

**Chapter 6 The delivery phase - Part II: the relation  
between decision-making and corruption in courts**

### *6.1. Introduction*

For a judge with corrupt intent, success of the corrupt activity largely depends on whether he can deliver the promised corrupt service without exposing such corrupt act. The capacity to deliver includes the capability to translate and transform an individual decision, supposedly fulfilling one's corrupt interest, into a court decision in accordance to the law. Chapter 5 has illustrated how the decision-making power is exercised and regulated in China's courts. This chapter will show that the features described in Chapter 5 regarding court decision-making have provided the most nurturing environment for the delivery of corrupt services in the adjudicative process. The lack of scrutiny of the formulation of decisions allows party leaders or court leaders to frame or incorporate corrupt interests into public interests with little reasoning. The strict superior-subordinate discipline of unconditional compliance enables the superiors to effectively execute such decisions into court decisions with minimum resistance. Execution conducted in this manner encourages and sometimes requires subordinate judges to disregard adjudicative procedures and to discard rational legal reasoning. When such arbitrary practices have been systematically registered in courts, any judge can conveniently utilize the established level of tolerance of arbitrariness for their own initiative to carry out corrupt activities as long as their private interests do not run into conflict with the private interests of their superiors. This condition has greatly facilitated the contractual performance of the bribed and hence smoothed the contracting process of corrupt exchange.

This chapter will exemplify how the particular way of decision-making has enabled and facilitated corrupt practices and how the power structure has affected the dynamics of corruption in China's courts. Empirical data used for the case studies include focused interviews of legal practitioners, particularly lawyers, during 2005-2009 as well as court documents or press releases of cases involving judges who had committed bribery in performing their court duties. The total number of these cases amounts to 398, all taking place over the period of a quarter of a century spanning 1985 till 2009.<sup>415</sup> This chapter is divided in two sections, one focusing on the delivery of corrupt services, one focusing on the dynamics of corruption in China's courts.

### *6.2. Delivery of corrupt services in courts*

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<sup>415</sup> These sources include the legal sections of *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. They also include the legal columns of two major internet news websites in China: [www.sina.com](http://www.sina.com) and [www.xinhuanet.com](http://www.xinhuanet.com).

In China's courts, allocation of judicial decision-making power is highly stratified. As shown in Chapter 5, Section 5.3.2, within a court, the court president tops the power hierarchy. Next are other members of the party-group, the highest decision-making body, followed by the divisional directors, who are also members of the court adjudicative committee. Further down are the head-judges and at the bottom are rank and file judges. Beyond the court, leaders of the territorial party committee can also influence court decisions by exerting influence upon the court president. The data studied show that party leaders and court leaders deliver their corrupt services mainly by sending down their instructions through the chain of command since these leaders do not carry out court activities at the ground level. "Frontline judges", in contrast, mainly deliver their corrupt services through their concrete judicial conduct by distorting the fact-finding process and by misinterpreting the law, taking advantage of the institutional tolerance of disregard of law. When the "frontline judges" commit to corruption, they have to ensure that their practices do not encroach upon the interests of their superiors.

### *6.2.1. Party leaders*

The "party leaders" in this section refer to members of the decision-making bodies of the party apparatus, many of whom also hold key positions simultaneously in the governmental institutions. Due to the scarcity of materials concerning the CCP decision-making body at the central level, cases included in this section only cover party leaders at and below the provincial level. In examining these cases, it is noteworthy that although an increasing number of party leaders are prosecuted and convicted for corruption each year, only a few had reportedly conducted corruption in court affairs. However, it does not necessarily lead to the conclusion that party leaders are refrained from conducting corrupt exchange by interfering in court cases. Instead, one likely explanation of this low representation is that for a party-leader the value of power over courts is marginal comparing the value of power over other public affairs because of the weaker authority of courts *vis a vis* other public institutions. According to the data studied in this research, the detected corrupt acts of corrupt party-leaders mostly involve taking bribes in, for example, allocating public funds, awarding commissions of lucrative public procurement contracts, personnel management and permission of land confiscation.<sup>416</sup> To obtain corrupt benefits by exercising their power in interfering court cases seem not particularly salient or attractive. Nevertheless, this research has been able to trace a few examples of corrupt practices committed by party-leaders by interfering with court affairs, which will be illustrated below.

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<sup>416</sup> For example, in the case against Mu Suixin, former mayor of Shenyang City, Liaoning Province, the prosecutor listed 60 corrupt conduct, among which only one was related to a court case. Dalian City Procuratorate vs. Mu Suixin, Criminal Division, Dalian Intermediate Court [2007] No.153.

First of all, what is striking is that these cases share a common feature in terms of the pattern of delivery of corrupt services – all appear “effortless”. For example, in order to help a local business tycoon to obtain favored treatment in a litigation tried in a court within his jurisdiction, Mu Suixin, former mayor of Shenyang City (Liaoning Province), had a brief conversation with the then president of Liaoning High Court during the break of a party meeting. Afterwards, the high-court president gave instructions to his subordinates and favored treatment was granted to the tycoon. In exchange the tycoon offered Mu cash and gifts worth of 850,000 *yuan* over a period of three years for the favor obtained from the court case as well as from other occasions.<sup>417</sup> In Zhuzhou, Hunan Province, Zeng Jinchun, the deputy chief of the Zhuzhou Party Committee, once had received a similar request from a plaintiff, who pleaded for Zeng’s help to obtain a favored court decision in a contractual dispute. After having received a bribe of 20,000 *yuan*, Zeng contacted the court. The plaintiff won the case. During the appeal, the defendant established contact with Zeng and asked for his favor in the appeal. In the meantime, the defendant successfully landed a job for Zeng’s mistress. Pleased, Zeng contacted the vice-president of the appeal court, which is also under his jurisdiction. The court reversed the decision of the first instance court and turned down all the claims of the plaintiff. Immediately after the decision was rendered, Zeng received a sum of 200,000 *yuan* from the defendant as a demonstration of the latter’s gratitude.<sup>418</sup>

Party leaders can not only obtain corrupt benefits through influencing individual court decisions but also through the appointment of court leaders. For example, the aforementioned Liaoning Mayor, Mu Suixin, had helped to promote Liang Fuquan to become the deputy chief secretary of the party-group of Shenyang Intermediate Court. After the promotion, Mu received 20,000*yuan* from the new appointee.<sup>419</sup> Furthermore, corrupt party leaders can also interfere with other court affairs and conduct corrupt exchange with firms, which provide professional service to courts. In Chongqing city, Zheng Wei, deputy chief of the Chongqing Yuzhong District Party Committee, was once approached by an owner of an auction firm, who wanted to have his firm enlisted by the Yuzhong District Court so that the firm can tender for court auction commissions. Zheng contacted the court and the auction firm was enlisted. For this service, the auction firm owner paid Zheng a tribute of 50,000 *yuan*.<sup>420</sup>

Unfortunately, public case reports seldom review how exactly a party leader instructs a court leader. Instead, a euphemistic term, “*da zhaohu*” (literally translated as “to say hi”)

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<sup>417</sup> Dalian City Procuratorate vs. Mu Suixin, Criminal Division, Dalian Intermediate Court [2007] No.153.

