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**JUDICIAL
REFORM IN
CHINA:
Lessons from
Shanghai**

Veron Mei-Ying Hung

China Program

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Carnegie Endowment for International Peace
Publications Department
1779 Massachusetts Avenue, NW
Washington, DC 20036
Phone: 202-483-7600
Fax: 202-483-1840
www.CarnegieEndowment.org

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About the Author

Veron Mei-Ying Hung is an associate in the Carnegie Endowment's China Program. She has in-depth experience in Chinese law, and law and politics in the Asia-Pacific region. In academia and the private sector, she has studied such areas as legal reform in China, constitutional development in Hong Kong, human rights in Cambodia, and trade with China. Hung was assistant professor of law at the City University of Hong Kong and visiting professor of the People's University in Beijing. She was also a consultant for the United Nations Office of the High Commissioner for Human Rights, advising the office on implementing human rights technical cooperation programs in China. She trained legislative affairs officials from China's provinces and the State Council, the country's highest executive organ, on "China: WTO and Judicial Review." Hung is a member of the New York Bar and the District of Columbia Bar, and is admitted as a barrister in England, Wales, and Hong Kong. She received her doctorate from Stanford University. She is the author of "China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform" (*American Journal of Comparative Law*) and "Getting to Democracy in Hong Kong" (Carnegie Endowment).

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CONTENTS

Interference in Court Matters 4

 Party Members’ and Government Officials’ Better Respect for Law 7

 Less *Guanxi* and Local Protectionism 9

 Interference Still Exists 10

Intracourt and Intercourt Influence. 14

 Better Judges 14

 Clearer Rules 15

 Influence Still Exists 17

Judicial Corruption 17

 Better Pay and Social Status 18

 Stricter Discipline 19

Lessons for Judicial Reform in China 19

List of Interviewees 23

Notes 25

The George W. Bush administration in September 2002 laid out in the “National Security Strategy of the United States” its strategy toward China: “We welcome the emergence of a strong, peaceful, and prosperous China.”¹ During a trip to Asia in March 2005, Secretary of State Condoleezza Rice adopted a similar phrase to welcome “the rise of a confident, peaceful, and prosperous China.”

Implicit in Washington’s message is its concern about the potential threat of China’s rise. To ease such concern prevailing outside China and to respond to criticisms about the Chinese Communist Party’s (CCP) governance spreading across the country, Beijing has vowed to establish a “socialist harmonious society” that features, among other characteristics, the rule of law, fairness, and justice.

Unfortunately, courts in China have yet to exemplify the rule of law, fairness, and justice. Understanding that its governance cannot be sustained by a dysfunctional justice system, Beijing has taken a series of actions to reform China’s judiciary. In 1999, immediately after the CCP decided at the Fifteenth Party Congress to “promote judicial reform” (*tuijin sifa gaige*), the Supreme People’s Court (SPC) announced a five-year reform plan to build a “fair, open, highly effective, honest, and well-functioning” judicial system. “Judicial fairness” (*sifa gongzheng*) was highlighted as the “essence” of judicial reform. Since then, although Chinese leaders have coined various expressions, including “fairness and efficiency” (*gongzheng yu xiaolu*) and “administering justice for the people” (*sifa weimin*), to describe their judicial reform initiatives, fairness has always been the central theme.

Five years have passed since the release of the SPC’s reform plan. While claiming that it has completed most of the tasks laid out in the plan, the SPC particularly commended Shanghai for its “outstanding...judicial work, court reform, and contingent building.”² Such achievement has helped this pioneering city acquire the title of “the most competitive city in mainland China.”³ To what extent has the objective of fairness *really* been achieved in Shanghai?

Judicial fairness in a highly opaque legal system like China’s cannot be readily measured. But administrative cases—lawsuits brought by private parties against government agencies on the grounds that those agencies’ decisions have infringed on the parties’ legal rights or interests—shed useful light on the topic. Gu Nianzu, a former president of the Shanghai High Court, the highest court in the city, put it this way: “Whether or not the work of a court is fair hinges on administrative litigation.”⁴

China enacted the Administrative Litigation Law of 1989 to formally introduce administrative litigation to its legal system. Despite some improvements, this type of litigation is still hampered by interference from the CCP and government officials, intercourt and intracourt influence, and judicial corruption.⁵ This study seeks to analyze whether fairness has *really* been achieved in Shanghai and what this means to China as a whole, and it tries to accomplish this through extensive literary research as well as a survey and interviews in China, especially Shanghai.⁶ This study seeks to answer three questions: Are interference, intracourt and intercourt influence, and

judicial corruption of a lesser magnitude in Shanghai than in other parts of China? If so, what measures has Shanghai taken to accomplish this? What lessons about judicial reform in China can be learned from Shanghai's experiences?

INTERFERENCE IN COURT MATTERS

Interference with the judiciary by the CCP and administrative agencies is a major problem of China's administrative litigation. This problem is reflected in Chinese courts' small administrative caseload. On average, administrative cases account for only 1.4 percent of all first-instance cases accepted by courts in China.⁷ Many government officials and party members, especially those at lower ranks, pressure judges to reject administrative cases filed by aggrieved parties.

Compared with China as a whole, Shanghai has consistently had a smaller administrative caseload. On average, administrative cases accepted by courts in Shanghai account for only 0.9 percent of all of the city's first-instance cases. Does this suggest that interference is more serious in Shanghai?

This question cannot be answered without analyzing how serious the "three nots" (*san bu*) problem is in Shanghai. Three nots is an expression widely used in China to describe the phenomenon that many aggrieved parties:

- Dare not sue (*bu gangao*) because of their fear of retaliation by the government,
- Are unwilling to sue (*bu yuangao*) because of their concerns over, among other things, the cost of litigation, and
- Do not know how to sue (*bu donggao*) because of their inadequate legal knowledge and weak sense of seeking professional legal advice.⁸

In China, the three-nots problem is, though serious, the second most significant cause (after interference) of China's small administrative caseload. Is Shanghai's smaller administrative caseload simply a result of the city's more serious three-nots problem or is it a result of more interference?

Research shows that the three-nots problem does not have as much impact on Shanghainese⁹ as it does on the population in the rest of China because Shanghainese generally fear the government less, are more willing and able to bear the costs of litigation, and are either more knowledgeable about legal procedure or more ready to seek legal service.

Less fear. Individuals in Shanghai generally have less fear of suing government officials because officials of a highly mobile and populous society like Shanghai have difficulty retaliating against a particular individual.¹⁰ For example, when asked what they would do if the police illegally imposed a fine of 500 renminbi (\$62.50) on them for violating traffic regulations, 145 of 362 (40 percent) of Shanghai residents said that they would sue the police. The second most chosen means of settling the dispute (19.11 percent) was mediation.¹¹ Individuals in China as a whole generally fear the police most, and bringing lawsuits against the police is not common.¹²

Private enterprises have different considerations. Operation of these enterprises, regardless of their locations, is subject to close control of business-related agencies such as the industry and commerce bureaus. Possessing enormous discretionary power, these agencies could easily retaliate by, for example, rejecting applications by targeted enterprises for administrative approvals.¹³ Private enterprises' fear of suing government agencies is reflected in both national and Shanghai statistics. Industry and commerce administrative cases, for example, account for only approximately 2 to 3 percent of all first-instance administrative cases in Shanghai and in China as a whole. Such a low percentage does not correspond with the growing importance of industry and commerce departments in China, especially in Shanghai.

