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Separate and Unequal: State Security Detainees in China
Testimony to the Committee on Foreign Affairs of the House of Representatives

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I commend the Chairman on holding this first-of-its-kind hearing on the annual report of the Congressional Executive Commission on China. I am honored to have been asked to testify on the same occasion as Congressman Christopher Smith and Senator Sherrod Brown, members of Congress who, by dint of hard work and deep passion, have kept human rights in the forefront of America's relations with China.

Every year in mid to late September, around the time the CECC releases its annual report, the Chinese government publishes statistics on how many people were arrested, indicted, and tried for endangering state security (hereafter ESS), China's most serious political crime. I am attaching to this statement graphs that map the trajectories of ESS arrests, indictments, and trials since 1998.

The numbers presented offer a rare official glimpse at the scale of the Party and government's efforts to suppress dissent. (Efforts to suppress unauthorized religious activities, petitioning, and protests are not included in these figures, though the same police who deal with dissent also handle the suppression of unauthorized religion and protest.) Because the numbers are published as the Commission's report is being finalized, they are not discussed in this year's or previous years' reports. I'd like to spend the time allotted to me to talk about what the numbers for 2010 tell us.

Last year, there were 1,045 people arrested in 424 cases of endangering state security, and 1,223 people indicted in 419 cases of endangering state security. Although the precise numbers for ESS arrests and indictments are released, the number of ESS trials is lumped together with crimes of dereliction of military duty. This latter crime is rare, accounting for less than one percent of trials in this category, so we can say with some confidence that there were around 670 ESS trials concluded in China in 2010.

This is the third consecutive year in which ESS arrests and indictments have exceeded 1,000. Given the number of arrests that have already taken place this year, more than 10,000 people have been arrested and indicted for ESS crimes since the current Criminal Law was enacted in 1997. The number of ESS trials recorded in 2010 is the second highest total since 1997.

Based on our analysis of sentencing trends, and the fact that there have been no known sentence reductions or paroles issued to those serving sentences for subversion and splittism (and their incitement), we have concluded that there are now more people serving sentences for political

offenses in China than at any time since 1989, the year of the Tiananmen Square crackdown. The majority of those arrested for endangering state security—perhaps as many as 75 percent—are suspected of committing speech and association crimes—subversion, splittism and incitement of subversion and splittism.

Once someone is identified as an ESS suspect, he or she receives very different treatment from most other suspects. After an ESS suspect is detained by the political police—officers of the political security bureau of the Ministry of Public Security or subordinate bureaus of the State Security Ministry—he or she is brought to a detention center. Family members are often not advised of the reasons for the detention as doing so “might hinder the investigation.” The proposed revision of the Criminal Procedure Law would make it possible for an ESS detainee to be placed under so-called “residential surveillance” for a period of six months in a location that is not the detainee’s residence. The combination of residential surveillance in a place other than one’s own residence and a lack of official notification to the detainee’s family fits the definition of “enforced disappearance.”

Public security and state security bureaus handling ESS cases can apply to their superiors to classify an ESS case as a state secret. Once a case is classified a state secret there can be no mention of it in the media, and even family members who learn about details of the case are prohibited from revealing them to anyone. Classified ESS cases are tried in closed courts. (In recent years foreign citizens tried for ESS crimes have been tried in closed courts that bar the entry of consular representatives in contravention of consular agreements and past practice. American representatives were barred from attending the trial of Dr. Xue Feng, one of two Americans presently serving sentences for ESS crimes in China.)

The proposed amended Criminal Procedure Law grants lawyers greater access to detainees, but makes an exception for those detained for ESS, terrorism, and major crimes of corruption. For such cases, lawyers must apply to the investigators for permission to meet their clients. In practice, permission is often denied.

ESS cases tried in Chinese courts rarely result in acquittals. Of 105 people tried for ESS in Sichuan Province during the 10-year period from 1996 through 2005, only one was acquitted. Moreover, according to official adjudication statistics made available for 2002 and 2004, ESS convictions carry heavier sentences than all other classes of crime: more than 50 percent are sentenced to prison terms of five years or more.

