception of the problem of administrative detention, laws and regulations are in place which, in theory, should provide China with a decent penal system and also a decent system of administrative detention.

The progress so far has been spotty, with huge variations from province to province and prison to prison. But experience dem-

onstrates that, where there is a political will, prison conditions can be made satisfactory.

Mr. FOARDE. Jim, thank you very much. Just to clarify, we have passed out your paper. There is a distribution table back in the back, and everybody has got a copy.

Scot, if you please, go ahead.

STATEMENT OF MURRAY SCOT TANNER, SENIOR POLITICAL SCIENTIST, RAND CORPORATION, ARLINGTON, VA

Mr. TANNER. Mr. Foarde, Mr. Dorman, I would like to begin today by expressing my sincere thanks to the Members of the Congressional-Executive Committee on China for honoring me with the invitation, and also thank the committee staff, in particular Dr. Susan Roosevelt Weld, for her kind help in arranging my visit.

I must also note for the record that, since I was last honored to speak to this Commission a little over a year and a half ago, I have taken a new position as a senior political scientist at the Washington offices of RAND Corporation.

My comments today draw upon my longtime study of policing issues in China and are not part of any project I am currently undertaking for RAND. My views today are entirely my own and do not necessarily represent the views of RAND Corporation, its officials, or any of its many contracting organizations.

My purpose today is to examine the recent wave or renewed popular and official attention to law enforcement abuses in China and analyze some of the recent reforms in police regulations designed to reign in some of these abuses.

I am going to focus in particular on an issue that even many law enforcement officials concede is pervasive, and that is the widespread use of torture.

My purpose is not monitoring or exposition of these abuses. That has been done much better by many courageous, dedicated, and meticulous individuals and organizations, including several here today.

And although I am going to be discussing some recent changes in police regulations designed to deter torture and also the positive role played by some law enforcement reformers in China today, listeners should not infer from that any defense at all of the government's totally inadequate record in addressing law enforcement abuses.

As I have argued before, any examination of the efforts of some Chinese to address law enforcement abuses must begin by confronting the painful distinction between the kinds of significant improvements that may be possible within China's current authoritarian system and more fundamental improvements that are not probably possible without institutional changes that are incompatible with the current system.

China, like most authoritarian systems, lacks the institutions to create self-generating or self-sustaining monitoring of law enforcement abuses, or to generate effective political pressure for reform.

The institutions I am talking about, of course, would be things such as a free and investigative press, civil society, human rights monitoring groups, professional judges and prosecutors, elections, and so on.

The party has launched short-term crackdowns on abuses in the past—1998 was an example—but without these other fundamental institutional reforms, improvements are very difficult unless the top leadership keeps up the pressure.

Beginning in late summer, we started seeing the first signs that another wave of attention to law enforcement abuses, especially administrative detention of migrants, detention exceeding time limits, torture, abuse of prisoners, was emerging within China's popular press, within its official legal press, and even in the speeches of some senior officials.

So far, this has spawned renewed policy debates over how to handle these problems, and a few noteworthy changes in regulations. I would point to four or five significant political forces that have come together to pressure China's leadership to address these issues at the present time.

These are, first, leadership succession politics and the desire of the new Party General Secretary and President Hu Jintao to find popular issues such as corruption and rule by law to strengthen his power base and his mass support.

Second, the recent occurrence of several high-profile shocking cases of law enforcement abuses that acted as focusing incidents in the Chinese, that is, *jiaodian shijian*, for these problems.

Third, the rise of a nascent public opinion pressure on the regime, in particular via a less restrained and increasingly competitive and sensationalistic press and Internet, all of which have raised public consciousness of these focusing incidents in a manner that we have rarely seen before in China.

Fourth, the tireless lobbying and advocacy of a small number of reformist legal officials and scholars who, for more than a decade, have drafted and continually pushed proposals for stronger disincentives for law enforcement abuses, in particular, stiffer penalties and tougher rules of evidence.

Fifth, I would say the international forces have always played a significant role. While it is impossible to say with any great confidence how much impact sustained international pressure by international human rights organizations, by the U.S. Government, or by other countries has had in shaping this response, we do know that in internal discussions of law enforcement policy reform, China's international reputation is frequently invoked as one among many justifications for change.

We should also note that the changes proposed by legal reformers in China explicitly draw on Western, and in many cases Warren Court-era U.S. law enforcement reforms.

Readers of China's legal press would probably never have anticipated this campaign at the beginning of the year. In early February, the Ministry of Public Security held a rather self-congratulatory nationwide meeting to launch a 5-year effort to reduce police violations of law and discipline.

This meeting, however, began by claiming remarkable improvements that had been made against such abuses in 2002 over 2001, including a claim of a 41.4 percent drop in torture cases over the preceding year.

By mid-summer, however, it was clear that even official views of law enforcement discipline were changing quickly In China, as in

most countries, including the United States, political perceptions of law and order are shaped far more by a few high-profile, heavily publicized focusing cases than they are by any official statistical measures of legal trends.

The most famous cases, unquestionably, were the detention and beating death of Sun Zhigang, as well as the case of a mother detained by police whose baby starved to death because of police neglect, written up, I think, brilliantly in an article by John Pomfret.

Cases that received not only extensive coverage in official and popular press outlets, but also in the West and, in particular, on the Chinese Internet. As with the SARS crisis in the spring, these new electronic media helped fan the nascent public opinion pressure that the government felt it could not ignore.