Survey results are also illustrative. Residents in Shanghai were asked what they would do if they were owners of profitable restaurants and were applying for a license to run another restaurant but the government agencies unreasonably rejected their applications. About 46 percent of 488 respondents opted for the choice of "petition to the local government" for help. Only 185 (27 percent) said that they would sue to confront those agencies directly.¹⁴

Both individuals and private businesses in Shanghai are, like their counterparts in the rest of China, quite ready to sue administrative agencies if they feel they are immune to retaliation by these agencies because of, for example, their good connections (*guanxi*) with government agencies that rank above the defendant agency in China's political hierarchy. They are also ready to bring lawsuits if their interests at stake outweigh their fear. Loss of enormous economic interests such as real property is an example. Individuals or entrepreneurs who are unfairly evicted from their homes or places of business have little fear of petitioning to local or central governments for help or of suing the agencies responsible for the eviction. Chinese authorities have openly acknowledged the growing importance of eviction-related administrative cases.¹⁵

Eviction disputes seem to be even more common in Shanghai, which is undergoing fast urbanization and needs to build numerous facilities to host the World Expo in 2010. Official sources reported that half of the households involved in the city's two thousand eviction disputes in the past decade sued the government; the rest mostly resorted to lodging complaints with local leaders.¹⁶ These officially acknowledged one thousand eviction-related administrative cases account for almost 13 percent of the eight-thousand-odd administrative cases accepted by courts in Shanghai during this period. Such cases account for only 6 percent of all first-instance administrative cases handled by courts in China in 2004.

Interviewed experts confirmed the significance of eviction administrative cases in Shanghai. Some of them suggested that the 20 percent to 30 percent annual increase in the number of administrative cases in Shanghai in recent years is primarily due to the rapid growth of eviction cases.¹⁷

Less unwillingness. Citizens in China are often unwilling to bring lawsuits, including administrative lawsuits, because of their concern over, among other things, litigation costs.¹⁸ Residents in Shanghai do not appear to have such concerns.

At first glance, one may attribute this to Shanghai's better legal aid service. The city's legal aid service has received blessings from the national and municipal governments. In 2001, of the 47 million renminbi (about \$6 million) appropriated by the national government to the country's legal aid system, half was spent on coastal regions such as Shanghai and Guangdong province. Likewise,

Shanghai's municipal government appropriated 10 million renminbi (\$1.25 million) to twenty legal aid centers in the city for improving their offices. This stands in stark contrast with China as a whole, where 23 percent of county-level localities are still short of funds for building legal aid centers.¹⁹

A deeper investigation indicates that the greater willingness of the Shanghainese to bring administrative lawsuits is unrelated to the city's better legal aid service. In Shanghai, legal aid in administrative litigation is limited. Of the 2,645 legal aid cases handled in Shanghai in 2001, only 10 (0.37 percent) were administrative cases. In 2002, of the 2,903 legal aid cases, only 9 (0.31 percent) were administrative.²⁰ Such a low percentage is not simply a reflection of the low percentage of administrative cases in the pool of all first-instance accepted cases in Shanghai because the latter percentage—about 1 percent in both 2001 and 2002—was actually higher.

The director of the Shanghai Municipal Legal Aid Center said he had noticed this trend and was planning to study this issue.²¹ A well-known lawyer in Shanghai who specializes in administrative litigation offered his insight: "It's about citizens suing officials; why does the government help its citizens sue itself?"²²

The greater willingness of the Shanghainese to bring administrative lawsuits is likely linked to their relative affluence. The average annual income in Shanghai is the highest in the country, reaching 49,180 renminbi (about \$6,150).²³ For an administrative case that does not involve property, the court fee is only 100 renminbi (\$12.50). This, together with lawyers' fees that range from 3,000 to 5,000 renminbi (\$375–\$625) per case, is an amount that a Shanghainese with an average income can afford.²⁴

More knowledge. Many citizens in China still do not know how to bring an administrative lawsuit.²⁵ Shanghainese, in general, do not seem to have this problem, as illustrated by the fact that the city handles many new types of administrative cases. Although most citizens were still unaware of their legal right to sue agencies for "failing to act," that is, failing to carry out the agencies' legal obligations (*bu luxing fading zhize*), this type of case was already growing rapidly in Shanghai, from 23 cases in 1998 to 163 cases in 2000.²⁶

Interviewees attributed Shanghai residents' better knowledge about bringing lawsuits to the city's efforts to promote legal education among the general public²⁷ and the residents' strong sense of seeking legal advice.²⁸ In 2001, for example, 70 percent of all first- and second-instance administrative cases completed by courts in Shanghai were cases in which the aggrieved parties were represented by lawyers.²⁹ For all of China, the percentage was only 24 percent. This comparison also shows that, although lawyers in Shanghai are, like other lawyers in the country, reluctant to handle administrative cases because they do not want to stand up against the government, in Shanghai they seem to have less fear of doing so.³⁰

This, however, does not mean that lawyers in Shanghai have no fear at all in handling administrative cases. The plight of Zheng Enchong may have sent a warning to these lawyers. Zheng, a prominent lawyer in Shanghai who had handled many eviction cases, was sentenced to three years' imprisonment for disclosing state secrets. Zheng is believed to have offended powerful local party officials when he, in the course of representing two thousand residents in a suit against Shanghai's land administration authorities, alleged that local party officials had colluded with a wealthy property developer to evict those residents. The developer's subsequent conviction on fraud and stock manipulation has not changed Zheng's fate.³¹

The above analysis shows that the three-nots problem is actually less serious in Shanghai than it is in other parts of China. Hence, the three-nots issue does not explain the city's smaller-than-national average administrative caseload.

One may then deduce that Shanghai courts are indeed suffering from more interference. But this deduction is not supported by a comparison of the withdrawal rates of administrative cases in Shanghai and China as a whole. In China, a significant portion of accepted administrative cases is subsequently withdrawn from courts because of interference. Many government officials and party members, especially those at lower ranks, pressure, either directly or indirectly through judges, aggrieved parties to withdraw their cases.³² If there is more interference in Shanghai, one would expect to see a higher withdrawal rate. But Shanghai's average withdrawal rate, 34 percent, is lower than that of the national average, which is 42 percent.

Shanghai's lower-than-national-average withdrawal rate is mainly due to less interference prevailing in Shanghai's judiciary. Party members and administrative officials in Shanghai are less likely to pressure aggrieved parties to withdraw an accepted administrative case from the courts.³³

The city's lower-than-national-average withdrawal rate is also linked to fewer mistakes made by aggrieved parties and administrative agencies.³⁴ Residents in Shanghai, who generally have better legal knowledge, are less likely to bring a groundless suit and have to withdraw it upon discovering their mistakes. Likewise, administrative agencies in Shanghai, which generally have better knowledge of legal principles, are less likely to take a groundless government action and find it necessary, upon discovering their mistake, to amend the action to make the aggrieved party feel satisfied and withdraw the case.

The above analysis shows that the main cause of Shanghai's smaller-than-national-average administrative caseload is neither a situation of greater interference nor the more serious three-nots problem in the city. The main cause is that citizens lodge fewer complaints against government agencies in the first place. In fact, approximately 52 percent of 691 surveyed Shanghainese agreed or strongly agreed that, compared with other places in China, judges in Shanghai suffer from interference the least. Only 13 percent of them disagreed with this view.³⁵ This favorable situation in Shanghai, in turn, owes largely to Shanghai officials' better respect for law, which is one of the reasons for less interference in Shanghai.³⁶

Party Members' and Government Officials' Better Respect for Law

Shanghai's judiciary has experienced less interference mainly because Shanghai's party members and government officials have better respect for law, and connections (*guanxi*) and local protectionism (*difang baohuzhuyi*) are less prevalent in the city.

