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Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation

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Chapter 2 Corruption in China's Courts - An overview of scope and general patterns

(Included in *Judicial Independence In China: Lessons For Global Rule Of Law Promotion*, Randall Peerenboom ed. Cambridge University Press, 2010)

2.1. Introduction

Corruption in China's courts is a rather neglected field of study in both the Chinese and English language academic circles. Although scholars and commentators have pointed out various deficiencies in the operation of courts, their relation to corruption has never been closely examined, let alone systematically investigated.³⁴ Policymakers as well as scholars seem rather more ready to attribute judicial problems to external factors, such as undue interference from the Chinese Communist Party (the CCP or Party), lack of resources and local protectionism. Even when scholars do pay attention, they do so most often only in passing.³⁵ This casual treatment of corruption in the courts has resulted in the marginalization of the problem in academic discourse. As a result, corruption in the courts appears omnipresent yet untraceable and elusive.

The relative scarcity of studies on this topic is perhaps attributable to the evidently sensitive nature of the topic, which makes empirical research difficult. The fact that corruption is openly denounced and severely punished in China makes interviews with judges or other court officials extremely difficult.³⁶ Even for punished and closed corruption cases against court officials, access to case-files is highly restricted. For researchers, attending court trials sometimes may yield interesting findings.³⁷ However, what is seen in courtrooms provides little information on what happened behind the scenes. Therefore, a preliminary examination on the existence and salience of various corrupt conducts in contemporary China's courts precedes any further comprehensive studies on the subject, which will be provided in the rest of the thesis.

³⁴ Edited volumes on this topic include Yaxin Wang, et.al., *Falü chengxu yunzuo de shizheng fenxi* [A Positive Analysis to Practice of Legal Procedures], (Beijing: Law Press China, 2005). Suli Zhu, ed., *Falü he shehui kexue* [Law and Social Science] (Beijing: Law Press, 2006). Yefu Zheng, et.al., ed., *Beida qinghua renda shehuixue shuoshi lunwen xuanbian* [Selected Theses for Master-Degree in Sociology from Peking University, Qsinghua University and Renmin University] (Jinan: Shandong People's Publishing House, 2006).

³⁵ Li, "Court Reform in China: Problems, Progress & Prospects." pp.57-8; Dingjian Cai, "Development of the Chinese Legal System since 1979 and Its Current Crisis and Transformation," *Cultural Dynamics* 11, no. 2 (1999). pp.152-4; Zou, "Judicial Reform Versus Judicial Corruption: Recent Developments in China." pp.328-9. Henderson, "The Rule of Law and Judicial Corruption in China: Half-Way over the Great Wall." Benjamin L. Liebman, "China's Courts: Restricted Reform," *The China Quarterly* 191 (2007). p.627.

³⁶ During my fieldwork, I made several attempts to interview judges and other court officials. Some declined the request. Some agreed to be interviewed but were clearly reluctant to discuss corruption in the courts.

³⁷ Liang's recent work provides a valuable "thick-description" of the operation of the courts by attending open court-hearings, shedding light on various discriminative and unfair court practices. Bin Liang, *The Changing Chinese Legal System, 1978-Present: Centralization of Power and Rationalization of the Legal System* (New York, London: Routledge, 2008).

This chapter seeks to answer three main questions : What types of corrupt behavior exist in China's courts? Do the different types of corruption occur with equal salience in different court-divisions, different types of cases, courts at different levels and for different groups of judges? How can the findings be interpreted and explained? In answering these questions, I adopt an inductive analytical framework developed from a comprehensive study of about 350 court corruption cases, spanning the years 1991 to 2008. These cases are supplemented by numerous media reports, diaries and essays written by court-users about their court experience during the same period of time. Unlike the policy- or solution-oriented approaches adopted in most current studies,³⁸ I attempt in this chapter to investigate, describe and analyze the basic factual features of corruption in China's courts, which will be used as the basis for the more in-depth studies in the following chapters.

2.1.1. Analytical framework

In this chapter, I divide corrupt conduct into three sub-categories: Type A involves cases where corrupt judges have physically abused litigants, illegally seizing and detaining them by force. Type B represents corrupt conduct without exchange between the judge and litigants, such as embezzlement, misappropriation of assets, swindling litigants and serious negligence. Type C represents mainly bribery and favoritism.³⁹ The cases investigated in this research include both those punishable and punished in accordance with PRC Criminal Law and those that do not meet the minimum legal requirement for criminal indictment but involve violations of ethical, professional or Party disciplinary rules.

2.1.2. Data sources

The data includes 350 cases corresponding to 341 individual judges and 9 non-judge court officials, including 4 court clerks, 4 court accountants and 1 court bailiff.⁴⁰ In each of these cases, a judge or court official was punished for one or in some cases several corrupt acts according to the CCP anti-corruption disciplinary regulations or the Chinese criminal code. Information concerning these 350 cases comes from media reports of court-trials or press releases from courts or related investigated bodies, principally the

³⁸ Gong, "Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China." Xin He, "*Zhongguo fayuan de caizheng buzhu yu sifa fubai* [Lack of Financial Funding and Judicial Corruption in China's Courts]," *ershiji shiji (21 Century Bimonthly)*, no. 2 (2008). Henderson, "The Rule of Law and Judicial Corruption in China: Half-Way over the Great Wall."

³⁹ These cases are often referred to as *jinqian'an*, *renqing'an*, *guanxi'an* (literally translated as money case, personal-feeling case and connection case).

⁴⁰ Since the number of non-judge subjects in the database is limited, for ease of reference this group is also referred to as "judges".

procuratorates or the discipline inspection commissions of the local CCP. 21 of these cases are supported by court files, such as court judgments and statements by prosecutors or defendants. The cases were collected between 2005 and 2008 by regularly screening the legal sections of major internet news outlets and newspapers or magazines focusing on legal affairs and corruption issues⁴¹. A supplementary number of cases have been located by using the popular PRC domestic search engines *baidu* and *google*.⁴²

2.1.3. Data configuration

The data are summarized by when the corrupt act was detected rather than by the time the corrupt act was committed, since many cases involve multiple corrupt acts, extending over several years. Among the 350 judges, 12 were accused of corruption in the period of 1991-1999, 183 in the period of 2000-2004 and the remaining 155 in the period of 2005-2008. It is difficult to ascertain the cause of this imbalance. It could be that reports of recent cases are more visible and accessible online than reports of earlier cases. It could also be the result of increasing incidences of violations, increased efforts against corruption, or both.

Concerning court levels, 55 out of the 350 judges served in high courts (*gaoji renmin fayuan*) at the time of detection and 151 in intermediate courts (*zhongji renmin fayuan*). The remaining 144 judges served in basic level courts (*jiceng fayuan*), of which 60 were in urban districts, 73 in counties and 11 held appointments in people's tribunals (*renmin fating*). The Supreme People's Court (SPC) is not represented in this database, although the openly reported on-going investigation against the SPC vice-president Huang Songyou suggests it is highly likely that a corruption prosecution will be pursued.⁴³

At the regional level, the data covers all provincial-level administrative regions except Shanghai City, Qinghai Autonomous Region and Tibetan Autonomous Region. Different regions have different rates of representation in the database. However, the regional representation in the database should not be mistaken with that of the actual occurrence

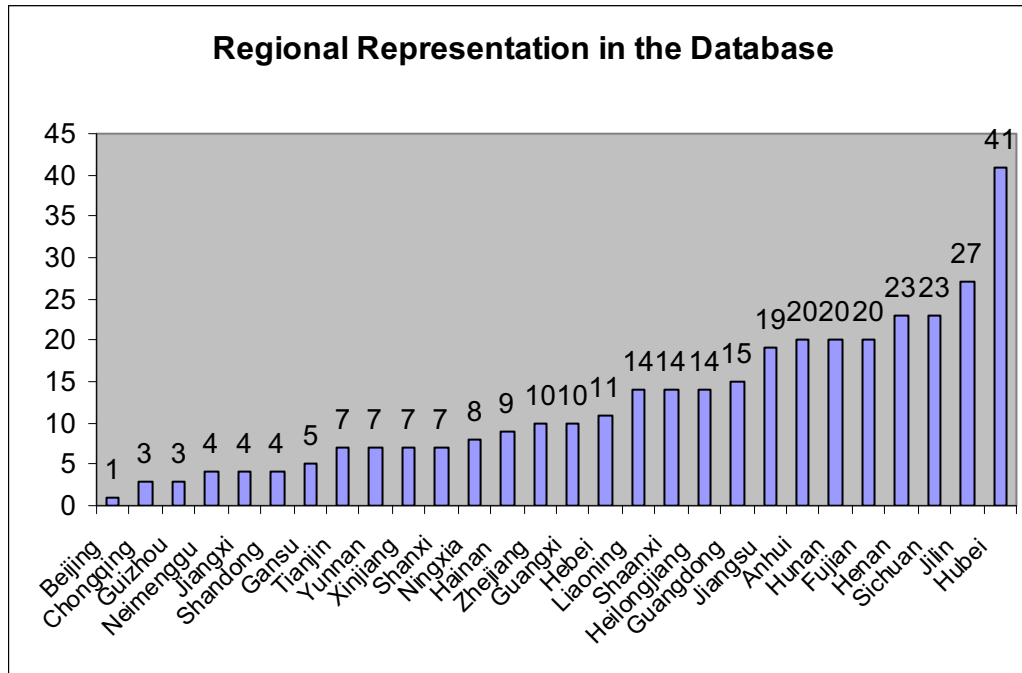
⁴¹ These sources include the legal sections of www.sina.com and www.xinhuanet.com, Fazhi Ribao (Legal Daily), Jiancha Ribao (Procuracy Daily), Jiancha Fengyun (Procuracy Affairs), Nanfang Zhoumo (Southern Weekly), Caijing Magazine and Minzhu yu Fazhi (Democracy and Rule by Law) and Anti-corruption Weekly published on Zhengyi Wang, an internet-based magazine run by the Supreme Procuratorate.