In recent years, and especially after 2008, the majority of defendants in ESS trials have been members of China’s national minorities. The situation is especially grim for Uyghurs and Tibetans. In January 2011 the president of the Xinjiang High People’s Court revealed that there were 376 ESS trials in Xinjiang in 2010. Included in this number are appeals, but even so we can safely conclude that roughly half of all ESS trials in China took place in Xinjiang last year. Of the 36 trials recorded in Dui Hua’s database for 2010, only three involve Han Chinese.

Once those convicted of ESS enter prison they are designated “important prisoners” subject to closer monitoring and reporting than “ordinary prisoners.” When it comes to sentence reduction and parole, ESS prisoners are subjected to “strict handling,” resulting in clemency rates far lower

than those for the general population. Discrimination takes place at every step of the process by which prison authorities judge ESS prisoners. We are not aware of a single sentence reduction or parole issued to a prisoner serving a sentence for subversion, splittism or incitement since September 2009.

All ESS prisoners who complete their sentences are subject to a supplemental sentence of “deprivation of political rights” ranging from one to five years. DPR means they cannot vote, cannot stand for office and cannot hold a position in a state-owned company. They are prohibited from writing articles or giving interviews. Not long ago, released ESS prisoners could spend their DPR sentences at home. Now the police are using a little known set of regulations issued in 1995—Provisions for the Management and Supervision of Criminals Subject to Public Surveillance, Deprivation of Political Rights, Suspended Sentences, Parole, or Medical Parole by Public Security Organs—to take measures against recently released prisoners, subjecting them to house arrest (as with Hu Jia) and enforced disappearance (as with Hada and Gao Zhisheng).

Presumably, after all sentences have been complete the prisoner is free to resume his or her normal life. Unfortunately, as we have seen in the case of blind lawyer Chen Guangcheng, that is sometimes not the case. Recently released ESS prisoners become part of “the targeted population,” a police term used to describe what might be called “the usual suspects.” A political crime committed in the neighborhood—mailing an anonymous letter, putting up a poster criticizing a government policy or official—invites that midnight knock on the door, and quite possibly those first steps down the path to another long sentence in a Chinese prison.