The “losing rate” of defendant agencies in administrative litigation is often used to show the extent that officials—and, by extension, party members because most officials, especially decision makers, are members of the CCP—respect law. Although the term “losing rate” is not defined, it is often used to mean the rate at which

- Plaintiffs withdraw their administrative cases from courts after defendant agencies agree to alter the challenged administrative acts,
- Courts decide to revoke or alter the challenged administrative acts, and
- Courts order defendant agencies to act, that is, implement their legal obligations.³⁷

On the basis of this definition, the average annual losing rate of defendant agencies in Shanghai was approximately 20 percent, compared with approximately 35 percent in China as a whole. Interviewed experts interpreted Shanghai agencies’ lower losing rate as Shanghai officials’ and party members’ better respect for law.³⁸

In particular, surveys conducted by the central government show that citizens in China consider Shanghai’s police, who account for the majority of administrative officials in the city, to be the best when compared with the police in nine other cities of the country.³⁹ Shanghainese themselves also rated their police highly. Approximately 48 percent of 789 surveyed Shanghainese agreed or strongly agreed that their police force is the best in China. Only 21 percent of them disagreed with this view.⁴⁰ The police are the most powerful administrative agency in China, and their abuse of power and dereliction of duty have aroused grave concern.

Shanghai officials’ and party members’ better respect for law is a result of the city’s relative success in recruiting more qualified personnel as well as providing them with training and law enforcement advice.

Following the CCP policy of recruiting better educated and professionally more competent people,⁴¹ political and legal institutions in the country have required applicants for most positions, especially top-level positions, to pass a law examination.⁴² Such recruitment methods, together with Shanghai’s ability to offer attractive salaries, have turned the city into a magnet for the best labor in China, which is in desperate need of quality labor.

Recent recruitment for the Shanghai police best illustrates the city’s ability to recruit more highly qualified candidates. The annual salary of a Shanghai police officer ranges from 50,000 to 80,000 renminbi (\$6,250–\$10,000). Such an attractive employment package allowed the city’s police to stop recruiting high school graduates in April 2003. Instead, they recruited seven hundred people with a *dazhuan* (often translated as a college diploma level, but it is below the bachelor’s degree level) or above as well as three hundred university degree holders.⁴³

China has increasingly placed emphasis on training of administrative officials and party members. This goal has not been fully attained, however, especially in poorer regions where administrative bodies do not even have enough resources for their routine operations.⁴⁴ For example, as of November 2003, only approximately 65 percent (about 194,000 persons) of all police officers at the county level and leaders of police stations had received legal training. Financial problems are the main reason for inadequate training.⁴⁵

By contrast, Shanghai's prosperity allows the city to allocate funds for training its government personnel. To that end, it launched a five-year plan to train all civil servants in the city and to require them to have post-training assessment.⁴⁶ In 2000 and 2001, the city organized thirty-eight programs to train more than four thousand law enforcement officers on municipal legislation. Incumbent civil servants in Shanghai who are incompetent are also required to go through training and assessment.⁴⁷

Enhanced respect for the law on the part of Shanghai officials and party members also stems from the provision of law enforcement advice by legal affairs offices of administrative agencies and from law professors and judges. Advice on routine operations is often handled by a legal affairs office within each administrative agency. Staff members of these offices usually have educational and professional backgrounds relating to law.⁴⁸

Shanghai courts also give advice to administrative agencies in the form of judicial suggestions (*sifa jianyi*), explaining to them why they lost a particular administrative case or what problems the judges discover in administrative agencies' law enforcement. A professor at Fudan University who served as a consultant to administrative agencies said, "Most administrative agencies in Shanghai consider judges to be their 'monitors.'"⁴⁹ In an official review of the performance of China's courts, Shanghai's judicial suggestions were specifically complimented as having effectively improved the law enforcement of the city's administrative agencies.⁵⁰

Less *Guanxi* and Local Protectionism

Courts in Shanghai have experienced less interference also because the problems of *guanxi* and local protectionism are less serious in the city of Shanghai than they are elsewhere.⁵¹

Officials and party members in China may interfere with judges to inquire about a case that concerns a friend or a friend's friend. Cases that are influenced by such interference are dubbed *guanxi* or *renqing* cases, and they are not uncommon in China. Such cases are, however, less common in Shanghai. Of more than twenty thousand cases randomly examined in 1998 by the party organization in Shanghai, only twenty-six (0.14 percent) were *guanxi* or *renqing* cases. This is corroborated by the general impression of interviewees.⁵²

The smaller number of *guanxi* cases is mainly due to the fact that Shanghainese place less emphasis on *guanxi* than other Chinese do. A scholar traced the roots of this culture to Westerners' governance in Shanghai before the establishment of Communist China. During that earlier time, residents in Shanghai were exposed to the Western culture of following rules. In fact, because of the relative indifference of Shanghainese to *guanxi*, other mainland Chinese often see them as arrogant and lacking *yiqi*, the sense of personal loyalty that bonds most Chinese.⁵³

Local protectionism is also a problem in administrative litigation, meaning that local party members or officials may request that judges make a ruling that would protect the locality's economic interests. The magnitude of local protectionism is inversely proportional to the prosperity of a locality. The more prosperous a locality is, the less local protectionism it practices. When a locality is desperate for improving its economy, its government works to its utmost to prevent any loss of investment projects.

Shanghai is not that desperate for investment, as reflected in the fact that private enterprises in Shanghai contribute 50 million renminbi (\$6.25 million) to the municipal government each day.⁵⁴ Local protectionism could not be a serious issue in the city, and interviewed experts shared this view. Many surveyed Shanghainese also had this impression. Approximately 44 percent of 743 surveyed residents in Shanghai agreed or strongly agreed that local protectionism is least serious in Shanghai compared with other places in China. Only 28 percent disagreed with this view.⁵⁵ Some interviewees also cautioned, however, that local protectionism still exists if an investment is so profitable that it contributes significantly to the economic development of the city.⁵⁶

Interference Still Exists

Notwithstanding the progress Shanghai has made, interference still exists and is most evident in “major and complex” cases such as eviction cases.⁵⁷ Interference in Shanghai takes forms similar to interference in the rest of China. The existence of interference in Shanghai also shows two fundamental problems of the city’s court system: Judges are strongly requested, without clear guidance, to make their judgments realize both social and legal effects (*shixian shehui yu falu xiaoguo*), and the financial and personnel arrangements of local courts are still, regardless of some improvements, highly controlled by local governments and party organizations.

Major and Complex Cases

Interference is most common at the basic court level, not only because approximately 80 percent of court cases are handled at this level but also because their jurisdictions cover small communities governed by officials who generally have the least respect for law.

At all levels of courts, interference is particularly common in major and complex cases. Final decisions in these cases are made by each court’s adjudication committee, which consists of the president and vice presidents of the court as well as chief judges of the court’s various divisions—criminal, administrative, and civil divisions, for example. Adjudication committees usually make their decisions after consultation with the CCP’s political-legal committees at corresponding levels. These political-legal committees are led by senior party members who also serve as leaders of administrative agencies, such as the police, at corresponding levels. Such a decision-making mechanism opens a door for officials and party members to interfere with the judicial process.