<sup>418</sup> Statement of the Changsha People’s Procuratorate against Zeng Jinchun [2008] No.2.

<sup>419</sup> Dalian City Procuratorate vs. Mu Suixin, Criminal Division, Dalian Intermediate Court [2007] No.153.

<sup>420</sup> Chongqing No.5 People’s Procuratorate vs. Zheng Wei, Court judgment, 1<sup>st</sup> instance, Chongqing No.5. Intermediate Court [2009]. Available at

<http://www.bizteller.cn/trade/news/newsSearch/newsContent/68207183.html>.

was commonly employed to describe this kind of private conversation in which a superior addresses a specific personal request to a subordinate. When such a request was realized through court decisions, the authority of the instructor becomes the basis of the decisions. For example, in the afore-mentioned case concerning the Chongqing Yuzhong District party leader Zheng Wei and the request from the auction firm, after Zheng instructed the leader of Yuzhong District Court (whose identity was not disclosed in the court judgment), the court leader instructed the responsible judge to take care of the case and told him that the firm was recommended by a district leader.<sup>421</sup> In Fuquan County Court (Guizhou Province), a plaintiff was denied access to 1,480,000 *yuan*, the amount of his court award, which the court had collected from the defendant on the plaintiff's behalf. "Some leader had instructed (*da zhaohu*) the court to freeze the money" was all that the plaintiff was told.<sup>422</sup>

Even though the instructed court leaders did not necessarily know the details of the exchange between the party leader and the favor-seeker, they seemed to share an understanding that they were not in a position to question the instruction but were obliged to follow it even if the instruction was in breach of the law. In fact, what troubles some court leaders most is not that party leaders interfere in court affairs but that some party leaders instruct rather ambiguously, leaving it to the court leaders to guess their intention. For example, Fu Yulin found in her research that according to her interviews, when a people's congress leader (most are also party members) intends to interfere with a court case, he/she would not express his/her intention directly but imply it indirectly by displaying dissatisfaction with the court decision on the case concerned without giving specific instructions. Judges are then left to guess the preferences of the leader. If they guess correctly, the leader will let the case pass by withdrawing his right to "monitor" court performances. If not, the judges will continuously be summoned by the leader to report the case progress to his office.<sup>423</sup>

### 6.2.2. Court leaders

As mentioned in the previous section, the decision-making power of different judges varies greatly. So do their corrupt opportunities. A judge's position in the power hierarchy corresponds to the range and the value of his decision-making power and hence the number of corrupt opportunities. Among the 398 cases studied in this research, 236 cases were about corrupt conduct committed by judges, who held an executive position

<sup>421</sup> See supra 104. Court judgment. Chongqing No.5 People's Procuratorate vs. Zheng Wei.

<sup>422</sup> See the report at <http://news.sohu.com/20090211/n262174423.shtml>.

<sup>423</sup> 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). p.113.

(including deputy position) at or above the divisional level. A judge's position in the power hierarchy is also proportionate to the volume of corrupt benefits that can be collected. For example, according to the dataset of this chapter, between a group of 13 high court judges with no executive function and a group of 17 high court judges with executive functions,<sup>424</sup> the average amount of bribe that had been taken was 1,660,000*yuan* for judges with an executive function and 207,000*yuan* for judges without executive functions. For example, Wu Zhenhan, former president of Hunan High Court had received a total sum of bribes worth 5.8 million *yuan* just from one litigant.<sup>425</sup> Whereas the highest amount of bribe received by a rank and file high court judge was less than 9% of what Wu had taken.

Other than its effect on opportunities for corruption, a judge's position in the power hierarchy also determines the means of delivery of corrupt services. Similar to party leaders, court leaders do not normally carry out court actions at the ground level.<sup>426</sup> Instead, they carry out their duties mainly through making instructions. Compared with party leaders, court leaders can influence court decisions in a more regular manner thanks to the power they are endowed with by the *pi'an zhidu* as mentioned in Section 3.2, which is to examine and approve drafts of court decisions before they are rendered. Many of the instructions are written on the drafts submitted by the subordinate judges. For example, the convicted former president of Guangdong High Court, Mai Chongkai instructed his subordinate to render favorable treatment to specific litigants by writing remarks, such as, "deal with the case properly, with heed and expedition".<sup>427</sup> Some court leaders used more discreet language, such as "please adjudicate the case according to the law" by Zhou Wenxuan, convicted former president of Wuhan Intermediate Court,<sup>428</sup> or "this case needs careful examination" by Wu Zhenhan, convicted former president of Hunan High Court.<sup>429</sup> These "coded messages" would have entirely lost their meaning in the eyes of outsiders. Only judges who work in the institution can understand the important messages conveyed in such seemingly redundant instructions. For example, judges who worked with the afore-mentioned former president of Guangdong High Court, Mai Chongkai, were aware of a "customary" rule that the litigant whose name is closest

<sup>424</sup> In the dataset, only about the half of the cases concerning corrupt high court judges has indicated the exact amount of bribes taken.

<sup>425</sup> *The Procuratorate vs. Wu Zhenhan*, Criminal Judgment, the 2<sup>nd</sup> Intermediate Court of Beijing [2006] No. 858.

<sup>426</sup> In order to contain this practice, the SPC issued a directive requiring court leaders, including court-presidents, vice-presidents, divisional directors and deputy directors to attend court hearings in a minimum number of cases. The exact number is left to be decided by each court's superior court. SPC Directive [2007]. No.14.

<sup>427</sup> See the report at <http://past.tianjindaily.com.cn/docroot/200402/10/xb01/10171301.htm>.

