

CRIMINAL PROCEDURE REFORM IN THE PEOPLE'S REPUBLIC OF CHINA: THE DILEMMA OF CRIME CONTROL AND REGIME LEGITIMACY

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I. INTRODUCTION

During the era of reforms in China and the resulting rapid social changes, criminal law and proceedings have primarily been used as an instrument to combat the upsurge in crime and corruption, and to punish individuals that have had the temerity to challenge Party rule. In effect, criminal institutions have been widely regarded as an important discretionary instrument of the Communist Party to institute social and political order.¹ It is only through recent developments in China's criminal procedure that the Party has recognized and elevated the rights of criminal suspects against the interests of the state. Changes in China's criminal procedure constitute a critical component of the whole legal reform package and reflect how the regime will respect its commitment to the protection of human rights and the development of the rule of law.

This study approaches the question of human rights and the rule of law in China by examining aspects of due process, equal-

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1. See generally Donald C. Clarke & James V. Feinerman, *Antagonistic Contradictions: Criminal Law and Human Rights in China*, 141 CHINA Q. 135, 152-3 (1995). See also LAWYERS COMM. HUMAN RIGHTS, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS: CHINA'S CRIMINAL PROCESS AND VIOLATIONS OF HUMAN RIGHTS 1, 2 (1993); Xu Youjun, *Zhongguo Xingshi Susong yu Renquan [China's Criminal Procedure and Human Rights]*, 2 ZHONGWAI FAXUE [Peking University Law Journal] 38, 38-43 (1992); AMNESTY INT'L, CHINA, NO ONE IS SAFE: POLITICAL REPRESSION AND ABUSE OF POWER IN THE 1990s 9 (1996).

ity before the law, natural justice, and the efficacy of the law in relationship to criminal proceedings. Criminal procedure in China was under the guidance of the 1979 Criminal Procedural Law (CPL) until subsequent revisions were made in 1996. The 1996 CPL is designed to provide greater legal protection to the accused, enhance the role of defense lawyers, curb the discretionary powers of police and prosecutors, and define a new role for judges as neutral adjudicators rather than investigators of a criminal case, as under more adversarial-type court proceedings. The law furthermore elevates the status of the courts vis-à-vis the police and the prosecution.²

This study raises a few questions concerning the reform of criminal procedure in China. Provided that the 1979 CPL had served as an efficient instrument of crime control for the Party, why did the Party eventually decide to introduce sweeping changes to the code? What practical effects do the revision have on the criminal justice system? More importantly, does the revised CPL effectively protect the rights of the accused?

Even though many observers and scholars of Chinese law have identified some fundamental flaws with the modified CPL, they have hailed the revision as one of the most significant and positive breakthroughs of the criminal justice system in China since 1979.³ However, thus far the praises and critiques of the revised CPL have not tackled any empirical evaluation of the law's effectiveness in actual practice. Most remain pessimistic about its effectiveness, believing that the revised law will actually have little or no immediate effect on the criminal justice process and that the "gap between the law and the practice of criminal justice in China will actually grow wider, at least in the short term."⁴

2. For a version of the 1979 law, see Criminal Procedure Law of the People's Republic of China, *translated in* THE CRIMINAL LAW AND THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA (1984). Text of the 1996 revision is found in *Quanguo Renmin Daibiao Dahui Guanyu Xiugai Zhonghua Renmin Gongheguo Xingshi Susong Fa de Jueding* [*The Decision of the National People's Congress to Revise the Criminal Procedural Law*], FAZHI RIBAO [LEGAL DAILY], Mar. 24, 1996, at 2.

3. See JONATHAN HECHT, OPENING TO REFORM? AN ANALYSIS OF CHINA'S REVISED CRIMINAL PROCEDURE LAW 77 (1996); see also JIANFU CHEN, CHINESE LAW: TOWARDS AN UNDERSTANDING OF CHINESE LAW, ITS NATURE AND DEVELOPMENT 197 (1999).

4. HECHT, *supra* note 3, at i. H. L. Fu is likewise doubtful that years of accustomed practice will hardly change the behaviors of the police, prosecutors and court officials. H. L. Fu, *Criminal Defense in China: The Possible Impact of the 1996 Criminal Procedural Law Reform*, 153 CHINA Q. 31, 48 (1998); see also Weizheng Liu & Yingyi Situ, *Criminal Courts in China's Transition: Inquisitorial Procedure to Adversarial Procedure?*, 25 CRIME AND JUST. INT'L 1, 8 (1999).

Whatever the spirit of the revised CPL, the written law needs to be judged according to its effectiveness in implementation. This article uses data from official statistical sources in China, secondary materials, and the author's own interviews conducted with Chinese scholars, lawyers, prosecutors, judges, and court officials during the summer of 1999. The first section describes the essential differences between an inquisitorial and an adversarial criminal procedure system. This description provides a background to the next two sections, which compare the development of criminal proceedings before and after the revised CPL. These are followed by an examination of whether the spirit of the revised law has any actual effect on criminal court proceedings in China.

This study argues two points. First, for the Party leadership, the decision to strengthen the rights of the accused stems mainly from the leadership's realization that further legal reforms cannot be pursued effectively without making the legal process socially legitimate. Second, the findings of this study in respect to the criminal procedure of China suggest that, contrary to most scholars' gloomy predictions regarding the revised CPL's implementation, there is evidence indicating that certain areas prescribed by the revised CPL have altered criminal proceedings in China. Nevertheless, some hindrances still remain that do not permit the full recognition of defendants' right in actual practice. Despite the fact that the revised CPL was implemented only during January 1997, the law has induced certain behavioral changes in criminal proceedings. The developments, however moderate and cumbersome, nonetheless denote the general trend that criminal process in Chinese law is gradually conforming to international standards in relation to the treatment of suspected criminals and the right to a fair trial, rather than deviating from international standards.

II. *INQUISITORIAL VS. ADVERSARIAL SYSTEMS*

Inquisitorial criminal justice systems are more readily identified with the civil law tradition of continental Europe, while the adversarial system, also known as the accusatory system, is generally associated with the common law tradition of Great Britain and its former colonies. The classical distinction between the adversarial and inquisitorial system is that the former can be best described as a rivalry between two parties, resolving a dispute before a passive and neutral arbitrator, with a jury conclusively pronouncing some version of the truth. The inquisitorial system involves the state vigorously pursuing the facts and serving as the investigator. The state under this circumstance is the prosecutor

who collects the facts, as well as the independent and impartial judge who is actively involved with the investigations and fact-findings.⁵ The principal aims of both systems are to seek out the truth in criminal proceedings and to punish the guilty rather than the innocent. It is the methodology for ascertaining the facts that differs widely between the two.

The assumption under adversarial systems is that the truth is uncovered in the courtroom through extensive debate and persuasion between two equal parties, the prosecution and the defense. Both sides are active and lead the court proceedings, questioning witnesses and presenting evidence. The adversarial process is in effect a contest in which each party tries to defeat the other by presenting the most convincing evidence and arguments. The judge serves as a passive referee, making sure that both parties are following the rules of contest. An impartial decision-maker, which can be either the judge or a jury, then renders a verdict based on the evidence presented by both parties. An important aspect of an adversarial system is that the state bears the burden of proof through the presentation of extrinsic evidence and witnesses. The prosecution furthermore bears the burden of convincing the judge or jury that the suspect is indeed guilty of committing the crime.⁶ The burden of proof imposed on the state naturally entails the principle of presumption of innocence and invokes the privilege against self-incrimination for all suspects.

The adversarial system has been praised for its ability to assure limited government, to protect individual rights, and to render accurate judgments by relying on extrinsic evidence and by rebutting the other party's arguments and contesting the opposing side's evidence.⁷ Yet many legal experts have identified several problems with the adversarial system. Adversarial hearings are usually encumbered with countless rules and are time-consuming and thereby costly, especially when witnesses are re-

5. See Nico Jörg, Steward Field & Chrisje Brants, *Are Inquisitorial and Adversarial Systems Converging?*, in CRIMINAL JUSTICE IN EUROPE: A COMPARATIVE STUDY 42 (Phil Fennell et al. eds., 1995).

6. The logic behind having the state bear the burden of proof is that the state has a disproportional advantage in collecting and preserving evidence. Moreover, the state has superior resources over the suspect. See Gregory W. O'Reilly, *England Limits the Right to Silence and Moves Towards an Inquisitorial System of Justice*, 85 J. CRIM. L. & CRIMINOLOGY 402, 425 (1994). See also PHILIP L. REICHEL, COMPARATIVE CRIMINAL JUSTICE SYSTEMS: A TOPICAL APPROACH 151 (1994).

7. See O'Reilly, *supra* note 6, at 427. Similarly, G. D. Etherington comments that the main principle underlying the criminal process in England is that "it is better that ten guilty men go free than one innocent man be convicted." See G. D. Etherington, *The Balance of Power: Dependence and Interdependence*, in UNAFEI, ANNUAL REPORT FOR 1995 AND RESOURCE MATERIAL SERIES, No. 49, 95, 95 (1997).

quired in court for cross-examination. The high possibility that both parties can manipulate the evidence to each party's advantage, even while sharing equal standing in court, makes the task of finding the truth elusive. This possibility raises doubts as to whether it is plausible that an independent judge or jury can discover the truth.⁸ Denunciation of the jury system has surfaced both in the United States and England as confidence in this mode of trial procedure has weakened.⁹

On the other hand, the inquisitorial system assumes that the facts can only be discovered through an investigative procedure since it is always in the interests of the parties involved to conceal relevant evidence. Therefore, fact-findings are best left to legal professionals that conduct extensive but fair pretrial investigations and interrogations. The defense lawyers play little or no role during the investigations since professional investigators of the state, such as the police, forensic psychiatrists, and scientists, as well as other state-funded institutions, are expected to do much of the work in an impartial way.¹⁰ Inquisitorial systems focus on efficiency and crime control and have confidence in the ability of police and prosecutors to identify and release the potentially innocent suspects, while sustaining action against suspects with probable guilt.¹¹

Under inquisitorial systems, judges have considerable power and influence during the investigation stage and continuing through the trial. The trial judge examines all the evidence in order to establish probable cause and to determine whether a trial is necessary. The presiding judge then presents and investigates the evidence during trial and questions the defendant along with relevant witnesses. The judge is also actively engaged in debates between the prosecution and the defense pertaining to the proceedings and punishment.¹² In effect, the inquisitorial system relies more on interrogations and confessions for convictions.

The inquisitorial system has been criticized basically for its reliance on interrogations that can yield false confessions, since weak suspects under interrogation may falsely admit to a crime

8. See WILLIAM T. PIZZI, TRIALS WITHOUT TRUTH: WHY OUR SYSTEM OF CRIMINAL TRIALS HAS BECOME AN EXPENSIVE FAILURE AND WHAT WE NEED TO DO TO REBUILD IT 117-153 (1999).

9. See SEÁN ENRIGHT & JAMES MORTON, TAKING LIBERTIES: THE CRIMINAL JURY IN THE 1990s, SEÁN ENRIGHT & JAMES MORTON, TAKING LIBERTIES: THE CRIMINAL JURY IN THE 1990s 1-5 (1990).

10. Most inquisitorial systems, like adversarial systems, incorporate the presumption of innocence but do not invoke the privilege of the right to remain silent. See Jörg, Field & Brants, *supra* note 5, at 43-5.

11. See GRAEME NEWMAN, GLOBAL REPORT ON CRIME AND JUSTICE 70 (1999).

12. See Liu & Situ, *supra* note 4, at 1.

that they have never committed.¹³ The reliance on interrogation leaves open the possibility of forced confessions and abuse by the police and prosecutors during pretrial investigations. Because judges in an inquisitorial system are more actively engaged in the investigations, they rely heavily on the dossier, a written compilation of the evidence prepared before trial that they themselves usually prepare.¹⁴ Public hearings by the courts serve more as a verification of the pretrial investigations rather than a stage for contesting the evidence. This process inevitably raises concerns that the judges will be inherently biased and will have the tendency to render verdicts in favor of the prosecution.¹⁵

Based on the general procedures established by both systems described above, one would expect acquittal rates in adversarial systems to be higher because the prosecution bears the burden of proof and the standard for conviction is much higher. For inquisitorial systems, since the process is designed to screen out potentially innocent suspects before trial and to accept into evidence any information that will help determine the defendant's role in the offense, one would expect acquittal rates to be much lower than those under adversarial systems.¹⁶ Because judges conduct extensive pretrial investigations under the inquisitorial system, there is an inherently self-fulfilling prophecy effect, in that judges bring a suspect to trial largely to verify and ratify evidence uncovered in the investigation, rather than to provide a forum for debate and contention over the evidence. Moreover, under adversarial systems, defense lawyers are usually more active during pretrial investigations and are permitted to present contending evidence rather than being forced to rely on evidence gathered by the state.

Table 1 shows the prosecution and acquittal rates of several countries using either an inquisitorial system, an adversarial system, or a mixed system. In general, countries with adversarial systems tend to have higher prosecution rates and acquittal rates than those countries with inquisitorial systems, suggesting that it is more likely that those suspects who are potentially innocent are screened out during the early stages of the inquisitorial process. This is plausible because for many countries with an adver-

13. See O'Reilly, *supra* note 6, at 426.

14. However, the dossier also serves as a safeguard for due process since it reports every procedure conducted during the investigation by the police and prosecution. The judge's inquiry results are also included in the dossier. The dossier is available to both the defense and prosecution as a means of supervision and control. See Jörg, Field & Brants, *supra* note 5, at 47.

15. See Liu & Situ, *supra* note 4, at 1.

16. See NEWMAN, *supra* note 11, at 70. Nevertheless, it is important to take into account the distinct practices of the judicial offices in various countries. For example, Thailand shows extremely high prosecution and conviction rates.

serial system, police usually initiate arrests at an earlier stage and fewer suspects may be excluded before arrest. Some evidence of culpability might also be excluded during trial under adversarial systems.¹⁷ The average rate of prosecution for adversarial systems is around 85%, while the average acquittal rate is 11%. These rates can be contrasted with an average prosecution rate of 61.4% and an acquittal rate of 2.4% for countries with inquisitorial systems.¹⁸

Another possibility accounting for high acquittal rates under adversarial systems is that in most adversarial systems, juries decide the verdict, and any conviction of a defendant requires a majority or unanimous vote, thus making convictions less likely.¹⁹ Some legal experts believe that professional judges in bench trials will base decisions mostly on facts, and the factual outcome of the trial is more logical or rule-bounded than in jury trials, since jurors sometimes base their decisions on emotional rather than logical grounds.²⁰

As for the possibility that jury trials will be less likely to convict, the evidence does not seem to support the argument. While figures in Britain do tend to show that jury trials acquit more than bench trials, the difference is not significant. For example, in Crown Courts that have a jury system, the acquittal rate was

17. Pre-arrest and detention in civil law countries usually permit police to detain accused persons from 24 to 72 hours, whereas in several common law countries, even limited periods of investigative detention before arrests are not allowed. See, e.g., BARTON L. INGRAHAM, *THE STRUCTURE OF CRIMINAL PROCEDURE: LAWS AND PRACTICE OF FRANCE, THE SOVIET UNION, CHINA, AND THE UNITED STATES* 37-46 (1987).