⁴² A considerable proportion of the cases was initially posted at "*tangan danganguan*", a web-blog hosted by Zhang Hongjian, a procuratorator in Heilongjiang Province, whom I owe thanks to.

⁴³ Since the public media are under strict control by the central government, pre-prosecution media reports of corruption cases, especially those concerning high-profile officials, often serve as a means for the political leadership to "prepare" the public, providing guidance about how the case should be perceived. Among the cases studied, a prosecution is most likely to take place, followed by a conviction, when the media reports start to "demonize" the suspect already in the investigation period, which is exactly what is happening with the case of Huang Songyou.

of corruption.⁴⁴ Rather, it is more an indication of the visibility of corruption in public media, which is a mixed result of many factors that are beyond the scope of discussion here.

Figure 2.1



So-called “political corruption,”⁴⁵ or cases where judges render partial decisions in response to political pressure, is not represented in the database and hence not discussed in this chapter. What Wang describes as judicial corruption in a “special environment,”⁴⁶ that is institutional corrupt practices carried out semi-officially by courts, such as illegal over-charging of litigation fees, is also not represented in the database. Crimes committed by court personnel but unrelated to the exercise of a court’s function are also excluded.

⁴⁴ For example, Shanghai had reportedly investigated and punished 8 court officials in 2006 and 14 in 2005. See “Shanghai Court Officials Sign Anti-corruption Pledge First Working Day after Spring Festival (2007)”, <http://news.qq.com/a/20070226/000696.htm> and “Shanghai Court Officials Sign Anti-corruption Pledge First Working Day after Spring Festival (2006)” <http://news.eastday.com/eastday/node37/node189/node4644/userobject1ai63508.html>. However, no publicly-reported corruption cases were found during the research period concerning corruption in the Shanghai courts.

⁴⁵ Gong, “Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China.”

⁴⁶ Yaxin Wang, “*Sifafubai’ xianxiang de yizhong jiedu* [An Interpretation of ‘Judicial Corruption’],” *Sixiang zhanxian* 31, no. 4 (2005). p.50. fn.2.

Lastly, the database includes only cases for which official investigations had been completed and which were reported by official sources with specific allegations. Among the 350 judges, only two were acquitted on the grounds of “lack of evidence.”⁴⁷ Due compliance to the criminal procedure in the process of investigation has been considered in the data-selection. This resulted in the elimination of two cases, in one, the evidence was unreliable due to having allegedly been procured by forcible means; in the other, there was competing evidence that the prosecution had acted out of revenge against the defendants, even though the prosecuted corrupt acts of the defendants may also have occurred.⁴⁸ For the remainder of the cases, compliance to the Chinese Criminal Procedure Law can only be generally assumed to have been observed, in the absence of any observable indication to the contrary.

2.1.4. Limitations

Since most of the data was obtained from the media, the configuration of the cases is as much an indication of the slant of media coverage and different propaganda policies of different regions as of the frequency of actual instances of corruption. Due to the lack of up-to-date studies, and more importantly due to the scarcity of data, this chapter must, inevitably, remain methodologically exploratory as well as tentative in its findings and conclusions. The lack of scientific sampling of the data means the result may be skewed by media bias and my selective and hence possibly imbalanced exposure to the media coverage.

It has proved laboriously difficult to generate a sizable database from official press releases, the main source of information that is currently available for this kind of research.⁴⁹ However, the representativeness of the database could be much improved if other reliable means of data collection could be accessed and used to expand the case coverage.

⁴⁷ In this case, two judges from Gansu High Court were prosecuted for bribe-taking because their family members had purchased apartments from a litigant’s company at a below-market-value price while the litigant’s case was pending in their court. One judge was also given a mobile phone by the same litigant. In their defense, one judge argued that he had no knowledge of the purchase while the other argued that the price-benefit was not illicit because the judge’s father-in-law was an employee of the litigant’s company. The court acquitted the judges on the ground of “unclear facts” and “insufficient evidence”. For details, see “Two Gansu High Court Judges Became Suspects of Bribery in Their Adjudication of A Civil Case”. <http://news.tom.com/1002/20040703-1058395.html>.

⁴⁸ I would like to thank Christiane Wendehorst, who raised the issue at the 2nd Annual Conference of European China Law Association in Turin, Italy, in 2008, where an earlier version of this chapter was presented.

⁴⁹ Media case reports have been used as the major source of data for statistic analysis in the following research studies on corruption: Guo, "Corruption in Transitional China: An Empirical Analysis." Alan P. L. Liu, "The Politics of Corruption in the People's Republic of China," *American Political Science Review* 77 (1983). Wenhao Cheng, "An Empirical Study of Corruption within China's State-Owned Enterprises," *The China Review* 4, no. 2 (2004).

2.2. Corruption in China's courts - scope and prevalence

How serious is corruption in China's courts? This has been the most frequently asked question during my research. The scale of corruption in the courts can be gauged by reviewing published data released by official sources. However, it is impossible to measure the actual scale with accurate quantitative data since many corrupt acts remain undetected. Since statistics concerning court affairs are officially considered as "confidential (*jimi*)" or even "absolute confidential (*juemi*)" state secrets,⁵⁰ access to original court data of any kind is extremely difficult to obtain, let alone data concerning corruption. The most visible index is the total number of court personnel who were investigated and punished for misusing or abusing adjudicative or court enforcement power for private benefit, as presented in SPC working reports each spring.

Table 2.1 The SPC National Figures for Court Personnel Investigated for Corruption⁵¹

Year	1993	1994	1995	1996	1997	1998	1999	2000
No. of cases investigated	850	1094	962	1051	NA	2512	1450	1292
Year	2001	2002	2003	2004	2005	2006	2007	
No. of cases investigated	995	NA	794	461	378	292	218	

According to SPC reports, the number has continuously declined since 1998. Compared to the total of more than 190,000⁵² judges in the country as a whole, the figure of 218 corruption incidents for the year of 2007 appears moderate.⁵³ However, as shown in Table 2 some of the data released by local courts through the local media cast doubt on the accuracy of the SPC figures in Table 1. For example, the number of court personnel

⁵⁰ "[Regulation on Strengthening Judicial Statistics of People's Courts]," ed. The Supreme People's Court (1985). Part IX. Art. 29.

⁵¹ Note: "Punished" refers to both criminal punishments and administrative sanctions. All numbers refer to court personnel only (so do not include corrupt prosecutors or police). The national figures for 2007 and a few local figures refer to judges only. The figure of investigated and punished judges released in the SPC Report (2004) is 794, but 468 in the SPC Report (2008). I assume that this discrepancy is a typo and that the larger number 794 refers to the number of investigated and punished court personnel rather than judges only. Sources: The SPC Annual Reports

⁵² Jingwen Zhu, ed. *Zhongguo Falü Fazhan Baogao (1979-2004) [China Legal Development Report (1979-2004)]* (Beijing: People's University, 2007), p.19.

⁵³ Yulin Fu, Randall Peerenboom, "A New Analytical Framework for Understanding and Promoting Judicial Independence in China," in *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, ed. Randall Peerenboom (New York: Cambridge University Press, 2010).

investigated in 2006 for corruption in just five provinces (out of 32 provincial-level administrative regions) is 585, or more than twice the SPC's total nationwide figure.

Table 2.2 Annual Figures for Court Personnel Investigated and Punished (*chachude*) for Corruption⁵⁴

Year	Local figures released by local courts	National figures released by the SPC
2007	252 4 provincial regions: Shaanxi, Hebei, Jiangxi, Hubei; 3 cities: Nanjing (Jiangsu), Linfen (Shanxi), Shizuishan (Ningxia) 1 basic court: Beilin District of Suihua city (Jilin)	218
2006	697 8 provincial regions: Shanxi, Henan, Ningxia, Hunan, Liaoning, Hubei, Hainan, Shanghai 2 cities: Ha'erbin (Heilongjiang), Xuzhou (Shandong)	292
2005	597+80 ⁵⁵ 8 provincial regions: Liaoning, Hainan, Zhejiang, Shanxi, Henan, Guangdong, Jilin, Shanghai	378
2004	298+31 ⁵⁶ 5 provincial regions: Hunan, Hainan, Fujian, Jilin, Liaoning 1 city: Guilin (Guangxi)	461
2003	884 9 provinces: Shanxi, Liaoning, Shaanxi, Henan, Anhui, Hainan, Jiangsu, Hubei, Xinjiang 1 city: Cangzhou (Hebei)	794
2002	386 4 provincial regions: Hubei, Hunan, Liaoning, Neimenggu	NA ⁵⁷

⁵⁴ Note: Some of the statistics from local courts only roughly correspond to the full calendar year as listed in the left column. For example, some figures only represent the results of an anti-corruption campaign in a particular month. Some figures start and end in the middle of the calendar year. In two cases, the figures also cover the first half of the next calendar year; this is indicated where applicable. All data and sources are on file with the author.