<sup>428</sup> See the report at <http://news.sina.com.cn/c/1/2007-07-20/072613488841.shtml>

<sup>429</sup> Zili Xu, "Court President Conduct Corruption for the Benefit of Adopted Son, the Whole Family Was Brought Down," *Jiating* 414, no. October (2007). Available at <http://xia.cnfamily.com/200710/ca34133.htm>.

to Mai's written instruction is the party to be given favorable treatment.<sup>430</sup> Sometimes, the instruction is more direct and explicit for instance when the court leader entrusts the subordinate with the corrupt conspiracy. An example is the afore-mentioned former president of Hunan High Court, Wu Zhenhan. When Wu was approached by a litigant for a favor, Wu instructed Li Xiaohua, former director of the political department of the same court, to take care of Yan's cases and asked Li to report to him if it was necessary for him to step in.<sup>431</sup> In circumstances where a corrupt court leader could not wait for the subordinate judge to submit a draft on which to indicate his instruction by written remarks, the leader can demand the bribing litigant or his representative to submit a "case-report" to the court, addressing and rationalizing their demands. The court leader can then endorse the report with supporting remarks and send it to the subordinate judge to execute.<sup>432</sup> This makes the instruction seemingly less personal.

Leaders of appellant courts can deliver corrupt services not only by instructing judges in their own courts but also judges in the subordinate courts. For example, a district court not only ruled in favor of a litigant but also waived her litigation fee because Tang Jikai, former vice-president of Changsha Intermediate Court, had asked the district court leaders to take care of the litigant (so-called "dazhaohu") at a banquet hosted by the litigant for Tang and the district court leaders. During this period, Tang and his wife had received a total sum of gifts worth 143,700 *yuan* from the litigant.<sup>433</sup> Li Xiaohua, former director the political department of Hunan High Court, located also in Changsha City, once instructed the leaders of the Changsha Intermediate Court, to render a reduced sentence in an embezzlement case. Having received 200,000 *yuan* from the defendant, Li instructed the intermediate court judges to "try to reduce the amount of embezzlement under 10,000,000 *yuan* and to control the sentence below the term of imprisonment of ten years".<sup>434</sup>

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<sup>430</sup> Liu, "Jujiao Mai Chongkai Chenglun De Guiji [Zooming in the Falling Trajectory of Mai Chongkai]." Also Available at [http://www.uibe.edu.cn/upload/up\\_jcsjc/alfx/alfx\\_07032002.html](http://www.uibe.edu.cn/upload/up_jcsjc/alfx/alfx_07032002.html). For other report of the customary court practices of implicit instructions, see Weidong Chen, "Xingshi Ershen Fahui Chongshen Zhidu De Fansi Yu Sikao [Re-Examining the 'Send Back for Retrial' Decision in the Appeal of Criminal Cases]," (Renmin University).

<sup>431</sup> *The Procuratorate vs. Wu Zhenhan*, Criminal Judgment, No. 858 [2006], the 2<sup>nd</sup> Intermediate Court of Beijing.

<sup>432</sup> Interview L.013. Also see the case report of Wang Zhiwen, former court president of Dachuan County Court, Sichuan Province. Tan, *Sifa Fubai Fangzhi Lun [Preventing Judicial Corruption]*. pp.109-11.

<sup>433</sup> See *Procuratorate vs. Tang Jikai*, Huaihua Intermediate Court, Hunan Province [2006] No.52

<sup>434</sup> Jianliang Huang, Chen Qiuhua, "Faguan Tanwu, Huilu Fanzui Fenxi [a Criminological Analysis of Embezzlement and Bribery Committed by Judges]" *Fazhi Pinglun Zhoukan [Rule of Law Review Weekly] (neicangao [For Internal Communication only])* (2005).

The loosely scrutinized procedures concerning the formulation of decisions combined with strict discipline of execution of superiors' instructions allows a court leader to influence a court decision according to his personal preference, which is directed not by a set of explicit rules laid down in the law but, in the case of corruption, by who brings more bribe. In a divorce case, by juggling with court decisions, Cheng Kunbo, former president of Huangshi Intermediate Court, received 10,000 *yuan* from the husband and 5,000 *yuan* from the wife respectively.<sup>435</sup> Meng Laigui, former director of the Adjudicative-Supervisory Division of Shanxi High Court, had operated in a similar manner,<sup>436</sup> which is described in a popular satiric proverb as "eating off of plaintiff and then defendant (*chi'le yuangao chi beigao*)".<sup>437</sup> Reluctant to be taken advantage of by one judge in a bidding and aware of the court power structure and how it operates, more cost-efficiency-oriented litigants avoid entering in a bid and instead seek to spend the bribe on judges or other decision-makers, who can better guarantee a favorable decision.<sup>438</sup> A lawyer once reminisced with great pride on how he once successfully won a "grand" case by having made the right choices of which decision-makers to approach after having investigated and acquired information on the moves that the other litigating party had taken. He said: "I feel I am more like a director and my work is to put the right actor at the right place and let them play".<sup>439</sup>

Bound by the strict discipline to follow instructions, in the cases studied subordinate judges seldom examine or question the legitimacy of the instructions given them by court leaders. Likewise, court leaders' in these cases seldom question instructions from party leaders. Furthermore, in these cases it seems an established practice that the breach of law and judicial ethics is exonerated if such conduct is carried out to execute a superior's instruction. In all the cases investigated, no judge had been punished for carrying out a corrupt leader's instruction to deliver a corrupt service on the leader's behalf, unless the judge was found having also taken bribes for the service. From the policy-maker's viewpoint, it is logical that the subordinate judge is exonerated for the unlawful and unethical actions taken to execute the instructions. The reason is that to punish a judge for his misconduct in carrying out instructions is to invite the judge to examine the legitimacy of each instruction given to them and that will impede the execution of decisions from above. Punishing subordinate judges who take bribes on their own initiative is not in conflict with the discipline, since their bribe-taking is not part of the instruction.

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<sup>435</sup> For details of this report, see <http://www.cnhubei.com/200304/ca240652.htm>.

<sup>436</sup> For more details, see Li, "Corruption in China's Courts."

<sup>437</sup> Zhizhi Yang, "Cong Minyao Kan Woguo Fazhi Jianshe [to Assess the Development of Legal Establishment in Our Country from Folklores]," (2007).

<sup>438</sup> Interview L.013. L.014. L.015.

<sup>439</sup> Interview L.013.