18. Although figures for acquittal rates as a percentage of those pleading not guilty are difficult to attain and in many cases unrecorded, in the United States, the percentage of suspects pleading not guilty in District Courts in the year 1998 was 17.2%. Of those who pleaded not guilty, 69.3% were acquitted or who had their cases dismissed by the court. In Britain during the year 1994, 22.8% pleaded not guilty and of those pleading not guilty, 42.4% were acquitted. These figures can be contrasted to those of Japan that has an inquisitorial system. During 1992, a total of 3,886 out of 55,487 defendants pleaded not guilty (7%). Out of the 3,886 defendants pleading not guilty, only 3.8% were found innocent or partly not guilty. Thus, acquittal rates in Japan are still significantly lower when compared with those in both Britain and the United States. See Appendix for references. Also, one needs to take into account specific rules bounding the criminal process that may affect prosecution or acquittal rates. For example, in Japan, prosecution has high discretion over the decision to prosecute and many of the convicted criminals might receive suspended sentences. See Didrick Castberg, *Prosecutorial Independence in Japan*, 16 *UCLA PAC. BASIN L.J.* 38, 55 (1997). Moreover, the United States uses plea-bargaining that might affect those pleading not guilty. However, in Britain, there is no plea-bargaining and the two countries show similar rates.

19. For example in Britain, a majority of 10 out of 12 jurors are needed for conviction. See *WORLD CRIMINAL JUSTICE SYSTEMS: A SURVEY* 54 (Richard J. Terrill ed., 3rd ed. 1997).

20. See Kenneth Mann, *Criminal Procedure*, in *INTRODUCTION TO THE LAW OF ISRAEL* 282 (Amos Shapira & Keren C. Dewitt-Arar eds., 1995).

TABLE 1: CROSS COUNTRY COMPARISON OF PROSECUTION AND ACQUITTAL RATES

Adversarial Systems	Year	Prosecution Rates	Acquittal Rates ⁱ	Jury System ⁱⁱ	Lay Judges ⁱⁱⁱ
Great Britain	1994	88.3%	9.7%	Yes	No
United States (District Courts)	1998	90.6%	11.8%	Yes	No
Hong Kong (District Courts)	1994	67.8%	15.9%	Yes	No
New Zealand (District Courts)	1990	n. a.	10.4%	Yes	No
Sri Lanka	1992	96.5%	7.3%	Yes	No
Denmark	1992	n.a.	5.2%	Yes	Yes
Italy	1994	80.7%	22.3%	No	Yes
Canada	1994	n.a.	5.5%	Yes	No
Inquisitorial Systems					
Japan	1992	68.1%	0.2%	No	No
Thailand	1992	97.6%	0.8%	No	No
Korea	1992	56.9%	0.4%	No	No
Germany	1994	31.1%	3.1%	No	Yes
France (Cour d'assises)	1994	80.2%	4.7%	Yes	No
Netherlands	1995	72.7%	3.7%	No	No
Finland	1994	42.0%	3.8%	No	Yes
Mixed Systems					
Israel	1994	n.a.	3.4%	No	Yes

i. Includes cases dismissed by courts.

ii. Even in countries with jury systems, single judges for less serious crimes also rule many cases.

iii. Although lay judges are chosen from the public and function as juries, they may take part in deciding issues of fact as well as issues of law, similar to a professional judge. In contrast to a jury system in which the jury deliberates on the verdict, lay judges pronounce guilty or not guilty verdicts along with the presiding judge.

Sources: See Appendix for References *infra* pp. 252-3.

9.7% during the year 1994. However, for Magistrates' Courts that do not have jury trials, the acquittal rate was 6.6% for the same year.²¹ In 1998, juries in United States District Courts acquitted in only 13.8% of the cases decided by jury trial, while judges acquitted in 49.7% of the cases decided by non-jury trials.²² In France, there is no difference in acquittal rates between

21. THE HOME OFFICE, *Criminal Statistics: England and Wales 1996*, in RESEARCH AND STATISTICS DIRECTORATE MISSION STATEMENT 139, 143 (1997). 6.6% is still higher than the acquittal rates of all the inquisitorial systems presented in the table.

22. A significant number of the defendants who are not convicted have their cases dismissed before trial. See BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF

bench trials under Tribunaux Correctionnels (4.7%) and jury trials under Cour d'assises (4.7%) for the year 1994.²³

Numerous debates have surfaced over which system is superior in terms of fact-finding, efficiency, and the protection of defendants' rights, as well as which system is likely to produce potential hazards. Just as many advocates in countries that use inquisitorial systems have had aspirations toward introducing common law practices, many common law countries have had reservations concerning their own criminal justice systems.²⁴ For example, there have been discussions in England since the 1970s of introducing an examining magistrate during the pre-trial process that conforms to the continental model.²⁵ Similarly in the United States, many commentators have strongly criticized the adversarial criminal justice system and have advocated the implementation of inquisitorial trial procedures, especially after the conclusion of several well-publicized trials.²⁶ While the debates continue, there is no real consensus as to which system is more appropriate. Likewise in China, legal scholars and officials have continuously debated over which system is better suited for the country. Regardless of the system employed by any country, the process of seeking the truth should be guided by principles of due process and fair treatment, and be conducted in a manner that is socially legitimate.²⁷

III. HISTORICAL BACKGROUND: CHINA'S CRIMINAL PROCEDURE AND THE REFORM PROCESS

At the founding of the People's Republic, the Chinese Communist Party had to devise a new legal system, since the legal framework that had formerly operated under the Nationalist re-

CRIMINAL JUSTICE STATISTICS 1998 387, 407 (Ann L. Pastore & Kathleen Maguire eds., 1999).

23. See MINISTÈRE DE LA JUSTICE, FRANCE: ANNUAIRE STATISTIQUE DE LA JUSTICE ÉDITION 1999: SÉRIES 1993-1997 [ANNUAL JUDICIAL STATISTICS 1999 EDITION: 1993-1997 SERIES] 109, 111 (1999).

24. See COMPARATIVE CRIMINAL PROCEDURE 2 (John Hatchard et al. eds, 1996). For debates on which system is superior, see John Langbein & Lloyd Weinrab, *Continental Criminal Procedure: "Myth" and Reality*, 87 YALE L.J. 1549, 1549-69 (1978). See also Abraham Goldstein & Martin Marcus, *Comments on Continental Criminal Procedure*, 87 YALE L.J. 1570, 1570-77 (1978); Pizzi, *supra* note 8, at 138-39.

25. See John Jackson, *Trial Procedures*, in JUSTICE IN ERROR 130, 131-32 (Clive Walker & Keir Starmer eds., 1993).

26. For example, many American citizens and scholars have condemned the trials involving William Kennedy Smith, the Rodney King assailants, and O. J. Simpson. See William Pizzi, *The O. J. Simpson Trial and the American Legal System*, 145 NEW L.J. 990, 990-91 (1995).

27. See Nico Jörg, Steward Field & Chrisje Brants, *supra* note 5, at 42.

gime was completely abolished.²⁸ However, efforts to devise a comprehensive criminal procedure code in China after 1949 were continuously disrupted by political campaigns and upheavals. The Anti-Rightist Campaign of 1957 directed its national purge mainly against intellectuals, including legal professionals and scholars, and severely disrupted the drafting of a criminal procedure code after 1954.²⁹ After the collapse of the Great Leap Forward, efforts to rebuild legal institutions corresponded with the redrafting of a criminal procedure code that resulted in around 200 articles in 1963.³⁰ Implementation of the law was short-lived following the advent of the Cultural Revolution. During the Cultural Revolution, countless individuals, including many high ranking officials, were arbitrarily arrested, detained, tortured, and murdered according to the "political correctness" of the time. Laws provided little protection against any injustice because there were virtually no standard legal procedures and safeguards. Most legal institutions were abolished, including the National People's Congress (NPC), the Ministry of Justice, and the People's Procuratorates.

After the conclusion of the Cultural Revolution, the Party once again had to reconstruct a comprehensive legal system. Chinese leaders felt an urgent need to implement a code for criminal procedure; the intent was to prevent the rampant abuse prevalent during the lawlessness of the Cultural Revolution. The version of the criminal procedure code adopted by China in 1979 was in many ways inspired by earlier drafts prepared during the 1950s and 1963 that had their roots in the civil law inquisitorial system of continental Europe.³¹ These earlier drafts also incorporated elements of Marxism and Leninism into the text, and the law was seen as a tool of the proletarian dictatorship designed to protect the people from enemies of the Communist Party.³²

Major flaws existed in the 1979 CPL not because the system was designed as an inquisitorial process per se, but because of the major deficiencies and ambiguities present under the procedural

28. See CHEN, *infra* note 63, at 24.

29. See Shengqing Chen & Jinglan Wang, *Zai "Fanyou" de Kuangfeng Baoyu Xia [Under the Turbulence of "Anti-Right"]*, in ZHONGGUO DANGDAI FAXUE ZHENGMING SHILU [A RECORD OF THE CONTENTION ON THE SCIENCE OF LAW IN CONTEMPORARY CHINA] 72, 72-78 (Guo Daohui et al. eds., 1998).

30. See XINGSHI SUSONGFA XINLUN [A NEW THEORY OF CRIMINAL PROCEDURE LAW] 52-3 (Zhang Zhonglin ed., 1993), *quoted in* HECHT, *supra* note 3, at 2.

31. See Yang Cheng, *Criminal Procedure in China: Some Comparisons with the English System*, 37 INT'L & COMP. L.Q. 190, 191 (1998).

32. See Zhonghua Renmin Gongheguo Xingshi Susong Fa (1979) [Criminal Procedure Law of People's Republic of China (1979)] art. 1, in ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN 1979 [COMPILATION OF LAWS AND REGULATIONS OF PEOPLE'S REPUBLIC OF CHINA 1979] 87-124 (1997) [hereinafter CPL 1979].

law, and the lack of qualified legal professionals working within the system to comply with the rules. As a result, authorities have often times taken advantage of the numerous ambiguities and loopholes in the law and have widely disregarded many legal safeguards granted to criminal suspects.³³ Officials have frequently violated certain provisions of the procedural law in order to comply swiftly with *yanda*, or “strike-hard” campaigns against crime, and working under an inquisitorial system has regularly allowed swift arrests and convictions without adequate regards for due process.³⁴

During the early stages of the procedural law’s implementation, judges, prosecutors and police were unfamiliar with working under formal legal procedures and were thus unable to complete their tasks according to specified time constraints. The NPC Standing Committee, the State Council, the Supreme People’s Court, the Supreme People’s Procuratorate, and other state bodies subsequently amended several of the 1979 CPL provisions to extend the time frame for conducting investigation, prosecution, trial, and appeal, but those amendments did little to protect the rights of the accused.³⁵ Under the 1979 CPL, the state had many disproportional advantages over the defense during detention and arrest, pretrial investigation, and the trial itself. The police had wide discretion over the arrest and detention of suspects that lacked considerable scrutiny and review.

There was no presumption of innocence for the accused; rather the system incorporated the presumption of guilt as the standard for trying cases. Since suspects were objects of punishment, they were not guaranteed many rights, including early access to an attorney. Moreover, verdicts were usually decided before trial, frequently not by the judges who had investigated the cases themselves, making trial procedures a mere act of formality. These conditions led to numerous criticisms concerning the 1979 CPL’s failure to adhere to international legal standards

33. See LAWYERS COMM. HUMAN RIGHTS, *supra* note 1, at 9.

34. These criticisms emerge from both domestic and international sources. See, e.g., Xu Youjun, *supra* note 1, at 38-43; HAROLD M TANNER, STRIKE HARD! ANTI-CRIME CAMPAIGN AND CHINESE CRIMINAL JUSTICE 1979-1985, at 72-5 (1999).

35. See, e.g., The NPC Standing Committee’s Decision Regarding the Procedure for Prompt Adjudication of Cases Involving Criminals Who Seriously Endanger Public Security (Sept. 1983) [hereinafter 1983 NPC Decision] (removing the 1979 CPL requirement of seven days advance notice of trial, thereby providing little time for the accused to prepare a defense and also reducing the time period in which defendants could file for appeals from their sentences from ten days to three days); See also NPC Standing Committee’s Supplementary Provisions Regarding Time Limits for Handling Criminal Cases (1984) (extending the time limits in which suspects held in custody during investigation, and significantly increasing the powers of police, prosecution and judiciary against the interests of the accused).

of presumption of innocence, due process, and the right to counsel.³⁶

The Purge of the Inquisitorial Criminal Procedure Code

The resolve to establish a more justifiable criminal justice system and to limit the powers of the state in criminal proceedings is fundamentally a strategy of gaining legitimacy by the Party leaders. Members of the post-Deng leadership have increasingly advocated the rule of law as their emblem of justifiable rule. Individuals within the top-ranking leadership have also taken advantage of playing the "rule of law" card by promoting popular legislation and policies for the purpose of attaining legitimacy and political strength for themselves and their respective offices. Aside from the Party's monopoly on coercion and force, a crucial factor in determining prolonged rule and survival of the Party, as well as individual leaders, is the level of popular support. The passing of the late "helmsman" Deng Xiaoping, credited as the architect of reforms, has left many third generation leaders with a legitimacy vacuum.³⁷ Rampant corruption in many government functions has repeatedly scarred the image of the Communist Party, and instances of corruption and injustice in the criminal justice system have similarly had a debilitating effect on Party legitimacy since it is through the criminal justice system that the state can take liberty, property and even life away from any individual.

The top leadership's perpetual campaigns against crime and corruption have been key strategies employed by the leaders to prevent further erosion of Party legitimacy. Yet the attention focused on catching and penalizing criminals indiscriminately for the purpose of social stability likewise has had a negative impact on the Party's image. In their relentless efforts to combat corruption and crime, Party leaders neglected many of the rights granted to the citizens under the 1982 Constitution.³⁸ This condition proved to be a serious "dilemma of legitimacy" for the leaders, since their quest to secure legitimacy by curbing crime and corruption was correspondingly offset by the many injustices prevalent in the criminal justice system. By understanding the dilemma facing the top Party leaders as a collective whole, we

36. LAWYERS COMM. HUMAN RIGHTS, *supra* note 1, at 9.

37. See Michael Schoenhals, *Political Movements, Change and Stability: The Chinese Communist Party in Power*, 159 CHINA Q. 595, 604 (1999).

38. See, e.g., XIANFA [CONSTITUTION] art. 125 (1982) (accused has the right to defense); See also Chen Lan, *Jin Bange Shiji Woguo Xingshi Susong Faxue de Huigu Yu Qianzhan* [The Return and Prospects of Our Country's Law after Half a Century], FAXUE PINLUN [LAW REVIEW].

can better understand their decision to approve the reform of the criminal procedure code in China.

Chinese officials and scholars had recognized major deficiencies with the criminal process and its implementation as far back as 1985 and had considered revising the CPL.³⁹ Discussions pertaining to human rights gained momentum in legal and academic circles during 1991, even after the crackdown at Tiananmen Square two years earlier. The Party had released its grip on debates concerning human rights in China, including discussions on various legislation that would protect the "rights and interests" of citizens.⁴⁰

After the June, 1989 crackdown, the legal academy in China provided the first impetus for the revision of the original CPL in early 1991, including theoretical studies between the inquisitorial and adversarial criminal processes.⁴¹ The academic community, headed by Professor Chen Guangzhong, held a conference during 1991 on the revision of the CPL. The conference was attended not only by scholars, but also by legislative drafters of the NPC and officials in the Supreme People's Procuratory and the Supreme People's Court. Following the conference, several publications concerning particular reform measures appeared, which subsequently led to the establishment of a research team in 1992 funded by China's National Social Sciences Fund to study foreign criminal procedure codes.⁴² Essentially, the spirit of the conference and the calls for revision were aimed at finding a balance between punishing criminals and protecting individual rights through the due process of law. A new system was needed that could fundamentally overhaul the ingrained practices of the judicial organs.⁴³

The Eighth NPC's first plenary session, held during the spring of 1993, established Qiao Shi as Chairman and Tian Jiyun

39. See GU ANGRAN, *Some Major Issues in the Drafting of the Criminal Procedure Laws - Speech at the Training Class for Law-making Cadres (May 1985)*, in SHEHUI ZHUYI FAZHI HE LIFA GONGZUO [SOCIALIST LEGAL SYSTEM AND ITS LEGISLATIVE WORK], quoted in CHEN, *supra* note 3, at 200 n.20.