We do also know, however, that there were other cases of illegal detention and torture that got spotlighted in Chinese law enforcement internal documents. Although they were not widely publicized, they appear to have had some impact in the process.

These focusing cases soon became symbols in China's ongoing leadership succession process. Before his accession to power last November, General Secretary and President Hu Jintao had never made a public priority of legal reform or rule by law. I say this, having suffered from having read every published speech the man has ever given, something I do not recommend.

Indeed, when he spoke of legal issues at all, it was often to endorse strike-hard anti-crime campaigns or to endorse Deng Zaoping's famous authoritarian dictum that "stability overrides everything."

Very soon after his accession, however, Hu began making speeches and organizing seminars for top party leaders on the importance of law and constitutionalism. These talks contained few concrete proposals to reform legal institutions, and so far they have shown no sign of going beyond a very instrumental strategy of advocating rule by law in order to stabilize and professionalize the party's ruling position.

Obviously, I have cut too long a presentation for myself. Let me get to the major points. On July 14, in response to Hu Jintao's pressure, the Minister of Public Security, Zhou Yongkang, gave a widely publicized press conference in which he attacked a number of these abuses.

In response to this pressure, there have been two modest, but noteworthy, law enforcement policy changes, both of which draw on policy proposals long advocated by reformist scholars.

In September, the Zhejiang Provincial Public Security Bureau announced tougher administrative punishments for police who commit torture, including automatic firing not just for them, but for their overseeing bosses. Also, if a public security department has two serious torture cases in a year, the head of the department is supposed to be fired.

The second noteworthy change was a revision of the Ministry's regulations on handling administrative cases, the category of broad cases that include the Sun Zhigang case.

I believe one of the most interesting aspects of this was that the regulations involved adopting an exclusionary rule for oral confessions, and perhaps other evidence illegally obtained by torture.

These were improperly reported in the press as a ban on torture in China. As the Commission members no doubt know very well, torture has been illegal under Chinese law for decades. But this is a step toward bringing police internal regulations in line with those of courts and procurators to exclude illegally obtained evidence.

In legal circles, these regulations rekindled a major new policy debate. Some have portrayed these as a step forward. Others have criticized them, arguing that these punishments might be substituted for criminal punishments for torture.

Still others have expressed a fear that these might create unintended negative side incentives as local police, fearful of being fired, will step up their pressure to intimidate witnesses.

I can go into more detail on this later. But I see these as a modest step forward in the direction toward establishing a solid, clear exclusionary rule for evidence obtained by torture.

Prospects and obstacles. Two noteworthy positive points. One, is the nascent public opinion pressure via the press and Internet which could gradually become a persistent source of pressure and criticism on law enforcement abuses.

Another modest source of optimism is that with each successive wave of attention to these law enforcement abuses, legal reformers seem to be making gradual progress in the intellectual battle toward law enforcement professionalism and the establishment of an exclusionary rule.

Still, there is strong reason for pessimism that the current wave of leadership attention is going to be sustained. The letter of Chinese law has long banned torture to extract a confession, as I pointed out. The problem has always been getting sustained enforcement of these regulations.

Despite the calls by Hu Jintao for judicial structure reform and these new regulations, there is no sign yet that anyone in China's top leadership is presently pushing for the kind of significant institutional changes that I have argued would be necessary to create self-sustaining, self-generating pressure against these abuses.

Consequently, there is reason to fear that, as the leadership and popular attention to the problem eases, so will the pressure for improvement.

Mr. FOARDE. Lots of ideas there and a rich trove of question-producing ideas; the same from Jim Seymour's presentation.

I am going to let you both catch your breath for about 1 minute while I take care of an administrative matter or two.

Because our Commissioners are, we hope, fast closing in on the end of the first session of the 108th Congress, we will probably not have another formal hearing this calendar year. We will be back in the spring, or probably late winter, to start our hearing series again.

But we will continue to have these issues roundtables every couple of weeks through the end of this calendar year, and picking up again in January. So I do not have an announcement for you today, but please continue to watch our Web site, and that is www.cecc.gov.

If you are not already signed up for our Web site, and I see from the people in the crowd that maybe you are, but if you are not, you can sign up on the front page of the Web site and receive our an-

nouncements. We try to get them to you at least 2 weeks before the event.

So, we will probably have a roundtable in November and one in December before the Christmas holidays start before picking up again after the first of the year.

Let me leave the administrative announcements there and go now to the question and answer session.

I would open by posing a question or two to Jim Seymour, please.

One of the things that the Congress is very interested in, and certainly our Commission members are very interested in, is the question of re-education through labor and reform through labor and the relationship between the enterprises that are staffed by prison laborers and exports anywhere, but particularly exports to the United States.

As you know well, section 1307, title 19, U.S. Code prohibits the import of prison labor-made products into the United States, and this is something that our Commissioners take seriously.

So I wanted to see if you would spend a minute or two picking up on a theme that you brought up in your presentation. That is, I take it from your writings and from what you just said that at one point the Chinese penal system had it in mind that it could be a revenue-generating enterprise, generally.

The government has now admitted to itself that that is basically not possible, and they need to have a budget and budget for it as a cost item rather than a revenue-generating item.

In the context of those changes, can you talk a little bit about your views as to whether exports from prison labor facilities to anywhere in the world, but particularly the United States, are a big problem or a small problem? Is there any way to tell? Your views would be welcome.