In contrast, for judges, who insist to comply with the law at the “expense” of disregarding instructions, the consequence could be tragic. Wang Yaguang was a judge from Fuping County Court, Shaanxi province. In 1994, Judge Wang presided over an administrative dispute. The plaintiff sued the local construction and zoning bureau for dismantling his house. The defendant claimed that they did that because the plaintiff had not obtained a construction permit. The court found that the plaintiff had applied for such a permit and had even paid the fee for it. It was the defendant who had failed to issue the permit. During the adjudicating process, the president of the County Court instructed Judge Wang to render a decision in favor of the defendant. Believing that the defendant should take the blame and responsibility for the plaintiff’s damages, Judge Wang drafted a ruling against the defendant and submitted it to the court adjudicative committee for deliberation. The adjudicative committee rejected the ruling and instructed Judge Wang to revise it. Judge Wang made a compromise. He ruled against the defendant but reduced the award of damages to the plaintiff. As soon as the ruling was issued, the defendant made a strong protest to the court president. Immediately, the court president summoned the adjudicative committee to meet. The committee decided that Judge Wang did not follow the committee’s decision, violated court discipline and should be punished. The committee demanded that Judge Wang write a statement of self-criticism. Judge Wang wrote such a statement, in which he rebutted the committee’s decision and refused to admit that he had done anything wrong. Soon thereafter, the court removed Judge Wang from his job and warned all court staff in a notification that Judge Wang’s mistake was “on purpose not [due to] negligence... it was an issue of his political stance not of his professional competence.” Judge Wang started to complain to higher authorities but to no avail. Witnessing Judge Wang suffering and struggling, the court president told the judge, “Go on complaining. The more you complain, the more leaders I will acquaint. Let’s see whom the superior authority will believe.” By the time the media coverage of this case began, Judge Wang had been demoted and removed from his adjudicative post for seven years. The most humiliating aspect of all is that as one of the only three judges in the court with a law degree, Judge Wang was asked to attend a training course. His first assignment was to read Mao’s *Against Liberalism*.<sup>440</sup>

### 6.2.3. “Frontline judges”

In comparison to judges who are court leaders, “frontline judges” (*yixian faguan*) are those judges, who sit in the collegial panel, examine and investigate cases by interacting with litigants and other court-users, and carry out court functions at the ground level. “Frontline judges” are usually judges at the bottom of the power hierarchy, who do not

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<sup>440</sup> For the full report of the story, see Guangming Huang, “The Price for a Judge to Pay for Offending His Superiors” *Southern Weekend*, 23 March 2001.

hold any executive functions.<sup>441</sup> When the “frontline judges” commit corruption on their own initiative, information about the practices are better exposed and hence allow a closer examination of the delivery of corrupt services in the litigating process.

First of all, as explained in the previous section, any court superior, from court leaders to divisional leaders, can intervene in the adjudicative process at the ground level. Therefore, for a corrupt “frontline judge”, to succeed with the delivery of a corrupt service, he has to make sure that his corrupt interest is not in conflict with the interests of the superiors. It means that corrupt opportunities for “frontline judges” are limited to cases, which lack either political or corrupt interests for their superiors. Among the 398 cases investigated in this research, 162 cases concern corruption committed by “frontline judges”. According to these 162 cases, “frontline judges” can deliver corrupt services in the course of litigation by distorting the fact-finding process, by manipulating the interpretation of the law, or most often, through the combination of both.

In a legal environment, where power prevails over law and authoritarianism preempts rational legal thinking and practices, the fairness of a legal proceeding greatly depends on the moral standard and integrity of the judge who presides over the proceedings. When a judge intends to take advantage of this authoritarian environment and to abuse his power, it can be more easily done by, for example, distorting the fact-finding process, including admitting evidence without giving the other party an opportunity to contest it, arbitrarily excluding legitimate evidence, obstructing the access to evidence and manipulating the forensic examination procedure.<sup>442</sup> In this environment, from the perspective of a defendant in a criminal trial, the difference between conducting and not conducting corruption could be life or death. For example, in a murder trial in Jingmen Intermediate Court (Hubei Province), Lü Zonghui was the responsible judge. The defendant’s relative came to Lü and asked for help. Lü told the family that according to the law, the defendant could be sentenced to death unless the defendant could provide evidence for mitigation of sentence, such as providing evidence of an undiscovered further crime or leads to dissolve another crime. The family followed the advice and with a bribe obtained a lead from the captain of the local police. The family leaked the “lead” to the defendant, who then reported the “lead” to the police in a framed interrogation.<sup>443</sup> Based on the

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<sup>441</sup> In 2007, the SPC issued a directive, which requires court leaders and divisional directors to sit in collegial panel and attend court hearings in a minimum amount of cases per year. Lower courts have the discretion to decide on the exact amount. When they do, they are automatically the head-judge, who can designate a responsible judge to do the preparative work. SPC Notification [2007] no.14.

<sup>442</sup> For example, see the documented story of a plaintiff Zhu Dinglong in Dinglong Zhu, *Guansi [Lawsuit]* (Beijing: Law Press, 2007). p.268. Such practices can also be found in the cases compiled in Tan, *Sifa Fubai Fangzhi Lun [Preventing Judicial Corruption]*. pp.67-126.

<sup>443</sup> According to the Procuracy Daily, convicts of corruption are often found being given mitigation based on “meritorious performance”. Quite a few were detected having conducted fraud (*jia ligong*), namely convicts “buying” off tips from investigators and “reporting” it back to investigators, which would be

defendant's "report" in the interrogation, the captain issued a testimony confirming the defendant's "meritorious performance" for the court's reference. During the court hearing, judge Lü announced the discovery of mitigating evidence and admitted it immediately. When the victim's family requested the court to disclose this evidence, the judge denied the request on the ground that the evidence is "adjudicative secret". The judge dismissed the challenge from the victim's family and rendered a decision of reprieve from the death sentence.<sup>444</sup> During the litigation, Lü accepted 8,000yuan and solicited various gifts from the defendant's family.

Huang Xiaoguang, a former judge of Chenzhou Intermediate Court (Hunan Province), had safely accumulated bribes for several years from prosecuted local thugs, mostly drug traffickers in exchange for a reprieve from death penalty. His corrupt conduct was concealed so well that he was even recommended in 2006 to the SPC to review death penalty sentencing at the national level until his corrupt conduct was exposed.<sup>445</sup> According to the cases investigated, it is also common for "frontline judges" to abet litigants to obtain and submit, for instance, fake age or medical certificates in order to facilitate the decision-making concerning probation, parole, reduction of sentence or executing a sentence out of prison based on deceitful medical certificate or deceitful "meritorious performance".<sup>446</sup>

Forging evidence is an approach to deliver corrupt services in criminal cases as much as in civil cases. Fan Qiyang and Zhang Jinhan, former judges of Wuhan Maritime Court, knowingly admitted a fake contract as the basis of their ruling, which legitimized the litigant's purchase of a smuggled oil tank. For this service, the judges were rewarded with a bribe of 200,000yuan.<sup>447</sup> Former judge Wang Shenjie from Shangqiu Intermediate Court (Henan Province), instead of waiting for the litigant to solicit his corrupt service, volunteered to deliver a "favor" to a plaintiff in a tort case concerning a land dispute. Based on the knowledge that the plaintiff was well connected with party leaders, the judge hoped that the plaintiff could return his "favor" by helping to advance his career or to land a job for his offspring. As the "responsible judge" in the case, Wang, on his own initiative, tampered a land certificate by scratching off important information and replacing it with his own handwriting. Wang admitted the certificate as evidence without disclosing it at the court hearing. Wang accordingly rendered a decision in favor of the

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recognized as "meritorious performance", as the defendant had done in the case described above in the main text. For reports on this phenomena, see <http://www.jcrb.com/zhuanti/ffzt/tglg/>

<sup>444</sup> The People's Courts Publishing House, "People's Court Case Report (Criminal Section)," 47 (2005), p.550-9.