⁵⁵ The figure for Guangdong province covers 2005 and the first half of 2006.

⁵⁶ The figure for Liaoning Province covers 2004 and the first half of 2005.

⁵⁷ Sources: The SPC Annual Reports and local media reports on file with the author.

The origin of this discrepancy is difficult to explain. There is relatively little incentive for the local courts to inflate the number. Do the local courts perhaps “shrink” the numbers before they are submitted to the SPC, or does the SPC manipulate the data after collecting it from the local courts? Irrespective of the correct explanation for the discrepancy, it appears that the actual level of corruption in courts is more serious than the SPC reports suggest.

Furthermore, when looking at these numbers, it should be borne in mind that the detection of corruption in the courts is usually, if not always, tied to a particular case. When a judge is caught for corruption in one case, previous cases tried by the same judge will not normally be examined. It is only when a suspect confesses to other as yet undetected corrupt acts in exchange for lenient punishment that this case-by-case approach is modified to some limited extent. However, the total number of unlawful and unethical acts in a corrupt judge’s career can never be accurately ascertained, especially for those had been corrupt for many years before being caught.

2.3. Type A - extreme cases involving physical violence

Corrupt conduct involving physical abuse of the victim mainly refers to those acts that deprive the victim of her/his physical liberty, such as the illegal seizure and detention of litigants. There were six such cases among the total of 350. In a notorious case in Jiangxian County, Shanxi Province, the former vice court-president of the county court Yao Xiaohong instructed his subordinates to beat a litigant to death just because the litigant attempted to challenge Yao’s arbitrary decision.⁵⁸ In another case in Rongcheng County, Hebei Province, Yin Hexin, the then chief of the economic division of the county court was “hired” by two plaintiffs to “enforce” payment of debt from their disputant, who resided in another province. Having accepted 10,000 *yuan* “litigation fee” Yin and his colleagues kidnapped the defendant from his home. Struggling and shouting for help, the disputant was handcuffed from behind and covered with the judges’ clothes over his head. Hours later, the disputant was found suffocated to death.⁵⁹ In at least four cases, the judges committed violent corrupt conduct at the request of friends or relatives. At the moment of detection, all six judges served in basic-level courts, five of at the county level.

There are too few cases in this category to conduct a more segmented analysis. In reality there are most certainly more cases of this type, though not necessarily all with fatal

⁵⁸ “How Can A Court Become the ‘Palace of Hell’? (1999)”, <http://www.cyd.net/cyd/zqb/19990715/GB/9560^Q515.htm>.

⁵⁹ “To Make Money Court Issues Quota to Judges, To Collect Debt Judges Killed Human Life (1998)”, <http://www.gmw.cn/01shsb/1998-07/27/GB/688^SH14-215.htm>.

consequences. Nonetheless, the comparatively low representation of this type of corruption in this database may suggest that the use of physical violence is not typical for corruption in China's courts. The explanation for the violence in these cases, both in terms of its existence and its low representation in the database, may well be that the courts enjoy only limited policing power via the so-called "judicial police" (*sifa jingcha*),⁶⁰ whose formal purpose is to uphold court orders and assist in enforcing asset-related judgments. This feature of the distribution of power also separates corruption in courts from that in other law enforcement institutions, such as the procuratorates and the police, which enjoy a wider range of policing powers involving restricting an individual's physical freedom, and in which the deprivation of a victim's liberty is the principal form of corrupt conduct.

2.4. Type B - corruption without exchange (non-bribery)

Corruption in this and the next category does not involve violence. However, the absence of physical force does not necessarily imply an absence of any kind of force, coercion or threat. Instead, some acts in this category involve the use of symbolic power, which extracts deference through the presence of symbols of court power, such as a court document or a court official riding in a court vehicle. It is this kind of power, imbued with the threat of coercion, that enables some judges to compel voluntary submission or cooperation from their subjects in order to obtain their corrupt gain without needing to resort to physical violence or intimidation. Judges from basic courts continue to dominate this type of non-bribery corrupt conduct (47 out of the total of 79 judges). Six judges were from high courts and 26 from intermediate courts.

The main form of corrupt conduct in Type B is theft. 69 judges were punished for embezzlement and/or misappropriation of court funds or seized assets. Nine judges were found guilty of fraud (four of them also conducted embezzlement and/or misappropriation). Six judges, including one, who also conducted embezzlement, were involved in serious incompetence and negligence at work, such as losing case-files and failing to hold an open trial for 19 years.⁶¹ Since there is no clear indication in the available materials that the judges had received external incentives to be deliberately negligent (though this is generally more likely), "effort-saving" is assumed to be the private benefit in these five cases.

Among the 69 embezzlement and misappropriation cases, it is not surprising to find that more than one third took place in enforcement divisions, where large volumes of seized

⁶⁰ Regulation of Judicial Police in People's Courts, The Supreme People's Court (1997)

⁶¹ "Hainan Lingao Court Failed to Hold Open Trials for A Small Case for 19 Years (2006)", <http://news.sina.com.cn/s/2006-07-29/09219601648s.shtml>.

assets are administered. In these cases courts largely failed in discharging their mandated role as guardian of the seized assets for litigants. Instead, easy opportunities for embezzlement and misappropriation were nurtured by the lack of monitoring, especially monitoring by the litigants to whom the assets belong. Tan Yongxing, an enforcement judge in Longgang District (Basic) Court, Shenzhen City, misappropriated 13 million *yuan* for gambling in a year, and had gambled away nearly half of it when he was caught.⁶² Li Zhengda, an enforcement judge in Jilin High Court embezzled 40 million *yuan* over eight years. Despite complaints from litigants, the investigation somehow only started after he had retired from his job and was about to leave the country.⁶³

Other than the enforcement judges, 4 court accountants and 20 court presidents or vice presidents were also apprehended for embezzlement or misappropriation. Both accountants and court administrative leaders have easy access to the public coffers. Cheng Wei, an accountant in Tianjin Maritime Court, had successfully embezzled 1.69 million and misappropriated 140 million *yuan*, mostly from court accounts of seized assets. Cheng ultimately left a 100 million *yuan* “black hole” at Tianjin Maritime Court.⁶⁴ There is no information about how the loss in these cases was settled with the litigants to whom these assets actually belong. It is surprising, though, that within Type B only one judge came from the case registration division, which is responsible for collecting litigation fees, the principal source of court income.

Apart from theft, seven judges were accused of usurpation of assets through deception and/or illegal seizure. One judge from Heishan County Court in Liaoning Province swindled 990,000 *yuan* from a gullible buyer, who believed the judge’s story of a fake court auction.⁶⁵ In Hunan Province two judges loaned money to a construction sub-contractor who had been commissioned by a corporate developer. Knowing that the developer had deep pockets, the judges raised the interest rate of the loan to 20 times above the market rate, which the sub-contractor obviously would not be able to pay. The judges then brought a lawsuit against the sub-contractor in their own court in the name of an acquaintance, rendered a court decision in their favor and enforced the judgment by freezing the account of the corporate developer.⁶⁶

⁶² “Thrown Millions in Gambling Judge Became Prisoner (2000)”, http://gzdaily.dayoo.com/gb/content/2000-12/07/content_42133.htm.

⁶³ “Exploiting Loopholes, Jilin High Court Li Zhengda Embezzled Millions (2006)”, http://news.qq.com/a/20060216/000869_1.htm.

⁶⁴ “No. 1 Biggest Judicial Corruption Case in Tianjin Involving More Than *yuan* 100Million (2006)”, http://news.163.com/06/0418/14/2F0ES2P30001124J_3.html.

⁶⁵ “Liaoning Heishan County: Judge Chewed Receipt, Court Denied Responsibility (2004)”, http://house.people.com.cn/xinwen/article_04_10_12_2340.html.

⁶⁶ See case digest in Shigui Tan, *Zhongguo sifa gaige yanjiu [A Study on Judicial Reform of China]* (Beijing: Law Press China, 2000). p.123.

In two cases, judges seized assets from non-litigants just by dressing up in court uniforms and showing fake court documents. Li Shengyin, a county-court judge from Hebei Province, used a forged court order to appropriate assets worth seven million *yuan* from a bankrupt state-owned enterprise under the eyes of the factory guards. They “invented” a contractual dispute case with the enterprise after the usurpation, using remote relatives as plaintiffs and forging evidence.⁶⁷

2.5. Type C - corruption through exchange

In this sub-category, corruption occurs in the form of an exchange. In this chapter ‘exchange’ is not limited only to monetary transactions, or *jinqian* case (cases influenced by monetary bribes), as in the SPC classification. It also includes exchanges performed in the form of a favor under the principle of reciprocity. Oftentimes such favors are not immediately or directly associated with a monetary value or payback. Nonetheless, these favors necessarily have great value for the recipients.

For example, Su Jiafu, the former chief of the criminal division of Gutian County Court, Fujian Province, confessed that he acquitted three defendants on a rape charge not just because he was offered the 6000 *yuan*. Rather, it was also because one of the defendants turned out to be the son of the director of the local police bureau, who had done a favor to Su before in a battery case involving Su’s brother. Su considered that it was time for him to return the favor.⁶⁸ Su acquitted the defendants by recognizing the victim’s cries as a form of sexual consent against all other contesting evidence. This is a typical example of what the SPC terms a “*renqing* case,” a case influenced by an exchange of favors. Sometimes, the litigant does not yet have an established reciprocal relationship with the judge when the litigation is brought to court. In such circumstances, a favor exchange is often conducted through an intermediary, the so-called *guanxi*, a person who is familiar with both parties and guarantees that the favor is properly registered and returned. *Jinqian*, *renqing* and *guanxi* cases are all denounced by the SPC and all three fall into the category of corruption through exchange in this chapter.

