

# The big squeeze

**Jerome A. Cohen** looks at various types of incommunicado detention in China, and discusses what Bo Xilai could face under *shuanggui*, a widely feared internal disciplinary action that is outside the reach of Chinese law

In China, as elsewhere, famous cases enhance popular understanding of the legal system. Just a year ago, when Beijing police detained noted Chinese artist Ai Weiwei (艾未未) incommunicado for 81 days, they exposed national and foreign audiences to their unlawful abuse of “residential surveillance”.

Now the Communist Party has subjected Bo Xilai (薄熙來), Chongqing’s deposed party secretary, to the party disciplinary procedure of *shuanggui* (literally “double designation”), bringing public attention to another extralegal, widely feared type of incommunicado detention with an innocuous name.

The simultaneous confinement of Bo’s wife, Gu Kailai (谷開來), on murder charges illustrates a third type of incommunicado detention, one authorised by law until the newly revised Criminal Procedure Law takes effect in January.

The publicity and condemnation inspired by Ai’s “residential surveillance” contributed to domestic and international pressures for legislating reform of that notorious practice. Those pressures, reflected in certain improvements in the new law, continue to generate demands for



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further legal restrictions on the power of police to transform what the legislature intended to be a form of house arrest into up to six months of incommunicado confinement not in the suspect’s house.

Will the public’s current preoccupation with the fate of Bo lead to a similar focus on the realities of *shuanggui* and a demand for bringing it under legislative regulation?

For the over 80 million party members subject to investigation and sanctions administered by the party for corruption and other violations of party discipline, the order to report at a designated time and place for investigation – hence “double designation” – is dreaded. It often results in the loss of party membership, and the most serious infractions are transferred to prosecutors for indictment and punishment.

*Shuanggui* conditions are sometimes more comfortable than confinement under “residential surveillance” or criminal detention, but the suspect’s isolation is usually just as complete. The environment is also just as coercive, often including psychological and physical torture. No contact is permitted with family, friends or colleagues, and there is no access to a lawyer. The suspect is alone with relentless interrogators, whom party investigators supply with

regular infusions of new material on which to base their questioning.

Moreover, while Chinese police operate under generous time limits during ordinary criminal investigation and “residential surveillance”, in practice party investigators are even less hampered by time constraints, and their targets know that. Interrogators also make clear that they grant “leniency to those who confess, severity to those who resist”, with additional consideration given to suspects who accurately implicate others. In these circumstances, suicide attempts are not uncommon.

The party has occasionally experimented with rules requiring that, before a member can be ousted or suffer other serious sanctions, he should be informed of the charges against him, given an opportunity to rebut them at a hearing, allowed the assistance of a party colleague, provided with a written decision and permitted an appeal. Yet my research indicates that such experimental rules are unlikely to be available to major suspects like Bo.

It is surely ironic, although apparently unnoticed, that the present party leadership, while endlessly emphasising that the entire Bo Xilai affair will be handled in strict accordance with the law, has nevertheless entrusted the fate of its central figure not to the legal system but to party justice, at least initially.

Bo’s wife, however, has been immediately consigned, together with an assistant, to the formal criminal justice system, presumably because there is already evidence that they have committed murder. Details are still lacking, but apparently the suspects have been detained in accordance with the ordinary criminal process rather than the dubious “residential surveillance”.

Normally, party members are required to be divested of their membership via discipline inspection procedures before undergoing criminal detention, so it is plausible to assume that neither suspect is currently a party member, although that seems unlikely in the case of Gu. It may be that the leadership’s sense of urgency to put an end to this unprecedented scandal has made it expedient to ignore the normal practice, especially since she has not yet been accused of corruption.

In any event, although Gu and her assistant are entitled under the current law to protections not available to those who are subjected to “residential surveillance” or *shuanggui*, those protections are unlikely to spare them from incommunicado detention. Police and prosecutors will probably declare that, at least during the investigation stage, the case involves “state secrets” and therefore, under the existing law, investigators are authorised to deny the suspects access to counsel until investigation ends, which can be months away.

Unless interrogators decide to permit a visit by family or friends in an effort to persuade suspects to confess, the detainees will remain



isolated from anyone but their jailers until the new law – which provides for access to counsel during the investigation stage in most cases – takes effect.

Will Bo be sent to criminal prosecution after losing his party membership as anticipated? That will depend on what evidence is uncovered by current investigations as well as on the leadership’s perception of political needs. Even if not implicated in the murder itself, Bo may well be charged with attempting to cover it up or at least with huge corruption and false imprisonment and torture of his enemies, as well as other abuses of the criminal process on which his life and that of his wife now depend.

If prosecuted, Bo may finally have contact with a lawyer after January 1, and that would end his nightmare of incommunicado detention.

Yet that would not offer him much solace. Although Bo is rumoured to be insisting on a fair and public trial, from his own experience manipulating the legal system, he well knows the realities of “a socialist rule of law with Chinese characteristics”.

Jerome A. Cohen, an NYU law professor and co-director of its US-Asia Law Institute, is also adjunct senior fellow for Asia at the Council on Foreign Relations. See [www.usasialaw.org](http://www.usasialaw.org).