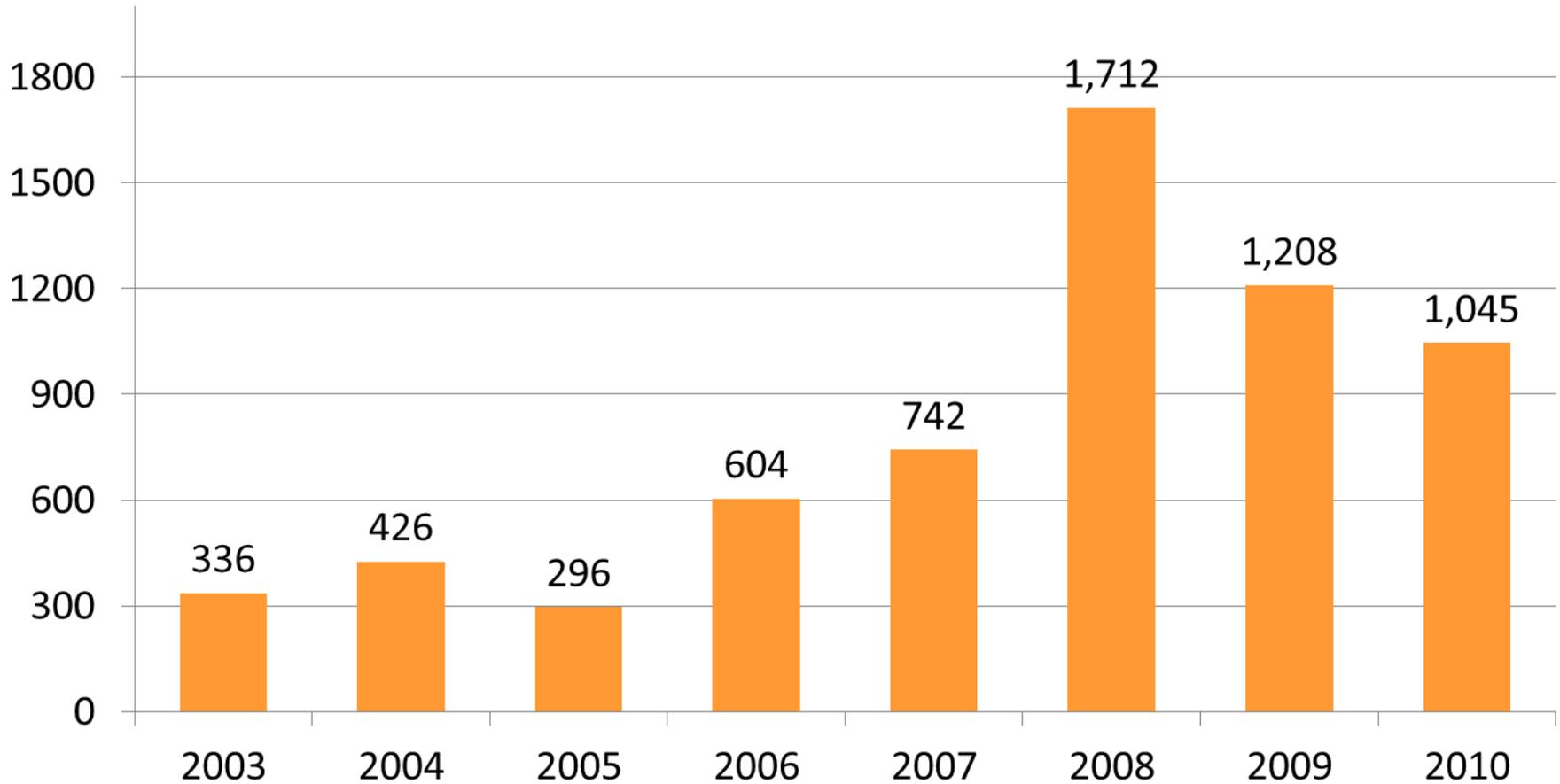
China has for many years worked to establish a dual-track justice system, one for more than 99 percent of its citizens, and one for the rest, a group that the Party sees as threatening its hold on power. This group includes those who come together and speak out against one-party rule, those who attend house churches and practice banned religions, and those who organize so-called “mass incidents.” Despite its many improvements—among them better treatment of at-risk detainees including juveniles, women, and individuals assigned to psychiatric detention centers—the amended CPL’s treatment of ESS detainees brings closer the completion of this dual-track system. ESS detainees are increasingly treated as a group apart, a group to whom basic rights are denied.

There is one other fact about ESS prisoners I’d like the Committee to consider: despite the hard work of the CECC and groups like Dui Hua, we know less than 10 percent of the names of people arrested for endangering state security in China. In this sense, more than 90 percent of ESS detainees have effectively been disappeared.

Knowing so little about those we are trying to help, those in China and abroad who seek justice for individuals imprisoned for exercising their internationally recognized human rights are hindered. Yet, with this Committee’s support and firm commitment to the freedom and dignity of the individual, we continue searching for those whose names must be spoken and remembered, mindful of what Milan Kundera told us, that the struggle of man against power is the struggle of memory against forgetting.

Thank you.