This section is arranged along the three phases of litigation, which also correspond to the three major functional court divisions: case registration (*li’an*), adjudication (*shenpan*) and enforcement (*zhixing*). A summary of litigation procedure in China’s courts provides the context for this discussion.

⁶⁷ The case drew media attention only when the employees of the state-owned company held a public protest and physical conflict ensued with the local police. An investigation by the local Procuratorate followed. Xinhuanews Net, Fazhi News, 12 December 2003, available at http://news.xinhuanet.com/legal/2003-12/12/content_1228524.htm.

⁶⁸ Tan, *Zhongguo sifa gaige yanjiu [A Study on Judicial Reform of China]*. p.123.

2.5.1. Brief introduction to litigation procedure in China's courts

In the 1990s, the SPC launched an institutional reform, dividing courts into several divisions according to the chronological order of the litigating process. Before this reform, courts were only divided according to the nature of the case⁶⁹ and each court division was mandated to complete the entire process from case registration, court hearing, panel adjudication, and issuance of verdict to enforcement of the judgment. Under the previous system, the judge who registered a case might well be the same judge who heard and decided the case and who enforced the judgment. This concentration of power is believed to have increased opportunities for corruption in courts.⁷⁰

Under the reform, a further division of power was carried out resulting in three separate court divisions: case admission/registration, case adjudication and judgment enforcement. Each performs different functional judicial power.⁷¹ At the same time, a separate adjudicative supervisory division (*shenpan jiandu ting*) was also established, charged with correcting glaring mistakes and injustices in closed cases using a special procedure.⁷²

The normal sequence of the litigation procedure is as follows. The plaintiff brings his statement of action to the case registration division (*li'anting*), where the case will be examined and archived and the litigation fee will be decided. Once the litigation fee is received, the case will then be assigned to the responsible adjudication division (*shenpan ting*). The adjudication division will hold court hearings and issue the judgment after deliberating in a panel – either a small collegial panel set up within the court-division (*heyiting*) or a grand collegial panel (*shenpan weiyuanhui*) set up at the court-level - depending on the nature of the case. A few cases can be handled according to a simplified procedure and are subject to the decision of a single judge instead of a panel.⁷³

A victorious plaintiff can go to the enforcement division of the first instance court to apply for enforcement if the defendant fails to perform his obligation voluntarily.⁷⁴ The enforcement division will examine the application and decide whether the enforcement

⁶⁹ Namely, whether the case is civil, criminal or commercial. The Organizational Law of People's Courts (1979), Ch.2.

⁷⁰ Shouguang People's Court (Shandong Province), "*Dali'an' jizhi de yunxing moshi yu chengxiao* [The Operational Model and Effect of the 'Grand Case-Registering' Mechanism]," *Sifa shenpan dongtai yu yanjiu* [Research on Judicial Development] 1, no. 1 (2001). pp.95-7.

⁷¹ Jianxin Ren, "Annual Report of the Supreme People's Court," (1998).

⁷² Zhu, ed. *Zhongguo Falü Fazhan Baogao (1979-2004)* [China Legal Development Report (1979-2004)]. p.189.

⁷³ Civil Procedural Law (1991). Ch. 12-13.

⁷⁴ Civil Procedural Law (1991). Art. 207.

will be carried out. Within two years after the court judgment has taken effect, if evidence of serious injustice can be provided, litigants are entitled to apply for *zaishen*, a re-examination and re-trial of a closed case at the adjudicative-supervisory division. The procedure can also be initiated by the court that had rendered the judgment, its superior court or the procuratorate.⁷⁵

Among the 350 judges included in the database, 304 were involved in corruption through exchange in the form of either specific monetary payment or unspecific reciprocity. 179 judges were bribed for their favorable decisions in the adjudicative procedure; 91 were bribed for the same in the enforcement procedure and 7 in the case registration procedure.⁷⁶

2.5.2. Adjudication phase

179 judges rendered perceptibly favorable court decisions to the favor-seeking parties in exchange for monetary bribes or other forms of favors. Usually, judges would render perceptibly favorable decisions to the party from whom they had taken or expected to take bribes, against the interest of the other party. However, a few especially “greedy” and manipulative judges⁷⁷ managed to take bribes from both parties and yet made both believe that they had been treated favorably. The most infamous example is Meng Laigui, the then Chief of the Adjudicative-Supervisory Division of Shanxi High Court. Meng had conducted the so-called “eating from the defendant after having eaten from the plaintiff (*chile yuangao chi beigao*)” in 10 out of 21 cases, in which Meng had taken bribes.⁷⁸ Most of these cases underwent lengthy mediations presided over by Meng, who took advantage of asymmetric information of the litigants to play off the two sides and manipulate their expectations.⁷⁹

Among the 179 judges who were bribed in the adjudication phase, at least 57 took bribes in criminal cases, and 111 in civil cases.⁸⁰ Among the 111 civil cases 95 were about contractual disputes and tort. Court insolvency cases, in particular, always seem to attract

⁷⁵ Civil Procedural Law (1991). Art.177, 185.

⁷⁶ The remaining 27 judges conducted corrupt exchange in court administrative affairs, for example, taking bribes from subordinates in exchange for promotion or taking bribes from bidders in exchange for court procurement contracts.

⁷⁷ For example, see <http://news.sina.com.cn/c/2003-01-20/180136143s.shtml> and <http://news.tom.com/Archive/1002/2003/7/17-35160.html>.

⁷⁸ “Corrupt Judge Meng Laigui ‘Eating from Defendant After Having Eaten from Plaintiff’ (2007)”, <http://news.163.com/07/0703/03/3IEPKLR200011229.html>.

⁷⁹ For similar practice, see the case of Cheng Kunbo, the former court-president of Huanggang Intermediate Court. “Faguan de fubai tongmeng [Corrupt Coalition of Judges],” *zhongguo xinwen zhoukan* [*China Newsweek*], Apr. 19, 2004.

⁸⁰ In some cases, there was no information concerning the type of case in which bribery took place. In other cases, judges took bribes in multiple cases, civil and criminal, and hence are counted twice.

a high volume of bribes. Having just passed the Bankruptcy Law and obviously lacking experience of such cases, the SPC established a pilot program in the Shenzhen Intermediate Court and Tianjin High Court. Both courts wound up with high-profile corruption scandals. Some lawyers revealed that in these cases the court insolvency proceedings are opaque, which makes it difficult for creditors to supervise and allows great discretion to the court in choosing the members of the insolvency committee.⁸¹ In these scandals, where high volumes of assets are at stake, corrupt exchanges develop not only between judges and the creditors/debtors in exchange for a manipulated price of the auctioned items; but also between judges and professional service providers, such as auctioneers, asset-assessors and lawyers, in exchange for court commissions. The SPC was alerted by similar practices detected in many other courts.⁸²

No case reviewed in this research concerns administrative litigations. However, one case involving corruption in an administrative review procedure may be worth of mentioning. Lou Xiaoping, who served as the deputy director of the Justice Bureau of Hainan Province, was prosecuted for taking 400,000 *yuan* from a farm manager who had applied for an administrative review of a decision made by Sanya City concerning the confiscation of his land. Consequently, Lou rendered a decision in the farm manager's favor. When the bribery was detected six years later, Lou had already been appointed as the vice president of Hainan High Court. Lou was sentenced to a term of imprisonment of 11 years for bribe taking and for illicit enrichment, namely, having a significant increase of his assets which he can not reasonably explain in relation to his lawful income.

The low volume of administrative actions in China's courts in general⁸³ might be the direct explanation for the low incidence of administrative cases in the database. Nonetheless, Lou's case is special because we would normally assume that biased decisions in administrative disputes would be rendered only in favor of governmental institutions. However, as Fu has shown, that there seems to be less corruption between plaintiffs and courts in administrative cases is more likely to be because most of the plaintiffs have no money or status.⁸⁴ If the plaintiff has substantial resources, as the farm manager in Lou's case, the decision may also be tilted in the plaintiff's favor.

⁸¹ "Five Former-judges from Shenzhen Intermediate Court Suspected of Corruption, Three Sentenced (2007)", <http://news.sina.com.cn/c/1/2007-03-24/093512601837.shtml> and "Several Judges from Tianjin Courts Fall Due to Corruption (2008)", http://news.xinhuanet.com/local/2008-07/29/content_8834976.htm.

⁸² The SPC referred to the practices as the "blowing wind of insolvency cases (*guaqile pochanfeng*)". See "Several Opinions of the Supreme People's Court on Strengthening the Adjudicative Ability and Raising the Standard of Adjudication (2005)," Note.13.

⁸³ Detailed statistics can be found in Zhu, ed. *Zhongguo Falü Fazhan Baogao (1979-2004) [China Legal Development Report (1979-2004)]*. Ch.4.

⁸⁴ Hualing Fu, "Putting China's Judiciary into Perspective: Is It Independent, Competent, and Fair?," in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, ed. Erik G. Jense, Thomas C. Heller (2003). p.212.