The Chinese government often justifies the participation of the CCP’s political-legal committees in the judicial process as an exemplification of the leadership of the CCP—a principle enshrined in the Chinese Constitution. Abiding closely by the CCP’s leadership principle is praised and is considered particularly important in administrative litigation, as reflected in the following paragraph extracted from an article published at an official web site of Chinese courts:

During the implementation of administrative adjudication, courts at all levels realize that administrative litigation is a type of work that involves a lot of rule-of-law and policy issues. The handling of many cases involves the overall working situation of the party and the state and involves social stability and economic development...*therefore, [judges] must tightly rely on the party committee’s leadership...to ensure the orderly development of administrative litigation....* (emphasis added)⁵⁸

The article continued to commend a few courts, including a court in Shanghai, for “taking the initiative to report” to party committees to receive their support in handling administrative cases that had a relatively large impact on their localities. It concluded that experiences showed that this method is effective. Because of such an attitude, courts often boast in their annual reports about their efforts in “taking the initiative” to get support from the party.⁵⁹

Criticism of the apparent conflict between the CCP’s leadership and another constitutional principle of allowing judges to independently adjudicate cases is mounting. The CCP has attempted to reconcile the conflict by reiterating that the political-legal committees do not decide any specific cases for judges. These committees, as alleged by the CCP, only provide “macroscopic supervision” over adjudication to ensure that judges correctly apply laws. Because laws were enacted to reflect party policies, correct application of laws automatically means correct application of party policies. The CCP’s leadership is thus indirectly exemplified in adjudication. In sum, judges should apply laws but *not* party policies when they decide individual cases. The CCP cannot lead the country by holding its policies above the law because, according to the constitution, “all political parties...must abide by the constitution and the law.”⁶⁰

This explanation sounds persuasive. But what should judges do if a case covers an area where no law exists or the existing law no longer reflects the most updated party policies? Li Yayun, professor of law at the Central Party School—the CCP’s leading institute for training party cadres—explained that judges have two alternatives when they adjudicate these exceptional cases.⁶¹ First, China’s national legislature, the National People’s Congress, should follow legislative procedures to enact, amend, or repeal relevant laws in time. The presiding judge(s) of the exceptional case can either suspend the court proceeding to wait for new legislation or report the exceptional case to the SPC to seek its instructions.

Alternatively, CCP policies can be used to guide the adjudication of that exceptional case. Because (1) all party policies must be “conducive to developing a socialist society’s productivity, conducive to strengthening a socialist country’s comprehensive state power, and conducive to improving the people’s living standard”⁶² and (2) these “three conducives,” as alleged by the CCP, are in compliance with the constitutional principle that “the Chinese people of all nationalities will...persist in reform and opening-up, steadily improve socialist institutions, [and] develop a socialist market economy...”⁶³ the CCP claims that the application of party policies to guide the adjudication of an exceptional case does not violate the Chinese Constitution.⁶⁴

Those indeterminate expressions embodied in the three conducives and the above-mentioned constitutional principle could easily be misused to justify the application of virtually any party policy to guide the adjudication of exceptional cases. The problem is exacerbated by the fact that these exceptional cases are not really so exceptional in China, whose laws and rules still do not cover a great number of legal vacuums; in addition, many laws and rules quickly lag behind party policies. For this reason, this alternative solution should not be used.

The problem of allowing political-legal committees to participate in the judicial process is aggravated by the vague definition of the term “major and complex.” Judges are guided by some rules to determine whether a case is major and complex. Yet, those rules often include a catchall phrase to let judges categorize a case as major and complex as long as they believe that the decision of the case is likely to have great impact on society. Hence, new types of cases and cases jointly brought by a large number of plaintiffs, such as labor and eviction disputes, are often treated as major and complex and are decided by adjudication committees and, ultimately, by the CCP’s political-legal committees.

Judges in Shanghai are still overshadowed by adjudication committees and political-legal committees, even though the problem may not be as serious as in other places in China.⁶⁵ Eviction cases are good illustrations of the problem. Because of rapid urbanization, eviction lawsuits against government authorities have been common in China, especially in Shanghai, but government authorities have seldom lost. Members of adjudication committees and political-legal committees are reluctant to rule against the government, fearing that this would hinder urbanization and economic development. The difficulty of winning eviction cases has led frustrated residents to organize demonstrations.⁶⁶

Forms of Interference

Interference from administrative agencies and party members in Shanghai takes on forms similar to those in the rest of China.⁶⁷ Blatant disregard of law is rare. Instead, interference can include rejecting a case filed by aggrieved parties or pressuring aggrieved parties to withdraw accepted cases from courts. A common form of interference is for officials to influence judges to interpret legislation in a way that favors defendant agencies. As a result, some cases are either not accepted by courts or are ruled in favor of defendant agencies.⁶⁸ Numerous pieces of ambiguous legislation in China provide much room for this form of interference.

To stop this type of interference, courts in Shanghai are reportedly cautious about improper contact between presiding judges and defendant agencies.⁶⁹ However, an interviewed representative of the Shanghai Municipal Industry and Commerce Bureau blurted out that in cases where her bureau's interpretations of laws were different from judges' interpretations, she and her colleagues would explain their views to judges, even in the absence of plaintiffs. When asked whether this type of *ex parte* communication is fair to plaintiffs, she replied, "I believe plaintiffs [talk to judges], too. Nowadays, judges seem to be quite ready to help plaintiffs, thinking that they are weak. We, therefore, need to seek every opportunity to show our stance!"⁷⁰

Two Fundamental Problems

The existence of interference in Shanghai reveals two fundamental problems in its court system. These problems have also hampered the entire court system in China.

Judges' uncertainty about how to realize social and legal effects in adjudication opens a door for interference. Leaders in Shanghai, like others in China, emphasize that adjudication should realize both legal effects and social effects (*shixian falu xiaoguo yu shehui xiaoguo*).⁷¹ Authorities, however, offer no clear explanation about how to achieve this goal. Shedding some light on the topic, the SPC's official web site explains: "To realize legal effects, [adjudication] has to strictly follow laws; to realize social effects, [adjudication] has to satisfy emotional needs of society and the public."⁷²

This dual-goal approach is quite appealing, but difficulties arise if the realization of one effect conflicts with the realization of the other. The same web site also addresses this problem:

In most cases, these two effects are consistent. But sometimes they are not. An inconsistency between legal effects and social effects may reflect *conflicts between law and policy*, conflicts between law and actual needs, conflicts between law and social customs, and conflicts between law and moral standards. (emphasis added)⁷³

What should judges should do under these circumstances? The web site article states:

How to find a point of convergence among these conflicts *requires our judges' thorough consideration and prudent judgment*. As courts and judges, of course, the first is to strictly enforce laws, strictly work in accordance with laws. There is no doubt about this. The effect of fair adjudication (*gongzheng sifa*) is forever a goal that we pursue. We oppose blatant violation of explicit provisions of law and violation of the spirit of law to partially meet some thoughts appearing in society that are in contempt of law.... (emphasis added)⁷⁴

The real problem is that most Chinese judges, whose average level of competence remains low, can hardly make “thorough consideration and prudent judgment.” Judges who feel incapable of finding “the point of convergence” are likely to seek assistance from their court’s adjudication committee, which may, in turn, consult the CCP’s political-legal committee. Even if judges feel capable of finding the point of convergence, adjudication committees and political-legal committees, by categorizing the case under consideration as major and complex, can always step in to decide.

In Shanghai, for example, three types of cases that require close examination of social effects and legal effects are “new types of cases,” “cases brought by large groups of plaintiffs,” and “cases that are likely to spark controversies in society such as labor disputes and eviction cases.”⁷⁵ These cases are, as explained above, usually treated as major and complex cases.

Hence, excessive emphasis on the integration of legal effects with social effects, along with the facts that judges are not provided with clear guidance on how to do so and that China’s legislation has many ambiguities, would give the CCP’s political-legal committees opportunities to put policies above laws during adjudication in the name of seeking such integration.