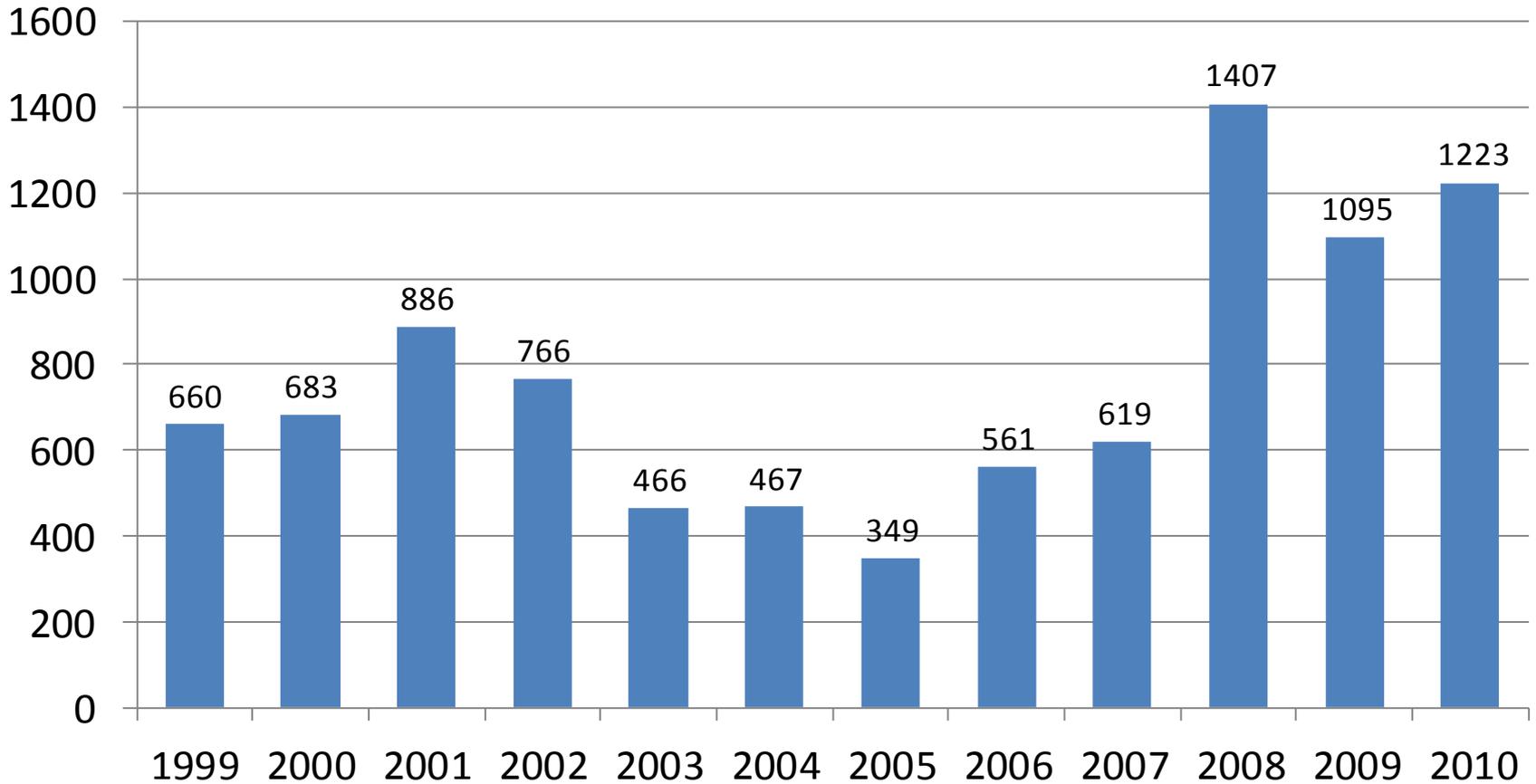
ESS Arrests Still High



Source: *China Law Year Book*, 2004 - 2011

ESS Indictments

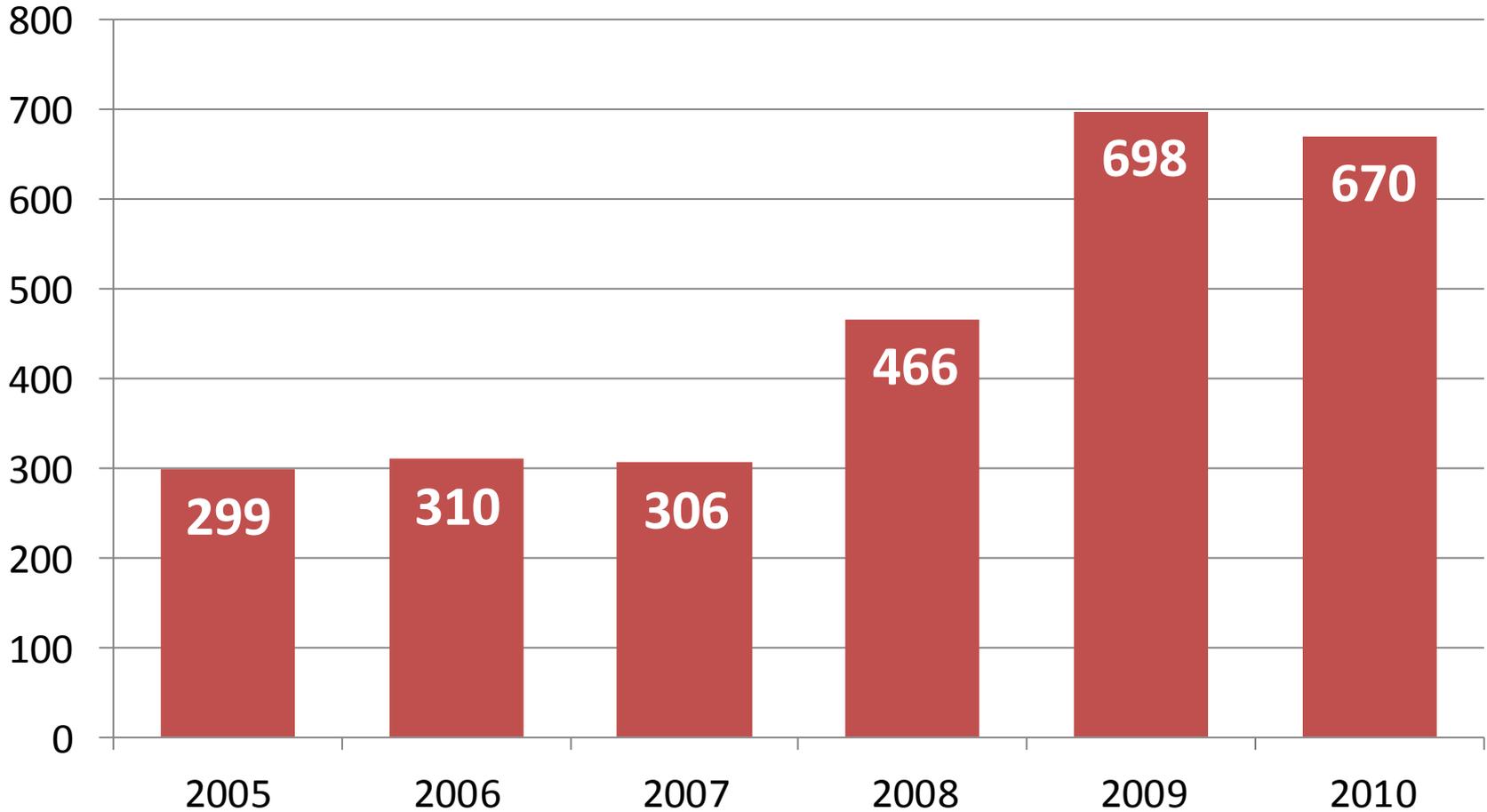
Indictments for Endangering State Security in China 1999 - 2010



Source: *China Law Year Book*, 2000–2011

Rise in ESS Trials

Trials for Endangering State Security, 2005-2010



Source: *China Law Year Book*, 2006 - 2011

**United States House of Representatives
Committee on Foreign Affairs**

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1. Name:	2. Organization or organizations you are representing:				
3. Date of Committee hearing:					
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?				
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Yes	No				
Yes	No				
6. If you answered yes to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.					
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