2.5.3. Enforcement phase

It is conspicuous that 79 judges had conducted corrupt exchange in the enforcement phase. A law graduate, after having worked as an intern in a local law firm for a year, said in an interview, “I thought the operation of the adjudication procedure was dark. But now I realize that the darkness only begins when it comes to judgment enforcement.”⁸⁵

In practice, both plaintiffs and defendants can bribe the enforcement personnel in order to either expedite or delay the procedure, depending on which party is making the request. To help the plaintiffs, exceptional measures can be employed to facilitate the enforcement, including advanced enforcement (*xianyu zhixing*),⁸⁶ seizing assets that are located outside of one’s jurisdiction (*yidi zhixing*),⁸⁷ designating a specific court to enforce a particular case not necessarily within the court’s jurisdiction (*zhiding zhixing*) and requesting that a case be transferred from lower courts to a superior court for the purpose of enforcement (*tiji zhixing*).⁸⁸ Some enforcement personnel, after taking bribes from the plaintiff, were also caught seizing assets from third parties unrelated to the litigation.⁸⁹

Other than accelerating the procedure, plaintiffs also bribe enforcement judges in order to prioritize their court award in litigation involving multiple creditors. For example, after taking 100,000 *yuan* a former judge from Hunan High Court satisfied a creditor’s court award by appropriating the amount from the defendant’s account that had been frozen in another pending case for the benefit of a different plaintiff.⁹⁰ A lawyer expressed his

⁸⁵ Interview L013.1. More complaints and remarks from lawyers about court malpractice in the enforcement procedure can be found at “Truth of *zhixingnan*”

http://12203.1cnlaw.com/Essay_Topic.htm?fn=20080927091446; “Judges, why don’t you enforce the judgment when the defendant is solvent”; http://club.pchome.net/topic_1_15_1814718_.html; “Lawyer out of solutions”, <http://www.acla.org.cn/forum/printthread.php?Board=fzsp&main=702008&type=post>

⁸⁶ In one case, a well-connected plaintiff had her claimed assets seized and delivered even before the trial started through the *xianyu zhixing* (advanced enforcement) procedure (*xianyu zhixing*). Court Judgment (2006) [Huaihua Intermediate Court No.52], Ruanling People’s Procuratorate vs. Tang Jikai

⁸⁷ In the so-called “*Changhang* incident” in Hubei province, several judges from Shiyan Intermediate Court once seized assets worth of millions from someone over whom the court had no jurisdiction and who had never been informed about let alone heard in the framed litigation. It was later found out that the judges had shares in the plaintiff’s pledging business. “A Fraud Case Led to Discovery of Greedy Judges”, *Worker’s Daily Tianxun Online*, 29 Nov. 2003. More such examples include Li Zhengda, former judge from Jilin High Court; Wu Chunfa, former judge from Guiyang Intermediate Court; and the group corruption case of judges from Wuhan intermediate court, including former deputy court president Ke Changxin.

⁸⁸ A more detailed local study about *yidizhixing* and *tijizhixing* written by a judge from Chongqing High Court is on file with the author.

⁸⁹ See the report “Anci District Court of Langfang City Illegal Enforcing Non-Litigant’s Property” *Legal Daily*, Jan. 11, 2002; “Enforcement Staff Ignore Defendant’s Property for Months but Freeze Property of Owners Not Related to the Litigation”, *Guangming Daily*, Nov. 25, 2005.

⁹⁰ Court Judgment (2005) [Hunan High Court final No.129] Loudi People’s Procuratorate vs. Wang Kuang

concern in an interview that a court award was unlikely to be realized automatically if the plaintiff does not provide a monetary incentive to the enforcement judges, especially when there are many creditors and much is at stake.⁹¹

In some cases judges also accede to requests from losing defendants to stall the enforcement, temporarily or indefinitely. As a matter of common sense, requests from defendants for inaction or delayed action are much easier to satisfy than requests from plaintiffs for proactive enforcement, since the latter would naturally require more effort and more resources. Another approach to the stalling of enforcement is to start a *zaishen* case, the exceptional retrial procedure mentioned above. Under the Civil Procedure Law, once a *zaishen* application is granted, enforcement proceedings are suspended.⁹² A judge in Sichuan High Court was once paid 160,000 *yuan* by a defendant for this “service”.⁹³

The enforcement procedure is likely to become precarious when both the plaintiff and the defendant seek to influence the judge. In a contractual dispute between two real estate developers in the capital city of Guangxi Province, the disputed apartment building was seized and re-seized several times, leaving the primary victims, the real estate buyers, totally unprotected.⁹⁴

That enforcement procedures are particularly fertile ground for corruption stems in part from litigants’ increasing willingness to pay as the fulfillment of their objectives draws closer. In addition, excuses for judges’ corrupt conduct are easy to find. For example, when stalling the enforcement procedure after bribes have been taken from defendants, judges can justify their inaction by resorting to subterfuges such as local protectionism, the lack of vehicles and human resources, the lack of cooperation from the defendants and the lack of authority.⁹⁵ On the other hand, if “tough enforcement” is meted out, the

⁹¹ Interview L014.1.

⁹² “Opinions on the Application of the Civil Procedure Law (1991)”, The Supreme People’s Court. Art. 206.

⁹³ “Two Judges From Sichuan High Court and Chengdu Intermediate Court Were Sentenced for Bribe-taking (2005)”, <http://www.justice.gov.cn/epublish/gb/paper147/5/class014700001/hwz672714.htm>.

⁹⁴ “A Guangxi Court Released Seized Assets, Plaintiff Got Nothing in Eight Years after Winning the Litigation (2006)”, <http://news.sohu.com/20060802/n244576787.shtml>.

⁹⁵ After taking money from a defendant, Ke Changxin, the former vice-president of Wuhan Intermediate Court, instructed to stall the enforcement of the defendant’s case. The plaintiff resorted to the court-president, who then pressed the vice-president to proceed the enforcement procedure. Ke instructed both the defendant and the enforcement personnel. On the day of enforcement when the court personnel arrived at the defendant’s residence, the defendant resisted the court order and threatened the enforcement personnel by slaughtering a live rooster in front of them and hanged it on his door. The enforcement personnel withdrew from the scene immediately. See “*Jiekai wuhan zhongyuan de heixiazi* [Uncover the ‘Black Box’ of Wuhan Intermediate Court]”, *Minzhu yu fazhi* [Democracy and Rule by Law], Vol. 6, Issue 1, 2004.

conduct can be described as a demonstration of the court's endeavors to realize litigants' rights and enhance its authority.⁹⁶

Court auction procedures, administered by enforcement divisions, are especially prone to corruption. In three cases involving three judges, who had taken 22 bribes in total during enforcement procedures, 11 bribes were from plaintiffs, 4 from defendants and 7 from auctioneers. In the database as a whole, 14 judges were punished for taking bribes either from auctioneers in exchange for the court commission or from buyers in exchange for a manipulated lower-than-market price of the auctioned item.

2.5.4. Case registration phase

This research uncovered only seven judges from case registration divisions (*li'anting*) who had engaged in corrupt exchange. Two were from intermediate courts and five from high courts. The seemingly low corruption rate in this court division, especially in the lower courts, is not surprising. With litigation fees constituting a major portion of the income for many lower-level courts, charging litigants an additional "entry fee" on top of the litigation fee would risk deterring litigants from going to court all together, resulting in a loss of litigation fees for the court and consequently corruption opportunities for judges in other court divisions. To ensure that courts are the ultimate dispute-resolution institution, the Civil Procedure Law also clearly provides that "a court must accept a case if the plaintiff has indicated a specific defendant, the dispute and his claims"⁹⁷ and appeal is provided as a "right" of litigants.⁹⁸ Both leave comparatively little discretion to judges for manipulation, especially in the case of an application to appeal.

No litigant in the investigated cases was found paying monetary bribes to judges in order to obtain an appeal. In contrast, acceptance into the *zaishen* procedure is notoriously troublesome and is more likely to involve monetary bribes.⁹⁹ Since *zaishen* is an exceptional procedure, its acceptance is strictly controlled, to ensure the authority, effectiveness and predictability of court judgments. This creates a large gap between the demand for *zaishen* from litigants and the supply of this procedure by the courts. At the same time the screening criteria for acceptance are vague and leave substantial room for

⁹⁶ The aforementioned former enforcement judge Li Zhenda from Jilin High Court was even awarded a medal for his "contribution" to the court. These reasons were also mentioned in an interview with a judge and two other interviews with lawyers.

⁹⁷ Civil Procedure Law (1991) Art.108.

⁹⁸ Civil Procedure Law (1991) Art.147.