40. See Ronald Keith, *The New Relevance of 'Rights and Interests': China's Changing Human Rights Theories*, 10 CHINA INFORMATION 38, 61 (1995).

41. See Long Zongzhi, *Xingshi Susong de Liangzhong Jiegou Bianxi* [The Analysis of Two Forms of Criminal Procedure], 3 XIANDAI FAXUE [MODERN LAW SCIENCE] 14, 14-17 (1991).

42. This section refers to official accounts and extensive interviews conducted by Jonathan Hecht. HECHT, *supra* note 3, at 14-15 (consistent with official publications); See also *Research Office of the NPC Standing Committee Legislative Affairs Work Committee, Legislative Work by the NPC and its Standing Committee, 1997*, ZHONGGUO FALU NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1998).

43. See Chen Guangzhong, *Xingshi Susong Zhidu de Gaige yu Fazhan* [The Reform and Development of the Criminal Procedure], JIANCHA RIBAO [PROCURACY DAILY], Mar. 2, 1996.

as First Vice-Chairman of the parliament. From the outset of attaining their posts, the new leaders began to set their five-year legislative agendas for the NPC. During October, 1993, the NPC's Legislative Affairs Committee, the main law-drafting bureau of the NPC, asked Professor Chen and his research team to prepare a draft for the revision of the CPL. The request followed several meetings by the Legislative Affairs Committee a few months earlier in which the leaders of the NPC and the Committee had reached a general agreement on the need to revise the CPL.⁴⁴ The research team subsequently submitted a draft to the Committee in July of 1994, resulting in the publication of a proposed draft with over three hundred pages of detailed analysis concerning the revision.⁴⁵

While the NPC had favored revising the CPL in general during 1993, it solicited numerous opinions from the organs involved with the criminal process, such as the Supreme People's Procuratorate, the Ministry of Justice, which supervises lawyers and the prison system, the Supreme People's Court, and the Ministry of Public Security, which handles all police activities. During the process, each organ tried earnestly to guard its own turf and interests. The Supreme People's Court and the Ministry of Justice proposed more liberal opinions, such as the early intervention of defense lawyers, promoting an adversarial process, and increased court supervision over the procuratory and the police. The procuratorate, although supporting the early involvement of lawyers in principle, stipulated that the scope of involvement be limited at different stages of the investigation and advocated limited changes to the present system. The Ministry of Public Security argued that intervention by defense lawyers during investigation would be detrimental in its efforts to collect evidence and to prove a case.⁴⁶

The Committee issued a "draft for comment" during the fall of 1995 that was circulated among provincial governments, Party organs, scholars, and judicial branches at the national level for further opinions.⁴⁷ Still, various judicial organs and members within the NPC continued to bicker over the specifics of the contents.⁴⁸ Three NPC committees—the Legislative Affairs Com-

44. See CHEN, *supra* note 3, at 201.

45. See HECHT, *supra* note 3, at 15.

46. See Fu, *supra* note 4, at 41; See also Submission of Supreme People's Court on the Amendment of the CPL 1996; Submission of the Ministry of Justice on the Amendment of the CPL 1996; Submission of the Supreme People's Procuratorate on the Amendment of the CPL 1996; Submission of the Ministry of Public Security on the Amendment of the CPL 1996, quoted from Fu, *supra* note 4, at 41.

47. Research Office of the NPC Standing Committee Legislative Affairs Work Committee, 1997, *supra* note 42, at 2.

48. See HECHT, *supra* note 3, at 17.

mittee of the Standing Committee, the Law Committee and the Committee for Internal and Judicial Affairs—organized four additional meetings to incorporate further opinions on the draft.⁴⁹ The practice of soliciting opinions and drafts from various state organs undoubtedly proved difficult in reaching a consensus. After the “draft for comment” was issued, a version of the draft law was sent to the NPC Standing Committee for formal deliberation on December 20, 1995. The NPC Standing Committee presented the draft to the fourth session of the NPC on March 1, 1996, leading to the passage of the revised law on March 17, 1996 and its formal implementation on January 1, 1997.

It is important to note that since revision of the CPL fell under the scope of the basic law and was a significant piece of legislation, top members of the Party must have evaluated and approved the basic principles of the draft. Moreover, since top leaders in the NPC concurrently held several top positions within the Party, it is very likely that they would have reported the subjects of the revision to the other Party leaders.⁵⁰ According to Central Document Eight, issued by the Party in 1991, the Party is to review all significant legislation involving constitutional reviews and important laws, including economic, administrative, and political laws.⁵¹ The top Party leaders’ approval for the revision of the criminal procedure code indicates that there was general consensus among them that although the 1979 CPL had faithfully served their need for criminal and political control, the law was still somehow inadequate to satisfy broad resentments against the criminal justice system both domestically and internationally.⁵²

In light of the fact that the NPC Legislative Committee had written a draft during the fall of 1995, one has to question why the NPC rushed to pass the law in less than four months, even though many judicial and legislative officials still had not reached true consensus. On February 20, 1996, Gu Angran, chairman of

49. See *Beijing Hosts Seminar on Revision of Criminal Procedure Law*, XINHUA NEWS AGENCY, Jan. 18, 1996.

50. See HECHT, *supra* note 3, at 17-18. For example, NPC Chairman was also a member of the CCP Politburo Standing Committee and NPC Vice-Chairman Wan Hanbin was an alternative member of the Politburo.

51. See MURRAY SCOT TANNER, *THE POLITICS OF LAWMAKING IN POST-MAO CHINA: INSTITUTIONS, PROCESSES AND DEMOCRATIC PROSPECTS* 66-70 (1999).

52. Resentments against China’s criminal justice system have been widely published in China and internationally. See, e.g., *ZHONGGUO FAZHI SISHINIAN* [FORTY YEAR’S OF PRC’S LEGAL INSTITUTIONS], (Zhao Zhengjian ed., 1991). See also, *People’s Congress to Revise Criminal Procedure Law*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 27, 1996; Chen Ruihua, *Xiuzhenghou de Zhongguo Xingshi Susong Fadian—Cong Xingshi Sifa Guoji Biaozhun Jiaodu de Fenxi* [The Revised Criminal Procedure Law—An Analysis from International Justice’s Perspective], 5 XIANDAI FAXUE [MODERN LAW SCIENCE] 15, 15-20 (1996).

the Commission of Legislative Affairs of the NPC Standing Committee, suggested that the amendments to the law of criminal procedure should contain more details.⁵³ According to legal scholar H. L. Fu, one highly plausible explanation is that since the term of the NPC's session was closing soon, members of the NPC and its Standing Committee wanted to establish a good legislative record.⁵⁴ There is also reason to believe that by supporting the revision, the NPC and its leaders were attempting to strengthen their images as accountable and influential players in the government. Fu's argument is supported by Qiao Shi's speech to the NPC deputies on March 17, 1996, the day the revision was passed. Qiao remarked that the passage of the law "reflects our deputies' spirit to be responsible to the people and abide by the constitution and relevant laws . . . a step toward the establishment of rule of law and development of a socialist legal system."⁵⁵

Even though legal scholars initiated discussion of the amendment of the criminal procedure law in China, what is noteworthy in this time-consuming and often contentious endeavor is how the top leaders of the Party responded to advocates of the revision. The concurring response reflects how these leaders have gradually taken into account dissatisfaction amongst ordinary citizens, the academic community, and even officials directly involved with the criminal process.⁵⁶ The efforts by the NPC Standing Committee and its deputies to hastily promulgate the revised legislation demonstrate how this significant reform of the criminal process is used to attain legitimacy and institutional muscle for a legislature that had been consistently identified with a "rubber stamp" image. This episode is but a part of the broader framework in which Party leaders have increasingly espoused the rule of law to attain political legitimacy.⁵⁷

53. See *NPC Mulls Over Three Draft Laws*, XINHUA NEWS AGENCY, Feb. 28, 1996.

54. See H. L. Fu, *The Right to a Fair Trial in China: The New Criminal Procedure Law*, in *THE RIGHT TO FAIR TRIAL IN INTERNATIONAL AND COMPARATIVE PERSPECTIVE* 78, 85 (Andrew Byrnes ed., 1997).

55. See Qiao Shi, Speech at the Fourth Session of the Eighth NPC (Mar. 17, 1996). Qiao is known as an open-minded reformer whose icon was the establishment of the rule of law. Qiao's advocating the rule of law has gained himself much popularity among the masses and his peers.

56. For example, even the president of the Supreme People's Court had recognized several deficiencies within the criminal justice system. See *Judge Vows to Overhaul 'Unfair' Judicial System*, SOUTH CHINA MORNING POST, Dec. 28, 1992, at 8.

57. Jiang Zemin's report delivered at the Fifteenth National Congress of the CCP on September 12, 1997 likewise stressed developing the rule of law as the means to achieve Chinese democracy. See Stanley Lubman, *China, the WTO and the*

IV. THE 1996 REVISED CPL

The revision of the criminal procedure code is indeed substantial when one takes into consideration the amendment of 70 articles out of the original 164 articles in the 1979 CPL, including the addition of 63 new articles and the deletion of two articles. The last article of the revised CPL made clear that when the law becomes effective on January 1, 1997, the 1983 and the 1984 NPC Standing Committee decisions would be annulled.⁵⁸ "The significance of the revision lies, however, not in the total number of articles revised, but in that, to some extent, certain fundamental 'due process' principles have been, for the first time, incorporated in the CPL."⁵⁹ Substantial changes were made concerning the presumption of innocence, arrest and detention, prosecutorial discretion, defense lawyer participation, and trial proceedings. The following section describes the changes to these aspects of the criminal process.

Presumption of Innocence

For the first time in the history of the PRC's legal system, the presumption of innocence, albeit in a vague form, has been incorporated into the criminal process. Although the presumption of innocence is not explicitly spelled out in the revision, three articles bolster the principle. Article 12 affirms that no person shall be found guilty without being judged as such by a People's Court according to law. Article 34 of the 1996 Criminal Procedure Law provides that before public prosecution is initiated, the original title of "defendant" is to be changed to one of "criminal suspect." Finally, Article 162, Section 3 states that if the evidence is insufficient and thus the defendant cannot be found guilty, he shall then be pronounced innocent on the basis that the evidence is insufficient and the accusation unfounded.

Even though the articles explicitly denounce the presumption of guilt, they do not clearly specify the presumption of innocence. Even so, these revisions offer hope that more legal protection will be provided to criminal suspects against overzealous prosecutors, or police officials who can easily intimidate

Rule of Law: The Newest Entrant to the World Trade Organization Must Adopt a New Legal Framework, FINANCIAL TIMES, Dec. 8, 1999, at 19.

58. See Zhonghua Renmin Gongheguo Xingshi Susong Fa (1996) [Criminal Procedure Law of People's Republic of China (1996)] art. 110, in ZHONGHUA RENMIN GONGHEGUO XIN FAGUI HUIBIAN 1996 DI YI JI [NEW COMPILATION OF LAWS AND REGULATIONS OF PEOPLE'S REPUBLIC OF CHINA 1996 VOL. 1] 55-103 (1996) [hereinafter CPL 1996].

59. Chen, *supra* note 3, at 201.

a suspect into confession based on a presumption of guilt.⁶⁰ Furthermore, these clauses will enhance the neutrality of judges who had often been accustomed to the idea that "since the police and prosecutors have already investigated a case thoroughly and gathered sufficient evidence before initiating public prosecution, the accused must be guilty to a certain degree."⁶¹

Detention and Arrest

Under the 1979 CPL, the public security organs launched investigations into the majority of criminal cases, while the rest were handled either by the procuratory or the courts themselves.⁶² When a suspect was identified, the public security had five measures at its disposal: compulsory summons for examination (*juchuan*),⁶³ awaiting trial under guarantee (*qubao houshen*), surveillance of residence (*jianshi juzhu*), detention (*juliu*), and arrest (*daibu*).⁶⁴ The public security organs could request a formal arrest warrant from the procuratory or courts after the facts pertaining to a suspect had been clarified, provided it was an offense subject to a sentence of imprisonment, and that the suspect could pose a threat to society if left undetained.⁶⁵ The maximum allowed time frame between detention and application for approval of arrest was seven days. The procuratorate was then given three days to decide whether or not to approve the arrests. If the arrest was not approved, the suspect had to be released immediately.⁶⁶ Therefore, the maximum time allowed between detention and formal arrest was ten days under the 1979 CPL.

In order to comply with the constant *yanda* campaigns against crime initiated by the Party, the public security apparatus often resorted to using the infamous "shelter for examination" (*shourong shencha*) as a means for detaining and interrogating suspects and to extend the period of time needed to conduct in-

60. See *id.* at 208. See also Huang Dao & Tie Li, 'Wuzhui Tuiding' Zai Xin Zhongguo de Mingyun [The Prospects for Presumption of Innocence in New China], in ZHONGGUO DANGDAI FAXUE ZHENGMING SHILU [A RECORD OF THE CONTENTION ON THE SCIENCE OF LAW IN CONTEMPORARY CHINA] 300, 302 (Guo Daohui et al. eds., 1998).

61. Interview with judge, 5/27/99.

62. For example, cases involving corruption and dereliction of duty are handled directly by the procuratory, see CPL 1979 art. 13. See also, Provisions on the Criteria for Handling Criminal Cases Directly Accepted by the People's Procuratorates, issued by Supreme People's Procuratorates, March 24, 1986.

63. CPL 1979 art. 38. This measure, *juchuan*, applies to those who fail to comply with a summons. Then the suspect is liable to be physically compelled to comply with the summons. See ALBERT H. Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 155 (1998).

64. CPL 1979 art. 38, 40, 41.

65. CPL 1979 art. 40.

66. CPL 1979 art. 48.

vestigations and collect evidence.⁶⁷ The public security first adopted the measure in 1961 to handle the increasing flow of migrants throughout China. This measure provided police with the power to detain and interrogate suspects who had no known status or confirmed residence.⁶⁸ "Shelter for examination" was widely used by the police as a substitute for standard procedure for arrest and detention, and often led to rampant abuse and violations of the three month time limit specified under the public security regulation. Furthermore, it is estimated that at least eighty percent of all suspects arrested before the 1996 CPL came into effect were first detained under this sanction.⁶⁹

Since the practice of "shelter for examination" was an administrative sanction, it fell outside the scope of the CPL and had few procedural safeguards. Compounding the abuse was the lack of review over this administrative measure.⁷⁰ The State Council and the Ministry of Public Security issued several directives for the proper use of "shelter for examination" that covered jurisdictional scope, time limits, and approval authority for its use, but the directives were often vague and inconsistent.⁷¹ The NPC Standing Committee, the Supreme People's Court, and the Supreme People's Procuratory all attempted to control the discretionary exercise of "shelter for examination" without much success.⁷²

Once a suspect was arrested, the time period allowed for the procuratorate to hold suspects in custody while an investigation was conducted was not to exceed two months. If the case was complex and required further investigations, the procuratorate could apply for an extension of another month from the

67. "Shelter for examination" has gained a notorious reputation in China and internationally and is believed to be the one measure in which there was wide consensus for its abolition among the lawmakers, legal scholars, the Supreme People's Court, the Supreme People's Procuratory and the Ministry of Justice. Only the Ministry of Public Security had objected to its elimination. See HECHT, *supra* note 3, at 25. See also AMNESTY INT'L, PUNISHMENT WITHOUT CRIME: ADMINISTRATIVE DETENTION (1991); AMNESTY INT'L, CHINA, NO ONE IS SAFE, POLITICAL REPRESSION AND ABUSE OF POWER IN THE 1990s, *supra* note 1; Wang Xinxin, *Shourong Shencha Zhidu Ying Yu Feichu [Shelter and Investigation Should be Abolished: A Discussion with Comrades Chen Weidong and Zhang Tao]*, 3 ZHONGGUO FAXUE [LEGAL SCIENCE IN CHINA] 110, 110-112 (1993), *quoted in* CHEN *supra* note 3, at 205 n.49.