Mr. SEYMOUR. Well, as you say, Federal law prohibits the import of products of prison labor. By the way, it does not outlaw the export of the products of prison labor, and the Chinese are very aware of that. My own impression, though it is difficult to get statistics on this, is that the export from China of the products of prison labor go almost entirely to countries neighboring or very near China: Southeast Asia, and some of the Central Asian or former Soviet Union countries.

Of course, they deny that any of it comes to the United States. Every once in a while, a product of prison labor does get through the net. I do not think they do everything they could on the Chinese side to prevent that. But because these products tend to pass through a lot of different hands, or enterprises, or commercial entities, it is kind of hard to track.

However, the vast majority of the products of prison labor are sold within China, so my own view is that, from a human rights points of view, we should be focusing more on the conditions in the prisons and the exploitation—whether they are prisoners are not—of Chinese labor. So, that is my perspective. Did I miss parts of your question?

Mr. FOARDE. Not at all. Very useful.

Let me shift gears a little bit and ask you for your sense of the percentage of the prison population in China currently that are people that you would term, I think, people that are there because

everybody recognizes what they did is a crime, would be a crime anywhere.

Mr. SEYMOUR. By our definition of a crime.

Mr. FOARDE. By our definition.

Mr. SEYMOUR. Well, it is hard to put a number on it. I do not think I should try to do that. First, we do not have enough information. Second, there is such a huge definitional problem.

I think if you use a more precise term, such as Amnesty International's term, "prisoner of conscience," then you might be able to pin this down, but then it would probably be a rather small number compared to the total prisoner population. It is certainly not in the hundreds of thousands. It is probably more than in the thousands, maybe 10,000 or 20,000. I think it would be generally in that range.

I personally suspect that there is a large category of prisoners that fall in the gray area of people who are in prison not because they wrote a pamphlet, nor because they put on a Falun Gong demonstration, but because somebody stepped on the toes of some administrator, said the wrong thing or did the wrong thing, and maybe did, indeed, have some minor infraction that they could pin on him or her, and then send him or her to jail for what is actually a different reason from the stated reason. I think there is a lot of abuse of that sort. You could call those people political prisoners. If you include that sort of thing, then of course the figure gets much larger.

If you include people who have engaged in some act of violence, it would probably be slightly larger, although this is mainly an issue when you get up into the northwest. But that is my general take on that.

Mr. FOARDE. Thank you. Can you also comment just briefly on what, in your view, are the best sources of information about questions like this from your research over the many years?

Mr. SEYMOUR. I am sorry, sources of information?

Mr. FOARDE. The best sources of information in China about prison population, types of offenses, and what people are incarcerated for, et cetera.

Mr. SEYMOUR. Well, there are a variety of sources. No single one, in itself, is satisfactory. One can approach it from a number of different angles. You can, of course, look at the official national statistics. One can also go province by province and get a sense of how many people there are in these different prisons—we know most of them—then add it all up and see how that comports with the official figures.

But there is a problem with the official figures in that they leave out a whole lot, so you have to add it back in. So, what they call the prison population does not include any of the administrative detention people, for instance. It does not include any of the people who are detained in jails, pre-trial, or maybe never will get a trial. Usually such detentions are just for a matter of days or weeks, but there are cases of people having been in jail untried, the case unsettled, for decades. This is not the norm, but it happens. So if you add in all those cases, and it involves a lot of guesswork, then it is at least a third higher than your starting official "prisoner" figure.

Mr. FOARDE. Very useful. Thank you. I am out of time, so I am going to hand the microphone over to Dave Dorman.

Dave.

Mr. DORMAN. Thanks, John. And thanks to both of you for taking the time today to testify. What you have said so far has been very useful.

I have had an opportunity to scan through your written statement Professor Seymour, and calling it comprehensive is an understatement. I think it will be a very valuable addition to the record, so thank you for that.

One thing you both may have noticed in this year's annual report by the Commission, and this is a question for you Professor Seymour, is that the Commission commented positively on China's decision to eliminate its frequently repressive custody and repatriation regulations and replaced them with non-coercive measures.

I was interested in your testimony, and made a point of writing down your statement that these regulations had "more or less" been eliminated in China.

As a Commission, to point out to the Chinese Government that here is a move that we are pleased with, and then to hear that these regulations have only been "more or less" eliminated, concerns me.

Could you expand on your comment, please? Thank you.

Mr. SEYMOUR. Well, the words "more or less" just were to flag the fact that this is rather recent, and it is too soon to say what is happening. In general, this regime used to be administered jointly by the Civil Affairs Bureau and the Public Security Bureau, or the police. Supposedly now the police are out of it, and it is just the Civil Affairs Bureau, and it is supposed to be kind of a humanitarian way to take care of these migrants. But this happened so recently that it is hard to access. But I have asked around to people who are in a position to know, and they seem to think that it is happening, that people are not forcibly detained any more simply because they were in a city where they did not have the proper papers to be in that city. The emphasis is more on helping those people who are destitute or in trouble, and it is out of the penal system.

Now, that is the initial feedback that I get. But we have to wait. Ask me a year from now and I will have a much better sense of whether it really happened.

Mr. DORMAN. Do you think that the Commission was premature in identifying this as a positive development?