<sup>445</sup> See <http://old.jfdaily.com/gb/jfxww/xlbk/bkwz/node36356/node36358/userobject1ai1869606.html>.

<sup>446</sup> Examples can be found in the case of Wu Yunfa, former judge of Liu'an County Court, Anhui Province, and the case of Zhang Gusheng, former judge of Yongshun County Court, Hunan Province. Tan, *Sifa Fubai Fangzhi Lun [Preventing Judicial Corruption]*, pp.101-4, 108-9.

<sup>447</sup> See the report at [http://www.chinalawedu.com/news/2004\\_4/15/1403097759.htm](http://www.chinalawedu.com/news/2004_4/15/1403097759.htm).

plaintiff. By the time the corrupt conduct was discovered, the judge had not yet been promoted; however, the plaintiff had awarded the judge a sum of 210,000*yuan* in cash.<sup>448</sup>

In another case, former judge Jiang Guoliang from Yancheng Intermediate Court (Jiansu Province), Jiang received a request from a defendant, who was prosecuted for manslaughter, accompanied by 5,000*yuan* as well as various gifts. Jiang delivered his corrupt service by tampering with an interview transcript, based on which, he interpreted a decisive traffic regulation in favor of the defendant.<sup>449</sup>

Compared with the previous examples for the delivery of corrupt services, exercising stipulated discretion is a much safer approach. The vagueness, ambiguity and sometimes inconsistency featuring in Chinese laws leaves large room for this exercise. In Taizhou Intermediate Court (Sichuan Province), a bank manager was prosecuted for embezzlement of 3,000,000*yuan*. Upon a bribe, the collegial panel dismissed the charge, defined the conduct as an administrative violation and acquitted the defendant.<sup>450</sup> Wide discretion also exists in sentencing in criminal cases. The Chinese Criminal Law normally only indicates two to three scales of the sentence for each crime. Judges are granted discretion to decide on the exact term of sentence based on the “circumstances (*liangxing qingjie*)” of the case concerned. For instance, according to the Chinese Criminal Law (1997), the sentences for the crime of embezzlement for more than 100,000 *yuan* range from imprisonment of more than ten years to life-imprisonment, and even the death penalty, if the “circumstance” of the case is “particularly serious”.<sup>451</sup> There are few instructions on how the “circumstance” should be gauged. In court judgments, the reason for this exercise of discretion is seldom elaborated. Judges are not legally bound by their own previous decisions or that of their peers’ in the same or superior courts.<sup>452</sup> Overwhelmed by the large number of complaints on judges’ abuse of their discretion with regard to sentencing, the SPC only recently launched an experimental guideline to “standardize” the exercise of sentencing discretion for a few selected types of crimes.<sup>453</sup>

In civil cases, the room for manipulation of stipulated discretion is at least as wide as that in criminal cases. A public-interest lawyer once represented a group of pollution victims in an environmental tort case against a factory. When the presiding judge decided to award only 30% of the plaintiffs’ full claim of damages, the lawyer asked for the basis of

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<sup>448</sup> See the case report of former judge Wang Shenjie, available at [http://news.shangdu.com/category/10003/2007/11/30/2007-11-30\\_840426\\_10003.shtml](http://news.shangdu.com/category/10003/2007/11/30/2007-11-30_840426_10003.shtml).

<sup>449</sup> “Two Senior Citizens Fought for the Dignity of Law”.

<sup>450</sup> See <http://sc.news.163.com/06/1028/08/2UGOM82K00500079.html>

<sup>451</sup> Chinese Criminal Law (2009). Art.383(1).

<sup>452</sup> During a presentation in the 2<sup>nd</sup> Annual Conference of the European Chinese Law Studies Association, Chao Xi reviewed that even the SPC judges do not follow their precedent cases according to his interviews.

<sup>453</sup> See related report at [http://news.xinhuanet.com/legal/2009-06/01/content\\_11464962.htm](http://news.xinhuanet.com/legal/2009-06/01/content_11464962.htm).

the number. The judge simply ignored the question.<sup>454</sup> In a contractual dispute case tried in Zhuji County Court (Zhejiang Province), former judge Lou Zemin awarded an excessively large sum of damages to the plaintiff in exchange for a reward of 130,000yuan.<sup>455</sup> Overall, it seems easier for prosecutors to scrutinize a judge's abuse of power in criminal cases than in civil cases. Among the case materials collected in this research, cases concerning judicial corruption in criminal cases tend to provide detail information about how the corrupt service was carried out in the adjudicative process than those in civil cases, even though corruption is likely to occur in both to the same extent.<sup>456</sup> A possible explanation is that in criminal cases abuse of judicial discretion which results from the misapplication of law is easier to identify because of the range of benchmark sentencing standards laid down in the Chinese Criminal Law, against which violation can be gauged. Such a "benchmark", however, is much less obvious in the Chinese Civil Law.

Enjoying only limited corrupt opportunities, some more risk-averse "frontline judges" chose to deliver corrupt services by engaging their superiors. For example, when a former judge Wu Chunfa from Guiyang Intermediate Court (Guizhong Province) was approached by an auctioneer for favored treatment in a court auction commission, Wu said he could not decide on that issue. Wu then introduced the auctioneer to his supervisor, Xi Lilong, former director of the court enforcement bureau. After having been promised a sum of money as a "gratitude fee", Xi instructed Wu to satisfy the auctioneer's demand.<sup>457</sup> Li Xiaohua, former director of the political department of Hunan High Court, was once approached by Yan Caihong, an owner of an investment conglomerate, who had multiple cases pending in Hunan High Court. Without the decision-making power to deliver the corrupt services that Yan asked for, Li introduced Yan to Wu Zhenhan, the then president of the Hunan High Court. This brokerage earned Li a bribe of 370,000yuan from the litigant.<sup>458</sup>

Therefore, "democratic centralism", which is characterized by a loosely scrutinized process of formulation of decisions and a strictly disciplined execution of these decisions, has greatly facilitated the delivery of corrupt services in China's courts in three respects. Firstly, it allows party leaders and court leaders to conceal their corrupt intent by framing or incorporating it into uncontestable instructions and to deliver corrupt services by effectively translating their individual decisions into court decisions by manipulating their endowed power to intervene in the judicial decision-making process any time. It

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<sup>454</sup> Minutes of the Conference on Legal Right Assertion of Pollution Victims (2009)

<sup>455</sup> See <http://www.148com.com/html/583/83675.html>.