68. See Kam C. Wong, *Police Powers and Control in the People's Republic of China: the History of Shoushen*, 10 COLUM. J. CHINESE L. 367, 369 (1996).

69. See HECHT, *supra* note 3, at 22.

70. The only recourse to arbitrary detention and abuses under "shelter for examination" was the Administrative Litigation Law (1989).

71. Guanyu Yangge Kongzhi Shiyong Shourong Shencha Shouduan de Tongzhi, Gongfa 50 Hao [Circular Regarding the Serious Control Over the Use of the Shelter for Examination Measure, Public Security Regulation Number 50], *issued by* Ministry of Public Security, July 31, 1985.

72. See Wong, *supra* note 68, at 368.

procuratorate at the next higher level.⁷³ However, if certain major and complex cases still could not be solved within that time frame, the Supreme People's Procuratorate could request an indefinite postponement from the NPC.⁷⁴ If the investigations were handled directly by the procuratory, it could either dismiss the case, exempt from prosecution, or initiate public prosecution. If the investigations were handled by public security officials, then at the end of the designated time frame, they were directed to draft a conclusion recommending prosecution, exemption from prosecution, or dismissal of the case to forward to the procuratorate, along with relevant evidence and the case file.⁷⁵ The procuratorate could then either decide to follow the recommendation or remand the case back to public security for supplementary investigations.⁷⁶

The revised CPL modifies the procedure for pretrial detention and arrests in several ways. First, provisions under "shelter for examination" are to operate under the criminal procedure framework rather than as a distinct administrative sanction. The 1996 NPC session confirmed the elimination of "shelter for examination" as an administrative practice.⁷⁷ The revision, however, extends the maximum detention period from seven days to thirty days as an alternative way of coping with instances under "shelter for examination,"⁷⁸ and to better accommodate the public security's predicament of clarifying the facts of a crime within the time period allowed under the original CPL.⁷⁹ Changes in pretrial detention and arrests still resemble processes employed by countries with an inquisitorial system that allow police to detain accused persons for a period of time before arrest warrants are issued.⁸⁰

73. CPL 1979 art. 92.

74. CPL 1979 art. 92, sec. 2.

75. CPL 1979 art. 93

76. CPL 1979 art. 99.

77. Gu Angran, *Guanyu Zhonghua Renmin Gongheguo Xingshi Susongfa Xizheng'an (Cao'an) de Shuoming* [Explanation of the Draft Amendments to the Criminal Procedure Law of the PRC], (delivered at the Fourth Session of the Eighth NPC, Mar. 12, 1996), found in *ZHONGHUA RENMIN GONGHEGUO QUANGUO RENMIN DAIBIAO DAHUI CHANGWU WEIYUAN GONGBAO* [GAZETTE OF THE NATIONAL PEOPLE'S CONGRESS STANDING COMMITTEE OF THE PRC] (1996).

78. These include suspects who "do not reveal their true names or place of residence or whose identity is unclear, or are strongly suspected of wandering around committing crimes, of committing multiple crimes, or forming bands to commit multiple crimes." CPL 1996 art. 61, sec. 1, 2.

79. CPL 1996 art. 69. Many had argued under the legislative process that the time frame provided for arrest under the CPL 1979 was too short, Chen, *supra* note 3, at 205.

80. See INGRAHAM, *supra* note 17, at 37-46.

While abolishing "shelter for investigation" as an administrative practice, the 1996 CPL does not address another administrative sanction, "re-education through labor" (*laodong jiaoyang*). "Re-education through labor" applies to people who commit minor offenses that do not constitute true crimes. But punishment under this measure can last between one to four years in prison-like conditions. This administrative punishment falls outside the scope of the criminal procedure law and has been widely used against political dissidents. Individuals punished under "re-education through labor" have no right to a hearing or access to lawyers.⁸¹

Regarding post-arrest procedures, the 1996 CPL retained the original time limits of two months, plus an additional month for complicated cases (subject to procuratory approval at the next higher level), for public security organs and procuratorates to hold a criminal suspect in custody.⁸² The revised CPL adds a further extension of two months for detention under arrest, subject to the approval of the procuratorate at the provincial level, for grave and complex cases in which traffic is inconvenient, for cases that involve criminal gangs or people who commit crimes from one place to another, and for cases that involve various quarters for which it is difficult to obtain evidence.⁸³ An additional two months can be sanctioned for cases that involve punishment of more than ten years imprisonment and in which investigations still cannot be concluded.⁸⁴ The indefinite period of detention with the approval from the Supreme People's Procuratorate and the NPC is retained under Article 125. Despite imposing more limitations on police discretion, the revised CPL nonetheless extends the potential duration that a suspect can be detained, from a maximum period of three months to seven months.

New articles are included that specify with more clarity conditions under which suspects may apply for bail, including the introduction of monetary guarantees as an option in addition to the personal guarantees allowed under the 1979 CPL.⁸⁵ Other restrictions of suspects under guarantees are also clarified, such as forbidding them to engage in witness and evidence tampering or to leave a city or county without permission.⁸⁶ Because the 1979 CPL did not provide any provisions stating how long a suspect can be released on bail and did not limit police discretion on the

81. See HECHT, *supra* note 3, at 65-6.

82. CPL 1996 art. 124.

83. CPL 1996 art. 126.

84. CPL 1996 art. 127.

85. CPL 1996 art. 53.

86. CPL 1996 art. 51-56.

use of residential surveillance, the 1996 CPL formally imposes a time limit for suspects on guarantee to twelve months and for suspects under residential surveillance to six months. Under the revised CPL, the suspects in custody, their legal representatives, and their near relatives now have the right to apply for a guarantor pending trial.⁸⁷ The revised CPL also gives suspects and their representatives the right to demand cancellation of all compulsory measures that have exceeded the time limit, although the revised law does not provide any procedures for challenging the lawfulness of the detentions.⁸⁸ Lastly, the revised law places time limits of twelve hours on compulsory summons for the interrogation of suspects, and police are forbidden to detain suspects under the disguise of repeated compulsory summons.⁸⁹

Prosecutorial Discretion

As mentioned above, under the 1979 CPL, after the procuratorate or the public security organs had concluded their investigations, the procuratorate had several means at its disposal, including initiating a public prosecution, dismissal, exempting from prosecution, and remanding the case for supplementary investigations if the case was handled by the police. The revised law, while permitting even more generous time limits for arrested suspects at the discretion of the procuratory, also eliminates the prosecution's highly discretionary option of "exemption from prosecution" (*mianyu qishu*).

Exemption from prosecution implies that the suspect is guilty of the crime but is exempt from public prosecution and does not need to be tried by a court for any punishment. The problem with exemption from prosecution was that the procuratorate could render a suspect guilty without trial by a court and before the suspect had been granted legal counsel.⁹⁰ Thus, the procuratorate assumed the triple function of investigation, prosecution, and adjudication, which was contradictory to Article 5 of the 1979 CPL, in which the courts, procuratorates, and the public security organs were to divide their respective responsibilities.⁹¹ Exemption from prosecution also lacked super-

87. CPL 1996 art. 52.

88. Recourse and compensation, however, can be filed under the Administrative Litigation Law (1989) or the State Compensation Law (1994).

89. CPL 1996 art. 92.

90. Under the 1979 CPL, the suspect had the right to an attorney only after the procuratory had decided to initiate public prosecution. This subject is discussed in the next session.

91. See CHEN, *supra* note 3, at 209. Under this case, procedural justice was sacrificed for efficiency in handling criminal trials. See Gao Yifei, *Chengxu Zhengyi Zai Xingshi Susong Xiaoli Zhong de Yiyi* [Some Observations on the Significance of

vision and was prone to abuse through corrupting practices, either by allowing a guilty person to be let off the hook, or by declaring an innocent person guilty due to insufficient evidence.⁹² This unique institution is formally abolished under the revised CPL due to wide criticisms concerning its lack of due process and its arbitrary nature. The NPC Standing Committee identified this practice as being in violation of fundamental rule of law principles and of transgressing the lawful rights of the innocent persons concerned.⁹³

Under the 1979 CPL, when the procuratory requested supplementary investigations from the public security after the latter had concluded its investigations, suspects would usually still be held in custody and the public security organs had another month to complete investigations. One loophole was that there were no limits on the number of times the procuratory could request for supplementary investigations from the police. In theory, under the 1979 CPL a suspect could be held indefinitely if the procuratorate requested continuous supplementary investigations. The 1996 NPC revision limits the number of times the supplementary investigations can be conducted to two at most.⁹⁴

Role of Defense Lawyers

Under the 1979 CPL, defense lawyers were virtually powerless to protect the rights of accused, even though the 1979 CPL and the 1982 Constitution state that the accused has a right to defense.⁹⁵ Except for a very few cases, defense lawyers often had little chance to win a case against the prosecution.⁹⁶ This was due mainly to ambiguities in the 1979 CPL, the restrictions it placed on lawyers, and the lack of respect by judges and prosecutors for the defense lawyers' role in the process.⁹⁷ Courts "had difficulty in accepting alternative views on the case after they had read through the files and verified the evidence. A challenge to

Procedural Justice During Efficient Criminal Procedure], 3 XIANDAI FAXUE [MODERN LAW SCIENCE] 88 (2000).

92. See CHEN, *supra* note 3, at 209. For innocent persons who are exempt from prosecution, they retain a criminal record in their files that often leads to grave social consequences such as employment opportunities. Petitions contesting exemption from prosecution were rarely successful. See LAWYERS COMM. HUMAN RIGHTS, *supra* note 1, at 21-6.

93. See CHEN, *supra* note 3, at 210. See also Gu Angran, *supra* note 77.

94. CPL 1996 art. 140.

95. CPL 1979 arts. 8, 26; See also XIANFA [CONSTITUTION] art. 125 (1982)

96. See CHENGGONG DE WUZUI BIANHU [Successful Defense Against Convictions] 1 (Li Shunyi ed., 1997).

97. Interview with judge, 5/27/99; Interview with court official, 6/10/99; Interviews with lawyers 6/12/99, 6/14/99, 6/15/99. See also Wang Wenzheng, *Bianhu Lushi Zhende Bang le Daomang ma?* [Are Defense Lawyers Really Helpful?], 3 Zhongguo Lushi [China Lawyer] 27, 27-28 (1992).

the charge was not so much a challenge to the prosecution's case as a direct attack on the court's credibility."⁹⁸ Acting on behalf of a defendant also entailed certain risks for a lawyer, since a lawyer who was not prudent and who argued a case overzealously had a chance of ending up as a defendant in court himself.⁹⁹ Furthermore, a political defendant had little chance to obtain a lawyer due to political interference from the authorities in the lawyer's participation.¹⁰⁰

The 1979 CPL provided that once courts had decided to open a session and conduct a trial, they had to deliver to the defendant a copy of the bill of prosecution no later than seven days before trial, at which time the defendant might be allowed access to counsel by an attorney.¹⁰¹ The court was required to summon the defenders, witnesses, expert witnesses, and interpreters no later than three days before the opening of trial session.¹⁰² Under this provision, the right to counsel was restricted only to seven days before trial, hardly a sufficient period of time for any lawyer to defend a case effectively. Furthermore, the NPC Decision of 1983 abolished the seven-day notice period, as well as requirements to inform lawyers of the trial date for particularly serious crimes, including those involving the death penalty.¹⁰³ Criminal defendants under the 1979 CPL had a right to appoint a lawyer, but the state was not obliged to provide defendants with legal counsel except under limited circumstances.¹⁰⁴

The revised CPL extends the right to counsel to the investigation stage. The revision allows lawyers to provide legal advice and to file petitions and complaints on a suspect's behalf in two circumstances: when the police interrogate the suspect for the first time and on the day compulsory measures are adopted against the suspect. The lawyer has the right to find out from the investigative organs the nature of the suspected crime and may meet with the suspect in custody. In addition, a lawyer is permitted to apply on the suspect's behalf for a guarantor pending trial. However, the same article also allows investigative organs to be present when a lawyer meets with the suspect "in light of the

98. See Fu, *supra* note 4, at 34.

99. Interview with Lawyer, 6/14/99. See also Li, *supra* note 96, at 1.

100. See LAWYERS COMM. HUMAN RIGHTS, *supra* note 1, at 34-5.

101. CPL 1979 art. 110, sec. 2. However, one lawyer indicated that the time was usually less than a week. Interview with lawyer, 6/14/99.

102. CPL 1979 art. 110, sec. 4.

103. See 1983 NPC Decision, *supra* note 35. This provision was frequently applied to politically sensitive cases.

104. CPL 1979 art. 27 states that "if the defendant is deaf or mute, or he is a minor, and thus has not entrusted anyone to be his defender, the people's court shall designate a defender for him."

seriousness of the crime and where it deems necessary," and requires the lawyer to obtain approval for meeting with the suspect if the case involves state secrets.¹⁰⁵ Thus, although the lawyer's participation is expanded during arrest and detention, it is still limited somewhat by police and prosecutorial discretion. In addition, neither the police nor the prosecution are obliged to inform the suspect of his right to counsel.

A suspect is granted the right to counsel on the date the case is transferred for examination before prosecution, and the procuratorate must inform the suspect of his right to counsel within three days of receiving case materials transferred for examination.¹⁰⁶ Lawyers are permitted under the revised law to meet with the suspect in custody, and to consult, extract, and duplicate judicial documents pertaining to the case, as well as other verification materials, starting on the date that the procuratorate begins to examine a case for prosecution. Lawyers are also granted the same right when a court accepts a case for trial implementation.¹⁰⁷ These revisions greatly extend the period of time that lawyers can prepare for a case before trial, compared to the seven day advance notice under the 1979 CPL. When examining a case and interrogating a suspect, the law provides that the procuratorate should heed the opinions of the defense lawyers.¹⁰⁸ The revision permits lawyers to present material evidence to the court along with the procuratorate during trial, instead of the judicial personnel presenting the material evidence under the 1979 CPL.¹⁰⁹

The amendments also elaborate the conditions under which victims of a crime or their relatives can initiate private prosecutions or file civil claims against defendants.¹¹⁰ The 1996 CPL expands the rights of crime victims and their relatives by enabling them to hire lawyers to represent them in cases of private and public prosecution.¹¹¹ Victims are now entitled to request a protest from the procuratorate if they disagree with a decision made by the courts of the first instance.¹¹²

105. CPL 1996 art. 96.

106. CPL 1996 art. 26.

107. CPL 1996 art. 36.

108. CPL 1996 art. 139. For an official publications discussing the role of lawyers under the revised CPL, see generally LIU DAN, XINGSHI SUSONG YU LUSHI SHIWU [CRIMINAL PROCEDURE AND A LAWYER'S PRACTICE] (1998); TENG WEI, XINGSHI SUSONGFA ZHIXING ZHONG WENTI JIEDA [ANSWERS TO QUESTIONS CONCERNING THE IMPLEMENTATION OF THE CRIMINAL PROCEDURE LAW] (1998).

109. CPL 1979 art. 116; CPL 1996 art. 157.

110. Unlike public prosecutions, private prosecutions are those initiated by the victim or relatives of the victim. See also CPL 1996 art. 88, 145, 170.