*Financial and personnel arrangements of the courts are controlled by local governments and party organizations.*⁷⁶ Judges in China are susceptible to interference from local government and party organizations that control financial and personnel arrangements of courts. Judges in Shanghai have the same problem, even though there have been some improvements in these arrangements.⁷⁷

Since 1998, the Shanghai High Court has worked with district and county party committees to appraise the performance of leaders of basic courts. The court has also been allowed to nominate candidates to be presidents of basic and intermediate courts. These nominations, however, still have to be endorsed by local party leaders, who are often also government leaders, before the nominees are finally appointed by legislatures at the corresponding levels. The court is not given absolute freedom.⁷⁸

Reform in personnel arrangements has had some effect. From 1998 to 2002, the Shanghai High Court, together with local party organizations, selected thirty-five persons to be leaders of basic courts. In most cases, local party organizations agreed with nominations made by the court. In some cases, they did not. The Shanghai High Court, for example, nominated a candidate to the basic court in Jingan district. The party organization of that district objected and nominated another candidate. The court commented that the party organization’s nominee was not qualified because the person had never had formal legal education and had been employed only at a workers’ union. The party organization rebutted, “There’s no problem. The current president of the high court also used to only work for a workers’ union!”⁷⁹

Some progress has also been made in the financial arrangements of the Shanghai courts. Budgets of basic courts are no longer totally reliant on their district governments. Part of each basic court's budget is from the high court, which, in turn, receives its budget from the municipal government. This helps reduce local judges' susceptibility to local governments.⁸⁰

The Shanghai High Court has attempted, without much success, to make another improvement. In Shanghai, some local governments have followed a practice, under which they allow courts at the corresponding level to keep a certain percentage (usually 30 percent) of fees that those courts have collected from litigants. As a result, courts are inclined to handle cases in favor of the governments' interests, in the hope of getting the governments' continued support for such practice. To stop this practice, the Shanghai High Court requires that all fees collected be passed on to the local government. However, some local governments and courts defy the high court's requirement.⁸¹

Overall, Shanghai judges are still susceptible to local government and party organization control although the problem in Shanghai may not be as serious as it is in other places.

INTRACOURT AND INTERCOURT INFLUENCE

Like interference from the CCP and administrative agencies, intracourt and intercourt influence within China's court system is another major cause of judges' lack of independence. A lower-ranking judge is quite ready to report to and seek instructions (*qingshi*) from higher-ranking judges whenever the judge of the lower rank encounters difficulties such as conflicting legislation or major and complex cases. Sometimes, senior judges simply step in to instruct junior judges.

Qingshi is particularly prevalent at the basic court level because, at this level, judges are less competent and interference from local governments and party organizations is more prevalent. Judges usually resort to *qingshi* to let their court leaders and upper-level courts deal with the interference.⁸²

Influence within the court system in Shanghai is perceived as less serious than in the rest of the country because judges in Shanghai are of better quality and local governments prescribe clearer rules for judges to follow. Judges in Shanghai are, therefore, less likely to need supervision from senior judges. Yet, influence still occurs in Shanghai. Like their counterparts elsewhere in China, judges in Shanghai are wary of being unfairly held accountable for making decisions considered by higher-ups to be erroneous and, thus, engage in *qingshi* to avoid making mistakes. But with *qingshi*, they also subject themselves to influence from senior judges.⁸³

Better Judges

China has about 300,000 judges and other court employees.⁸⁴ Only about 3,000 judges, representing approximately 1.5 percent of all 210,000-odd judges, have master's or doctoral degrees. Shanghai judges are more qualified; approximately 87 percent of all judges in Shanghai have attained at least the bachelor's level. Of this group, about 8 percent have master's or doctoral degrees. Shanghai judges are generally more qualified and competent because the city is able to recruit top candidates from all around the country and organize intensive training for incumbent judges.

Similar to its recruitment of officials, Shanghai's prosperity allows it to offer attractive employment packages to lure good candidates from all over the country to apply to its courts. To select the best candidates, the city has set up a competitive selection process. In addition to basic requirements prescribed by the Judges Law, such as passing a "national unified judicial examination," the Shanghai High Court requires applicants to sit for another written test; this is followed by a comprehensive examination in which each candidate's work performance, professional abilities, political thoughts, and moral conduct are assessed.⁸⁵

Judges in Shanghai have better training partly because they are exposed to a wide variety of legal disputes stemming from the city's robust development; judges in less-developed areas do not have similar learning opportunities.⁸⁶ But the municipal government should also be commended for organizing numerous judicial training programs that fall into three broad categories: qualifications-oriented training, skills-oriented training, and other training acquired through research and exchange programs.

Qualifications-oriented training programs aim to prepare judges for acquiring academic qualifications. The target used to be to prepare judges for acquiring a bachelor's degree, but with judges' improved qualifications, the Shanghai High Court in 2002 launched a five-year plan to set a higher goal: preparing judges to attain the master's level.⁸⁷

Skills-oriented training programs aim at equipping judges with practical skills needed during adjudication. In 2000, Shanghai courts launched a five-year training plan to bolster Shanghai judges' competence in presiding over trials, preparing judgments, applying law, and understanding civil-evidence rules. From 1998 to 2002, the Shanghai High Court organized sixty-eight classes with more than four thousand trainees. Because Shanghai has only about five thousand judges and court employees, this means that about 80 percent of them were trained. In contrast, during the same 1998–2002 period, only two-thirds of all judicial staff in China received training.⁸⁸

Shanghai judges acquire other training through research and exchange programs. Research work appears to be quite organized. The high court identifies a list of the most important research topics, and courts at all levels submit their proposals to bid for a research project. A review committee comprising experts, professors, and senior judges decides which proposals should be approved. Because all topics are directly related to these judges' work, they can acquire useful knowledge and skills during the research process, and research results are conducive to improving their performance.⁸⁹

Judges in Shanghai also seem to have more opportunities to participate in exchange programs. They were among the first batch of judges who received World Trade Organization–related training conducted in Hong Kong, Europe, the United Kingdom, and the United States.⁹⁰

Clearer Rules

Influence within Shanghai's court system is less serious than across the rest of the country also because Shanghai's local legislature prescribes clearer rules for judges to follow and *qingshi* is, therefore, less frequent.⁹¹

Deficiencies in Chinese legislation, such as ambiguous and conflicting provisions or absence of legislation in certain areas, have long been criticized.⁹² To fill the legal vacuum, China has been

enacting more legislation and issuing more judicial interpretations. During the past two decades, the national legislature and its standing committee have adopted more than five hundred laws and law-related resolutions. From 1998 to 2004, the SPC formulated approximately 210 judicial interpretations.

To improve the quality of legislation, China, prompted by its accession to the World Trade Organization, requires all local governments to file their legislation with the State Council. Private parties are allowed to request the council to review whether a piece of filed local legislation violates national laws. By the end of 2003, all 2,026 pieces of local legislation were reportedly filed.⁹³

These efforts are impressive, but many problems remain. Some important areas are still not regulated by laws. Private parties have not adequately taken advantage of the review process even though official sources acknowledge that some filed local rules violate national laws.⁹⁴

Notwithstanding these problems in the nation, they are of lesser magnitude in Shanghai, where legislation is often among the most advanced in the country. In 2002, Shanghai took the lead in bringing its legislation in line with China's World Trade Organization obligations by enacting two pieces of legislation, one on the operation of business associations in the city and the other on administration of publication distributors.⁹⁵

Shanghai's efforts to maintain a better body of legislation are largely driven by its desire to strengthen its competitiveness through creating a more favorable legal environment for economic development.⁹⁶ Of sixty-eight pieces of legislation enacted or revised by the Shanghai Municipal People's Congress from 1998 to 2002, approximately 60 percent concerned commercial law.⁹⁷

Shanghai's better system of legislation is due to the city's structured legislative mechanism that involves a series of internal reviews and allows more participation from experts and the general public. Shanghai's legislative work is carried out by specialized committees and the Legal Affairs Commission (*fazhi gongzuo weiyuanhui*), which was established under the municipal legislature in 1998 and has since been led by legal experts. Specialized committees are responsible for reviewing bills drafted by government departments. When it receives a bill from a government department, the relevant specialized committee examines the bill and identifies major problems in the draft. It then submits a report to the municipal legislature's standing committee and makes necessary amendments to the bill after the standing committee finishes its first review. The Legal Affairs Commission is responsible for amending the bill after the standing committee finishes its second review. Some bills are passed after the first review, but most have to go through the entire process.⁹⁸

To further ensure the quality of legislation, the specialized committees and the Legal Affairs Commission may also, during the entire legislative process, organize meetings to solicit opinions from drafting departments, relevant law enforcement departments, law professors, judges, lawyers, and ordinary citizens.⁹⁹ Since 2000, the municipal legislature and municipal government have identified the Shanghai Lawyers Association as a work unit that they must consult when any local regulations and rules are made.¹⁰⁰