<sup>456</sup> Li, "Corruption in China's Courts."

<sup>457</sup> See the report at [http://www.xinhuanet.com/chinanews/2006-06/07/content\\_7196104.htm](http://www.xinhuanet.com/chinanews/2006-06/07/content_7196104.htm)

<sup>458</sup> *The Procuratorate vs. Wu Zhenhan*, Criminal Judgment, No. 858 [2006], the 2<sup>nd</sup> Intermediate Court of Beijing.

also enables them to deliver corrupt services in a highly effective manner by mobilizing subordinate judges through the chain of command with minimal resistance from them. Secondly, subordinating law to power also hinders the development of the rule of law and rational legal thinking. It tolerates and sustains practices that disregard procedural rules and are devoid of rational legal reasoning. Such environment enables “frontline judges” to deliver corrupt services in the judicial decision-making process on their own initiative as long as they observe and avoid potential conflicts between their own interests and the political or private interests of their superiors. For example, in the 398 cases studied, none of the judges had been found taking bribes from litigants, who were involved in the “politically sensitive” cases. It is not only because these litigants usually hold strong ideological beliefs and are less likely to offer bribes but also because these cases concern the pivotal political interests of the supreme CCP leadership. Taking bribes in these cases will be suicidal or “bringing fire to one’s own body (*yinhuo shaoshen*)”, as a pertinent Chinese idiom would have it. Thirdly, to subject law to power damages the predictability of law, which generates bribes from both litigants, who intend to obtain a better than fair decision, and from litigants who are compelled to bribe in order to avoid a less than fair decision. The proliferation of corrupt conduct in turn increases the expectation of judicial corruption and reinforces the belief in the supremacy of power rather than of law.

### *6.3. Dynamics of corruption in courts*

As introduced in Chapter 5, decision-making in China’s courts has features that allow personal power to supersede law. The dynamics of the power structure inherent in the litigating process therefore also defines the dynamics of corruption, if pursued. It makes corruption a multi-facet and a multi-player game. Litigants can seek to influence the outcome of litigation by conducting corrupt exchange with different judges or others who can influence the judges concerned. The multi-instance nature of litigation provides both litigants a spacious ground to level their dispute by deploying and re-deploying their economic, social and political capital to induce favorable decisions. When both litigants are more or less equally resourceful in terms of social, political and economic capital and equally committed to win the case through any means, the outcome is often lose-lose because the extra resources they invest in corruption may eventually be canceled out, which brings the case back to the starting point. The following case may serve as an illustration of this.

In 1994, Shenmu County, Shaanxi Province, a group of villagers brought a civil suit against a well-connected mine-developer. The villagers bribed the judge in the basic court, but lost the case. Having consulted a lawyer, the villagers believed that they lost the case because their bribe was insignificant compared with the influence exerted upon the court by the defendant. More importantly, the bribe was only offered to the responsible judge,

but not to the court leaders. The villagers chipped in more “bribe-funds” and appealed to the Shenmu Intermediate Court. This time, they bribed three judges, including a vice-president and a divisional director, of the intermediate court. They won the case but soon received a stay of execution because the defendant started an exceptional retrial procedure in the provincial Shaanxi High Court. The case was sent back to the appellant Intermediate Court. The villagers bribed the retrial judge, who, after having taken the bribes, sustained the previous judgment. However, the defendant managed to stall the enforcement procedure, which gave him a chance to invoke yet another re-trial procedure at the provincial High Court almost a year later. This time the High Court revoked all the previous court decisions and sent the case back to the first trial court again. Two years later the dispute was eventually closed with a settlement between the villagers and the mine-developer.<sup>459</sup>

According to a lawyer, these “lose-lose cases” are usually the result of compulsive decisions by vengeance-charged litigants, who simultaneously or consecutively engage different power-holders to support their demands through corruption whereby the court simply becomes an extended field of the “battle ground” of their dispute.<sup>460</sup> After several rounds of litigation, accumulated litigating expenses, the cost of bribes and the high transaction costs involved in corrupt exchange, none of the litigants emerges as a winner. However, when the litigation takes place between two parties with unmatched influencing powers, the outcome of the litigation can be more easily manipulated by the party, who enjoys the power advantage.<sup>461</sup> The aggrieved party usually either accepts its fate silently or embarks on a long, rough and uncertain road of petitioning, also known as letter and visiting (*xinfang*), to Beijing.<sup>462</sup>

From the perspective of the judges, the outcome of the corrupt activities is also dynamically associated with interactions among the bribe-takers. According to the cases studied, this research finds that the disciplined hierarchical structure in courts makes corruption alliances easier to forge in superior-subordinate relationships. Such alliances increase the efficiency of the delivery of corrupt services because the enhanced safety allows direct communication among the corruption participants and improves coordination among various judicial posts, which are in charge of different phases of the adjudicative process. Such coordination integrates the corrupt services that are fragmented due to division of power among the registration division, the adjudication

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<sup>459</sup> Liu, "Yiqi Hetong Jiufen Yinqi De Sifa 'Heishao' [a Judicial 'Black Whistle' in a Contractual Dispute]".

<sup>460</sup> Interview L.011.

<sup>461</sup> I asked a lawyer what the chance of such a disadvantaged litigant to have a fair trial would be, the lawyer answered he would never want to represent such a litigant. Interview W.029.

<sup>462</sup> For more empirical research and detailed analyses on this topic, see articles of Yu Jianrong at his personal blogs <http://yujianrong.vip.bokee.com/> or at [http://www.cngdsz.net/old/discourse/scholar\\_list.asp?scholarid=25](http://www.cngdsz.net/old/discourse/scholar_list.asp?scholarid=25).

division and the enforcement division. The integration in turn reduces the transactional costs of the corrupt exchange. This study finds that in courts where such alliances have been forged, the delivery of corrupt services is transformed from the what Scott termed “parochial corruption”, namely, “a situation where only ties of kinship, affection, caste, and so forth determine access to the favors of power-holders”,<sup>463</sup> to “market corruption”, in which corrupt services are offered in a more “non-discriminatory” manner to whoever pays the required amount of bribes. For example, investigators of the corruption scandals in the judiciary of Hunan Province found that, externally, certain “trade rules (*hanggui*)” have emerged regulating the price and the allocation of corrupt profits.<sup>464</sup> Internally, all bribes collected were shared among judges, who cooperated with each other in panel deliberations and other mandated procedures.<sup>465</sup> An anonymous unofficial source revealed more predatory practices involving the collusion between the detained SPC vice-president Huang Songyou and the director of the enforcement bureau of the Guangdong High Court.<sup>466</sup>