111. CPL 1996 art. 40.

112. CPL 1996 art. 140L.

The revised CPL makes significant changes to the role of defense attorneys in the criminal process and greatly enhances a suspect's right to counsel. These changes are partly designed to check police and prosecution abuse during the pretrial stage and to complement a more adversarial trial procedure that allows defense lawyers to argue a case on equal footing with the prosecution, as well as to effectively argue a case based on early access to the suspect and relevant evidence. Thus, early, albeit limited involvement of defense lawyers under the revised law increases the possibility that the procedural rights of suspects can be better protected. Still, lack of a requirement that the police immediately inform a suspect of the right to counsel, along with lack of a right to remain silent,¹¹³ compromises to a certain extent any check on possible forced or coerced confessions before a lawyer meets with the suspect.¹¹⁴ Second, the inclusion of "state secrets" as a barrier to legal counsel has the potential for the procuratorate to use this vague clause as a means to limit a suspect's right to counsel. Lastly, police or procuratorate's illegal activities during detention, arrest, and investigation do not constitute grounds for the dismissal of a case.

Trial Organization and Procedure

The reform of the criminal procedure introduces a shift from a highly inquisitorial system to one resembling a more adversarial process during trial.¹¹⁵ Trial organization of the courts has remained the same. Trials of first instances are conducted in the Basic People's Courts at the district level, Intermediate People's Courts at the city level, and High Courts at the provincial level. There is a three-tier court system in every province, autonomous region, and cities at the municipal level (Shanghai, Beijing, Tianjin and Chongqing).¹¹⁶ While a single judge can try a simple case, a collegiate bench comprised of three, five, or seven judges conducts most trials; these panels may include people's assessors (lay judges) who are appointed by the People's Congresses for a period of three years and have equal status with a judge.¹¹⁷

113. Suspects are only given the right to silence for interrogations that are irrelevant to the case. CPL 1979 and CPL 1996 art. 64.

114. See HECHT, *supra* note 3, at 41-2.

115. Trial procedure under the 1996 CPL still retains elements of the inquisitorial system nonetheless.

116. There are 3,083 courts at the basic level with over 30,000 subordinate people's tribunals in towns and villages, 390 intermediate courts and 30 high courts in 1996. See RONALD C. BROWN, UNDERSTANDING CHINESE COURTS AND LEGAL PROCESS: LAW WITH CHINESE CHARACTERISTICS 36 (1997).

117. However, in reality, most people's assessors did not have much weight in deciding the verdicts of a case. See Peishen Zhidu Huhuan Gaige [*Calls for Reform of the Jury System*], 6 MINZHU YU FAZHI [DEMOCRACY AND LEGAL SYSTEM] 4, 4-6

Under the 1979 CPL, a court had to review and examine a case thoroughly after receiving it in order to determine whether it was necessary to send the case to trial, to send the case back for supplementary investigations, or to request the procuratorate to withdraw the case if the facts were not clear or if no criminal punishments were necessary.¹¹⁸ This practice of reviewing, examining, and discussing all the necessary evidence of a case with the prosecution often predisposed the judges to prejudice, resulting in the common practice of “verdict first, trial second” (*xiand-ing houshen*) and no clear differentiation between prosecution and adjudication.¹¹⁹ The courts were directed to investigate the facts of the case in order to determine if it was ready for trial under the guideline “if the facts are clear and evidence ample.” This guideline was in effect the same standard used for conviction, resulting in pretrial verdicts that rendered extremely few acquittals.¹²⁰

According to the 1996 revision, judges no longer preview a case at a comprehensive level and no longer conduct pretrial investigations; instead, they only need to review a bill of prosecution that contains alleged crime facts, names of witnesses, a list of evidence, and photocopies of principal evidence.¹²¹ In addition, courts can no longer dismiss a case or remand a case back to the procuratorate for supplementary investigations.¹²² The issue of whether there is sufficient evidence to convict will be hammered out in the courts, making the prosecution and defense bear the burden of proof. The 1996 revision now requires that the prosecution and the defense present evidence to court, and question and contest the purported offense, witnesses, and evidence. Although the collegiate panel still reserves the right to question witnesses and the defendants during trial, the panel is to take a less

(1999). See also Xiong Qihong, *Sifa Gongzheng yu Gongmin de Canyu* [Citizen Participation and Justice], 4 FAXUE YANJIU [CASS JOURNAL OF LAW] 49, 49-66 (1999); Wang Minyuan, *Zhongguo Peishen Zhidu Jiqi Wanshan* [Jury System of China and its Completion], 4 FAXUE YANJIU [CASS JOURNAL OF LAW] 25, 25-48 (1999).

118. CPL 1996 art. 108.

119. See Long Zongzhi, *Xingshi Susong Tingqian Shencha Chengxu Yanjiu* [On the Preliminary Examination Procedure in Criminal Trial], 3 FAXUE YANJIU [CASS JOURNAL OF LAW] 58, 58-69 (1999). Thus, the new law was designed also to prevent other ingrained habits such as “shenzhe bupan, panzhe bushen” (those that try do not give verdicts and those that give verdicts do not try) and “shangding xiashen” (the top decides while the lower courts try a case). See ZHONGGUO XINGSHI ZHENGCE HE CELUE WENTI [QUESTIONS CONCERNING CHINA’S CRIMINAL POLICY AND STRATEGY] 51 (Xiao Yang ed., 1996).

120. See HECHT, *supra* note 3, at 51.

121. CPL 1996 art. 150.

122. CPL 1979 art. 123, sec. 3 is deleted. Dismissal of a case means that the courts can request withdrawal of prosecution from the procuratorate.

active role in the proceedings, and to concern itself with maintaining court order and court debates.¹²³

The lack of judicial independence has meant that the collegiate panels frequently asked for instructions from higher-level courts, essentially the same courts that would handle appeals.¹²⁴ Furthermore, most cases required the approval of an adjudicative committee (also referred to as the judicial committee), a body internal to courts at all levels, comprised of the court president and selected court leaders. The adjudicative committee had the final say on most cases and frequently made verdict decisions before trial, even though the committee did not try the cases.¹²⁵ The 1996 revision significantly provides a higher degree of independence for individual judges and the collegiate panel to try cases by requiring them to render a judgment after the hearings, except for difficult, complex or major cases in which the collegiate panel finds it difficult to make a decision.¹²⁶ Therefore, major and complex cases will no longer be transferred automatically to the adjudicative committee for deliberation before trial, and the collegiate panel itself and not the president of the court is to initiate the referral only after a trial has been conducted by the panel.¹²⁷

Article 174 provides detailed summary procedures for minor cases in which a single judge will try the case. This provision allows the courts to free up resources for the potentially more time-consuming and expensive adversarial trial proceedings.¹²⁸ Before the 1996 CPL, procurators could send the prosecution materials to the judges and not attend trial, and judges would try the case according to those materials and their own investigations. The revision requires the procuratorate to send a procurator or a team to support the prosecution, to question the

123. CPL 1996 art. 155-61.

124. Even though the CPL 1979 forbids courts of second instances from interfering with first-trial courts, interference was common due to the higher courts' regarding themselves as supervisory organs over lower courts. See Liu and Situ, *supra* note 4, at 5. For a discussion of judicial restraint exercised by the Chinese courts due to their constitutional weakness, see Anthony Dicks, *Compartmentalized Law and Judicial Restraint: An Inductive View of Some Jurisdictional Barriers to Reform*, 141 CHINA Q. 82, 94-95 (1995).

125. These practices are unintended consequences of a court president's power to veto any decision made by the collegiate panel. See CPL 1979 art. 107. Nonetheless, under the revised CPL, the court president still has significant influence over which judges (including the president herself) preside and can alter the decisions made by the collegiate panel through adjudicative supervision. Thus, while the revised law delivers a certain degree of independence for the collegiate panels, the choice of judges is still subjected to manipulation and interference.

126. CPL 1996 art. 149.

127. See CHEN, *supra* note 3, at 215.

128. See *id.* at 215.

witnesses, and to contest the defense's position.¹²⁹ Lastly, the court is to provide ten days advance notice of trial to the defense instead of the seven days before trial under the 1979 CPL.¹³⁰

The reform of trial procedure under the 1996 revision sets the stage for a more adversarial-type proceeding in China. The revisions are designed to enhance the neutrality and independence of the collegiate panel, and to promote more debates between the defense and the prosecution, with judges rendering verdicts based on arguments and evidence prepared by both parties. The revision enhances the rights of the accused by increasing the possibility that impartial judges will listen to both the defense and prosecution's arguments before deciding on a verdict.

Other Revisions: Appeal Process

If defendants are unsatisfied with the verdict or sentence, they may lodge an appeal either orally or in writing.¹³¹ Appellate courts can likewise hear a case protested by the victim's party or a case protested by the procuratorate.¹³² The old criminal procedure code did not provide any legal provisions whereby the defense could argue the case before an appeal court. In practice, many appellate decisions were based entirely on written case documents and did not require a hearing.¹³³ Notwithstanding the 1996 revision that confirms the general rule that appeals should be tried in open courts rather than through written documents, it also requires the court to examine the case file, interrogate the defendant, and heed the opinions of the defendant and the defense lawyers. If the facts of a case are clear, the court does not need to open a session. A full court session is required only for cases that are protested by the procuratorate.¹³⁴ The 1996 revision does not significantly alter the appeal trial process, and courts are still not required to open a session for all appeal cases.

Another form of appeal is through adjudicative supervision (*shenpan jian du*) if the time limit for appeal has expired or if the right to appeal has been exhausted.¹³⁵ A court at the next higher

129. Exceptions are cases tried through summary procedure. See Article 153, 1996 CPL.

130. CPL 1996 art. 151, sec. 2.

131. See CHEN, *supra* note 63, at 160. See CPL 1979 art. 129; CPL 1996 art. 180.

132. CPL 1979 art. 129-30.

133. See CHEN, *SUPRA* note 63, at 227.

134. CPL 1996 art. 187.

135. See CHEN, *SUPRA* note 63, at 160; CPL 1979 art. 148. See also M.W.K. Woo, *Adjudication Supervision and Judicial Independence in the P.R.C.*, 29 AM. J. COMP. L. 95, 95-119 (1991).

level, a procuratorate at the next higher level, the court president, the Supreme People's Court, and the Supreme People's Procuratorate can also demand cases be subjected to adjudicative supervision if they believe that there are definite errors in a legally effective judgment.¹³⁶ The revised CPL defines the time limit for which cases under adjudicative supervision shall be concluded.¹³⁷ The 1996 revision clarifies that all appeal cases remanded to the courts that originally tried them are to be retried with a new collegiate panel. Article 139 of the 1979 CPL states that courts that originally tried a case shall conduct a retrial, without clarification as to whether the same collegiate panel can retry the case. Therefore it is possible that the same judges who tried the case in the first instance would render the same judgment or even impose heavier sentences.¹³⁸

The 1996 amendment has made significant improvements over the 1979 CPL in terms of eliminating the presumption of guilt, limiting police and prosecutorial discretion, providing a defendant with greater access to an attorney, and improving the impartiality and independence of the collegiate panel. However, the revised CPL also has several setbacks, such as granting even more generous time limits to the police and prosecution during the detention and arrest phase. Despite providing greater access to defense attorneys, the police still reserve the right to be present when lawyers meet with their clients in custody, and permission to meet with suspects is still subjected to discretionary stipulations. The 1996 CPL does not recognize the right of a suspect to remain silent, or the right not to testify against oneself.¹³⁹ Nonetheless, the introduction of an adversarial trial procedure has the potential to render more accurate and impartial judgments by limiting the judges' role during the investigation stage, and by opening the door for lawyers to participate actively during the whole process.

V. THE OPERATION OF THE CRIMINAL JUSTICE SYSTEM UNDER THE REVISED CPL

This section probes the actual implementation of the 1996 revision and examines whether the behaviors of judges,

136. CPL 1979 art. 149.

137. CPL 1996 art. 207.

138. CPL 1996 art. 192.

139. This is primarily due to the fact that investigation stages under the CPL 1996 still represent process used by inquisitorial systems. Only now judges are excluded from investigations. However, a new regulation is currently underway that gives suspects the right to remain silent during arrest. See Peter Harmsen, *Chinese Law Experiment Gives Suspect Rights to Remain Silent*, AGENCE FRANCE PRESS, Nov. 23, 2000.

procuratorates, and lawyers are in accordance with the revised law. The purpose is to see how the actors involved have responded to a more adversarial system and to examine why these changes, if any, have occurred. This section draws several implications from protection of the rights of the accused in relation to court rulings, procurators' decisions, and lawyers' participation in criminal defense.

Court Rulings and Acquittal Rates

How would a change from an inquisitorial to a more adversarial trial procedure in China's criminal courts affect acquittal rates? Table 2 shows that since the revised CPL took effect on January 1997, acquittal rates rose from 0.66% in 1997 to 1.03% in 1998, and dropped slightly to 0.97% in 1999. Although these percentages of acquittal rates do not represent any extraordinary changes, these rates are unprecedented in Chinese court rulings.¹⁴⁰ Before the revision, the chances of being acquitted in Chinese courts were about 0.39%.¹⁴¹ The issue is not whether in fact more guilty or innocent defendants are acquitted, since it is difficult to find out with complete certainty the specifics of every crime. Rather, this analysis focuses on whether the higher standards required for conviction under an adversarial trial process applies in Chinese courts under the 1996 revision.¹⁴²

The acquittal rates in Table 2 suggest that judges are not as "trigger happy" in convicting defendants, even though they still convict a majority of the defendants. Despite a new *yanda* campaign launched in April 1996 that partly accounts for the lower acquittal rate of 0.34% for that year, an almost 100% rise in acquittal rates in 1997 suggests that courts are increasingly deciding cases according to provisions under the CPL revision rather than deciding cases through the influence of national campaigns against crime.¹⁴³ Even the persistent calls for *yanda* by the Party

140. A defendant might still be deemed guilty but not liable for criminal punishment under "exempt from punishment" (*mianyu xingshi chufen*).

141. Although there are no official data that shows the number of those pleading not guilty and acquittals based on that figure, a rough sample of the selected cases compiled in the *Law Yearbook of China* during the years 1997 and 1998 indicates that 7 out of 29 defendants (around 25 percent) pleaded not guilty to criminal charges. This is only a rough sample that may not represent actual figures since the selected cases are chosen from major criminal cases. See ZHONGGUO FALÜ NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1998, 1999).

142. This condition is based on three assumptions. First, the prosecution must bear the burden of proof. Second, judges serve as neutral adjudicators rather than conduct extensive pretrial investigations. Third, defense lawyers take an active role in the criminal process and represent another party presenting contending evidence and arguments. See discussion *supra* Section II.

143. According to *Newsweek*, under *yanda* campaigns, police usually are given a quota for how many suspects will be caught for various crimes. Prosecutors often

TABLE 2: ACQUITTAL RATES: CRIMINAL TRIALS IN THE FIRST INSTANCE

Year	Number of Suspects Tried	Exempt from Criminal Punishment ⁱ	Exempt Rates	Suspects Acquitted	Acquittal Rates
1999	608,259	9,034	1.49%	5,878	0.97%
1998	533,793	9,414	1.76%	5,494	1.03%
1997	529,779	8,790	1.66%	3,476	0.66%
1996	667,837	9,207	1.38%	2,281	0.34%
1995	545,162	7,911	1.45%	1,886	0.35%
1994	547,435	7,680	1.40%	2,153	0.39%
1993	451,920	6,371	1.41%	2,000	0.44%
1992	495,364	8,040	1.62%	2,547	0.51%
1991	509,221	7,587	1.49%	1,983	0.39%
1990	582,184	7,250	1.25%	1,912	0.33%
1989	482,658	n.a.	n.a.	n.a.	n.a.
1988	368,790	5,325	1.44%	2,039	0.55%

i. Defendants found guilty but are exempt from criminal punishment.