The legislature also publishes in the newspapers legislation that is closely related to ordinary citizens' lives to solicit citizens' views. Sometimes, the legislature also organizes legislative hearings.¹⁰¹ Wang Xixin, a leading expert from Peking University, who has conducted field research on public participation in rule making in seven provinces and cities in China, found Shanghai's achievements among the most impressive of China's jurisdictions.¹⁰² In early 2004, Shanghai

also took the lead in adopting a piece of legislation on freedom of information, under which the municipal government is required to allow residents to have access to public information, such as all local regulations and rules. If implemented properly, this would help ensure the quality of local legislation.¹⁰³

Influence Still Exists

Despite the improvement, influence from senior judges in the court still exists in Shanghai because there is still much room for improving rules and judges' overall competence.¹⁰⁴ Another reason is that Shanghai judges are, like other judges in China, wary of being unfairly held accountable for making erroneous decisions. To avoid making mistakes, they still participate in *qingshi*, which creates opportunities for influence from court leaders.¹⁰⁵

In defiance of the SPC's guidance, some courts in China have defined broadly the term "erroneous decision" to cover a wide range of decisions, including those that were reversed on appeal or sent for retrial.¹⁰⁶ Official reports show that Shanghai courts seem to have adopted the correct definition of erroneous decisions.¹⁰⁷ But, in practice, some courts in Shanghai do consider in their internal performance appraisal how often a judge's decision is not upheld because these courts believe that this reflects the judge's low competence. Some courts may even categorize first-instance decisions that are reversed on appeal or returned for retrial as erroneous.¹⁰⁸

To minimize the chance of being disciplined, judges in Shanghai are quite ready to resort to *qingshi*.¹⁰⁹ In addition, they prefer to keep their judgments simple. One scholar observed: "Judges in Shanghai are not stupid. They can give critical comments during private conversations. But their judgments look so silly because they don't want to make mistakes. The more they write, the more easily they will get caught. Thus, the 'accountability for erroneous cases' system only encourages more *qingshi*."¹¹⁰

JUDICIAL CORRUPTION

Judicial independence in China is also hampered by judicial corruption. But official information and interviewees' impressions show that the problem is less serious in Shanghai than in other areas of China.¹¹¹

From 1998 to 2004, about eight thousand judges and other court employees in China—approximately 2.7 percent of China's judicial staff—were punished for violating laws or discipline.¹¹² About one hundred of them were from Shanghai courts, representing 2 percent of all judicial staff in the city. None of these hundred-odd judges are from the Shanghai courts' administrative divisions.¹¹³ Exactly how many of these violators were punished for corruption is unknown; however, most official references to violations of laws or discipline in courts are put in the context of corruption. Such special mention of corruption probably indicates that a significant number of these violators were punished for this violation. If this is the case, the lower percentage of judicial staff in Shanghai being disciplined may also indicate that judicial corruption is less serious in the city.

Although reported data are incomplete, all interviewees opined that judicial corruption is less serious in Shanghai. Surveyed residents in Shanghai shared similar views. About 46 percent of 715 surveyed Shanghainese agreed or strongly agreed that corruption is least serious in Shanghai compared with other places in China. Only 22 percent disagreed with this view.¹¹⁴ According to interviewed experts, the better situation in Shanghai is not only because of Shanghai judges' greater legal awareness, but also because of Shanghai judges' better pay and social status as well as their being subject to stricter discipline.¹¹⁵

Better Pay and Social Status

Judges in Shanghai are, in general, less likely than other judges in China to take bribes to risk losing a career that gives them relatively good remuneration and higher social status.¹¹⁶

The basic salaries of judges at the same rank are the same everywhere in China. Differences in remuneration lie in additional benefits, the amounts of which vary but are directly proportional to the living standard of the locality in which the court is situated. In Shanghai, a holder of a bachelor of laws degree who has worked as a judge for four to five years earns about 70,000 renminbi (\$8,750) per year, including benefits. Very experienced and senior judges can earn as much as 110,000 renminbi (\$13,750) per year.¹¹⁷ Many judges in other places in China earn only 20,000 renminbi (\$2,500) per year or even less.¹¹⁸ Because the average annual income of Shanghainese is 49,180 renminbi (about \$6,150)—the highest average annual income in China¹¹⁹—the incomes of most Shanghai judges are above average in the city and much above most areas of the country.

The attractiveness of being a judge in Shanghai is also reflected in law graduates' career choices. Many law graduates in China prefer to work for foreign law firms instead of administrative agencies or courts because foreign firms offer higher salaries.¹²⁰

But many law graduates in Shanghai would rather join courts than foreign law firms. Although the basic salary is only about 30,000 renminbi per year, courts in Shanghai can offer “incredibly” attractive benefits, such as interest-free mortgages.¹²¹

One interviewee personally knows a judge who, on a salary of only about 30,000 renminbi per year, has been able to use the housing benefits to purchase an apartment in the vicinity of the People's Square, one of the most expensive places in Shanghai.¹²² This benefit as well as stability, regular working hours, more opportunities to handle litigation cases, and the high social status of being a *guan* (as in *fa guan* [judges]) make the employment packages of foreign law firms less attractive to Shanghai graduates.¹²³

Surveyed residents in Shanghai shared similar views about their impression of judges and lawyers. About 73 percent of 831 surveyed Shanghainese considered judges to be the “most respected,” “very respected,” or “relatively more respected” profession. Only 62 percent of them consider lawyers in this way.¹²⁴

Stricter Discipline

Judicial corruption is less serious in Shanghai because the city subjects its judges to discipline that is stricter than in other parts of the country.¹²⁵ In China, judges' discipline is primarily governed by thirteen prohibitions stipulated in the Judges Law that prohibit, *inter alia*, judges from taking bribes or engaging in business for profit. In June 2003, the SPC issued a judicial interpretation¹²⁶ that stresses that any judge who violates any of the thirteen prohibitions will be dismissed or disciplined in various ways. At the same time, the SPC launched judicial inspections to ensure that these disciplinary rules were being properly enforced.¹²⁷

Even before these rules were promulgated, the Shanghai High Court in 1999 had prepared the 130-article "Shanghai Courts Disciplinary Rules" to regulate the discipline of judges in Shanghai.¹²⁸ Interviewees spoke highly of the strict enforcement of these rules in Shanghai.¹²⁹ For example, in 1999, a judge who was responsible for enforcing a judgment was invited by the involved party to dinner. Because the judge suspected it might be an expensive dinner, the judge declined the invitation and went alone to a small restaurant to have noodles. The party to the judgment saw the judge and offered to pay for the judge's bowl of noodles. Because the bowl of noodles cost only about 12 renminbi (\$1.50), the judge accepted without realizing it was wrong. The incident was reported to the high court, after which the judge confessed and was reprimanded.¹³⁰

LESSONS FOR JUDICIAL REFORM IN CHINA

Administrative litigation in Shanghai has been hampered by interference from government officials and CCP members, influence within the court system, and judicial corruption. These problems are of lesser magnitude in Shanghai than in China as a whole.

Shanghai judges have experienced less interference mainly because government officials and CCP members in Shanghai have greater respect for law, and the problems of *guanxi* and local protectionism are less prevalent in the city. Shanghai officials' and party members' greater respect for law is due to the city's success in recruiting better-qualified officials as well as providing them with training and law enforcement advice. *Guanxi* is less serious in Shanghai primarily because the culture of the Shanghainese places less emphasis on *guanxi* than other Chinese do. Shanghai practices less protectionism because the city's prosperity makes the government less susceptible to any particular investor's will.