Mr. SEYMOUR. No. I believe that certainly it is a step forward, no question about that. Just what happens to these people, it is just too early to say. But so far, the news is good. It appears that migrants are not being dragged off the street. We have not heard of any Sun Zhigang-like cases since the Sun Zhigang case.

Mr. DORMAN. Good. Thank you very much.

Dr. Tanner, you commented on the impact the current leadership transition in China may or may not have on the prison system in China. Is it your feeling that, without sustained, high-level interest by the PRC leadership, any systemic change in the system is possible? Both of you mentioned variations in the prison system from province to province, and from locality to locality, but in terms of

the overall system, is there any possibility of change without sustained leadership pressure?

Mr. TANNER. I think, as I tried to point out in here, that significant improvement within the current system is just not possible without a sustained push from high-level leaders. And not just the national level leaders.

One of the things I have been trying to tell people for a long time, is that we in the West greatly over-estimate how centralized the Chinese law enforcement system is. Unless there is pressure not only from national level leaders, but also from provincial level party and government leaders, this significant improvement is not likely to occur.

Most of that comes down to just the difficulties of monitoring law enforcement behavior. We know how difficult this is in our own system or any other system. There is just something in the nature of policing. It requires speed, it requires a certain irreducible amount of secrecy, access to violence. These are all things that are very difficult to monitor from the outside, and doubly difficult in a Leninist system. So, yes. Pressure from the top on a sustained basis is necessary.

Now, that said, there are reformers in the criminal justice system and also in China's legal universities, and who have my undying admiration, because these people just hammer, and hammer, and hammer away at this stuff to try and make small changes. And I am not going to deny that they do make a certain amount of progress.

In my longer statement, you will see a list of the long number of regulations that have been issued in the last decade, trying to find ways to exclude as evidence confessions obtained by torture. I have no evidence that top central party officials were very heavily involved in authorizing or drafting that sort of thing.

My very strong sense, from talking with Chinese law enforcement officials and scholars, is that one of the great frustrations for them is that they cannot get senior leaders to pay attention to anything other than the economy.

Mr. DORMAN. Thank you very much.

Mr. FOARDE. Let us pass the questioning over to Susan Weld, the general counsel of the Commission.

Susan.

Ms. WELD. Thanks a lot. I guess my first question maybe can be answered quickly. I am interested in that new, centrally controlled prison in Beijing. Do you see it as possibly leading to changes in the prison system as a whole or a place for pilot programs in prison reform, any good efforts of that kind? If you could both answer that question, I would be grateful.

Mr. SEYMOUR. Well, I did not study that particular prison. I think, in general, the centrally managed prisons are less inhumane places than many of the provincial prisons. We know that they have certain prisons with high standards, and they get held up as models that others are supposed to emulate.

But that is not only true of the centrally administered prisons, this is also true of, for instance, Shangdong, where the prison system is considered better, and other provinces are urged to emulate that.

It is certainly a good sign that the center is paying attention and trying to do something somewhere, and let us hope that others follow the example.

Mr. TANNER. I cannot claim to have studied this particular reform in any detail. Let me just say a couple of quick, general things about that, though.

Two of the biggest problems in professionalizing law enforcement in China have to do with the localization of law enforcement. One of them is control of the type of personnel that get recruited to the system, which is frequently tightly controlled by local officials and frequently involves properly trained law enforcement people, by Chinese standards, being passed over for the brother-in-law of the mayor.

So, centralization, in that respect, could improve the quality of personnel that are recruited to it. The other problem is the budgetary issue. Since most law enforcement is financed locally in China, it means that provinces tend to provide as good law enforcement as they care to afford.

That means that the level of professionalization can vary enormously from place to place. As hard as this is to believe, I cannot tell you how many Chinese legal scholars I have had tell me that the best, most professional law enforcement in China is in Beijing.

Ms. WELD. Thanks a lot.

Mr. FOARDE. Let me pass the questioning over now to our friend and colleague, Steve Marshall. Steve works on Tibet and on prisoner data base issues for us and has some experience in following prisoner cases.

Steve.

Mr. MARSHALL. First, let me say that I have really enjoyed your written testimony and what you have had to say. There is a great deal of detail here, and we will all look at it very closely.

I am thinking of our Administration and the effort, beginning with President Clinton, to suggest that China should review the sentences of people convicted of counterrevolution before 1997 and propose their early releases or commutation of sentences, on the basis that this is now a defunct crime.

Some people point out that there is a problem with that, because basically with respect to the new CL and CPL, and then the 1999 constitutional amendment, that "counterrevolution" was just neatly changed into "endangering State security."

Based on these two premises, what do you gentlemen think? Is this likely to be a productive approach? Is it a good approach on principle, even if it does not necessarily yield results? Professor Seymour, do you want to start?

Mr. SEYMOUR. Well, certainly everything helps that calls attention to the fact that people who were imprisoned under an old regime that is supposed to be no longer in effect, just for the world to remember and to keep reminding the Chinese authorities that you are responsible for these people who are in prison, in many cases, non-violent people.

Of course, there was a whole range, or a half a dozen different types of counterrevolutionary crime, and one might want to distinguish among them. But probably one should focus on individual cases.

A problem with the suggested approach is that they could release all the people who are presently in jail as counterrevolutionaries, and it would just be the tip of the iceberg in terms of the total number of people whom we would consider political prisoners, or people imprisoned because of their beliefs or religious activities.

So, I think that is a useful approach, but I would not want it to divert us from the larger issue, that every non-violent person in prison because of their beliefs, political activities, should be released, regardless of the label that was placed on them at their trial, if they had a trial.