Sources: ZHONGGUO FALU NIANJIAN, (LAW Y.B. OF CHINA) Beijing, China, 1989-2000).

during the year 1998 did not decrease acquittal rates.¹⁴⁴ Rather, acquittal rates rose to 1.03%, the highest rates recorded thus far. Still, the courts are not completely free from political interference. There is a high possibility that a slight drop in acquittal rates in 1999 is the result of higher conviction rates faced by Falun Gong members during the regime's crackdown of that organization during that year.¹⁴⁵ However, top judicial officials have already expressed concern that rampant police brutality and abuse under the "strike-hard" campaigns have severely infringed upon the lawful rights of citizens.¹⁴⁶ In recent years, top court officials have increasingly focused on improving trial quality and

trump up charges; police brutalize suspects in order to extract confessions. The latest "strike-hard" campaign was launched in early 1996 and has been an ongoing annual campaign. See George Wehrfritz & Michael Laris, *Rulers are the Law*, NEWSWEEK (Atlantic Edition), Sept. 29, 1997, at 47. See also *China's Politics of Crime*, ECONOMIST, Aug. 10, 1996, at 25.

144. See 'Strike-hard' Campaign to be Maintained, XINHUA NEWS AGENCY, Dec. 21, 1998.

145. The wide crackdown has also probably caused the high number of people arrested and prosecuted for that year. See *China Has Detained over 35,000 Falun Gong Followers*, AGENCE FRANCE PRESSE, Nov. 29, 1999.

146. In 1998, then Supreme People's Court president Ren Jianxin stated that police misconduct represents a "grave" problem and said some law-enforcement officials "have taken advantage of legal loop-holes, intentionally misinterpreted the law, distorted evidence and broken the law they enforce." Wehrfritz, *supra* note 143, at 49.

adhering to due process under the revised CPL rather than on convicting defendants.¹⁴⁷

According to interviews with several judges, the revision of the CPL considerably alters their role in adjudication. In fact, they are actually quite content with their revised roles under the new system since they are relieved from conducting arduous and extensive pretrial investigations. Because judges now only receive a "draft copy" of the nature of the crime and a list of evidence and witness, the full facts of a case can only be ascertained during trial through evidence prepared by the defense, prosecution or through their own questioning. Consequently, verdicts can no longer be conceded before trial either by the collegiate panels or the adjudicative committees.¹⁴⁸ But a problem with the new trial procedure is that sometimes lawyers are excessively passive during trial, and judges have to resort to the old method of a highly inquisitorial process, interrogating suspects extensively during trial in order to have a clearer picture of the facts and evidence.¹⁴⁹ Although judges on collegiate panels under the amended CPL are granted more independence in trying cases and are subjected to less interference from other court officials, as well as higher courts, they are also held more accountable for their judgments in many ways.¹⁵⁰

Courts in China are now more open to the public and are subjected to closer scrutiny by the press.¹⁵¹ Judges in China who try a case must, within a specified time period, deliver a more detailed case report (*panjueshu*) of the trial process to their superiors.¹⁵² The report has to indicate the nature of the crime,

147. See Supreme People's Court President Ren Jianxin's speech at the National Work Conference on the Reform of Judicial Procedures, held in Beijing, July 15, 1996; *Supreme Court President Ren Jianxin on Reform of Judicial Procedures*, XINHUA NEWS AGENCY, July 31, 1996. In the report the judge emphasized that several reform measures were necessary in order to comply with the amended CPL and stated that "the main content of our task is to strengthen the function of court trials, lay stress on the responsibility of prosecutors, defenders and litigants in the process of proving the defendant's guilt, and augment the duty of collegiate benches and independent judges." *Id.* Since the report was delivered during July 1996, the implementation of the reforms would have occurred when the CPL was enacted on January 1997.

148. Interviews with judges, 5/27/99; 6/12/99; 6/15/99; 6/16/99.

149. Interview with judge, 6/12/99.

150. Interview with court official, 6/10/99.

151. According to the President of the People's Supreme Court Xiao Yang, press scrutiny, public trials and internal court reforms are needed to cope with the poor trial efficiency and belated trials that have caused grave concern and resentment in the society. See *Push Forward People's Court Reform in Five Aspects in Direction of Judicial Justice: Interviewing Supreme People's Court President Xiao Yang*, LIAOWANG, December 21, 1998.

152. Whereas case reports did not have to be meticulously written before, courts now require judges to include the reasons for their verdicts based on the evidence

the witnesses and all available evidence presented during trial, and arguments made by both the prosecution and defense. Judges are then required to provide explanations and justifications for the verdict and the sentence.¹⁵³ These reform measures fall outside the scope of the revised CPL, but it is through these court reforms that judges are able to adapt to the changes in the revised code and convict a defendant according to the most convincing evidence and arguments presented by either the prosecution or defense.

Nevertheless, there are still some problems unresolved under the revised CPL that can affect the neutrality of judges. It is possible that these problems still account for the relatively low acquittal rates compared with other countries with adversarial trial procedures. Even though the reform of the CPL now only requires judges to review the nature of the crime, names of witnesses, a list of evidence, and photocopies of principal evidence in order to curb the practice of rendering verdicts before trials, there is the potential problem that this condition cannot be met under the shortage of economic resources faced by many courts.¹⁵⁴ For some courts in China, the practice of copying relevant evidence for every case represents a significant financial drain on the already scarce resources available.¹⁵⁵ One Chinese legal scholar who also practices law expressed concern that since "principle evidence" is not defined with precision, the procurators can still submit a copy of the complete document of evidence to the judges, essentially reverting to old practices.¹⁵⁶ Since courts can no longer request the withdrawal of a case from prosecution or remand a case back to the procurators under the 1996 CPL, courts have no power to check whether the prosecution is acting in accordance with standard procedures for delivering the proper evidence.¹⁵⁷

presented. Interview with judge, 6/12/99. This has the potential for the government to reward the most intelligent and hardest working judges who present concise reports or who publish the most opinions. See Mark Ramseyer & Eric Rasmusen, *Judicial Independence in Civil Law Regimes: Econometrics from Japan*, in UNIVERSITY OF CHICAGO LAW SCHOOL WORKING PAPER NUMBER 37, at 28 (2nd Series, 1996).

153. Interview with judge 5/27/99; Interview with scholar 6/3/99. See also Yunnan Gaoji Rrenmin Fayuan Xingshi Panjueshu [*The Trial Report of High Court of Yunnan*] in Laizi Chu Shijian Anjian de 'Neibu' Baogao [*An Insider's Report of the Chu Shijian's Case*], 3 ZHONGGUO LUSHI [CHINA LAWYER] 18, 18-20 (1999).

154. CPL 1996 art. 150.

155. See Long, *supra* note 119, at 61.

156. Interview with scholar/lawyer, 6/15/99. Moreover, under Article 158 of the 1996 CPL, the collegiate panel can still carry out investigations in order to verify evidence.

157. Judging from the low rates of prosecution before 1997, the courts seldom requested that the procurators withdraw a case from prosecution. See tbl. 5, in Sub-

Another possible reason why acquittal rates have not risen dramatically since the introduction of the 1996 revision is that for some judges who lack adequate training, old habits are hard to overcome. For instance, many judges are still accustomed to the idea that defendants who are brought to trial are presumed guilty. And even if the defense unequivocally proves a defendant's innocence, some judges will still convict the defendant, but then impose a much lighter sentence, such as exemption from criminal punishment, fines, or suspended prison sentences.¹⁵⁸ Thus, the implementation of the 1996 CPL only imposes a structural constraint on the behavior of judges, but changes at a comprehensive level also depend heavily on the training and professionalism of judges.

A preliminary examination of appellate court rulings in Table 3 seems to indicate that there are no significant changes in the percentage of cases altered. However, the revised CPL does not mandate that all cases should be tried in open court sessions, and judges can still examine written documents thoroughly and interrogate defendants before conducting trial.¹⁵⁹ There is no available data on the number of defendants acquitted by appellate courts, but altered judgments mean either that defendants appealing a case have received favorable judgments in terms of acquittals or reduced sentences, or the prosecution protesting a case have received judgments to the detriment of the defendant.

Of the 70,767 cases settled by appellate courts during the year 1998, the procuratorate protested 2,935 of the cases for unjust verdicts or sentences. The procuratorate usually files a protest either on behalf of the victim or if the procuratorate feels that the defendant deserves either a heavier sentence or a guilty verdict.¹⁶⁰ Yet, only 472 cases, 16.1% of the total, were al-

section *Procuratorate Behavior*. But, the Chinese government has not eliminated the future possibility of having the procuratory's responsibility for approval of arrest shifted to the courts. See Long Zongzhi & Zuo Weimin, *Jiazhi Lixing yu Gongju Lixing: Xingshi Susong Yunzuo Xin Jizhi Pingxi* [Value Reasoning and Instrumental Reasoning: A New Structural Analysis of the Criminal Procedure Law], in XINGSHI FA PINGLUN [FORUM OF CRIMINAL LAW] 350, 367 (1997).

158. Interview with judge, 5/27/99.

159. CPL 1996 art. 187. See also Li Xuekuan, *Xingshi Ershen Shenli Fangshi Cunzai de Wenti yu Duice* [Problems and Solutions Regarding Trial Procedures Governing Criminal Trial of Second Instance], 1 ZHONGGUO FAXUE [CHINESE LEGAL SCIENCE] 28, 29-31 (1999).

160. CPL 1979 art. 180, 182. Although the CPL does not specifically state that a procurator can protest a case for lighter sentences or acquittals, one would expect defendants to file the appeal themselves if they are not satisfied with the rulings of the courts of first instances. In only a few cases does the procuratory protest a case because a court has delivered a heavier sentence than deserved. Interview with procurator, 6/2/99.

TABLE 3: CRIMINAL CASES HANDLED BY COURTS OF SECOND INSTANCE

Year	Cases Settled	As a Percent of Cases Tried in Courts of First Instance	Affirmation of Original Judgment	Original Judgment Altered	Percent of Cases Altered	Retrial	Percent of Cases Retried	Withdraw	Others
1999	78,803	14.6%	56,086	11,734	14.9%	6,026	7.6%	3,280	1,677
1998	70,767	14.7%	49,603	11,369	16.1%	5,603	7.9%	2,658	1,534
1997	64,548	14.7%	44,216	11,957	18.5%	4,716	7.3%	2,427	1,232
1996	67,087	10.9%	48,948	9,917	14.8%	4,614	6.9%	2,521	1,087
1995	53,942	10.9%	38,786	7,989	14.8%	4,140	7.7%	2,127	900
1994	52,579	10.9%	37,819	7,852	14.9%	3,810	7.3%	2,275	823
1993	47,602	11.8%	33,996	7,382	15.5%	3,520	7.4%	2,066	638
1992	55,579	13.1%	39,402	9,424	16.9%	3,897	7.0%	2,277	579
1991	55,817	13.1%	40,312	8,728	15.6%	3,869	6.9%	2,260	648
1990	57,048	12.5%	41,681	8,579	15.0%	3,730	6.5%	2,508	550

Sources: ZHONGGUO FALU NIANJIAN LAW YEARBOOK OF CHINA (Beijing, China 1991-2000).

tered.¹⁶¹ Therefore, the chances of the prosecution winning a case in appellate courts are roughly the same as defendants. By contrast, in all cases appealed before 1997, the procuratory usually won on average about 29% of the time, suggesting that judges are not necessarily rendering judgments in favor of the prosecution under the revised law.¹⁶²

Scholars have noted that the growing reluctance of defendants over the years to appeal represents a situation in which not many appeals have been successful, and that a higher court has usually reviewed and approved the sentence before a trial of the first instance has commenced. Another predicament that defendants have faced is that courts could remand a case back to the original court that tried the case.¹⁶³ Article 137 of the 1979 CPL states that defendants in appellate cases must not receive sentences higher than the original judgment except for cases protested by the procuratorate. However, there was a loophole in which there were no provisions requiring cases remanded to follow the same principle. Therefore, defendants could receive a higher sentence if the case were retried.

During 1986, 16.6% of cases handled by courts of first instance were appealed.¹⁶⁴ The percentage has steadily declined to around 11% during the mid 1990s. Following the implementation of the revised CPL in 1997, there has been a slight rise in the percentage of cases appealed, suggesting that more defendants have confidence in the appeal process since the enactment of the revised CPL. Yet there is also a slight increase in the percentage of cases retried. A possible explanation for the higher appeal rates and the higher percentage of cases retried is that the revised law stipulates that cases sent for retrial have to be tried by a new collegiate panel in the courts that originally tried the case. Furthermore, the revised law also provides another chance to appeal

161. See ZHONGGUO FALÜ NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1999).

162. The rate at which the prosecution wins an appeal has steadily dropped over the years. In 1992, the prosecution won 32.9% of all appeal cases. In 1996, the prosecution won only 25%. These figures also include a small percentage of civil, economic and administrative cases protested by the procuratorate. For example in 1992, these cases represented only about 4% of the total protested cases. Therefore the percentage of total cases altered provides us with only a slight error in the actual percentages of total criminal cases altered as a result of procuratory protest. See ZHONGGUO FALÜ NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1992, 1996).

163. See HECHT, *supra* note 3, at 70-1.

164. See ZHONGGUO FALÜ NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1987). Since protests by the procuratorate usually represent a small proportion of total appellate cases, the percentage provides a reliable estimate of the appeal cases lodged by defendants.

if the defendant is not satisfied with the judgment of the retried case.¹⁶⁵

Table 4 documents the number of cases filed through adjudicative supervision. As mentioned above, cases of adjudicative supervision are mostly filed from higher courts and procuratorates, or court presidents under the auspices that there are some definite errors in a legally effective judgment. These cases also represent a portion of written petitions from the defense, victims, or other citizens filed through these higher judicial organs. Accordingly, there have not been significant changes in the percentage of cases altered, but there has been a consistent decline in the number of cases filed for adjudicative supervision over the years. This trend suggests two possibilities reflecting court activities. First, fewer people affected by court verdicts are filing petitions for what they perceive as incorrect rulings. Second, the decisions made by lower courts are increasingly subjected to less interference from higher courts, procuratorates, and court presidents.

The analysis of court rulings in China before and after the enactment of the revised CPL indicates that the revision of the CPL has somewhat altered the role of judges in criminal adjudication. Perhaps more importantly, many judges perceive themselves to be more neutral in deciding cases and are less prone to interference by higher courts and court officials under the revised law. The changing role of judges is also a product of the extensive court reforms prepared by the Supreme People's Court to facilitate the changes in criminal procedure. Notwithstanding the lack of judicial independence in politically sensitive cases and the lack of professional training of many judges, evidence suggests that an increasing number of judges are becoming more immune from political campaigns against crime as their attention is gradually shifting away from the emphasis on convicting defendants indiscriminately to their duty to ensure that convictions should be based on evidence prepared by the defense and the prosecution.¹⁶⁶

165. CPL 1996 art. 192.

166. This duty might still not hold for enemies targeted by the Party since the Party still retains ultimate control over the police, procuratory and the courts. For a general discussion of the lack of professional training of judges, especially at the grass root levels, see Su Li, *Jiceng Faguan Sifa Zhishi de Kaishi* [On the Knowledge and Techniques Adopted by Judges at Local Levels], 3 XIANDAI FAXUE [MODERN LAW SCIENCE] 9 (2000).