⁹⁹ Discussions on this topic can be found in lawyers' online discussion groups; for an example, see http://www.fl365.com/gb/nhlaw/bbs/topicnew.asp?TOPIC_ID=98458&FORUM_ID=58&CAT_ID=&Topic_Title=%C1%A2%B0%B8%C4%D1.

manipulation.¹⁰⁰ Within the data sample, five judges responsible for reviewing *zaishen* cases were found to have taken bribes. Two of them reportedly boasted in identical terms to the bribing litigants, saying “Your case had reached its last stop here in my division”.¹⁰¹

It should be noted that first-instance case registration is not trouble-free for litigants and lawyers. Although it is not a procedural phase characterized by serious bribery, complaints abound as to the phenomena “difficult [surly] court personnel; difficult to obtain entry into the court system; and difficult to get things done in the courts” (*liannankan, mennanjin, shinanban*),¹⁰² which have been repeatedly denounced by the SPC.¹⁰³ Typical behaviors include the arbitrary refusal to permit the filing of a case. A young lawyer once had the registration of an action rejected because, according to the chief of the registration division, “the length of the contract was too short”.¹⁰⁴ Several complaints of this kind were posted online against the Chaoyang District Court of Beijing. On one occasion, as revealed by lawyer Liu Xiaoyuan in his blog, the court rejected a medical negligence case because the lawyer did not provide the proof of cremation of the deceased in addition to the death certificate. In another case involving a contractual dispute, lawyer Liu, after having provided the detailed postal address of the defendant, was told that the case could not be registered if he could not provide a special geographic code for that address, which is only commonly known to the police.¹⁰⁵ In an extreme case,

¹⁰⁰ Because of the abundant judicial problems emerged in the procedure, the Civil Procedure Law was amended in 2008, aiming to improve the transparency and efficiency of the examining procedure over *zaishen* application. See “New Civil Procedure Law: Examination of *Zaishen* Application Better regulated, More Transparent and More Efficient”, *People’s Courts Daily*, Apr. 12, 2008. For further study on the *zaishen* procedure, see Yulin Fu, “*Minshi shenpan jiandu zhidu de shizhengxing fenxi* [An Empirical Analysis of the Supervisory System of the Adjudicative Process in Civil Litigations]”, in *Falü Chengxu Yunzuo De Shizheng Fenxi* [A Positive Analysis to Practice of Legal Procedures] (Beijing: Law Press China, 2005).

¹⁰¹ See supra note 41 on the case of Meng Laigui. See also

<http://www.chinavalue.net/Media/Article.aspx?ArticleId=9149&PageId=1>.

¹⁰² A couple of examples can be found at <http://www.xici.net/b641398/d39976989.htm> and <http://chinahunyin.com/list.asp?unid=482>.

¹⁰³ For details, see reports on the SPC’s *Guifan sifa xingwei zhuanxiang zhenggai huodong* [special rectification campaign on regulating judicial behaviours].

¹⁰⁴ Interview L013.1. Similar complaints from lawyers can be found at “Descriptions and explanations of *li’an nan*”, <http://www.9ask.cn/blog/user/fyhaolvshi/archives/2008/41476.html> and “Lazy Beijing judges”, <http://www.acla.org.cn/forum/printthread.php?Board=44&main=682368&type=post>. For a summary of the problem of “*li’annan*”, see the interview with Professor Xu Xin in *China Adjudication Magazine*: “*Jiejue ‘liannan’ yao lizu zhongguo guoqing* [To Resolve the Problem of Difficulty in Case-Registration One Needs to Consider the Current Situation of the Country]”, *zhongguo shenpan* [China Adjudication] 2007. An electronic copy can be found in the interviewee’s blog: http://www.fatianxia.com/blog_list.asp?id=8057.

¹⁰⁵ See the blog of Liu Xiaoyuan lawyer: http://blog.sina.com.cn/s/blog_49daf0ea010005iw.html. Similar complaints about mis-handling of case registration applications by the same court can be found in “Resolving the impasse of *li’annan*” <http://club.news.sohu.com/r-fazhi-78818-0-0-10.html>.

a lawyer was even assaulted by a judge in Tianjin Nankai District Court, when the lawyer tried to challenge an unjustified rejection.¹⁰⁶

It is noteworthy, however, that the rejections are hardly ever made in written form,¹⁰⁷ making it difficult for litigants or lawyers successfully to challenge such rejections. According to a report in the Legal Daily, one lawyer was left with no option but to appear in court accompanied by a notary officer to witness the rejection so as to secure evidence, an innovative as well as desperate measure.¹⁰⁸

On the other hand, some court users report that if the litigant or lawyer has the right connections or “guanxi” in courts, the registration procedure can be surprisingly smooth and efficient. A lawyer proudly revealed in his blog that with the help of his “judge mates” (*faguan xiongdi*) he had once completed all court procedures and had a defendant’s bank account frozen in less than two hours from the moment he began to draft the plaintiff’s statement of case.¹⁰⁹ In another instance, Zhan Xiaoyong, the son of a former court president of the Hunan High Court, once successfully completed the notoriously difficult *zaishen* acceptance procedure on the same day, just a few hours after the announcement of the verdict of the appeal.¹¹⁰

2.6. General findings and interpretation

The first general finding of this chapter is the striking dominance of Type C corrupt conduct, corruption through exchange without any direct physical impact on the victim. Among the total of 389 corrupt acts (some judges were detected and punished for, for example, both embezzlement and bribe-taking) committed by the 350 judges, 303 acts,

¹⁰⁶ The report on this incident stated that when the administrative court division of Tianjin Nankai Court rejected a class-action law suit, the lawyer representing the plaintiffs attempted to challenge the court’s rejection by asking for an explanation, and refused to leave the court. During the argument, the then chief of the administrative court division came to the scene and tried to strangle the lawyer with his hands. This notorious incident was widely disseminated because the judge shouted at the lawyer and litigants that “*wo jiushi fayuan; fayuan jiushi wo* [I am the court and the court is me].” For details, see “Tianjin Judge Assaulted Lawyer: Investigation Team Suggested Removing the Judge from Court Leadership (2006),” *Huaxia Shibao* [*Huaxia Times*].

¹⁰⁷ There are also many complaints from lawyers and litigants that court clerks took evidence from them without issuing any acknowledgement about whether, when and what has been submitted by litigants or their representatives and received by courts. This practice makes it difficult to hold courts responsible when files are found to be missing. For details, search “*fayuan bu gei shouju* (no acknowledgement of receipt of evidence by courts)” at www.baidu.com.

¹⁰⁸ “First Public Notary Case of Securing Evidence for the Act of Registering a Case in Court (2007),” http://www.legaldaily.com.cn/0705/2007-08/12/content_678775.htm.

¹⁰⁹ The webpage of this story has been removed from the website but is on file with the author.

¹¹⁰ The information was disclosed as a piece of “side-information” in the defendant’s statement of Ao Wanquan, a former judge and deputy chief of the economic-case court-division in Hunan High Court, who was later prosecuted for bribe-taking.

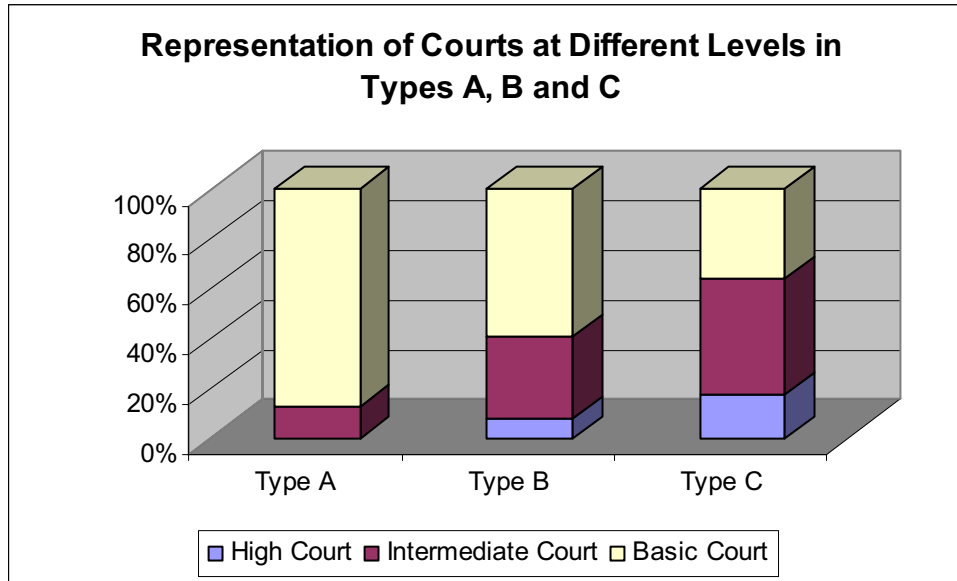
that is 78% of all, belong to Type C, corrupt exchange. This result is to be expected because Types A and B normally leave traces of evidence of corruption, such as missing assets or a direct victim, which makes the conduct riskier and its practitioner more vulnerable to exposure. Bribery and favoritism are instead based on a voluntary agreement between the exchange parties either in terms of a monetary transaction or an unspecified reciprocation, from which both parties benefit. This creates a sense of equilibrium, which sustains secrecy and makes the corrupt conduct more difficult to detect. Indeed, this form of corruption is widespread not just in the courts but in Chinese public institutions in general, as illustrated in Guo's recent work.¹¹¹

This dataset also suggests that judges from intermediate and high courts appear to be more likely to engage in Type C corruption than in Types A and B. In fact, no judge serving in high courts or above in this database was involved in corruption described in Type A. Physical violence is rare, and found mainly in basic courts, suggesting that upper courts judges have a higher sense of professionalism and a self-identity that inhibits such behavior. Higher court judges also appear to be less likely than lower court judges to engage in theft or misappropriation of funds. Judges from higher courts represent 8% of such Type B cases in the dataset, while intermediate court judges account for 33%.