Among the allied corrupt judges, “clients” are usually jointly managed and profits are shared. Prosecutors found that, for instance, more than half of the 23 bribes taken by former judge Liu Juping of Wuhan Intermediate Court (Hubei Province) were shared with other judges.<sup>467</sup> Normally, the illicit profit would be distributed among the “corrupt allies” in proportion to the judges’ position in the power hierarchy and their role in the corrupt activities. For example, when former judge Wu Zhilin received 10,000yuan from a litigant, he kept 3,000 to himself, offered 3,000 to a colleague and 4,000 to the court-president.<sup>468</sup> When He Qingyuan, former vice-president of Changli County Court (Hebei Province) solicited a few leather jackets from a litigant, he first reserved two for himself, two for the court president and then allocated the rest to other staff members involved.<sup>469</sup> The frontline judges are most of the time at the bottom of the pecking order, doing most of the labor but getting the least amount of profit.<sup>470</sup> Sometimes, the individual perceptions of these participants greatly vary as to the value of their roles in the corrupt activities. For instance, when Wen Zhipeng, a former official in the Legal Office of Hainan Province, told his superior Lou Xiaoping, the later president of Hainan High Court, that he had collected 400,000yuan from a briber, Lou told Wen to keep 10,000 for himself. It was only during the investigation of the case that it was found Wen

<sup>463</sup> J. C. Scott, *Comparative Political Corruption* (1972). p.88.

<sup>464</sup> Huang, "Faguan Tanwu, Huilu Fanzui Fenxi [a Criminological Analysis of Embezzlement and Bribery Committed by Judges]".

<sup>465</sup> Ibid.

<sup>466</sup> This post can be accessed at <http://www.studioclassroom.net/bbs/viewthread.php?tid=14127>.

<sup>467</sup> See the report at <http://news.sina.com.cn/c/2004-04-16/05522320106s.shtml>

<sup>468</sup> "Judges Standing in the Defendant's Dock," *Zhengfu fazhi* [Government and Rule by law], no. 6 (1997).

<sup>469</sup> See the report at <http://www.people.com.cn/GB/shehui/44/20030120/911470.html>.

<sup>470</sup> Interview. L.013.

had actually collected 600,000 instead of 400,000 *yuan* and secretly “intercepted” 200,000 *yuan* as his “fair” share.<sup>471</sup>

Among the 398 cases studied, collusive conduct had been detected in the corruption scandals in Tianjin High Court, Hunan High Court, Jilin High Court, Wuhan Intermediate Court (Hubei Province), Shenzhen Intermediate Court (Guangdong), Tianjin Intermediate Court (Tianjin Municipality), Changsha Intermediate Court (Hunan), Fuyang Intermediate Court (Anhui), Jingzhou Intermediate Court (Hubei), Jingmen Intermediate Court (Hubei), Nantong Intermediate Court (Jiangsu), Wenzhou Intermediate Court (Zhejiang), Chengdu Intermediate Court (Sichuan), Changchun Intermediate Court (Jilin), Guangzhou Intermediate Court (Guangdong), Yancheng Intermediate Court (Jiangsu), Shenmu Intermediate Court (Shaanxi), Mudanjiang Intermediate Court (Jilin). One interesting finding that emerged from studying these cases is that in the afore-mentioned scandals, collusion usually involves one court-president or one vice-president with one or a few divisional leaders and rank and file judges. In other words, collusion seldom takes place just between the court president and vice-presidents.<sup>472</sup> This pattern is also discernible in corruption cases detected in other public institutions.<sup>473</sup> It suggests that the infusion of distrust among top executive leaders as intended by the “democratic centralism”-principle is taking effect. Trust and loyalty is indeed easier to develop in superior-subordinate relations, where one owes a job or career to the other, rather than in more equal relations, such as between the members of the collective leadership. And that trust is one of the vital ingredients of collusive corruption.

Among these equals, investigators of the Wuhan Intermediate Court scandals found that the customary practice was non-interference.<sup>474</sup> However, this is not always the case. Since the discipline of unconditional compliance does not apply in equal relationships, their equal status provides these leaders with the incentive and capability to compete for corrupt opportunities and profits. Escalation of such “turf battle” may eventually end in exposure and apprehension of the participants of corruption. For this, one court auction in Hunan High Court provides the best illustration. In this case, a shopping mall located in Shenzhen City was to be auctioned as part of a standard enforcement procedure of a court

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<sup>471</sup> <http://www.hinews.cn/news/system/2004/08/12/000000717.shtml>

<sup>472</sup> The only exception is Fuyang Intermediate Court.

<sup>473</sup> This includes 100 cases concerning officials in other public institutions convicted for corruption between 2005-2009. Only in the corruption scandal of Shenyang City, two top leaders, the mayor and the deputy mayor stepped down together. However, even in this case, the two leaders fell together not because they colluded in corruption but because both of them were corrupt and the mayor refused to cover the corrupt conduct of his deputy, which facilitated the investigation. See Inspection, *Shenyang 'Mu Suixin, Ma Xiangdong' an Chachu Jishi [a Journalistic Report on the Investigation and Conviction of the Cases of Mu Suixin and Ma Xiangdong]*.

<sup>474</sup> Huailiang Hua, "Jiekai Wuhan Zhongyuan Fubai Wo'an De "Heixiazi" [Open The "Black-Box" Of the Group Corruption Case of Wuhan Intermediate Court]," *minzhu yu fazhi [democracy and law]* 2004.

award. A total number of five plaintiffs had submitted a joint claim in the auctioned asset worth of 0.4 billion *yuan*. The high value of the auctioned asset has attracted special attention from two groups of judges in Hunan High Court, one from the economic adjudicative division and the other from the enforcement division. All aimed at pocketing the lucrative auction commission, part of which was customarily attributed to judges as kickbacks.<sup>475</sup> Eventually, the court decided that the shopping mall would be divided into two packages, each division put in charge of one package. The economic adjudicative division commissioned the auction to an auction house, in which the son of the court president had a share. The enforcement division commissioned their service to an auction house, managed by the son of another former president of the court and then party leader of Hunan Province. During the auction, it was also discovered that the Shenzhen Intermediate Court, which had immediate jurisdiction over the shopping mall, also processed claims over the disputed asset. Consent could not be reached among the three interest groups concerning the distribution of the proceeds from the auction. The dispute was even presented to the SPC, which demanded that the Hunan High Court transfer a portion of the proceeds to the Shenzhen Intermediate Court. The Hunan High Court did not follow this instruction as the income from the auction sale had mostly been appropriated by the judges from Hunan High Court. Escalation of this conflict eventually led to a high-profile corruption investigation against Hunan High Court, which brought the collapse of the corrupt network, including the fall and conviction of the president of the Hunan High Court.<sup>476</sup>