Mr. TANNER. I would simply agree with Dr. Seymour's very thoughtful comments about that. But I think it is a bit artificial to overdraw the distinction between the old crime of counter-revolutionary offenses and endangering State security, leaking State secrets, the whole series of equally ill-defined crimes under Chinese law that were put in their place.

We also have to consider whether this is the most effective place to use our leverage, and that is all I care to say on that, except, of course, to stress that these are my own personal views.

Mr. MARSHALL. Thank you.

Mr. FOARDE. You have got time for a follow-up.

Mr. MARSHALL. I think I will pass the mic right now, because the next question I have is going to take every bit of 5 minutes.

Mr. FOARDE. Then let us give Keith Hand a chance to ask a question or two. Keith is a senior counsel and looks at national level rule of law issues for us.

Keith.

Mr. HAND. I was wondering if you might comment on the status of legal challenges to re-education through labor and administrative detention, generally. We understand that part of the impetus for the repeal of the custody and repatriation regulations was a scholar petition to the National People's Congress Standing Committee that challenged the legality of those regulations. Is there anything similar under way with respect to re-education through labor or other forms of administrative detention?

Mr. SEYMOUR. Well, this is becoming somewhat more common. People can appeal a verdict, or there also is another approach under the administrative litigation law that can be done. It is becoming doable. I do not say that it is the usual case, but only that the procedures are improving.

One hopes that that is the wave of the future. Certainly, in criminal trials, there has always been at least a theoretical possibility of an appeal, although usually the appeal is rejected. Now it is becoming much more common in the administrative detention cases that it is possible to appeal.

Along with that, now, people have, in administrative cases, a theoretical right to a lawyer if they can afford it. They are also entitled to a public hearing. So, all of this lays the basis for appeals if they wanted to do it. But I am not aware that it has been studied as to how often or what percentage of the cases get appealed, and how many of those appeals are successful.

Mr. TANNER. I prefer to see this as one of the latest steps in a long process, almost a reform cat-and-mouse game that is being played by people who want to tighten up the Chinese legal system

to try to narrow—increasingly through steps, through changes, through redefinitions—the number of actions for which people can be incarcerated without the case coming into court, which used to be just an enormous percentage of the number of cases.

I see this as the latest step forward in that line going all the way back to getting rid of *Shourong shencha*, or “shelter for investigation,” and things like that. This, and these administrative appeals, and changing the handling of these regulations, I think, are the latest step forward in this.

Unfortunately, what I would predict, based on what happened with shelter and investigation, is that local police officials will probably try to find additional pretexts within the available regulations to incarcerate people under other means, and then reformers will try and find some way of modeling that as well.

Mr. SEYMOUR. Could I just add that allowing appeals under the administrative detention cases only began this year, so it is really too early to answer that question.

Mr. FOARDE. Very useful.

Let me pass the questioning on now to Carl Minzner, who is a senior counsel looking at grassroots level rule of law issues.

Carl.

Mr. MINZNER. Thank you very much for coming here today. I want to just ask two quick questions, and one is perhaps a little more pointed than the other. And you can either both respond to one or the other, or maybe of you will respond to one, the other one will respond to the other.

The first question I want to ask is something just to follow-up on a question that Dr. Weld had asked. Both of you mentioned that the Chinese Ministry of Justice, the Chinese prison systems, are decentralized. I think Professor Seymour mentioned it in his written testimony. If I heard correctly, Dr. Tanner, you mentioned that in your spoken testimony. Both of you also characterized the provincial or the local detentions as perhaps more inhumane than, for example, the Beijing, or national, level.

Do you think that the U.S. Government or even U.S. aid agencies could play a useful role in improving the conditions of Chinese prisons by helping the central government to nationalize or control the prison system? So, centralized control of the prison system—that is the first question.

The second question is, as Mr. Foarde mentioned, that our Commissioners are very interested in the prison labor system in China. The United States has prison labor as well. Could you simply compare and contrast the prison labor systems in the two countries?

Mr. TANNER. I am going to decline on the second for ignorance of the American system. An awful lot of people in the Chinese criminal justice system see the decentralization of the system as one of the major sources of problems, the lack of professionalism, the lack of control, the difficulties of getting laws actually implemented or enforced the way they want them to.

I think they have a point. I also, however, sometimes think that they overstate this case. The Soviet system was a good deal more centralized than the Chinese system. I do not think we would draw from that the conclusion that it was more humane or professional.

Nevertheless, I do think that what you have asked is kind of the cutting-edge question for the most difficult areas of U.S. legal engagement with China, because, in the short term, professionalization of the system, tightening up of standards is probably one of the best things we can accomplish under the current Chinese system. It also, unfortunately, creates a massive dilemma—we run the risk of strengthening a system that none of us cares for at all.

I suggested, in the most cautious language the last time that I was here, that we might consider increased contacts with the Chinese procuratorial organs, because at least as far as I can tell, that seems to be one of the strongest locations within the system for this professionalizing, centralizing, and standards-raising school of thought, but that this has to be done in the most cautious way to make sure that we minimize the degree to which we might inadvertently be simply strengthening the existence of a system that we do not care for.

Mr. SEYMOUR. I would say that it is best to keep the focus on human rights abuses and urge the Chinese authorities to end those abuses, but not tell them exactly how to do it. I mean, this is a problem. They know they have a problem and they have to solve it.