There is less intracourt and intercourt influence in Shanghai's judiciary because the city has better judges and clearer legal rules. Judges are more capable of handling a case without seeking clarification from senior judges or judges of upper-level courts. Shanghai judges are generally more competent because the city is able to offer more competitive employment packages to attract excellent candidates and organize intensive training for incumbent judges. Shanghai's better system of legislation grows out of the city's desire to strengthen its competitiveness through creating a more favorable legal environment for economic development. The good legislative system is also due to the city's structured legislative mechanism that involves a series of internal reviews and allows more participation from experts and the general public.

Judicial corruption is less serious in Shanghai because the city has judges with greater legal

awareness, offers better remuneration and social status to discourage corruption, and subjects judges to stricter discipline.

Notwithstanding these improvements, problems still exist in Shanghai. Interference still exists, especially in major and complex cases such as eviction cases, because judges' uncertainty about how to integrate social effects with legal effects in adjudication opens a door for interference. In addition, judges in Shanghai, like their counterparts in the rest of China, are still susceptible to local governments' and party organizations' control. These bodies still retain a high degree of control over the Shanghai court system's financial and personnel arrangements, even though some improvements have been made.

Intercourt and intracourt influence still exists in Shanghai partly because the quality of judges and legal rules still need further improvement. But the existence of influence is also due to the fact that judges in Shanghai are, like other judges in the country, afraid of being unfairly held accountable for making erroneous decisions, and they therefore participate in *qingshi* with their leaders to avoid making mistakes.

Four observations and some useful lessons about judicial reform in China can be derived from Shanghai's experiences in tackling interference, intercourt and intracourt influence, and judicial corruption.

- *Shanghai enjoys some cultural and economic advantages that are conducive to judicial reform, but these advantages cannot be easily developed nationwide.* The Shanghainese culture of placing more emphasis on rules than on *guanxi* helps reduce interference. Shanghai's prosperity enables it to practice less protectionism, organize intensive training for judges and officials, offer attractive employment packages to lure China's best talents to join Shanghai's bench and government, and discourage judges from taking bribes. All these help alleviate interference, influence, and judicial corruption. These cultural and economic advantages cannot, however, be easily developed nationwide because their development depends on other conditions such as good education and economic structures.
- *Shanghai's judiciary still suffers from interference and intracourt and intercourt influence because some essential reforms have yet to be implemented in China.* China, including Shanghai, needs at least four essential reforms:
 - Individual judges must be guided clearly on how to integrate legal effects with social effects in adjudication without compromising the rule of law.
 - The current practice of using CCP policies to guide adjudication of a particular case if that case covers an area where no law exists or the existing law no longer reflects new party policies should be prohibited.
 - A transparent and independent mechanism should be established to review the legality and constitutionality of legislation. Under Chinese law, judges cannot do so. If they are uncertain about the validity of a piece of legislation, they have to seek advice from their court leaders, which gives rise to opportunities for intercourt and intracourt influence and interference. The need for a transparent, independent, and functional constitutional body is, therefore, pressing.¹³¹ The Standing Committee of the National People's Congress announced that it had already established such a body in 2004.¹³² Details about the body,

such as procedures on legislation review and the extent that it could operate with a high degree of transparency and independence, remain unclear.

- Most important, institutional reform should be implemented to redefine the relationships among courts, local governments, and party organizations to stop the courts' financial and personnel arrangements from being controlled by local governments and party organizations.¹³³ About 73 percent of 722 surveyed Shanghainese agreed or strongly agreed that such reform is the best way to help achieve judicial justice and independence in China. Only 5 percent disagreed with this view.¹³⁴

The SPC's five-year reform plan touches on this issue but confines any initiatives relating to reform of courts' financial and personnel arrangements to "explorations" only. Five years have passed, and some signs of change have emerged. In the report of the CCP's Sixteenth National Congress, the party explicitly vowed to reform the courts' financial and personnel arrangements. This seems to mark the end of the exploratory stage and the beginning of actual reforms. Whether this is really the case depends on the SPC's second five-year court reform plan, which is expected to be issued later in 2005, and the proposed amendment to the Organic Law of People's Courts.¹³⁵ It is believed that current Chinese leaders, though seen to be moderate reformers, are not ready to allow fundamental reforms in these areas.¹³⁶

- *Training judges, officials, and party members as well as improving legislation are quite effective interim measures, and they should be applied nationwide.* Shanghai has taken two major interim measures—training of officials, party members, and judges as well as improving the quantity and quality of legislation—to tackle interference, influence, and judicial corruption. Although critics express reservations about these interim measures, claiming that there is little point in introducing new laws or training programs while political interference and corruption remain rampant,¹³⁷ the Shanghai experience shows that these interim measures, though imperfect, have some effect. Leaders in the rest of China should, therefore, consider these interim measures as priority tasks and strive to provide resources for their implementation.

Leaders of poor localities may need to set some priorities. If resources for training are limited, officials and party members who could interfere with basic courts, where interference is most severe, should be trained first. In addition, judges at all levels should be equipped with knowledge about substantive and procedural laws. With limited resources, leaders could confine advanced legal training to judges at intermediate courts or above and provide basic court judges with basic training only. At intermediate or higher levels, interference is less prevalent because officials and party members have greater legal awareness and their professional interests discourage them from interfering with judges.

Leaders of poor localities, unlike their counterparts in Shanghai, may not be able to organize costly legislative hearings with the goal of improving legislation,¹³⁸ but they may regularly consult experts such as law professors and lawyers, many of whom are willing to offer their views for free.

- *China, including Shanghai, should take two other interim measures:*
 - Abolish the system of accountability for erroneous cases. The intent of establishing such accountability to improve the quality of judgments is good, but experience shows that the system can be easily manipulated and has been improperly used to discipline judges. To avoid making mistakes, judges *qingshi* senior judges, which leads to additional intercourt and intracourt influence. This is true in Shanghai, even though Shanghai judges are believed to be competent enough to handle many problems on their own. The difficulty of ensuring proper implementation of the system, together with the fact that the ills generated by this system have outweighed the intended benefits, makes abolition of the system worthy of serious consideration.
 - Strengthen citizens' access to the justice system. Legal aid for administrative litigation is still limited, even in Shanghai, where legal aid service is quite established. In addition, lawyers are still reluctant to take up administrative cases because they fear retaliation from local governments and party organizations. Reforms are needed to strengthen Chinese citizens' access to the justice system.

Such reforms would benefit the central government, which is most concerned about social instability and local officials' arbitrary exercise of power. Litigation is a better way than demonstrations in the streets for citizens to express their discontent. The central government should devote more efforts to reforming its legal aid system and should encourage more assistance from the nongovernment sector. The CCP should also loosen its control over lawyers. In December 2003, the Ministry of Justice decided to require law firms to establish CCP groups if the firms have party-member attorneys; the ministry claimed that this mechanism would help reduce lawyers' professional misconduct by "plac[ing] every party member under the management and supervision of party organs."¹³⁹ This move, however, makes lawyers if anything more wary of handling sensitive cases such as administrative cases. The CCP should let bar associations handle professional misconduct matters.

The past five years saw some progress in judicial reform in China. Progress in Shanghai is particularly impressive, but, as the Chinese government has acknowledged, more needs to be done. Lessons derived from Shanghai experiences show the directions that future reform efforts should turn. Successful implementation of recommended actions included in this section will likely provide Chinese citizens with a fairer judiciary. More important, reform will allow China to present itself as a growing power that is dedicated to sustaining peace and prosperity by justice. Such dedication is essential for stopping the rest of the world from seeing China as a threat.

LIST OF INTERVIEWEES

The list also includes the date of the interview. Interviewees who spoke on the condition of anonymity are identified by numbers and their primary occupations.

Cao Jinqing, professor, East China University of Science and Technology, April 7, 2003, Shanghai.

Chen Ruihua, professor, Peking University, March 23, 2003, Beijing.