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<sup>475</sup> According to the current auction law, the auction firm can claim up to 5% of the total value of the auctioned item respectively from the seller and the buyer for a service with little production cost. The auction commission is then distributed between the court and the auction firm. According to an internal report from the Procuratorate Daily, the customary practice is that the court takes 40% of the auction commission. The auction firm takes the 30%. The rest 30% is usually spent on operational costs, which include the cost of bribes offered to officials from other public institutions. Huang, "Faguan Tanwu, Huilu Fanzui Fenxi [a Criminological Analysis of Embezzlement and Bribery Committed by Judges] ". Similar distribution rate is also found in the report of the corruption scandal of Ulumiqi Railway Court (Xinjiang Autonomous Region) and most recently of the sandal of Taizhou Intermediate Court (Zhejiang). According to other cases investigated during this research, against a fair amount of bribe, the court can also help the buyer to auction off the asset at a price much lower than the market price. The court can also collude with the seller. The seller can set up a scarecrow company to buy off his own asset at a lower-than-market price. This way, the seller can keep his asset and impede the creditor from realizing his full claim. Victims of these practices are the innocent creditors or innocent buyers. In a recent case in Taizhou Intermediate Court, an innocent buyer paid for the auctioned real estate but was not able to obtain the estate. The case was reported by the Chinese Youth Daily. According to the report, the court had an agreement with every candidate auction firm that was short-listed by the court for the tendering. Based on the agreement, the court is entitled of 40% of the auction commission. Apart from that, the court also has large room of manipulation in deciding what and how the auction is to be performed. For details of the case, see [http://zqb.cyol.com/content/2009-10/23/content\\_2900306.htm](http://zqb.cyol.com/content/2009-10/23/content_2900306.htm).

<sup>476</sup> Dongwen Li, "Heibai Zhijian De Shenzhen Dongmen Dashijie [Shenzhen Da Shijie in Both the Black and White Worlds]," *Nanfang Dushi Bao [Southern Metropolis Newspaper]*, 31 August 2005.

The scandal of Hunan High Court is not the only case, in which competition for lucrative corrupt profits eventually led to the collapse of the corrupt network. For example, associated with the exposure of corrupt conduct of Pei Hongquan, former vice-president of Shenzhen Intermediate Court, was a court bankruptcy case with an estimated value of 160,000,000 *yuan*. Behind the fall of Huang Songyou, former vice-president of the SPC and Yang Xiancai, former director of the enforcement bureau of Guangdong High Court, was the enforcement of a court award involving real estate property located in the capital city of Guangdong Province, with an estimated value of one billion *yuan*.<sup>477</sup> Similarly, the most recent scandal in Chongqing High Court, which brought down Zhang Tao, its former vice-president, and Wu Xiaoqing, its former director of the enforcement bureau, was associated with the auction of a piece of land with an estimated value of 36,500,000 *yuan*.<sup>478</sup> In short, among court leaders of equal rank, the contrived mutual-constraint element of the “democratic centralism” functions not only as an obstruction of political conspiracy in the collective leadership but also as a barrier preventing them from colluding as a means to optimize corrupt opportunities and profits. In fact, their equal position provides these leaders with the incentive and the capacity to compete for more decision-making power and related benefits since the discipline of unconditional compliance does not apply in equal relationships. Eradicating one’s political rival by exposing the latter’s corrupt activities seems the most effective approach since it removes the competition without necessarily limiting the power attributed to the post to be taken over. However, this type of “democratic centralism” has little effect in fundamentally reducing corruption since this “democratic” arrangement is not designed to promote political liberty and accountability but to help the superior power to monitor subordinates’ performance and hence maintain its authoritarian control over the state. Under this instrumental view of democratic mechanism, measures of checks and balances are more likely to serve to allocate corrupt opportunities and profits rather than to reduce them.

#### 6.4. Conclusion

Chapter 5 has identified the two most significant features of decision-making in China’s courts, namely a loosely supervised procedure about the formulation of decisions and a strictly disciplined procedure of the execution of such decisions. This chapter has demonstrated that it is this particular manner of decision-making applied in the adjudicative process that has enabled and sustained corruption in China’s courts. It is responsible for having greatly eased the critical phase of contracting process of

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<sup>477</sup> Ling Yuan, "Huang Songyou Xianru Zhongcheng an Neimu Jiaoyi [Huang Songyou Trapped in the Insider Trading in the Zhongcheng Plaza Case]," *Liaowang Dongfang Zhoukan [Oriental Outlook Weekly]*, 10 November 2008.

<sup>478</sup> See the report at <http://news.sina.com.cn/c/sd/2009-04-20/172717648648.shtml>

corruption, namely the delivery of corrupt service as the object of exchange for bribes. Immediately associated with this finding is the fact that this particular manner of decision-making is systematically applied in all courts, which may help to explain why corruption permeates in courts across the country despite of their different location and jurisdiction and regardless of the finance status of the court and the salary of individual judges. It is these institutional factors that have not only generated and enhanced the incentives of corruption but also created and expanded opportunities of corruption for each member holding a position in the institution. Under these circumstances, the group political interests of the party coincide with the corrupt interests of every individual in the chain of command. Consequently, the institutionalization of the judiciary as part of consolidated party-state structure also institutionalizes corruption in China's courts.

This chapter also demonstrated that the features of court decision-making mentioned above have also affected the dynamics of corrupt activities in China's courts. From the litigants' perspective, such a litigating process generally favors resourceful litigants, who have sufficient political, social and economic capitals to dispose. When the litigants are equally resourceful, the outcome of the litigation becomes more precarious, depending upon the nature of the case, each litigant's dedication to the case, the "quality" and the effectiveness of each litigant's corrupt network as well as other contingencies. From the judges' perspective, a judge's position in the power structure of the court not only determines the volume of opportunities as well as profits of corruption but also the means of delivery of corrupt services. The higher the rank of a judge, the greater the opportunities as well as profits of corruption, and the safer the means of delivery of corrupt services. This particular manner of decision-making in courts is also conducive for coalition and collaboration among judges who share a superior-subordinate relationship. Such coalition and collaboration increases the efficiency and expands the volume of corrupt activities since it greatly reduces the transactional costs entailed in the communication and the coordination in the course of delivery of corrupt services. All these features described above have made corruption in China's courts a multi-player, multi-dimensional and dynamic phenomenon instead of being one-on-one, one-dimensional and static.