But for us to suggest specific ways, “you need to be more centralized,” or something like that, is kind of interfering in their affairs, and they are not going to listen anyway. So, I think that we should not tell them exactly how to solve these problems. We have just got to tell them they have got to solve this problem.

In many ways, we look with favor on China becoming a more decentralized place because then it becomes somewhat more pluralistic. Do we really want to push for more power and more authority in Beijing and less authority in the localities? That is a road that might look attractive in the particular case of the prison system because we see so many abuses in this or that province where they just have an awful system, and why does Beijing not move in and straighten it out? Well, of course, they should do what they have to do to straighten out those problems, but to just in general ask for a more centralized system, I would be cautious about going down that road.

Mr. FOARDE. Let me continue now with a question to both of you. What is the one thing that the Chinese government could do at the national, provincial, and local level to improve prison conditions and bring them up to international standards? One policy change or one specific thing. What would you recommend?

Mr. SEYMOUR. I would say that, in general, it is a matter of changing the political culture. At every level, people need to be told about the dignity of the individual and that people have legal rights, and people have rights under international human rights conventions, and specifically what these rights are and the limitations on authority. If you would only let me do one thing, then I am going to make it a big thing.

I would like to just have the government, which they are obligated to do under various international human rights conventions, promote the idea of human rights and educate people as to what

their rights are, and educate the people administering the prisons as to the limitations on their authority and power.

Mr. TANNER. If I were going to choose one, I think I would probably focus on weakening the control that local Communist Party committees have at every level over the whole package of law enforcement organs in China. Like a Soviet system, the Chinese legal system, on paper, has an enormous number of overlapping, cross-cutting oversight and monitoring and checking organizations.

A police department has a discipline inspection committee, it is a political affairs department, it has personnel, it has auditing, it has police oversight, and so on, and so forth. Outside, there is the procuracy, there is the courts, all of these other things.

These are supposed to be the organs that are supposed to cross-check and at least make sure that some semblance of procedure is actually followed. The problem is that at every level of this system, every one of these strings leads back to the Political Legal Committee of the local Party and the same person ends up overseeing all of these things. That greatly undermines the capacity of these organizations to begin to even play the kind of just basic bureaucratic, competitive cross-checking that would be at least a step forward in this system. So, I guess I would come back to getting rid of the old Party political/legal system of committees.

Mr. FOARDE. Very useful. Thank you.

I will pass the microphone back to Dave Dorman for a question. Dave.

Mr. DORMAN. Just a very short question for each of you. I will start with you, Professor Seymour.

As a simple political scientist on a commission that is made up mainly of lawyers, they have the very difficult task of trying to explain to me the intricacies of things like Chinese criminal procedure law. And I have to admit that I often have trouble understanding the precise definition of illegal or unlawful detention in China. There seem to be many exceptions and many loopholes. Help us understand how the average Chinese citizen views their system. How difficult is it for someone to determine whether they are legally or illegally detained?

Mr. SEYMOUR. Well, one can kind of break it down this way. There are certain laws that say under what circumstances you detain somebody. Then the formal arrest comes later.

But probably the larger issue is the sort of non-legal detention. They can detain you pretty much for any reason they want to. This is the underlying problem. I do not think anybody has a clear idea, because they do not make it that clear, as to what is legal and what is illegal.

There are certain time limits in which you are supposed to be let go, depending upon what regime you are taken in under. You are supposed to be let go at the end of a certain number of days. Of course, there are legal procedures or legal provisions when it comes to the formal arrest.

Then it becomes a little more something that we would recognize within the regime of law. I have no expertise in this area because I study what happens after they are imprisoned or sent to one of the non-prison incarceration regimes. But that is my general im-

pression. You really put your finger on an important problem and it is really something they need to work on.

Mr. DORMAN. Is this a one question round?

Mr. FOARDE. No. Please, go ahead.

Mr. DORMAN. Dr. Tanner, you made a very interesting and useful point, and I hope you can clarify it for us further. You mentioned the impact that the press and the Internet is having on some legal cases, and this in turn, on the legal system.

Dr. Tanner, I think you used the words “focus cases” “focal cases.” What characterizes these cases? In other words, if each of these has had a significant positive impact on the system as a whole, what is it about these small number of cases that has led them to have such an impact on the system? Why do we not see more? How can we encourage more?

Mr. TANNER. Well, first of all, in reference to your previous question, I want to tell you that you should not let the legal scholars get you down, that, as we all know, the superior degree is political science.

The Chinese propaganda system does not have anywhere near the level of control over the press that it did when I first went to that country in 1984. The capacity of even Communist Party-controlled papers or Web sites to publish these cases is really remarkable compared to what it used to be.

The need for these papers to make money drives them. I deliberately chose the word “sensationalistic” in my oral presentation to describe this. In an odd way, this is one of the interesting things that drives this. The write-ups you get on some of these cases are simply gut-wrenching, in many cases, the degree of detail they will go into, perhaps literally true, perhaps not. But these things get re-circulated very quickly. I ran a quick Chinese Web site check on Sun Zhigang’s name last week and was astonished at the number of times that the same couple of stories have been reprinted, and reprinted, and re-posted to other sites, including several official government sites.