TABLE 4: CHALLENGES AGAINST CRIMINAL JUDGMENTS THROUGH
ADJUDICATIVE SUPERVISION

Year	Cases Settled	Affirmation of Original Judgment	Original Judgment Altered	Percentage of Cases Altered	Cases Withdrawn	Others
1999	11,843	7,088	2,562	21.6%	34	2,159
1998	14,196	8,157	3,138	22.1%	30	2,871
1997	18,613	10,186	5,336	28.7%	417	2,674
1996	19,437	10,685	5,429	27.9%	470	2,853
1995	22,063	13,463	4,927	22.3%	538	3,135
1994	25,283	15,344	5,803	22.9%	628	3,508
1993	31,472	18,960	8,155	25.9%	830	3,527
1992	41,041	25,979	10,201	24.9%	875	3,986
1991	47,474	30,453	11,194	23.6%	1,188	4,639
1990	57,394	36,634	13,099	22.8%	1,554	6,107

Sources: ZHONGGUO FALU NIANJIAN [Law Y.B. of China] CHINA LAW YEARBOOK PUBLISHING HOUSE, (Beijing, China 1991-2000).

Procuratorate Behavior

The procuratorate's primary responsibilities are to approve arrests, conduct investigations and initiate public prosecutions.¹⁶⁷ The 1996 revision further adds a general principle stating that the procuratorate has to ensure that all criminal proceedings are properly conducted according to law.¹⁶⁸ This section analyzes the revised CPL's effect on prosecution rates, and the procuratorate's role in checking police discretion. It also examines whether the law has any effect on the prosecution's screening out more "probably innocent" suspects before initiating public prosecution.

It is possible that higher acquittal rates between the years 1997 and 1999 are the result of the procuratorate screening out less "probably innocent" suspects during the investigation stage of the criminal process, leaving more of those suspects to be screened out during trial. This reasoning is plausible because under the revised CPL, courts can no longer request the withdrawal of prosecution for a case brought forward by the procuratorate, and can no longer send a case back for supplementary investigations if the evidence is unclear or inadequate. However, Table 5 shows that the rate of arrest has declined slightly since 1996, and prosecution rates have actually decreased between 1997 and 1999. Thus, the prosecution is screening out more rather than less potentially innocent suspects before initiating a public prosecution, even accounting for the condition that there are no longer any court-requested withdrawals.¹⁶⁹ According to one procurator, under the revision, the prosecution now has to prepare sufficient evidence in order to win a case, since judges no longer consult with the prosecution or conduct investigations. Increasingly open trials also have had an effect on the prosecution's preparation of a case before trial.¹⁷⁰

167. CPL 1979 and CPL 1996 art. 3.

168. CPL 1996 art. 8.

169. It is also noteworthy that a very high percentage of suspects are prosecuted. Following most inquisitorial systems, the prosecution rates should be much lower. There is nevertheless, the possibility that the potentially innocent suspects are screened out during detention by the police before cases are brought before the procuratorates.

170. Interview with procurator, 6/2/99. Open trials under court reforms have been implemented at many courts throughout the country and have shown positive effects. For example, after the Liaoning People's High Court implemented open trial procedures and other reforms in 1998, it has received 70% fewer letters of complaint about trial processes. See Li Aiqin, *Jilin Fayuan Zhixing Fangshi Gaige Chujian Chengxiao* [Preliminary Success of Jilin's Court Reforms], 18 MINZHU YU FAZHI [DEMOCRACY AND LEGAL SYSTEM] 4, 5 (1999). For a general discussion of open trial, see Huang Shuangquan, *Lun Gongkai Shenpan Zhidu de Wanshan* [On the Perfection of Public Trial System], 1 ZHONGGUO FAXUE [CHINESE LEGAL SCIENCE] 25, 25-27 (1999).

TABLE 5: CRIMINAL SUSPECTS HANDLED BY THE PROCURATORY

Year	Suspects Recommended for Arrest by Police	Suspects Issued Warrants	Arrest Rate ⁱ	Initiate Prosecution ⁱⁱ	Non-Prosecution	Non-Prosecution Rate ⁱⁱⁱ	Exempt from Prosecution
1999	783,723	663,518	84.6%	672,367	16,172	2.4%	—
1998	689,025	582,120	84.5%	584,673	11,225	1.9%	—
1997	597,021	512,978	85.9%	525,319	15,693	2.9%	—
1996	780,086	673,733	86.4%	751,749	n.a.	n.a.	89,370
1995	670,886	576,033	85.9%	596,624	6,514	1.1%	62,364
1994	688,771	598,633	86.9%	610,495	7,187	1.2%	67,661
1993	607,945	532,394	87.6%	505,714	2,526	0.5%	66,740
1992	560,820	487,888	87.0%	520,430	3,892	0.8%	80,903
1991	601,117	521,610	86.7%	550,455	3,180	0.6%	74,689
1990	692,000	605,000	87.4%	636,626	4,400	0.7%	96,746
1989	632,323	548,960	86.7%	546,953	2,936	0.5%	57,590

i. The rates should vary slightly because the procuratory will generally handle leftover cases from the previous year and be unable to process all the cases in one given year.

ii. These include suspects investigated by the procuratory without involvement by the police.

iii. Non-Prosecution Rate = Non Prosecution / (Non Prosecution + Initiate Prosecution).

Sources: ZHONGGUO FALU NIANJIAN, [LAW Y.B. OF CHINA] (Beijing, China 1990-2000).

Under the revised CPL, the procuratorate can no longer exempt a suspect from prosecution. One possibility is that a slight rise in non-prosecution rates between the years 1997 and 1999 is the product of this abolition of the exempt from prosecution category. The elimination of this practice has the positive effect of not rendering a possibly innocent suspect guilty. Before the revision, a substantial number of suspects were exempt from being prosecuted. For example, in 1995, around 9% of the suspects handled by the procuratorates were exempt from prosecution. If one looks at the sentences passed by courts of the first instances in Table 6, there is a slight rise in the percentage of defendants who were exempt from criminal punishment during the years 1997 and 1998. A more significant percentage of defendants between the years 1997 and 1999 have received the lighter sentences of a suspended sentence, fine, probation, or other sentences without imprisonment. Arguably, many suspects that would have been exempted from prosecution under the 1979 CPL are now handled by courts rather than by the prosecution.

The 1996 revision abolishes the infamous practice of "shelter for investigation" as an administrative practice and places certain provisions of the regulation under the CPL framework. The revision therefore provides more room for the procuratorate to check police discretion.¹⁷¹ Table 7 shows the number of cases investigated by the procuratory concerning illegal detention that exceeds the maximum period of time allowed by law. For the year 1997, cases investigated rose by 47.7% over the previous year. Figures during the year 1998 show a remarkable increase from 1997, rising at an astonishing rate of 888%.¹⁷² To act in accordance with the revised CPL, the Supreme People's Procuratorate has introduced several reform measures designed to probe cases of power abuse by judicial organs during 1997.¹⁷³

171. See Jiang Yanwen & Teng Xiaohui, *Chaoqi Jiya de Yuanyin ji Zhili Duice* [Reasons for Extended Detention and Policies for Regulation], 2 FAXUE ZAZHI [LAW SCIENCE MAGAZINE] 51, 51 (2000). See also Chen Weidong & Hao Yinzong, *Zhen, Jian Yitihua Moshi Yanjiu* [A Study on the Model of Integration of Investigation and Procuratorial Work], 1 FAXUE YANJUE [CASS JOURNAL OF LAW] 58, 58-64 (1999); Interview with lawyer, 6/14/99. Under the Article of the Police Law of 1995, the police should accept supervision by the procuratorates. However, the Public Procurators Law does not specify this point at all. Both laws are adopted at the Twelfth Meeting of the Standing Committee of the Eighth NPC on February 28, 1995.

172. There are no consistent data on the number of cases that were altered as a result of the investigations. However, 1997 data reveals that of the 7,186 cases investigated by the procuratorate, 559 cases (7.8%) were altered. See ZHONGGUO FALU NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1998).

173. Zhang Siqing, Supreme People's Procuratorate NPC Work Report, delivered on March 10, 1997. See *China's Legal Chief Says Corruption in Judiciary Has Caused Severe Damage*, BBC MONITORING ASIA PACIFIC, Mar. 14, 1998.

TABLE 6: SENTENCES PASSED BY COURTS OF FIRST INSTANCE

Year	Five Years Imprisonment to Death the Penalty	Percent of Total Suspects Handled by Courts	Imprisonment of Five Years or Less	Percent of Total Suspects Handled by Courts	Suspended Sentences, Fines, Probation and Others	Percent of Total Suspects Handled by Courts	Exempt From Punishment	Percent of Total Suspects Handled by Courts
1999	157,462	25.9%	292,130	48.0%	143,755	23.6%	9,034	1.5%
1998	149,142	27.9%	249,139	46.7%	120,604	22.6%	9,414	1.8%
1997	209,309	39.5%	215,750	40.7%	92,454	17.5%	8,790	1.7%
1996	n.a.	n.a.	n.a.	n.a.	97,919	14.7%	9,207	1.4%
1995	219,922	40.4%	231,202	42.4%	84,241	15.4%	7,911	1.5%
1994	208,267	38.0%	244,156	44.6%	85,179	15.6%	7,680	1.4%
1993	173,897	38.5%	197,115	43.6%	72,537	16.0%	6,371	1.4%
1992	171,424	34.6%	243,684	49.2%	69,669	14.1%	8,040	1.6%
1991	184,334	36.2%	n.a.	n.a.	n.a.	n.a.	7,587	1.5%

Sources: ZHONGGUO FALÜ NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1992-2000).

Procuratorates now have clear authority over crimes such as corruption and dereliction of duty by officials, and over civil rights violations, such as detaining a suspect longer than the period allowed by the law. Rapid response to these reforms is likely a result of the chief procurator's office being under increased scrutiny by the NPC.¹⁷⁴

TABLE 7: CASES INVESTIGATED BY THE
PROCURATORY CONCERNING ILLEGAL DETENTION

Year	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990
Cases	74,051 ⁱ	70,992	7,186	4,864	4,627	4,441	4,363	n.a.	4,338	3,509

i. Number of cases already corrected by the Procuratory.

Sources: ZHONGGUO FALU NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1991-2000).

Defense Lawyers Under the Revised CPL

The 1996 revision not only grants defense lawyers earlier access to criminal suspects, it also provides them more opportunity to gather evidence, and time to prepare for a trial. One intention of these provisions is to fit the lawyers into an adversarial type court proceeding in which lawyers can argue a case on equal grounds with the prosecution. How might defense lawyers' role change as a result of these improvements? A reasonable assumption is that more lawyers will participate in criminal proceedings since they presumably will be able to win more cases against the prosecution. This assumption is derived from the logic that more defendants will be willing to hire lawyers in criminal cases since lawyers under the revised CPL will be able to defend their clients more effectively during trial.

As one would otherwise expect, lawyers in China are still not actively engaged in criminal defense after the implementation of the revised CPL. Table 8 illustrates this point. While more legal assistance is available to defendants through court appointed lawyers, most defendants have been unwilling to hire lawyers. The percentage of cases in which defendants hire their own defense lawyers has decreased significantly since 1992, from 37.5% to 26.6% in 1998. During the same year, lawyers working

174. Past chief procurator Zhang Siqing's close call during the 1997 NPC session illustrates this point, in which Zhang received approval ratings of only 60% from the delegates Han Zhubin, who replaced Zhang during 1998, was barely voted into office by the NPC. See *China's New Chief Prosecutor Barely Approved by Parliament*, AGENCE FRANCE PRESS, Mar. 17, 1998. However, some scholars doubt that the congress system is sufficient to supervise the conducts of the procuracy. See XIANXING FALU LOUDONG DE BUDANG LIYONG YU FANGFAN [PRESENT LOOPHOLES IN THE LAW THAT SHOULD NOT BE USED AND BE AVOIDED] 668 (Yuan Renhui ed., 1999).

for the defense only handled 32% of all criminal cases, either through court designation or defendants' own hiring.¹⁷⁵ This can be compared to defense lawyer participation rate of 40.5% during 1992. Nonetheless, the increase in court-appointed lawyers after the revised CPL seems to have mitigated the effects of the continuous decline in cases handled by defense attorneys, the nadir of which came with a percentage of 29.6% during 1996.

Overall, more lawyers are handling criminal cases, but a large majority of them are handling criminal cases not to help defendants, but to help victims of the crime to either file a civil claim or to initiate private prosecution on behalf of victims.¹⁷⁶ The 1979 CPL only permitted victims to file civil claims or to initiate private prosecutions, it did not specify the scope of lawyer participation.¹⁷⁷ The 1996 CPL clarifies and expands the role of lawyers in helping victims of crime.¹⁷⁸ It is not surprising that a notable portion of lawyers have participated in either civil claims or private prosecution against defendants, since the chances of winning are extremely high due to the correspondingly high conviction rates.

There are many reasons why lawyers have not actively engaged themselves in criminal defense work after the revised CPL was implemented. First, the revised CPL now permits immediate relatives and close friends of a defendant to serve as defense counsels.¹⁷⁹ Many defendants likewise consider hiring lawyers a waste of money because the chances of being acquitted are not very high in China, and many defendants cannot afford to hire high-quality lawyers.¹⁸⁰ One source estimates the national aver-

175. There are no available data for the number of court appointed lawyers and the number of lawyers hired by criminal suspects due to inconsistent statistical reporting by the *Law Yearbook of China* during the year 1999. However, according to the available statistics, lawyers participated in an aggregate total of 309,767 criminal cases. See ZHONGGUO FALU NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 2000).

176. See Zhonghua Renmin Gongheguo Lushi Fa (1996) [Criminal Procedure Law of People's Republic of China (1996)] art. 25, sec. 3, in ZHONGHUA RENMIN GONGHEGUO XIN FAGUI HUIBIAN 1996 DI ER JI [NEW COMPILATION OF LAWS AND REGULATIONS OF PEOPLE'S REPUBLIC OF CHINA 1996 VOL. 2] 39-49 (1996). This reform was intended to correct the old practice where a defendant does not have to compensate a victim if a criminal punishment is given. See WANG YONGCHENG & FAN CHUNMING, XINGSHI FUDAI MINSU YU ZISU ANJIAN DE SHENPAN [PRIVATE PROSECUTION AND SUPPLEMENTARY CIVIL ACTION] 14 (Beijing, 1995).

177. CPL 1979 art. 53, 54.

178. CPL 1996 art. 40.

179. CPL 1996 art. 32. There are no official statistics that indicate the number of defendants receiving legal representation from relatives and friends as stipulated by the article.

180. According to one Chinese legal scholar, many defendants consider hiring a defense lawyer an unnecessary action since they can argue a case more zealously than an attorney. Interview with scholar, 6/3/99.

TABLE 8: LAWYER PARTICIPATION IN CRIMINAL CASES

Year	Cases Handled by Lawyers in Criminal Trials	Cases Handled by Lawyers through Court Designation	Cases in which Defendants Hired Their Own Lawyers	Percent of Cases in which Defendants Hired Own Lawyers ⁱ	Others ⁱⁱ	Total Criminal Cases Tried by Courts ⁱⁱⁱ	Percentage of Criminal Defense Cases Handled by Lawyers ^{iv}
1998	296,668	29,369	146,823	26.6%	120,476	551,141	32.0%
1997	275,188	22,733	147,826	29.3%	104,629	505,125	33.8%
1996	245,877	20,272	181,926	26.6%	43,679	683,763	29.6%
1995	204,382	14,991	156,433	28.4%	32,958	550,024	31.2%
1994	208,806	14,534	167,402	31.4%	26,870	533,493	34.1%
1993	191,657	12,933	155,045	34.4%	23,679	450,869	37.3%
1992	219,739	14,389	180,254	37.5%	25,096	480,019	40.5%

i. As a Percentage of the Total Cases Tried.

ii. Others include 1) Lawyers filing for civil claims on behalf of the victims or victims' families against the suspect and 2) Lawyers initiating private prosecutions on behalf of victims.

iii. Trials of First and Second Instances.

iv. Percentage of Lawyers Defending Suspects = (Defense Lawyers Appointed by Courts + Defense Lawyers Employed by Suspects) / Total Criminal Cases Filed in Courts.