In contrast, for Type C, exchange-based corruption, high-court and intermediate-court judges accounted for 17% and 47% respectively. However, this finding does not necessarily suggest that fewer cases of corrupt exchange occur in lower courts than in higher courts. It is more likely that punishable corrupt-exchange activities in higher-level courts are more visible than those committed by judges in lower courts. Greater sums or promises of reciprocal favors are likely to be required in order to influence judges in higher courts (overseeing higher stakes cases). This in turn makes these cases more visible: the media and the relevant judicial disciplinary committee are generally more likely to focus on cases in which judges accept large bribes from litigants or their lawyers in major cities, rather than on cases where litigants try to influence judges in remote countryside courts by delivering to them, for instance, 5 liters of cooking oil.

¹¹¹ Guo, "Corruption in Transitional China: An Empirical Analysis."

Figure 2.2

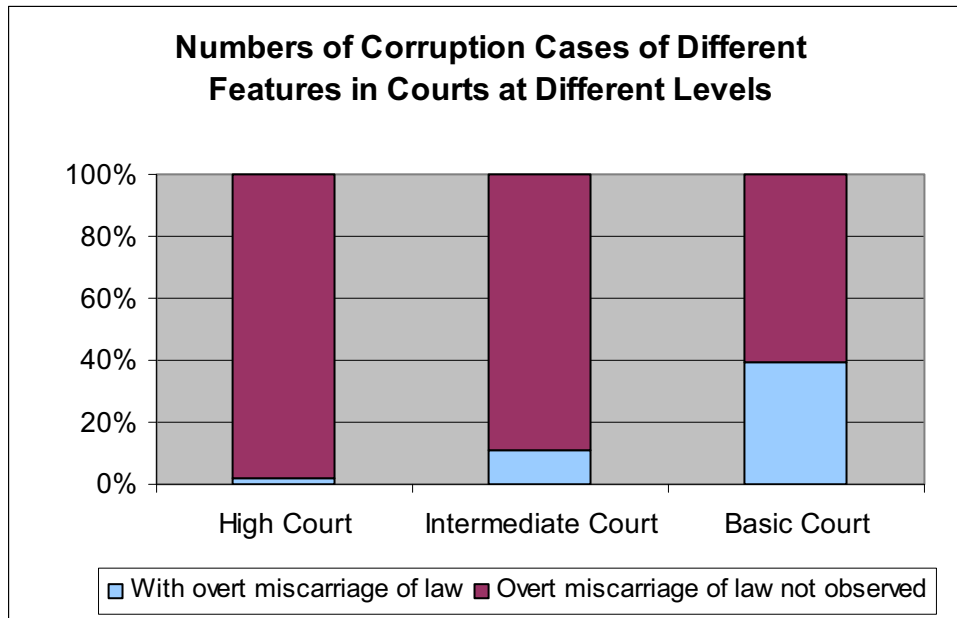


The second and related finding is that very few high-court judges in the cases digested in this research committed the crime of rendering a court decision in violation of the prescription of law (*wangfacaipanzui*). In other words, few high-court judges were engaged in corrupt activities which resulted in overt miscarriages of law, such as rendering favorable decisions for litigants by forging court documents or instructing litigants to forge evidence or commit perjury. Among the 79 corrupt exchanges committed by basic court judges, the ratio between corrupt exchange with and without resulting in overt miscarriage of law is 1:1.5. In contrast, the ratio drops to 1:11 and 1:48 in intermediate courts and high courts respectively. One possible explanation for this phenomenon could be that the complexity of cases presented in higher courts leaves more room for manipulation of discretion. Another possible explanation is that higher court judges are generally better educated and experienced in interpreting the law, and hence more capable of exploiting the law for corrupt purposes.

On the other hand, “collective corruption” cases (*chuan’an yao’an*) are more often found in higher courts, such as the corruption scandals in the provincial high courts of Jilin, Hunan, Liaoning, Tianjin and intermediate courts of major cities, including Changsha, Wuhan, Shenyang and Shenzhen. These scandals are characterized by collusive and sometimes organized corrupt conduct of judges from different court divisions and from

courts at different levels, who shared “clients” and the resulting corrupt benefits.¹¹² In some of these courts, corruption was so deep-rooted that corruption scandals continued to resurface even after the courts had gone through anti-corruption purges and the corrupt judges had allegedly been removed and replaced.¹¹³

Figure 2.3



The third general finding is that the occurrence of bribery relating to court-management affairs is closely correlated to the position of the offender. 15 judges took kickbacks from contractors in court construction projects; of these, 13 were court presidents at different levels. 12 judges, all of whom were court presidents, including four from high-courts, took bribes from their subordinates for court appointment and promotion.¹¹⁴ This finding is not surprising given that the decision-making power over court finances and personnel management is concentrated exclusively in the hands of top court leaders. This finding reinforces the conclusion of Ren and Du’s work, namely that “first-in-command”

¹¹² For example, in the Changsha scandal, corrupt cooperation was found among judges from Hunan High Court and Changsha Intermediate Court. In the Wuhan scandal, cooperation existed among judges between Wuhan Intermediate Court and Shiyan Intermediate Court. The recent investigation against Huang Songyou, the former vice-president of the SPC, also indicates that there was cooperation between the SPC and the Guangdong High Court.

¹¹³ Such incidences have been found in the following courts: Fuyang Intermediate Court, Wuhan Intermediate Court, Shenzhen Intermediate Court and Jilin High Court.

¹¹⁴ The four courts are Liaoning, Hunan, Heilongjiang and Guangdong High Courts.

officials in other public institutions are highly susceptible to corruption as a result of the concentration of power.¹¹⁵ Meanwhile, as the data discussed in this chapter show, the distribution of corruption in litigation-related affairs, although still dominated by functional leaders (161 out of 273 are judges above the rank of deputy division chief), is more dispersed among all judges. Indeed, within the dataset 126 judges without any leadership function were found conducting exchanges with litigants or lawyers while performing either adjudicative or enforcement functions.

The fourth general finding is that, at least on the basis of the datasets reviewed for this chapter, the number of detected cases of corruption committed in the litigation process, including the adjudication and enforcement phases, has increased steadily in recent years compared to cases of corruption conducted in other court-management-related areas. Notably, since 2005 the number of corruption cases detected in the enforcement divisions has equalled that found in the adjudicative divisions. It suggests that corruption in the litigation process, especially in the enforcement phase, is becoming at the very least more visible in media reports. Data collection methods will need to be improved in order to determine whether this also indicates an increase of the actual occurrence of corruption incidents in these procedural phases and court divisions.

Nonetheless, this trend would seem to coincide with the implementation of a series of SPC instructions aiming at strengthening the capacity of the enforcement divisions in higher courts.¹¹⁶ The most important of these instructions was the decision taken in 2000 to establish enforcement bureaus.¹¹⁷ This decision in fact raised the administrative rank of the enforcement divisions and of their top administrative leaders, thereby turning the enforcement divisions into the most powerful divisions in the courts.¹¹⁸ In contrast, the less powerful case registration divisions attract only petty forms of corrupt-exchange, which is mainly achieved through “work-to-rule” practices, discharging the minimum amount of work possible and following the rules to the letter so as to impede progress rather than achieving the aim of the rules. The only exception to this pattern is the *zaishen* procedure, in which the acceptance of a case has an immediate benefit and value to applicants and hence is able to attract and justify the more “serious” bribes.

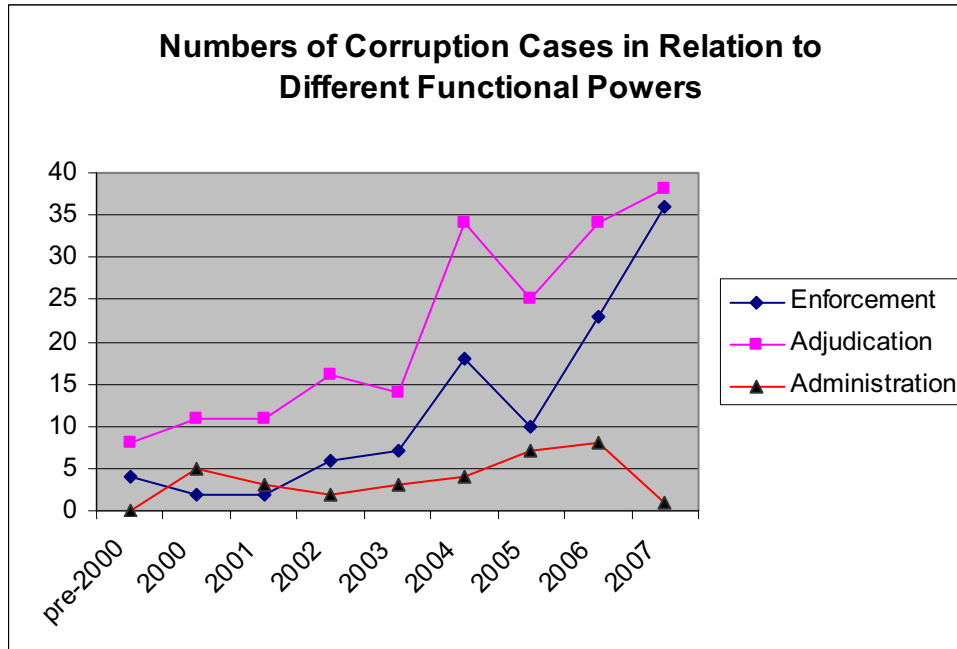
¹¹⁵ Jianming Ren, Zhizhou Du, "Institutionalized Corruption: Power Overconcentration of the First-in-Command in China," *Crime, Law and Social Change* 49 (2008).