We do not know yet exactly the politics of how that translates into putting pressure on legal officials. But on one of the points I left out of my oral presentation, the Vice Minister of Public Security, Bai Jingfu, in a public press conference shortly after these regulations were changed, was extremely frank about what happened after the Sun Zhigang case got out. He said, “We started getting complaints from all over Guangdong Province. We started getting complaints even from within Public Security departments about the way this case had been handled.”

I do not pretend to know any better than others why one case draws more public attention that it does in China any more than I understand why—I am not going to use a particular name, but we can all think of a half dozen legal cases that have focused attention in America in the last 5 to 10 years. These end up being moral object lessons in what is wrong with the system.

Unfortunately, one little thing that bothered me a little bit in doing some of my research for this. This can work in the other direction. One of the other cases that is being widely publicized on the Chinese Internet these days is that of—I do not recall the name.

Maybe you know, Dr. Seymour—a mafiosi, if you will, from northeastern China who apparently was able to successfully use an exclusionary rule as a defense in court and get a conviction turned back. These Chinese articles writing about this over and over again made reference to questions such as, “Is our country going to become like the cases of *Aiji Xiqusan*,” which is, of course, the Chinese transliteration of O.J. Simpson. Is this going to be a case where correct evidence against a man who is clearly guilty will be thrown out on a legal technicality?

So, this process can cut both ways. But the ability of these individual cases to galvanize public opinion is something that we really have to pay more attention to. But as for why some of them gather the attention of public officials more than others, I cannot really say.

Mr. SEYMOUR. Could I add a comment to that? That is, we should not think that suddenly these cases are getting a lot of attention in the media, whereas before they did not. It is a little different from that.

There was a lot published 10 or 15 years ago about horrendous cases of abusive behavior of people administering the justice system and awful things going on in the prisons, but they tended to be in a kind of narrow slice of what you might call the law press. That is, publications like *Fazhi Ribao* that tended to focus on, and just be of interest to, people who are interested in this sort of thing within the community of lawyers, judges, and people who are just following legal issues.

Now, so much of it is getting into the popular press and on the Internet. That probably has more clout. You would think that people would have had to pay attention to the legal press, but this seems to be a social phenomenon that is having some impact.

Mr. FOARDE. Very useful. Thank you.

Let us pass the questioning on to Susan Weld again for another question, please.

Ms. WELD. Thanks, John.

I am interested in—was it John who asked you—what was the single thing that you would like to have done if you could have something done? Jim said that the priority issue should be to teach the culture of human rights. He was probably referring to the International Covenant on Civil and Political Rights [ICCPR]. Scot, you also had a top-down solution. What was that?

Mr. TANNER. My solution was to loosen the Party committee control over all of the legal organs within one area.

Ms. WELD. That is less of a top-down idea. But what I see as the most useful thing is the culture of human rights, not in the sense that the state is teaching others how to respect them, but instead educates the ordinary people that they have these rights and that there are tools to use, mechanisms to go through to enforce them.

Several articles in the press recently have talked about prisoners’ rights. A scholar we were having lunch with talked about legal assistance centers in the prisons. I would love to think that could be an answer to this in a bottom-up way.

Can you tell me your assessment of whether that is likely? Is that a hope which is based in any sense on a good foundation?

Mr. TANNER. Well, it is likely and it is something that is going on quite a bit, and not just on legal issues. This has become quite the thing now. If you find that a local party official or a local government official is wronging you, it is increasingly easy—this commission knows that it used to be extremely difficult to even find the text of laws in China—now to find the text of regulations.

And, as several of my colleagues have written in other ways, one of the major sources of protest in this country occurs when people get a hold of the regulations and just go to the officials and wave them in front of them. “Here is the directive from Beijing. Where do you get off disobeying Beijing’s law?” That is a very powerful and hopeful sign for change in that system, this persistent, lower level pressure to actually force local officials to take the law seriously.

Mr. SEYMOUR. I think that we may be getting a false impression that we were thinking top-down, because it was kind of inherent in the way the question was asked, what one thing can China do. Well, China only has one government at the top.

But this is something that has to permeate society and it will not just be top-down, obviously. I mean, the Internet can play a role. I would hope that every local schoolteacher would teach these things, and every student, by the time he or she gets out of grade school, would know about the Universal Declaration of Human Rights and some of the international human rights covenants. If you get arrested, you have a right to do this, and a right not to do that, and a right to a lawyer, and so forth. Americans pick this up from watching television programs and that sort of thing. We all know about our Miranda rights.

So, in China, just the way China is, probably the easiest way to do it would be to publish it on the front page of People’s Daily. I do not know, does anybody read People’s Daily any more? I am not sure. Of course, there are local newspapers and they can promote this. So, you are absolutely right, it cannot be top down. It has to happen at all levels.

Ms. WELD. What about these legal assistance centers and the prisons. Does that seem to you like a realistic thing? Because, otherwise, if there is not a legal assistance center there, the prisoners themselves have no way to assert their rights against whatever abuse is being visited on them. So, do you think that is likely? I just want to know whether you think there are such possibilities from your experience.

Mr. TANNER. I cannot speak specifically to the legal assistance centers. I will say that previous similar experiments have not worked out well, as far as I know. A number of years ago, an experiment was tried to put representatives of a local prosecutor’s offices in prisons to give prisoners a chance to discuss things that were wrong with their cases. This was proposed also as a way of dealing with people who were incarcerated through tortured confessions. I have yet to see any evidence that this has resulted in any improvement in their situation. I cannot recall ever hearing of one prisoner that got released as a result of that. I can hope the legal assistance centers are more successful, but I am dubious.

