

Loose ends

Jerome A. Cohen says despite a suggestion that Bo Xilai might soon be put on trial, it is not yet clear whether party leaders all agree on the detailed issues involved in prosecution

Remember Bo Xilai (薄熙來)? He is, of course, the former Politburo member and Chongqing (重慶) party chief who last year was at the heart of China's biggest political scandal since the 1976 arrest of the Gang of Four. For months, party leaders have been quietly stewing about how to handle his case in a way that will be consistent with their ideological preferences and claims to respect the rule of law. Now, an "internal report" suggests that Bo may finally be put on trial next month.

On March 15 last year, Xinhua announced that Bo had been removed as Chongqing party boss. It was the first public step towards his political demise, which began with his police chief Wang Lijun's (王立軍) sensational February 6 attempt to defect to the US consulate office in Chengdu (成都), and continued with the subsequent stunning announcement that Bo's wife, lawyer Gu Kailai (谷開來), was being investigated for murder.

On April 10, the Politburo ousted Bo from its ranks and from the party central committee. It did so, Xinhua reported, because of Bo's "mistakes and responsibilities" in the cases of Wang and Gu and his other "disciplinary violations". Although party leaders had assured the public that Bo's case would be handled "strictly according to law", he was already in the custody of the party's feared Central Commission for Discipline Inspection, not government law enforcement agencies.

After six months of such "party justice", consisting of incommunicado detention, intense interrogation and secret investigation, and party leaders' endless covert, see-saw negotiations about his fate, on September 28, Xinhua announced that the Politburo had stripped Bo of party membership and that he had been transferred to government prosecutors for criminal investigation.

By that time, Gu had been convicted of murder in a brief, carefully orchestrated trial that notably never mentioned Bo, and Wang had been convicted of defection, bending the law for personal gain, abuse of power and receiving bribes.

The September 28 Xinhua announcement surprised those who believed that Bo might not be prosecuted but instead treated like former party secretary Zhao Ziyang (趙紫陽). Zhao, deposed during the 1989 Tiananmen tragedy, spent his last 16 years in illegal but comfortable "soft detention".

To justify turning Bo over for criminal investigation, Xinhua listed the discipline commission's conclusions. Yet the accusations were vague, and some bore no relation to crime. Bo had "seriously viola-

ted discipline" as Dalian's (大連) mayor, Liaoning's (遼寧) governor, minister of commerce and Chongqing's chief, and had "abused his powers" during both the Wang incident and the Gu murder case, "committing serious mistakes and bearing major responsibility". He had also helped others profit and had himself received massive bribes. In addition, he maintained "improper relations" with many women, and violated organisational and personnel regulations. All this "gravely damaged" the party, the country and the people.

After September 28, little has been said officially about Bo's case. On October 26, Xinhua belatedly reported that the Supreme People's Procuratorate had decided to open an investigation and take unspecified "compulsory measures" against Bo, and on November 4, it said the party central committee had confirmed the Politburo decision to expel Bo from the party. Since then, Xinhua has been silent, and it has thus far not confirmed the "internal report" of an impending trial.

To be sure, at least until recently, China's social media and the foreign press have been awash with rumours, planted stories, gossip and speculation. Yet some

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helpful books and essays have been published, and a few facts are established. For example, although we may not be certain that Bo has resisted pressures to confess and grown a beard in protest, he has retained two able defence lawyers, who have reportedly not once met him!

Bo's legal status remains murky. We do not know what "compulsory measures" have been taken against him or when they began. We know he has not been released on the Chinese equivalent of bail. No formal arrest or indictment has been announced.

It is probable that Bo, like many other



political suspects, including Nobel Prize winner Liu Xiaobo (劉曉波), was initially subjected to "residential surveillance" – not in his own Beijing residence but in a special facility controlled by the security apparatus. Until the country's new Criminal Procedure Law went into effect this year, such confinement would have been unlawful. In any event, its duration is limited to six months, which have expired.

As in Liu Xiaobo's case, Bo might have subsequently been subjected to the usual criminal procedures that begin with detention or arrest and proceed to indictment and trial. The time for approval of arrest, however, would have expired by now. It is possible that an arrest has been approved without public announcement, which would give the prosecution roughly half a year more before having to decide about indictment.

Perhaps the Standing Committee of the National People's Congress has granted an unannounced exception to prescribed time limits. Perhaps legal officials are simply awaiting party leaders' instructions before erecting a rationale for Bo's pre-indictment confinement. Some famous political offenders have been held for longer periods.

Party leaders, whatever their views on

constitutionalism and judicial independence, might easily disagree about the detailed issues that prosecution involves. Should Bo only be charged with bribery, abuse of power and embezzlement, as the "internal report" indicates? What kind of "public" trial should he have? Should it be extensive and televised like that of the Gang of Four, or truncated and regimented like that of Gu Kailai? Can Bo, formerly a feisty person, be guaranteed to follow a script without displaying the impact of confinement's coercion? How circumscribed should defence lawyers be? What punishment should be imposed?

Have party leaders already agreed? If not, when this summer they convene their traditional beach conclave at Beidaihe, can Xi Jinping (習近平) forge a consensus? Does he need to put Bo's trial behind him before this autumn's direction-setting third plenary session of the party central committee? What will Bo's case tell us about broader policies? One thing is certain – Xi has not forgotten Bo.

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