¹¹⁶ "Announcement of the Supreme People's Court Concerning Issues Related to the Reform of Enforcement Divisions of People's Courts (2000)", SPC.

¹¹⁷ Since the reform, the administrative rank of the chief of the enforcement court-division has been a half-rank higher than those of other court-divisions. "Announcement of the Supreme People's Court Concerning Issues Related to the Reform of Enforcement Divisions of People's Courts ", (2000).

¹¹⁸ Interview Z019.

Figure 2.4



The last general finding is that although corrupt exchange can occur in either civil or criminal litigation, civil and particularly commercial litigation dominates. Among the cases studied, the number of corrupt-exchange activities detected in the adjudicative phase in civil litigation doubles that found in criminal litigation. Taking account that the average first-instance case-intake ratio between civil and criminal litigations in China is about 7.5:1,¹¹⁹ the amount of corrupt activities taken place in criminal litigations, as suggested in this dataset, is much higher than what should be expected. Since the method for data-collection in this research is not ideal, here one can only speculate the causes to this result. A possible explanation is that in criminal cases the defendants are more willing to bribe because of the high stake involved. It could also be explained as that requests from bribers in criminal cases are easier to be granted because the resistance from the antagonists in criminal cases is weaker than that in civil cases. After all, in civil cases what is requested by one party has to come from the other party; however in criminal cases if a judge grants a bribing defendant, for example, a shorter term of

¹¹⁹ Zhu, ed. *Zhongguo Falü Fazhan Baogao (1979-2004)* [China Legal Development Report (1979-2004)]. p.207.

imprisonment, protest would be much weaker either from the victims¹²⁰ or the public prosecutors.¹²¹ The data also shows that more corruption was detected in commercial litigation (95 cases) than in non-commercial civil cases most probably because commercial litigation involves in much greater material interests, which more readily justify and better accommodate the costs of more “expensive” bribes as well as the higher transactional costs associated with illegal transactions.

As demonstrated above, corruption, by definition, shadows power. This is also demonstrated by the absence of corruption cases in courts involving the enforcement of judgments in criminal cases, over which courts do not enjoy the full competence. In such cases, whether a person is jailed, for how long or whether she/he has her/his property taken away may well be tainted by corrupt decision-making by individuals from other law-enforcement institutions rather than the courts. In fact, as emerged in some of the investigated cases, resourceful defendants and their families may seek out opportunities for favored treatment through bribing prison-administrators, which is akin to litigants in civil and commercial litigation bribing judges in courts. Such practices range from obtaining practical privileges in prison¹²² to more substantive preferential treatment, such as grant of probation, bail on medical leave and sentence reduction.¹²³ In some prisons, the “cost” of a bribe is clearly correlated to the amount of the reduction of sentence.¹²⁴

¹²⁰ According to Huang’s conversation with a basic court judge, what crime victims care most is the civil compensation. Criminal punishment is and should not be their [the victims’] concern, said the judge. Jialiang Huang, “*Falü zai jiceng gayuan zhong de shijian luoji* [Logic of Law in Operation in Lower Courts in China],” in Beida Qinghua Renda Shehuixue Shuoshi Lunwen Xuanbian [Selected Theses for Master-Degree in Sociology from Peking University, Qsinghua University and Renmin University] ed. Yefu Zheng, et.al. (Jinan: Shandong Renmin, 2006). pp.28-29.

¹²¹ To judge from the annual working reports of the Supreme Procuratorate, the performance of public prosecutors is evaluated mainly by the number of prosecutions and convictions.

¹²² See the report on Ma Jianguo, the convicted former governor of Jinniu District, Chengdu City. While serving his sentence in a local prison, he kept several prison administrators on his payroll. In return, Ma enjoyed the freedom of wearing his own clothes, having meals brought in, using his mobile phones to run his company businesses, and even attending banquets held for him in the city.

<http://news.sina.com.cn/c/1/2006-09-08/072010953673.shtml>. Another example concerns the convicted local gang leader Liu Wenyi, who was granted a reduction of sentence and released on the ground of “significant technology contribution” to the prison. It was later found out that the so-called “contribution” was his purchase of a heating boiler for the prison. In addition to the boiler, Liu also “contributed” money to the deputy director of the prison and other prison administrators. See http://www.china.com.cn/law/txt/2007-11/08/content_9196874.htm.

¹²³ The shrewd businessman Zhou Zhengyi, who was directly linked to the fallen Shanghai Mayor Cheng Liangyu, bribed four prison administrators in order to obtain a sentence reduction. The effort only failed because of the high-profile nature and political sensitivity of his case in relation to the former mayor. See <http://www.why.com.cn/epublish/node4/node12488/node12489/userobject7ai99708.html>. For a review of these and similar malpractices, see Shixing Jiang, “*Jianyu ganjing zhiwu fanzui yufang duice* [Prevention and Counter-Measures against Professional Crimes Committed by Prison Cadre-Officers],” in *Zhongguo Zhiwu Fanzui Yufang Diaocha Baogao* [Investigative Report on Professional Crimes and Its Prevention of China], ed. Criminology Research Society of China (2004). pp. 381-2.

¹²⁴ A report revealed that the price of a one-year sentence reduction in the Dalian prisons was known to be 12,000yuan. Jiaxun Lü, Hu Qishu, “*Dui Liaoning Dalianshi sifa jiguan gongzuo renyuan zhiwu fanzui*

The change of habitat of corruption is because the enforcement of criminal judgments involving the punishment of imprisonment is administered by the Ministry of Justice and its branches rather than courts.¹²⁵ Courts retain, however, the discretion to grant probation, enforcement without imprisonment and to render pecuniary penalties,¹²⁶ a field which in practice is far from corruption-free.¹²⁷ Customary practices had been found in some courts, where a fixed amount observation fee for a sentence suspension (*huanxingkaochafei*) is collected semi-officially from criminal defendants and the profits are later allocated proportionally among all court personnel involved.¹²⁸

2.7. Conclusion

Based on the data analyzed in this research, corruption has been found flourishing in the central court divisions, at almost all levels of the judicial system, involving all types of judges, regardless of whether the litigation was civil or criminal. Distinctions remain in terms of the prevalence of corruption of different types. By classifying corruption in China's courts into three types, this chapter attempts to demonstrate that each type exhibits different features depending on their particular context in courts at different levels and in different court divisions. On the basis of the data collected, extreme cases involving physical coercion and overt miscarriage of law appear mostly and in a mostly highly visible manner in courts at the lowest level. More "subtle" forms of corruption seem more conspicuous in higher courts. Among court-divisions, corruption is distributed unequally as well. According to the cases studied, corrupt-exchange activities are mostly concentrated in the adjudicative divisions of the courts. However, corruption has also grown rapidly in the enforcement divisions, making the enforcement and adjudicative divisions almost indistinguishable in terms of the salience of corruption. By contrast, due to their structural constraints, case registration divisions appear to be less prone to corrupt practices.

qingkuang diaocha ji yufang [Investigation and Prevention of Professional Crimes Committed by Personnel in the Justice System in Dalian City, Liaoning Province], in *Zhongguo zhiwu fanzui yufang diaocha baogao* [Investigative Report on Professional Crimes and Its Prevention of China], ed. Criminology Research Society of China (2004). p.353.

¹²⁵ Law of Prisons of the People's Republic of China (1994). Art.10

¹²⁶ Criminal Law (1997) Ch. 3 and Ch. 4.

¹²⁷ Liu Yaming, "Zhiwu fanzui anjian shiyong huanxing qingkuang diaocha fenxi [An Investigation and Analysis of the Use of Suspended Sentence in White-Collar Crimes]," *Network of prevention of white-collar crime* (2004). <http://www.yfw.com.cn/shownews.asp?id=36265>.

¹²⁸ "Rendering suspended sentences after taking money from defendants is illicit adjudication (2007)", <http://news.sina.com.cn/c/pl/2007-03-26/154612617436.shtml>. In most cases investigated for this research no distinction was made between reducing a substantive sentence and granting probation or enforcement without imprisonment. But in at least two cases judges were charged for taking bribes from relatives of the defendants for granting enforcement without imprisonment. See also see Yaxin Wang, "'Sifafubai' xianxiang ce yizhong jiedu [An Interpretation of 'Judicial Corruption']," *Sixiang zhanxian* 31, no. 4 (2005) p.50. fn.2

This chapter also shows that judges heading various administrative court divisions and sub-divisions constitute a major group of corruption offenders in the dataset employed. Possessing multiple functional powers, judges in this group are able to conduct corruption through exchange in various types of court affairs, ranging from the rendering of biased decisions in litigation, the granting of court commissions, the assignment of court procurement contracts, to the appointment and promotion of judges. That bribery has played a role in the appointment and promotion of judges, especially in four high-courts, is a matter for concern. It is not difficult to imagine the effect on litigation in these courts under a leadership which was inclined to retain judicial posts for sale. This phenomenon suggests that at least in some courts corruption is not just an isolated event but has instead become part of an organizational culture. This is further confirmed by outbreaks of corruption recurring in certain courts which had ostensibly already been “purged” of corrupt judges. The following chapters will provide more in-depth studies of corrupt behavior in China’s courts, especially of corrupt exchange, the most vigorous and resilient type of all.