Mr. SEYMOUR. I would say the underlying problem is that there are very few well-trained lawyers in China, compared to the need. So, even though there is a theoretical right for people who are

going to be tried to have a lawyer, of course, they usually get access to the lawyer too late.

The lawyer may not be qualified. The good lawyers tend to go into commercial law and work for companies because you can make a living there. You really cannot make a living being a defender of people accused of crimes. Certainly, defending criminal suspects is somewhat risky.

You hear of lawyers who try to defend alleged criminals. I guess in China we drop the term "alleged," because they are just considered criminals. So, sometimes lawyers get beaten up for defending these people whom the police are not particularly interested in having defended. Of course, if it is a political case, it is very hard to get a lawyer to defend a defendant. They may have to be brought in from another city.

I was recently talking to Han Dongfang, the labor activist. He would say, "Well, one of our labor organizers gets arrested. If they find somebody who is willing to defend them, probably," Han Dongfang said to me, "The lawyer knows less about the law than I do." So, they are just not qualified and maybe they do not have the guts—and who among us would—to defend these sensitive cases.

Mr. FOARDE. Our colleague, Steve Marshall, who has been very patient, has had a good question keyed up for about a half hour, now. So you may proceed with your question.

Mr. MARSHALL. Well, actually I have got more than one, so I have to make up my mind.

I would like to look at a comment on page 13 of Professor Seymour's testimony. You mentioned that as many as 40 percent of the political prisoners could be Mongols, Uyghurs, and Tibetans. You were commenting about the high incidence of State security convictions for these groups. This is very disproportionate, of course, to their population.

I wonder if this conspicuous disproportionality would also apply to something like torture. In your studies, and I am not talking about just political prisoners, is the police system in areas like Inner Mongolia, the Tibetan autonomous areas, or Xinjiang, arresting more indigenous peoples there for various crimes, including politically oriented crimes? Are they more likely to be tortured than people in other parts of China?

Mr. SEYMOUR. Well, that comparative question, I do not think I can answer. Let me just put it this way. It would not surprise me at all if the ethnic minority people imprisoned for political reasons were more subject to torture.

Also, perhaps because I am talking about the prisons and we should not just talk about torture in the usual sense, but include neglect, people who have health problems that do not get addressed, all of these things, one reads of case after case.

Actually, in hearings of this sort I like to humanize it by mentioning one individual. So, if I may, in response to your question, mention a gentleman named Hada in Inner Mongolia. Mr. Hada had a bookstore in Hohhot and was arrested a few years ago and given a 15-year sentence, and is reported to be in terrible condition and subject to, shall we say, physical abuse. So, this is a case that very much fits the category of prisoners that you are raising.

One knows anecdotally of so many cases of ethnic minority prisoners, especially politically active ethnic minority prisoners, who have been subject to physical abuse in prison, that one has the impression that, unfortunately, the answer to your question is "Yes." But data is a little hard to come by.

Mr. TANNER. Mr. Marshall, I am glad you asked the question. It is a question that I have tried very hard over the years to find any reliable evidence for one way or the other.

Any time that I have looked at data or characterizations or anything like that, I have never been able to find anything that in any conclusive way suggested one way or another that there was a higher incidence of torture of ethnic minority prisoners than there is of Han Chinese prisoners.

I do not rule it out. This is just one of these cases where we have to say, very frankly, that we do not have solid enough evidence to say one way or the other. I can say that I have discovered one thing that disturbs me a little bit and makes me suspicious, which is that in case books on torture, where cases of torture by police are being discussed in Chinese legal texts and analyzed, that the torture of ethnic minority prisoners seems to be systematically under-represented and under-reported, that these books tend to be loath to mention victims who are ethnic minorities. You used the standard "compared to their percentage of the population," and they are well below the percentage of the population. That makes me think that something special is going on here in the systematic under-reporting of it.

The other thing that is worth considering is that some of the crimes for which people in ethnic minority areas are picked up—how to put this? The same action in a Han area might be defined in one way and might be defined differently in another.

The one that immediately comes to mind is that when the police count incidents of unrest in China, these are referred to as incidents of a mass nature, *sheng ti xing shijian*, that of course is not necessarily the case for when protests, or riots, or a mass demonstration occurs in Xinjiang or Tibet. That is a riot, that is separatism, that is terrorism. Other words are used for that. This is making a logical jump, but that sets these people up for a different and much harsher standard of treatment in the law.

So, I would say those two things that lead me to suspect that there may be some evidence here, but I have to underscore I have tried very hard to find any solid evidence for this and have never been able to locate it.

Mr. MARSHALL. Thank you very much.

Mr. FOARDE. We have reached the magic hour of 3, despite what the clock behind me says. And we do have a responsibility to give up the room. So, unfortunately, we are going to have to leave our discussion there for today.

But on behalf of Congressman Jim Leach and Senator Chuck Hagel and the other Members of the Congressional-Executive Commission on China, thanks to Jim Seymour and to Scot Tanner for coming to share your expertise with us this afternoon.

Thanks to everyone in the room for staying. I think it has gotten progressively colder in here over the last 40 minutes or so, and you are all troopers. I appreciate your coming.

Please watch the Web site and your e-mail for an announcement on our next issues roundtable. With that, we will bring this one to a close. Thanks very much, and good afternoon.