Fu Hao, researcher, Research Center of the Shanghai Stock Exchange, March 14, 2003, Boston.

He Haibo, professor, Peking University, April 11, 2003, Beijing (phone interview).

He Weifang, professor, Peking University, November 3, 2004, Beijing.

Hu Angang, professor, Tsinghua University, March 17, 2003, Beijing.

Hu Ruyin, director, Research Center of the Shanghai Stock Exchange, March 31, 2003, Shanghai.

Jiang Huiling, judge, Research Office, Supreme People's Court, November 1, 2004, Beijing.

Jiang Mingan, professor, Peking University, March 18, 2003, and November 3, 2004, Beijing.

Li Yayun, professor, Central Party School, Beijing, November 1, 2004, Beijing.

Li Zongxing, professor, Shanghai Academy of Social Sciences, April 1, 2003, Shanghai.

Lian Danbo, judge, Supreme People's Court, November 5, 2004, Beijing.

Ma Huaide, professor, China University of Politics and Law, March 19, 2003, Beijing.

Qu Xuewu, professor, China Academy of Social Sciences, November 2, 2004, Beijing.

Shen Guoming, vice president of the Shanghai Academy of Social Sciences; director of the Legal Affairs Commission of the Shanghai Municipal People's Congress Standing Committee, April 10, 2003, Shanghai.

Shen Wei, director, Shanghai Municipal Legal Aid Center, April 3, 2003, Shanghai.

Shi Jiansan, lawyer, April 4, 2003, Shanghai.

Shi Juehuai, professor, East China University of Politics and Law, November 9, 2004, Shanghai.

Wang Xi, professor, Shanghai Jiao Tong University, November 8, 2004, Shanghai.

Wang Xixin, professor, Peking University, March 18, 2003 and November 4, 2004, Beijing and December 12, 2003, Washington D.C.

Xia, Sean, professor, Shanghai University; Member of the Shanghai Committee of the Chinese People's Political and Consultative Conference, November 9, 2004, Shanghai.

Xu Dingmao, director, Pudong Legal Aid Center, April 4, 2003, Shanghai.

Ying Songnian, professor, State College on Administration, Beijing, November 1, 2004, Beijing.

You Wei, professor, East China University of Politics and Law; member of the Shanghai Municipal Political and Consultative Conference; former vice president of Hongkou Basic Court, April 9, 2003, Shanghai.

Zhang, Bill, vice department chief, Lawyers Administration Department, Shanghai Municipal Bureau of Justice, November 10, 2004, Shanghai.

Zhang Jie, graduate, Department of Law, Fudan University, April 8, 2003, Shanghai.

Zhu Mang, professor, East China University of Politics and Law, April 8, 2003, Shanghai.

Zou Jialai, lawyer; director of the Administrative Litigation Committee, Shanghai Lawyers' Association, April 2, 2003, Shanghai.

Anonymous Sources

Officials

Official 1, Ministry of Foreign Trade and Economic Cooperation, March 14, 2003, Boston.

Official 2, Legal Affairs Office, Shanghai Municipal Public Security Bureau, April 10, 2003, Shanghai.

Official 3, Legal Affairs Office, Shanghai Municipal Industry and Commerce Bureau, April 10, 2003, Shanghai.

Official 4, Legal Regulations Office, Shanghai Municipal Tax Bureau, April 10, 2003, Shanghai.

Official 5, Legal Regulations Office, Shanghai Municipal Housing and Land Resources Administration Bureau, April 10, 2003, Shanghai.

Official 6, Legal Affairs Office, Shanghai Municipal Government, April 11, 2003, Shanghai.

Official 7, Ministry of Justice, November 3, 2004, Beijing.

Judges

Judge 1, Administrative Division, Supreme People's Court, March 18, 2003, Beijing.

Judge 2, Research Office, Shandong High Court, March 19, 2003, Beijing.

Judge 3, Administrative Division, Shandong High Court, March 19, 2003, Beijing.

Judge 4, Shandong, Dongying Basic Court, March 20, 2003, Beijing (telephone interview).

Judge 5, Administrative Division, Shanghai No. 1 Intermediate Court, April 10, 2003, Shanghai.

Judge 6, Research Office, Shanghai High Court, April 10, 2003, Shanghai.

Judge 7, Administrative Division, Shanghai No. 2 Intermediate Court, April 10, 2003, Shanghai.

Judge 8, Research Office, Shanghai No. 2 Intermediate Court, April 10, 2003, Shanghai.

Judge 9, Administrative Division, Shanghai No. 1 Intermediate Court, November 10, 2004, Shanghai.

Judge 10, Adjudication Supervision Division, Shanghai No. 1 Intermediate Court, November 10, 2004, Shanghai.

Lawyer

Lawyer 1, March 21, 2003, Beijing.

Professors

Professor 1, Department of Law, Fudan University, March 28, 2003, Shanghai.

Professor 2, Department of Law, Shanghai University, April 2, 2003, Shanghai.

Professor 3, Department of Law, Shanghai University, April 2, 2003, Shanghai.

Professor 4, Department of Law, East China Normal University, April 4, 2003, Shanghai.

NOTES

¹ “National Security Strategy of the United States” (Washington, D.C.: The White House, 2002), p. 27, available at www.whitehouse.gov/nsc/nss.pdf.

² “Contingent building” refers to the effort to build a team of professionally proficient judges. See “People’s Courts Completed Most Reform Tasks—China’s Chief Justice,” *BBC Monitoring International Reports*, March 12, 2003.

³ “Overall Competitiveness of Chinese Cities, Fifty Chinese Cities Ranked on Different Indicators,” *China Net*, May 10, 2004.

⁴ Liu Fuhua, “Topics about Shanghai,” *People’s Justice*, no. 10 (1995), reprinted in *Chinese Courts Net*, October 22, 2002.

⁵ For a detailed discussion of these three problems, see Veron Mei-Ying Hung, “China’s WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform,” *American Journal of Comparative Law* 52 (2004): 77–132.

⁶ Approximately 50 Chinese officials, judges, professors, and lawyers were interviewed in Beijing, Shanghai, Boston, and Washington, D.C., from March 14 to December 12, 2003, and during November 1–10, 2004 (see the list of interviewees at the end). A survey (hereafter, Survey) of about 800 randomly selected Shanghai residents was conducted in 2004 to examine these residents’ legal knowledge and their legal experiences. This survey was conducted by Horizon Research Consultancy Group with advice from the Carnegie Endowment for International Peace.

⁷ In China, “first-instance cases” are cases first tried by courts. “Second-instance cases” mean appeal cases. Unless stated otherwise, statistics used in this paper are from the *China Law Yearbook*, 1991–2004; *Supreme People’s Court Report*, 1999–2005; and *Shanghai High Court Report*, 1999–2005, except 2002.

⁸ Hung, “China’s WTO Commitment on Independent Judicial Review,” 85–90.

⁹ In this paper, this term is used loosely to refer to residents of Shanghai.

¹⁰ Hung, “China’s WTO Commitment on Independent Judicial Review,” 85–87.

¹¹ Survey.

¹² For a detailed discussion of individuals’ fear of suing public security organs and the implications for China’s system of re-education through labor, see Veron Mei-Ying Hung, “Improving Human Rights in China: Should Re-education through Labor Be Abolished?” *Columbia Journal of Transnational Law* 41 (2003): 303, 319–21. The Chinese government has been discussing possible reforms of the reeducation-through-labor system, but the Ministry of Public Security has been resistant to fundamental changes. Interviews with Jiang Mingan and Qu Xuewu.

¹³ Interviews in Beijing, Shanghai, Boston, and Washington, D.C., March 14–December 12, 2003, and November 1–10, 2004.

¹⁴ Survey.

¹⁵ See, e.g., *Supreme People’s Court Report*, 2003–2005; interview with Ying Songnian.

JUDICIAL REFORM IN CHINA

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