Sources: ZHONGGUO FALU NIANJIAN [LAW Y.B. OF CHINA] (Beijing, China 1993-1999).

age fee of defense lawyers to be between 5,000 to 6,000 RMB, for all three stages of the criminal process (investigation, prosecution, and trial stages).¹⁸¹ The annual gross domestic product per capita in China was 6,361 RMB for the year 1999.¹⁸²

One reason why a criminal lawyer charges relatively expensive fees is because of the high risks involved with criminal defense. These include the risk that a lawyer may be prosecuted by the procuratorate for presenting evidence that contradicts that of the prosecution.¹⁸³ The case of former lawyer Liu Jian illustrates this problem.¹⁸⁴ The prosecution arrested Liu while he was defending his client during a 1997 trial in Jiangsu province. The reason for his arrest was that Liu had presented evidence different from that of the procurator. According to Liu, the prosecution later coerced Liu to confess his crimes in exchange for recommendation of a light sentence. Liu was convicted and received a sentence of one-year imprisonment with two years reprieve.

Liu's case has received nationwide attention and concern from the legal community in China, especially those practicing law. According to many legal scholars, regardless of whether Liu had in fact falsified evidence, a higher court should have examined the case after Liu had defended his client during trial. In less than a year after the introduction of the new Criminal Law enacted on October 1, 1997, over a hundred lawyers have been arrested under Section 2 of the Criminal Law, "Crimes of Obstructing Justice."¹⁸⁵ Since the case of Liu, as well as many other cases of lawyers being arrested during trial, has been reported in

181. See Luo Xiaoping, *Xin Xingshi Susongfa Geju xia Lushi Zuoyong Tanwei* [A Probe into the Role of Lawyers Under the New Criminal Procedure System], 3 XINDAI FAXUE [MODERN LAW SCIENCE] 42, 44 (1999).

182. ZHONGGUO BAIKE NIANJIAN [CHINA STAT. Y.B.] (1999).

183. See Xia Lu, *Shui Lai Baohu Zhongguo Lushi?* [Who Will Protect China's Lawyers?], 12 ZHONGGUO LUSHI [CHINA LAWYER] 3, 3-5 (1995). See also Luo *supra* note 181, at 44.

184. See Yuan Jiang, et al., *Liu Jian You Hua Yaoshuo: Lushi 'Weizheng' Chongjibo zhi San* [Liu Jian Has Something to Say: the Wave of Commotion Cased by a Lawyer's Falsifying Evidence], Part Three], 7 MINZHU YU FAZHI [DEMOCRACY AND LEGAL SYSTEM] 12, 12-15 (1999).

185. See Zhonghua Renmin Gongheguo Xingfa (1997) [Criminal Law of People's Republic of China (1996)] art. 305, sec.2, in ZHONGHUA RENMIN GONGHEGUO XIN FAGUI HUIBIAN 1997 DI YI JI [NEW COMPILATION OF LAWS AND REGULATIONS OF PEOPLE'S REPUBLIC OF CHINA 1997 VOL. 1] (1996). The *Criminal Law* only vaguely states that "during the course of a criminal trial, any witness, expert witness, recorder or interpreter who deliberately gives false evidence or makes false expert evaluations, records or translations on certain material evidence, in order to frame another person or conceal criminal evidence of criminal wrongdoing, shall not be sentenced to fixed-imprisonment of not more than three years or criminal detention." *Id.* For a translation of the Criminal Code, see WEI LUO, THE 1997 CRIMINAL CODE OF THE PEOPLE'S REPUBLIC OF CHINA (1998).

the press, it is easy to understand why many lawyers are reluctant to handle criminal cases and defend suspects in court.¹⁸⁶

Defense lawyers likewise feel powerless to scrutinize the legality of the prosecution's evidence, such as that extracted through physical abuse and coerced confessions.¹⁸⁷ Lawyers also feel that they suffer a disadvantage when the prosecution is required to share all relevant evidence with the defense. Aside from sharing with the defense lawyers evidence that is required to initiate prosecution, the revised CPL is unclear on whether lawyers have the right to access the complete body of evidence, even those bits that may side with the suspects.¹⁸⁸

Lawyers in China prefer to handle civil and economic cases, since there is less risk involved and it is through these types of litigation that they can best utilize their talents. Above all else, there are substantially more economic rewards when litigating these types of cases instead of handling cases involving criminal defense.¹⁸⁹ As a result, another reason for the high fees of criminal defense cases is the high opportunity costs incurred by lawyers for not handling the more lucrative civil and economic cases. According to one scholar, rookies in the legal profession will usually show more enthusiasm for taking a criminal defense case. They are more willing to tackle criminal cases not because of the monetary incentives, but the potential fame and reputation that can be achieved from a successful defense or a well prepared defense that is reported by the press.¹⁹⁰

186. See Lian Jimin, *Jianchayuan Menqian Bianhu Lushi Zao Duda* [A Lawyer Viciously Assaulted in the Front Door of the Procurator], 8 *Minzhu yu Fazhi* [Democracy and Legal System] 22, 22-25 (1999). In this case, two lawyers in Shandong Province, Weishan District were repeatedly denied access to a copy of the relevant evidence by the public security and the procuratorate as provided by the 1996 CPL.

187. See, e.g., Liu Guohang, *Xingxun Bigong Yao Bu De —Ping 'Wuwei Cuo'an' Chengyin* [Reasons Behind Not Being Able to Argue Against Forces Confession in 'Wuwei's Wrongful Case'], *FAZHI RIBAO* [LEGAL DAILY], Oct. 18, 1997. In this case, the suspect was evidently physically abused and was forced to confess a crime that he did not commit. Even after hiring a lawyer for his defense, no judicial officials heeded the lawyer's arguments. See also Xiao Zhou, *Xingsufa, Sifa Jieshi yu Lushi Susong Quanli Baozhang* [Criminal Procedural Law, Judicial Interpretation and Protection of Lawyer's Litigation Rights], 1 *Zhongguo Faxue* [Chinese Legal Science] 124, 124-35 (1999).

188. See XIANXING FALU LOUDING DE BUDANG LIYONG YU FANGFAN, *supra* note 174, at 645. Lawyers in China, especially in criminal trials, still do not receive equal footing with the procurator. As such, the lawyers' ability to access evidence from the prosecution is subjected to discretion, both in social and political status. Moreover, it is difficult for lawyers to seek relief from judges when faced with this circumstance. See Li Jiezheng, *Lushi Zai Zhencha Jieduan de Susong Quanli* [A Lawyer's Right During the Investigation Stage], 2 *FAXUE ZAZHI* [LAW SCIENCE MAGAZINE] 56, 56-57 (2000).

189. Interview with lawyer, 6/14/99.

190. Interview with scholar/lawyer, 6/15/99.

Despite the 1996 CPL's intention of promoting an adversarial process in criminal trials, many defendants are still reluctant to employ lawyers to aid in their defense due to the high fees charged by the lawyers, along with the new option of having relatives and close friends being able to assist with their defenses. The general unwillingness of established lawyers in China to handle criminal defense as their main operation is partly the result of the increasing demand for their services in civil and economic litigation that are potentially more rewarding. To address the issue of defendants lacking representation, the Ministry of Justice has appointed more court-designated lawyers to assist defendants as part of a legal aid program instituted in 1996.¹⁹¹ Although court-appointed lawyers still represent a small portion of the total number of criminal defense lawyers, their numbers have steadily been rising.¹⁹²

Arguably, there are still some obstacles for defendants to acquire professional legal representation in China. The economics behind the legal profession and the risks entailed by defense attorneys represent serious obstacles for the full realization of the revised CPL's adversary process. Under these conditions, it will remain difficult for a defendant to receive sound legal representation, regardless of whether right to counsel is guaranteed by law. These problems could partly account for an explanation as to why acquittal rates have not risen spectacularly, even under an adversarial court process. The spirit of an adversarial process is compromised if there are not many qualified lawyers out there for the prosecution to argue against, and if there are few witnesses willing to testify during trials.¹⁹³ Recent supplementary regulations of the revised CPL have attempted to provide law-

191. See *Ten-Year Plan to 'Perfect' Legal Aid*, SOUTH CHINA MORNING POST, Nov. 19, 1996, at 10. See also Xiao Yang, *Jianli Yige Juyou Shehui Zhuyi Tese de Falu Yuanzhu Zhidu* [Establish a Legal Aid System with Chinese Socialist Characteristics], RENMIN RIBAO [PEOPLE'S DAILY], May 14, 1996, at 9.

192. The effectiveness and quality of court-appointed lawyers are questionable, but under the new legal-aid scheme that began in 1996, lawyers that are designated by the courts now receive a fee for their services. See *Ten-Year Plan to 'Perfect' Legal Aid*, *supra* note 191.

193. See Fang Qingxia, *Xingshi Zhengren Falu Baohu Tanta*o [A Discussion on the Protection of Witness in Criminal Trials], 2 FAXUE ZAZHI [LAW SCIENCE MAGAZINE] 53, 53-54 (2000). However, Articles 141-149 of the Interpretations Concerning Several Issues in the Implementation of the Criminal Procedure Law of the PRC promulgated in 1998 by the Supreme People's Court specify the role of witnesses in criminal proceedings. Although witnesses are provided a degree of protection (Article 146) when testifying, there are no specific provisions for compulsory summons of witnesses. For a detailed translation of the Interpretations, see WEI LUO, *THE AMENDED CRIMINAL PROCEDURE LAW AND THE CRIMINAL COURT RULES OF THE PEOPLE'S REPUBLIC OF CHINA* 147-260 (2000).

yers with enhanced security, but the effects of the regulations will need to be examined in future studies.¹⁹⁴

VI. CONCLUSION

The empirical analysis indicates that the revised CPL, by imposing a radical change in the trial process, has altered to a certain degree the behaviors of the relevant judicial officers. When the fact that the analysis only evaluates three years of recorded data since the law's enactment is taken into account, one cannot expect sweeping changes in the criminal process. Without doubt, criminal cases will still be handled inconsistently in different courts for a period of time. The Supreme People's Court and other law enforcement agencies have recently addressed several problems with the implementation of the revised CPL by passing several detailed regulations to supplement the revised law, including regulations that clarify a lawyer's right to meet with his client and to gather evidence without obstruction by the investigative organs.¹⁹⁵ This study also proposes that without further reforms within the judicial organs themselves, it will be difficult for them to fully comply with the rules written in the revised CPL. How the police, prosecutors and judges respond to a change in written law will inevitably depend on the professional quality of the personnel and further reforms of the judicial and law enforcement agencies.

As far as the reforms of the criminal procedure may develop, one cannot be too optimistic that these newly granted rights will still be available to those who challenge the Communist Party's political domination, since the courts and their personnel are by no means fully independent from Party control and interference.¹⁹⁶ These rights are reserved only for ordinary citizens who may have breached the law. The Party still retains tight control over political opposition and will likely negotiate with the law on its own terms when there is a threat to its power.¹⁹⁷ In

194. *Lawyers' Role Enhanced in Chinese Courts*, XINHUA NEWS AGENCY, February 27, 1998.

195. The regulations consist of fourteen parts, totaling forty-eight articles that clarify the roles and jurisdictions of the different players in the criminal process. See *New Rule Guards Smooth Implementation of the Criminal Procedure Law*, XINHUA NEWS AGENCY, Feb. 20, 1998. See also WEI, *supra* note 193.

196. See PHILIP BAKER, *Party and Law in China*, in STATE AND LAW IN EASTERN ASIA 9, 16-21 (Leslie Palmier ed., 1996). See also MARK FINDLAY, 'Independence' and the Judiciary in the PRC: Expectations for Constitutional Legality in China, in LAW, CAPITALISM AND POWER IN EAST ASIA, THE RULE OF LAW AND LEGAL INSTITUTIONS 281, 284-6 (Kanishka Jayasuriya ed., 1999); ATTACKS ON JUSTICE 69-70 (Mona Rishmawi et al. eds., 1999).

197. See LAWYERS COMM. HUMAN RIGHTS, *supra* note 1, at 12-3; See also HECHT, *supra* note 3, at 79. The regime recently arrested many practitioners of

this sense, equality before the law and due process principles are compromised. Yet, as long as Chinese citizens are aware of illegitimate breaches of the law by the government, there will always be a demand for reforms in the criminal justice system. Perhaps ultimately, top leaders of the next generation will be willing to further sacrifice their power over discretionary practices in exchange for political legitimacy.

The major changes to trial procedure are primarily a response to the myriad criticisms from scholars and even officials themselves that the 1979 CPL lacked elements of "natural justice." Many Chinese scholars had attributed the problems inherent under the old CPL to the inquisitorial system in which judges played the dual role of both prosecutor and adjudicator. The 1996 NPC decision transforms the criminal procedure process in China from that of an inquisitorial system into that with mixed adversarial and inquisitorial elements. The development of the criminal justice system nevertheless suggests that political leaders in China are now balancing their preoccupation with crime control with a greater emphasis on protecting the rights of the accused as a response to the criticisms.

Even though the 1996 revision represents a significant breakthrough in the reform of the criminal justice system in China in terms of granting more rights to the accused in accordance with international standards, there are still several issues under the 1996 CPL that need to be resolved. Political interference in judicial decisions and personal career prospects, the right to remain silent, the right not to self-incriminate, the non-exclusion of illegally gathered evidence, more access to counsel, and other issues that will better protect the rights of both the accused and the lawyers who defend them are discussed and debated in China today, and will continue to be of considerable concern in the future.¹⁹⁸ It is through these debates and official recognition

zhonggong (deep-breathing exercise) and confiscated their properties without any regards for due process, apparently after cracking down the Falun Gong Sect in 1999. See *Zhonggong Zhikong Dangju Pohai, Yaoqiu Lianheguo Qianze* [Zhonggong Charges the Regime with Injurious Damage, Seeks Condemnation from the United Nations], SHIJIE RIBAO [WORLD NEWS], Apr. 17, 2000.

198. The Chinese government is currently implementing a regulation that gives suspects the right to remain silent and not to self-incriminate. See *Government Looks to Establish Right to Remain Silent for Defendants*, BBC SUMMARY OF WORLD BROADCASTS: ASIA PACIFIC, June 24, 1999. For scholarly debates in China on this issue, see Sun Changyong, *Chenmoquan yu Zhongguo Xingshi Susong* [The Accused Right to Remain Silent and China's Criminal Procedure], 2 XIANDAI FAXUE [MODERN LAW SCIENCE] 18, 18-23 (2000).

of remaining problems that further reform of the Chinese criminal justice system will be propelled in years to come.¹⁹⁹

199. Numerous scholarly materials have surfaced concerning the 1996 revisions, including calls for further reform of the judiciary and the criminal process. See, e.g., Long, *supra* note 119, at 58. See also Zhou Hanhua, *Lun Jianli Duli, Kaifang yu Nengdong de Sifa Zhidu* [Establishment of an Independent, Open and Dynamic System of Justice], 5 FAXUE YANJIU [CASS JOURNAL OF LAW] 3, 3-20 (1999); Sun Changyong, *Shenpan Zhongxin Zhuyi yiji Qi Dui Xingshi Chenxu de Yingxiang* [Principle of Trial-Centered Criminal Procedure and Its Legal Effects], 4 XIANDAI FAXUE [MODERN LAW SCIENCE] 93 (1999); Yin Yijun, *Jianfa Chongtu yu Sifa Zhidu Gaige* [Conflicts Between Courts and Prosecution and Legal Reforms], in XINGSHIFA PINGLUN [ASSESSMENT OF CRIMINAL LAW] 406, 406-30 (Chen Xingliang ed., 1997).

APPENDIX FOR TABLE 1

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